

**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:

***Anthem Level Erlton Ltd.
(as represented by Altus Group Ltd.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Earl K Williams, PRESIDING OFFICER
P Charuk, MEMBER
J Pratt, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 201341716

LOCATION ADDRESS: 2418 Erlton Rd SW

HEARING NUMBER: 61222

ASSESSMENT: \$2,880,000 100% NON-RESIDENTIAL

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

Appeared on behalf of the Complainant:

- B Neeson (Altus Group Ltd)

Appeared on behalf of the Respondent:

- I McDermott

Property Description:

The subject property at 2418 Erlton Rd SW is a 1.76 ac (76,749 sq ft) parcel of land with the Property Use: Commercial, Sub Property Use: CM0050 Retail-Marginal Building and the Land Use Designation: Direct Control District. Further the subject property has been assigned the Non-Residential Zone Code of NONRES WS2. On the subject property are numerous buildings some of which are vacant and some of which are utilized as residential units.

Issues:

The subject property has been assigned the incorrect assessment class. The residential use of the property has not been recognized.

Complainant's Requested Value: \$2,880,000 75% non-residential 25% residential

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

The Complainant and Respondent presented a wide range of evidence consisting of relevant and less relevant evidence.

The Complainant's evidence package included a Summary of Testimonial Evidence; a map identifying the location of the property; photographs of the exterior of the subject property; the City of Calgary 2011 Assessment Explanation Summary; information on comparable properties and selected sections of the Legislation.

The Respondent's evidence package included a Summary of Testimonial Evidence; a map identifying the location of the property, photographs of the exterior of the subject property, the 2011 Assessment Explanation Summary, details of Bylaw No.118Z2007 which relate to the Erlton Area Redevelopment Plan and the Lindsay Park Master Plan as well as a summary of demolition permits issued in respect of the subject property.

Complainant

The Complainant argued that a portion of the subject property is or intended to be used for permanent living accommodation which has not been recognized in the assignment of assessment class.

Section 297 of the *Municipal Government Act (MGA)*, *Assigning assessment classes to property* states:

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

- (a) class 1 – residential*
- (b) class 2 – non residential*

297(4)(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;

The Complainant reviewed the map and photos (pages 16 -26 of Exhibit C-1) to identify the portion of the land which is raw land, the buildings which are vacant and the residential buildings which are located on the subject property facing west on to Erlton Rd SW. Two of the residential buildings which are single family dwellings are currently revenue buildings occupied as residences.

Further the Complainant presented the 2011 Property Assessment Notice, Assessment Summary Report and photographs for three comparables which have been assigned both non-residential and residential classes. Specifically the comparable on 2275 98 Ave SE is similar to the subject by having raw land assigned to the non-residential class and improvements assigned to the residential class.

In summary the Complainant argued there are occupied residential buildings on the subject property which have not been recognized in the assignment of the property class and that the requirements of the Section 297(4) (b) have been not been met.

Respondent

The Respondent reviewed the planning, zoning and redevelopment plans for the subject property and the adjoining area. Particular attention was directed at a review of Bylaw No 118Z2007 which outlines the Land Use and related matters for the Erlton Area Redevelopment Plan which includes the Lindsay Park Master Plan. The Land Use for the area is identified on page 52 (Exhibit R-1) and the Land Use for the subject property is High Density Mixed Use. Further the issuing of the demolition permits dated September 2010 and January 2011 (pages 39 to 51 of Exhibit R-1) for buildings on the property are in the view of the Respondent, support that development has started for the planned mix-use development. On this basis the class assigned to the property as non-residential is correct for the subject property.

Board's Findings

Based on the evidence presented the development of the subject property will be determined by the Erlton Area Redevelopment Plan and the Land Uses in the Plan. The property is at the conceptual level, as definite redevelopment plans have yet to be presented. The 2 residential buildings on the property are revenue generating. Section 297(4) (b) defines the non-residential assessment class to exclude: *land that is used or intended to be used for permanent living accommodation*; therefore the buildings should be excluded.

Board's Decision:

Based on the evidence presented the Board adjusted the assessment class to be non-residential 87.5% and residential 12.5%.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF December 2011.



Earl K Williams
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
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	OTHER	VACANT LAND		