

**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:

**1167186 Alberta LTD., (as represented by Altus Group Limited),
COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**T. Golden. PRESIDING OFFICER
R. Deschaine MEMBER
E. Reuther. MEMBER**

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 2012 Assessment Roll as follows:

ROLL NUMBER	067234104
LOCATION ADDRESS	800 1 AV SW
FILE NUMBER	67658
ASSESSMENT	\$2,340,000

This complaint was heard on 4 day of November, 2012 and continued on November 07, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5 and 6.

Appeared on behalf of the Complainant:

- ***A. Izard & B. Neeson - Altus Group Ltd.***

Appeared on behalf of the Respondent:

- ***H. Neumann, A. Czechowskyj – Assessors, The City of Calgary***

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

[1] The Board was required to make decisions regarding 3 preliminary issues prior to proceeding with the merits or during the hearing itself.

Procedural issue 1: Correction of a technical error.

[2] The Respondent stated that the original assessment was prepared using a count of 76 parking stalls but there are actually 68 stalls in the structure. With this new parking stall total, a revised assessment of \$2,090,000 was recommended by the Respondent. The Complainant agreed the parking stall count was 68 stalls, and agreed the new assessment was correctly calculated, but said that the recommended assessment still falls short of requested reduction. With this, the Board's decision is that the hearing should proceed.

Procedural issue 2: New information in rebuttal.

[3] The Respondent objected to the rebuttal document submitted by Complainant. The rebuttal document, in their opinion, contains new information in the form of two additional comparables, CARB and MGB Decisions, two different assessment calculations, and a new lease. Since these items were not in the initial disclosures, and are unrelated to the Respondents disclosure, the Respondent had no opportunity to adequately comment.

[4] The Complainant disagreed with the statement that the rebuttal was new information. They said that the rebuttal is a response to the Respondent's evidence questioning a main argument of the Complainant, being a Short Life issue related to the lease.

[5] The Board considered the presentations and reserved the decision on the validity of portions of the rebuttal document until the merit evidence was presented at which time the role of the rebuttal evidence could be determined.

[6] After hearing the merit of the Complaint, the Board decided that the Complainant's rebuttal evidence could be entered as evidence. In the Boards opinion, points 10 and 13 page six of exhibit R-1 question the Complainant's position regarding the method used to arrive at the requested assessment amount, and the issue of the lease of the subject being a common lease with renewals, similar to other leases within the City. The rebuttal will be considered by the Board and given the appropriate weight.

Procedural issue 3: Complaint properly before the Board.

[7] During the hearing the Complainant introduced into evidence a lease between the City, that is also the land owner, and La Caille Parkade Inc., which the Board accepts as the same entity as the assessed person. During the questioning of the Complainant's position the Respondent pointed to Article 10 point b of the lease document:

".....and is not permitted to take such action in its own name, upon agreeing to indemnify the landlord in respect of such action in its own name, upon agreeing to indemnify the landlord in respect of such action and all costs relating thereto...."

[8] In the Respondent's opinion, the Complaint could not proceed without the City of Calgary agreeing to the action. The Complainant suggested that the agreement is only required for joint actions.

[9] The Board understands that the Respondent is also the representative of the land owner and allowed the hearing to be recessed from October 29, 2012 to November 7, 2012 to allow the Complainant to contact the land owner to clarify the situation.

[10] When the hearing recommenced the Complainant provided a letter from the City of Calgary stating the tenant is paying the rent and is serving the terms, covenants and conditions of the lease agreement.

[11] The Board accepted the letter from the City of Calgary as it clarified the position of the land owner, but the Board made it clear the hearing would proceed regardless of the land owners agreement as the assessed person met the requirements of the legislation for filing a complaint.

Property Description:

[12] The subject property is a 68 stall underground downtown parking lot owned by the City of Calgary and leased to La Caille Parkade Inc. for an original period of 50 years with the possibility of 5 separate 10 year renewal periods. After each period the City of Calgary could renew the lease if the land was not required for municipal purposes. There are 41 years remaining on the initial term. The structure, constructed in 2002, is classed as a C- quality and is assessed at \$30,789 per parking stall; which is lower than other parking lots. Above ground is a public park, part of the downtown river park system.

[13] The assessment was conducted using an Income Approach, applying the typical factors developed for downtown parking lots, including a 7% cap rate. The initial assessment of the property was not disputed in the Complaint, as all of the factors were agreed to. The Complainant's said that Complaint concerns the potential effect of the (Short Life) lease on the market value.

[14] It was agreed that the subject parking lot was performing in a typical fashion with low or no vacancy and with typical downtown rates for parking. Given a high water table in the area, the operating costs may be higher than is typical.

Issues:

[15] **Issue:** Is it appropriate to apply a Short Life calculation to the assessment in order to more accurately estimate market value?

Complainant's Requested Value: \$1,880,000

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

Issue: It is not appropriate to apply a short life calculation to the assessment for the subject property.

[16] The Complainant explained to the Board the lease for the parking lot places an encumbrance upon the property by introducing uncertainty as to the continuing ability of the lessee to operate the parking lot after the end of the initial term of the lease. Article 3 of the lease states:

".....Should the Landlord require the Lease Premises for Municipal purposes at the end of the term or any renewals thereof, it must give written notice of such to the Tenant no later than one hundred and eighty days prior to the termination date or subsequent renewal period.."

[17] The statement indicates that the City may not renew the lease should the land be required for a municipal purpose. Unlike a privately owned parcel, the lease has no expectation that the use will be available after the initial term of the lease and therefore a Short Life calculation must be conducted to achieve the actual market value.

[18] To recognize encumbrance of the lease, the Complainant accepted the factors for the Income Approach to valuation including the typical cap rate of 7%, but calculated a 100% capture of investment over a 50 year period (the original length of the lease) and developed a revised cap rate of 7.7%. This cap rate, when used with the other typical factors, results in the requested assessment. The Complainant reiterated there was no objection with the 7% cap rate, and it was used in the discount calculation.

[19] In support of the request for the Short Life consideration, the Complainant argued that the City actually uses a Short Life calculation in the assessment of some properties in the City. In particular, two properties being West Market Square and Heritage Plaza. In addition, they presented several CARB and MGB decisions with respect to Short Life issues regarding West Market Square and Heritage Plaza. It is the Complainant's position that these decisions apply equally to the subject as the situation is similar with respect to the encumbrance of the leases that apply to the comparable properties. In each case the City has total control over the future of the properties at the end of the lease period, and therefore like the subject, they have a Short Life issue. This feature of the comparables has been recognized by the MGB, the CARB, and by City assessors who now assess these comparables with consideration for Short Life issues.

[20] The Respondent made it clear that none of the income factors are challenged by the Complainant and therefore the assessment is reflective of market value. The assessed value is the value of the fee simple estate of the subject. The Board was made aware how the various inputs to the Income Approach were developed, and were typical for, and applied to all downtown parking lots.

[21] As for the need to apply a Short Life analysis, the Respondent suggested that the lease is actually for 100 years and after the initial term there is the possibility of 5 ten-year renewals. This is such a long term lease it should have no market value impact. Since all commercial leases have terms, the subject should be assessed as all other lots in the downtown. The subject performs well in the marketplace.

[22] The Respondent tested the market value and assessment by providing a table of parkade sales, and recognized that there are few sales of these structures, and some were from the 1980's. When these sales were plotted in a straight-line graph, the subject was assessed

comparably with the sales. A table showing the assessment per parking stall (page 29 R-1) showed the subject was the lowest, and the Respondent said that it was likely the assessed value was low, but they were not asking for an increase to the assessment.

[23] The Board accepts that the income factors are accepted by the parties, and the consideration is restricted to the issue of Short Life because of a lease. The Complainant provided very little direct justification for a Short Life consideration on the subject property. Rather, the evidence was limited to previous Decisions, and based on those Decisions, the Short Life method of assessment used by the City to assess those same properties. It is then important to review the evidence before the Board to determine if the properties are similar, and therefore should the subject have similar assessment methods applied? Although this Board has the Decisions of the various Boards, the evidence before those Boards is not available.

[24] The Board finds that the subject differs significantly from the properties presented as comparables by the Complainant in terms of the use of the comparables and the subject, and their location, but specifically in three ways. Firstly, part of the consideration for Short Life is the length of time allowed in the initial term of the lease, and the remaining life of the lease. The comparables, based only on the information in the Decisions, seem to be approximately 20 years, or near half of the lease term. Since no leases are available this is not confirmed. The subject has a longer term of 41 years out of 50 years remaining on the initial term of the lease.

[25] Secondly, there is a difference in the comparables and the subject with receiving renewals, and this has restricted past Decisions to consider only the initial term of the lease. It appears the Heritage Plaza site has no renewal clauses. The location of the property would be important in this respect. Information regarding West Market Square is not clear, but it appears that Heritage Plaza lands may be required for an overpass at the intersection of two major roadways. Development appears inevitable at Heritage plaza and there is a real risk the lease will be terminated. In the case of the subject, the top of the parkade is a park. Parking in the downtown is at a premium and the parkade is likely to be operated for some time. In addition, the likelihood of this remaining a parkade is increased as some of the parking stalls are required by adjacent residential condominium units to meet development conditions.

[26] Lastly, the two comparables apparently have portions of the leases that require the structures to be demolished; it appears to be mandatory. In Article 9 of the subject lease, demolition appears not to be mandatory and is only considered at the end of the initial term and all renewals (Page 120 of C-1).


[27] The evidence provided by the Complainant is dependent on the comparables and the Board finds them to be dissimilar to the subject. Although the concept of Short Life may be applicable in some isolated situations, the argument that it should be applied to the subject was unsupported.

[28] The Board accepts the Respondent's factual correction of the total number of parking stalls in the parkade, and therefore the recommended assessment of \$2,090,000. With the revised value, the Board agrees with the Respondent that the recommended assessment is the best representation of market value.

Board's Decision:

[29] The assessment is reduced to \$2,090,000.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF November 2012.


T. Golden
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Letter from Owner
3. C3	Part 1 Rebuttal
4. C4	Part 2 Rebuttal
5. 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.

Appeal Type	Property Type		Issue	Sub-Issue
CARB	parking	Stand alone	Income approach	Short life.