

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***BPCL HOLDINGS INC., COMPLAINANT
(Represented by Altus Group Ltd)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member J. KERRISON
Board Member J. JOSEPH***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER: 071106207

LOCATION ADDRESS: 44 RADCLIFFE CRESCENT SE

HEARING NUMBER: 62633

ASSESSMENT: \$18,980,000.00

This complaint was heard on 19 day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Josh Weber, Altus Group Ltd. – Representing BPCL Holdings Inc.*
- *Dave Mewha, Altus Group Ltd – Representing BPCL Holdings Inc.*

Appeared on behalf of the Respondent:

- *Nathan Domenie – Representing the City of Calgary*
- *Aram Mohtadi – Representing the City of Calgary*
- *Jim Toogood – Representing the City of Calgary*
- *Blair Brocklebank – Representing the City of Calgary (Observing)*
- *Steve Cook– Representing the City of Calgary (Observing)*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional matters were raised at the outset of the hearing.

The Respondent raised a procedural matter for the Board's attention. During the preparation of the submission by the City of Calgary there was an error made with the insertion of a document titled '2010 CARB Confirmations: Improved Properties Value Using Sales Approach (Land)'. The Respondent stated this document had no bearing on the hearing before the Board and requested the section in each submission be ignored as the Respondent would not be presenting the document as evidence.

In the Board folders is a copy of an email sent to the Complainant and the Assessment Review Board advising the parties of this inclusion in error and the intent not to discuss at the hearings.

The Complainant acknowledged receipt of the email and had no objection to the Board disregarding the pages referenced in the email.

The decision of the Board is to accept the request of the Respondent and will ignore the pages in each of the complaints listed below –

Roll	File #	Pages
143079390	62002	173-244
200205045	62253	179-250
200406650	62159	163-334
075192310	62659	180-251
200230290	62266	180-251
757122007	62167	178-249
128165602	63628	181-252
071106207	62633	166-237
07112750	62631	169-240

On a second matter the Complainant and the Respondent requested the Board to apply the decision from this hearing to the hearings listed below. The parties testified the evidence and arguments to be presented for this hearing with respect to the Gross Income Multiplier (GIM) were identical.

Both Parties agreed that in the interest of time and brevity, The GIM argument would carry forward to the following hearings:

Roll	File
143079390	62002
200406650	62159
757122007	62167
200205045	62253
200230290	62266
071127500	62631
071106207	62633
075192310	62659
128165602	63628

The review of evidence and decisions of the Board will be copied to each complaint decision. All roll numbers would be cross referenced with Roll Number 143079390 in File 62002.

Having resolved all procedural matters, the Board proceeded to hear the merits of the complaint.

Property Description:

The subject is a 124 unit low-rise apartment buildings and townhouse complex located in the southeast community of Albert Park/ Radisson Heights in Market Area 7. The suite mix of the complex consists of 18 one-bedroom units, 85 two-bedroom units and 21 three-bedroom units. The complex is situated on an improved 5.8 acre parcel.

Issue:

Is the assessed GIM applied to the multi-residential complex correct?

Complainant's Requested Value: \$17,400,000.00

Board's Decision in Respect of Each Matter or Issue:

Complainant's Evidence:

The Complainant submitted the 2011 City of Calgary Multi-Residential Detail Report and the Assessment Summary Report, providing the details with respect to the subject. Additionally, photographs, a location map and an aerial photograph were submitted. (C1, Pg. 6-13)

The Complainant submitted a document titled "Investment Grade Multi-Residential Suburban Low-Rise Gross Income Multiplier Analysis 2011 Assessment Year". (C1, Pg. 16-19) The document provided an overview of Gross Income Multiplier (GIM) methodology, capitalization rate analysis and sale samples, with references to appraisal texts, articles and both Board and Court decisions.

The Complainant presented the Altus Suburban Low-rise GIM study which provided an analysis of three properties in Calgary (C1, Pg. 21) –

Name	Address	Calculated GIM	Altus Appraisal GIM
Acadia Place	331/333 Heritage Dr. SE	11.14	11.22
Castleview Park	79 Castleridge Dr. NE	10.93	10.97
Bonaventure Court	205 Heritage Dr. SE	10.84	11.06
Median GIM		10.93	11.06
Average GIM		10.97	11.08

The Complainant presented an Assessment to Sales Ratio (ASR) study which applied a GIM of 11.0 to the three sales. (C1, Pg. 22) The resulting ASR's had a range of 98.72% to 101.48%.

The Complainant presented Altus Appraisal Division sale write-ups in relation to the three presented sales to show support for the GIM valued determined through analysis. (C1, Pg. 24-34)

The Complainant referenced a 2010 City of Calgary submission to support the position the City of Calgary used typical data to determine the GIM for high-rise and low-rise apartments. (C1, Pg. 35-39)

The Complainant evidenced three decisions which reduced the GIM applied to properties under complaint –

CARB 2298/2010-P – GIM reduced on a townhouse complex
MGB Agendas 1416 (208) – GIM reduced on Roll No. 043010412
MGB Decision (2009) – GIM reduced on Roll No. 125000604

The Complainant requested the GIM be changed to 11.0 and the assessment reduced to \$17,400,000.00.

Respondent's Evidence:

The Respondent submitted a document on Multi-Residential Improved properties in the City of Calgary, detailing population and distribution by market zones. (R1, Pg. 10-18)

The Respondent submitted the 2011 City of Calgary Multi-Residential Detail Report and the Assessment Summary Report, providing the details with respect to the subject. Additionally, photographs, a location map and an aerial photograph were submitted. (C1, Pg. 36-49)

The Respondent presented the 2011 Assessment Request for Information (ARFI) – Multi-Residential returned to the City of Calgary April of 2010. (R1, Pg. 58-60) Attention was brought

to the Suite Mix chart which detailed the number of suites and the range of monthly rents for units, as follows:

TYPE	No.	Rent Range
1 Bedroom Units	52	\$800 - \$980
2 Bedroom Units	125	\$850 - \$1300
3 Bedroom Units	4	\$1400

The Respondent submitted a chart with respect to the 2011 Multi-Residential Low-rise vacancy rates to show the change by market zone and the comparison of the City of Calgary vacancy rates with the rates determined by Central Mortgage and Housing Corporation (CMHC). (R1, Pg 62)

The Respondent presented the City of Calgary Low-rise GIM study which provided an analysis of three properties in Calgary (R1, Pg. 64) –

Name	Address	Calculated GIM
	330 2 Avenue NE	14.01
Acadia Place	331/333 Heritage Dr. SE	11.14
Cedar Court Gardens	1820 14 Avenue NE	11.30

The City of Calgary applies a GIM of 12.0 in the calculation of the 2011 low-rise multi-residential property assessments.

Supporting documentation for the three sales was submitted in the Respondent's evidence package. (R1, Pg. 65-73)

A 2011 High Rise Mixed Use GIM Study – Suburban was submitted by the Respondent with the accompanying documentation on the six sales presented. (R1, Pg.74-97)

The Respondent entered a challenge to the sale of Castlevue Park, 79 Castleridge Dr. NE, entered into evidence by the Complainant. The Respondent raised two matters for the Board to consider in the use of the sale – firstly the sale occurred on December 21, 1010 and secondly the calculation to determine the GIM used incorrect data, specifically the vacancy rate and the rental rate for one bedroom unit. (R1, Pg. 99-106 & 131)

A document from the Government of Alberta Municipal Affairs titled '2010 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual' was entered into evidence. (R1, Pg 108-125) The Respondent highlighted a number of passages from the document for the Board's consideration and specifically noted was the time frames of the provincial audits, special financing adjustments to sales, sales under duress and foreclosure sales.

The Respondent submitted a paper on the 'Inappropriate Use of Post Facto' and a decision – ARB 0665/2011-P - which addressed the use of a post facto sale of a subject property and a decision not to accept the sale. (R1, Pg. 126-130)

The Respondent presented an objection to the use of Bonaventure Court at 205 Heritage Drive SE in the determination of a GIM value. (R1, Pg. 132-160) The subject property is in fact a

condominium apartment complex, not a single titled multi-residential property. Condominium units are assessed as individual titles for each unit and in compliance with the Robotham decision.

The Respondent submitted a number of Board and court decisions –

Bentall Retail Services Inc. V. Assessor of Area 09 – Vancouver decision

Bramalea Ltd v. British Columbia decision

CARB 1532/2011-P

ARB 0034/2011-P – ‘The assessment is not a precise estimate of value but rather a reasonable estimate within an acceptable range of values’ (R1, Pg. 312)

CARB 0958/2011-P – addressed the issue of changing a component in the determination of the capitalization rate

CARB 1331/2011-P - addressed the issue of changing a component in the determination of the capitalization rate

LARB 1123-2011-P

CARB 1119/2011-P – speaks to equity comparables

Complainant Rebuttal Evidence:

The Complainant presented a table of the five sales, also submitted by the Respondent, and determined GIM values for each. The table showed how the different combinations of sales would create differing median GIM values. (C2, Pg 3)

The Complainant put forward an argument that the sale at 330 2 Avenue NE would be better classified as part of the Beltline and the application of the 13.0 GIM from the Beltline results in a higher assessment and a .93 ASR. Maps showing the property location, City multi-residential zones and Central Mortgage and Housing Corporation market zones were in the submission. (C2, Pg 23-25)

The Complainant presented the Respondent's three sales which show a median value for the GIM of 11.3 that raised the question as to how the City of Calgary determined a GIM of 12.0. (C2, Pg 8) In support the Complainant presented two high-rise sales, and the calculated median values for the GIM. In both cases the GIM employed by the City of Calgary is supported by the sales analysis. (C2, Pg. 9-10)

The Complainant submitted a ‘2010 High Rise GIM Study Summary’ from the City of Calgary in support of the argument that the median value was used by the City of Calgary in the selection of the GIM rate to be applied. (C2, Pg. 12). An addition five pages of 2008 roll year analysis indicated the City of Calgary used statistical analysis, including median values, in the determination of GIM values. (C2, Pg. 13-21)

The Complainant submitted a page from the *Bentall Retail Services et al* decision and highlighted two passages (C2, Pg 18) –

“The various capitalization rates for comparable buildings are analysed with a view to developing a ‘typical’ capitalization rate for that class of property.”

and

"We find the appropriate appraisal methodology is to calculate the capitalization rates from comparable sales utilizing actual income, and deduct a vacancy and expense allowance in a consistent manner."

The Complainant submitted pages from the publication 'Mass Appraisal of Real Property' from the International Association of Assessing Officers, which spoke to the calculation of GIM and Overall Rates. (C2, Pg 19-22)

The Complainant submitted four decisions dealing with the admissibility of post facto sales, outlier properties and exposure in the market place –

CARB 1984/2011-P spoke to the use of typical parameters in the determination of the assessment and the Assessment to Sales ratios.

ARB 0789-2010-P spoke to the use of a post facto sale of the subject property in determining market value.

MGB 044/05 addressed the time frame for sales use to determine the capitalization rate as not needing to correspond to the period selected for the provincial audit.

CARB 2285/2010-P decision addresses the use of a sale which did not have a 'willing seller' but was exposed to the market place for a reasonable period before the sale.

Findings of the Board

The Board accepts the use of the sale at 79 Castleridge Drive NE. Although the sale is post facto to the valuation date this alone does not prohibit the use of the sale in a GIM analysis. While it is a preference to use sales within or before the valuation date, the Board accepts the scarcity of sales. To exclude this sale by limiting the time frame would present a restriction to the population of sales for the determination of a GIM value. Having accepted the use of the sale at 79 Castleridge Drive NE accepts the Respondent's recalculation of the GIM based upon the corrected parameters of rental rate and vacancy as applied to the market zone. Accordingly the GIM is revised to 11.04.

The Board accepts the Respondent's challenge to the use of the sale at 205 Heritage Drive to be valid and therefore will not use the sale in the determination of the GIM. The property has been clearly shown to be a condominium project and the basis for the assessment is different from a single titled property.

The Complainant's challenge to the sale of 330 2 Avenue NE is not allowed. The Complainant put forward two arguments – firstly the sale is an outlier and secondly the sale is more reflective of a Beltline multi-residential property. The Board found no evidence presented to dispute the sale, the rates for rental or vacancy applied to determine the assessed value. The fact the calculated value for the GIM is higher than for other properties does not of itself require the sale be ignored in the determination of the value. The argument presented that the sale is better fitted to be a Beltline property would necessitate the reassigning of the entire Market Zone to bring the values into line with those used in the Beltline. The Complainant, on the basis of one sale, has not provided adequate evidence for the Board to take such an action.

Board's Decision:

The Board, following a review of all the evidence presented by both parties, amends the Gross Income Multiplier to 11.5 from the current 12.

The Board, in reaching this decision, looked at the sales submitted by the Complainant and the Respondent. The Board, based a decision upon the four sales accepted by the Board, determined the new GIM value -

Acadia Place	11.14
Castlevue Park	11.45
Crescent Heights	14.01
Cedar Court	11.30
Average	11.98
Median	11.37

The Board found the evidence did not support either the request GIM of 11 or the current GIM of 12.

The Board amends the assessment from \$18,980,000.00 to \$18,190,000.00

DATED AT THE CITY OF CALGARY THIS 8 DAY OF November 2011.


Philip Colgate
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Residential	Walk-up Apartment	Income Approach	-Gross Income Multiplier