

**CALGARY
COMPOSITE 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:

Burnswest Corporation, as represented by Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

P. Charuk, MEMBER

K. Farn, MEMBER

These are complaints to the Composite Assessment Review Board (CARB) in respect of a property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBERS:	113000640 114247000
LOCATION ADDRESS:	7110 15 St S.E. 7100 15 St. S.E. Calgary, AB
HEARING NUMBER:	61103 61104
ASSESSMENT:	\$2,030,000 \$1,840,000

These complaints were heard on the 22nd day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *C. VanStaden, Altus Group Limited*

Appeared on behalf of the Respondent:

- *K. Haut, City of Calgary*
- *T. Johnson, City of Calgary*

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

These are new hearings on the merits of the Complaints. A previous Board, pursuant to Decision 1279/2011-P, determined that there had been a delay in the exchange of evidence that affected the Complainant's Disclosure. That Board set new disclosure dates and set a new hearing date for September 22, 2011. The Board did not hear evidence on the merits and determined that it had not been seized. There was no objection by the Parties to this Board hearing the Complaints.

While not a Procedural Issue, the Board notes that the Respondent corrected an error in the total assessment for Roll 114247000. In transitioning from the Cost Spreadsheet to the Assessment the error was made. The correct assessment for this roll, from the Respondent's viewpoint, is \$1,694,173, not \$1,840,000.

While the Complaints were read into the record individually, the evidence was presented as inter-related issues. The Board's decision, then, is to address both Complaints in one Decision.

Property Description:

The property at 7110 15 St. contains 28.22 acres and supports mixed industrial and recreational uses. The property at 7100 15 St. contains 15.8 acres and is used primarily for recreational purposes but also hosts some industrial buildings. Both properties are assessed using the Cost Approach to Value for the improvements and using the Sales Comparison Approach for the land. The two properties are separately titled but the different uses occur on each title, as well as other roll numbers not in dispute. For assessment purposes, some features are attributed entirely to one roll number although they may be physically present on the other roll number.

Issues:

1. Is the Burnco site (the industrial use on 7110 15 St.) properly assessed at the City's SE Industrial land rate of \$525,000 per acre?
2. Is the 18 hole golf facility on 7100 15 St. properly assessed as a Pitch and Putt or should it be assessed as a Mini Golf facility?

Complainant's Requested Value: On the Complaint Form:

Roll No. 113000640: \$1,760,000

Roll No. 114247000: \$1,360,000

At the time of the hearing this was revised to:

Roll No. 113000640: \$1,380,000

Roll No. 114247000: \$1,630,000

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

For ease of reference, the property at 7110 15 St. S.E., Roll No. 113000640 will be referred to as Subject #1, and the property at 7100 15 St. S.E., Roll No. 114247000 will be referred to as Subject #2.

Subject #1 contains the following assessable components:

- a) Various improvements valued at \$176,694 – this is not in dispute.
- b) 16.22 acres of recreational (golf course) land assessed at \$20,000 per acre for \$324,400 – this is not in dispute.
- c) 12.0 acres of industrial land (Burnco) assessed at \$525,000 per acre less various reductions – this part of the assessment is in dispute.

Subject #2 contains the following assessable components:

- a) 15.8 acres of recreational (golf course) land assessed at \$20,000 per acre for \$316,058 – this is not in dispute.
- b) Driving Range valued at \$311,359 – this is not in dispute.
- c) Building improvements valued at \$515,515 – this is not in dispute.
- d) An 18 hole golf facility, classified as pitch and putt, and valued at \$551,240 – this is in dispute.

During the course of the hearing the Complainant realized that there was an error in her Burnco land calculation and the Board granted her the opportunity to correct it provided it was reviewed by the Respondent and both signed attesting to the accuracy of the calculations. This was done and marked as Exhibit C2. However, in revising the request, the Complainant moved some of the components from Subject #1 to Subject #2 as that better reflected the Owner's business accounts. Later in the hearing, this part of the new assessment request was withdrawn. However, since the document also provides the detail for the Subject #2, 18 hole golf facility request, the document remains part of the record for this hearing.

Subject #1:

With respect to Subject #1 and the Burnco land assessment, the Complainant submitted that the lands are unserviced and cannot readily be serviced or re-developed. Access to the site is poor. This is supported by the City's application of a 75 per cent reduction to the land assessment for combined servicing and access issues. The Burnco site itself is separated from the Bow River by the other property under complaint as well as a portion of the 9 hole golf course; however, the Complainant stated that the lands are within the flood plain and have been subject to flooding in the past, disrupting Burnco's sales operations. It is the Complainant's position that the City will not approve permanent structures on the Burnco property because of flooding issues and because of unresolved access related to a future interchange at Heritage Drive and Deerfoot Trail. The lands are designated Industrial – General (IG) with Direct Control, DC-40Z93 which allows for the gravel operations conducted by the tenant but which does not reference the Floodway, Flood Fringe and Overland Flow Regulations within the City's Land Use Bylaw. The Respondent argued that there is no statutory evidence that the Burnco lands are affected by the City's flooding restrictions but does agree that servicing and access are issues.

In support of the requested assessment, the Complainant provided six sales comparables for properties that sold between December 2008 and February 2011. The lands are all vacant and none are serviced. Only the most recent sale is designated IG and it is also the one most close in size to the subject. However, the Complainant acknowledged that it is a post-facto sale and was not included in the median and average rates per acre developed from the comparables. One of the comparables is a very large 160 acre parcel and was included because it also has DC districting but it, too, is acknowledged as problematic as it may not be a fully arms-length transaction. It was, however, included in the per acre rate calculation. The Respondent called into question one of the comparables in that, while the sales price is shown as \$4,481,102, the Land Title's Affidavit puts the value at \$19,151,990. All of the remaining comparables are designated Special Purpose – Future Urban Development (S-FUD) which, according to the Respondent's Land Use Bylaw extract, shows the purpose of the district to be applied to lands that are awaiting urban development and utility service and to restrict premature subdivision and development of parcels of land. The Complainant chose the S-FUD parcels because they most closely approximate the actual development potential of the Burnco site and because of that factor, reduced the average sales price per acre only by 25 per cent for access and 15 per cent for size in reaching her proposed value of \$73,312 per acre to be applied equally across the 12 acres.

The Respondent supported the S-IG rate per acre of \$525,000 with eight comparables, all designated I-G and ranging in size from 1.3 to 22.4 acres. Two of the parcels have partial services and one has limited access. It appeared from the notations on the table that the remaining five were fully serviced with no other impediments to development. One property was removed by the Respondent from consideration because of unresolved inconsistencies in the parcel size. The Respondent noted that the Complainant's comparables are not suitable, having different land use designations from the subject and being located in rural areas in a different part of the City.

The Board found that the Complainant's comparables more closely approximated the conditions of the Burnco site, land use designation notwithstanding. Using comparables with the S-FUD land use designation creates a comparison with the Burnco site that reflects the quite severe development constraints on the latter and requires, then, only the City's adjustment for access

and, on the two acre area, size. However, the Board noted a further error in the Complainant's calculation in that the size reduction was applied to the whole Burnco site and not just the two acre portion of it that the Respondent had identified. The Board determined that only three of the Complainant's comparables should be included: 1100 226 Av S.E.; 16555 104 St. S.E.; 16625 104 St. S.E.

The Board's calculation of the Burnco site portion of the roll number is as follows:

1. $(\$110,485 + \$151,599 + \$162,835) / 3 = \$141,640/\text{acre}$, average.
 2. $(\$141,640 * 10) * 75\% = \mathbf{\$1,062,300}$
 3. $(\$141,640 * 2) * 75\% = \$212,460$
 4. $\$212,460 * 85\% = \mathbf{\$180,591}$
- Total of 2. & 3., above = \$1,242,891

Added to the other two components of the assessment not in dispute, the Board determined that the assessment on Subject #1 should be reduced to \$1,743,985 before truncation.

Subject #2:

At issue in this part of the Complaint is whether or not the Respondent has correctly characterized the 18 hole golf facility as a Pitch and Putt. The Complainant identifies the facility by reference to its web site as an "18 hole par 72 all-grass putting course . . . with rock, sand and water features . . . stretching nearly 2900 feet." The Complainant explained that there is no opportunity to pitch up onto the putting service; that the players walk from hole to hole and place the golf balls on the green. The size of the facility is approximately 4 acres. Both Parties referenced Marshall & Swift which describes various types of golf facilities and provides costing information for them.

Miniature Golf Courses, as claimed by the Complainant, is a "Good custom course . . . eighteen holes . . . ½ to 1 acre or more, extensive themes . . . with rock and waterscape layout." The Cost per hole is \$19,000 with additional inputs for lighting. In the alternative, the Respondent claimed that this is a Pitch and Putt course which is characterized by Marshall & Swift as a short course, "nine holes on 10 to 15 acres, 1,000 yards long, including irrigation".

It is clear to the Board that, although the subject course is almost 1,000 yards long, that distance is for 18 holes and not the 9 holes that Marshall & Swift attribute to a Pitch and Putt for that length. As well, the Complainant was clear that there is no pitching area to reach the greens and the ball can only move between the holes by hand.

The Board determined on the basis of the evidence provided that the subject facility is, indeed, a miniature golf course and should be costed as such. In the absence of any other evidence for this calculation, the Board accepts the Complainant's calculation as contained in Exhibit C2, designating the base cost at \$24,500, with the necessary adjustments for a total assessment of \$495,320.

Having regard to the other three elements that form the assessment, the assessment on Subject #2 is revised to \$1,638,252 before truncation.

Board's Decision:

The 2011 Assessment for Roll No. 113000640 is reduced to \$1,740,000

The 2011 Assessment for Roll No. 114247000 is reduced to \$1,630,000

DATED AT THE CITY OF CALGARY THIS 27th DAY OF September 2011.


S. Barry, Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. C2	Complainant's Revised Assessment Request – the Request was later withdrawn
3. C3	Complainant's Final Revised Request
4. R1	Respondent's 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.