

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

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

between:

***CIDEX DEVELOPMENTS LTD.,  
(as represented by Altus Group Limited),  
COMPLAINANT***

and

***THE CITY OF CALGARY,  
RESPONDENT***

before:

***R. Glenn, PRESIDING OFFICER  
K.Farn, MEMBER  
D.Steele, 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:

<b>ROLL NUMBER:</b>	<b>067085308</b>
<b>LOCATION ADDRESS:</b>	<b>1002 14 ST SW</b>
<b>FILE NUMBER:</b>	<b>68830</b>
<b>ASSESSMENT:</b>	<b>\$3,400,000</b>

This complaint was heard on Tuesday, the 13<sup>th</sup> day of November, 2012 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 3.

Appeared on behalf of the Complainant:

- M. Cameron as agent for Altus Group

Appeared on behalf of the Respondent:

- No appearance for the City of Calgary

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

[1] There were no issues of procedure or jurisdiction raised by the Complainant at the hearing. The Board however, noted that there was no attendance by the Respondent, nor was any information available from the Clerks regarding the non-attendance. The Board is under no obligation to attempt to contact a party when they are late or absent, and so the Board decided to proceed with the hearing without the Respondent being present.

[2] The only material which the Board had from the Respondent was the Respondent's Brief which had been properly submitted in a timely fashion. The Brief was later marked as an exhibit and was appropriately considered by the Board in its deliberation and decision in this matter.

**Property Description:**

[3] The subject property is a single storey wood frame building constructed in 1976, assessed with a class "B" rating, comprising 14,580 SF, used primarily for retail with approximately 25% storage space. The site area of 20,940 SF is located on the SE corner of 14St and 10Ave SW, in the community of Beltline, just west of downtown.

**Issues:**

[4] The Complainant submits there is an inequity in the overall assessment, as being too high when considering:

[a] the subject assessment is based on an incorrect Highest and Best Use analysis as the subject building currently houses a commercial business.

[b] the building is only a Class "C" building at best, as it is a wooden frame building. Apparently, the incorrect classification aided with the incorrect Highest and Best Use conclusion.

[c] it will be argued the correct equitable Class C cap rate is 8.25%.

**Complainant's Requested Value:**

[5] \$2,550,000

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

**Complainant's Position:**

[6] The Complainant argues that the Respondent should not have applied a Highest and Best Use approach to the assessment on this property. It is noted that the Respondent did apply a \$155/SF land rate to the subject which is the basis for their assessment.

[7] The Complainant suggests that the subject houses a viable ongoing retail business which has been carried on in that location for a substantial period of time. This, they say, is a strong indication that a Highest and Best Use approach is not at all appropriate.

[8] The Complainant also notes the site is not "being developed", it is stable in its current use. They carry on saying that because of its ongoing viability, the subject should be taxed on the basis of the typical retail income generated on the subject property.

[9] They say the income approach is the best case for equity and fairness in this situation. The Complainants go on to argue that the basis for a Highest and Best Use approach is simply not present in this current scenario, backing up their argument with reference to a number of prior MGB decisions and several textbook references. The nexus of their whole position is that it is inappropriate to expect a taxpayer to pay municipal tax based on a use that is not in place.

[10] In their Rebuttal Brief, the Complainants note that there has been a lack of sales in the Beltline area in recent years. In fact, they say that there has only been one relevant sale, and carry on to say that one sale cannot determine a market. The Complainant summarizes by stating that the subject should be assessed based on its current use, not on its land value. They complete their argument by noting that the Respondent has "speculated" on the use of the subject land, which unfair and could only lead to an inaccurate conclusion.

**Respondent's Position:**

[11] The Respondent's materials rely on a Sales Approach to Value for the subject assessment. They include a corner influence. The thrust of the Respondent's argument is that the Complainant's position is based on office buildings in the Beltline, whereas the subject is a retail building.

[12] In addition, other C class buildings in the Beltline show a higher retail rate than what the Complainant is requesting for the same class. The Respondent also claims the Complainant does not have any market support for Beltline land sales to show the assessment is incorrect.

[13] It is apparent that the Respondent in their printed argument have relied on 5 sales for the depreciated value they assign to the subject, but it is also apparent that only one of the sales is appropriate.

**Board's Decision:**

[14] The Board finds that the argument presented by the Complainant was properly supported and therefore, convincing. The Board finds their argument that the Highest and Best Use being inappropriate is the correct view in this circumstance.

[15] When a business has been successful in the same location over a substantial period of time, there is little room for the Respondent's argument regarding Highest and Best Use. It simply does not float. The Board rejects in its entirety the Respondent's position on that point.

[16] When looking for a proper basis for the assessment then, the Board is bound to accept the Complainant's position with the proper method of assessment being the Income Approach when there is no intention to re-develop the subject property, as in this situation.

[17] The other two issues stated at the outset were not addressed at all in argument. The Complainant's brief issue statement mentioned the cap rate should be 8.25%, but this was not argued at all, and the Respondent's brief demonstrated a cap rate of 7.75 for this class of property in the Beltline area. The Board accepts a cap rate of 7.75% as being applicable for the subject.

[18] With the building comprising 14,580 SF, and 25% of it being used for storage, the Board finds that the appropriate assessment is arrived at by noting 10,935 SF @ \$21/SF equals \$229,635, plus 3,645SF @ \$3.00/SF equals \$10,935 all of which totals \$240,570.

[19] Subtracting a vacancy rate of 10%, or, \$24,057 leaves an income of \$216,513. Subtracting the operating cost of \$12/SF, or \$17,496, and the non-recoverables of 1%, or \$2,165, and considering a cap rate of 7.75%, leaves a net operating income of \$196,852, which supports an approximate market value of \$2,540,026, truncated to \$2,540,000.

[20] The assessment herein is reduced to \$2,540,000.

DATED AT THE CITY OF CALGARY THIS 24<sup>th</sup> DAY OF DECEMBER, 2012.

  
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R.Glenn, Presiding Officer**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
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 MGB Administrative Use Only

Decision No.: 2402-2012-P      Roll No.: 067085308				
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Commercial Building	Equity	Income Approach	Market Value