

**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:**

***Copez Properties Ltd.  
(as represented by Altus Group Ltd.), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***L. Wood, PRESIDING OFFICER  
P. Charuk, MEMBER  
D. Julien, 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:

<b>ROLL NUMBER:</b>	<b>067243808</b>
<b>LOCATION ADDRESS:</b>	<b>730 10 AV SW</b>
<b>HEARING NUMBER:</b>	<b>63808</b>
<b>ASSESSMENT:</b>	<b>\$4,440,000</b>

This complaint was heard on 13 & 14 day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *Mr. A. Izard*                      *Agent, Altus Group Ltd.*
- *Mr. G. Kerslake*                *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Mr. J. Toogood*                *Assessor, City of Calgary*
- *Mr. R. Natyshen*              *Assessor, City of Calgary*

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

At the commencement of the hearing, the Respondent indicated that although it filed its disclosure on time with the Complainant, it did not file its disclosure on time with the Assessment Review Board, contrary to section 8(2)(b) of *Matters Relating to Assessment Complaints Regulation* AR 309/2009 (MRAC). The Board accepted the late disclosure and the hearing proceeded on the merits.

**Property Description:**

The subject property is a 10,061 sq. ft. warehouse that was converted into retail. The building is located on a 0.62 acre site in the Beltline community. It was constructed in 1962. The land use designation is CC-X, Centre City Mixed Use District.

The subject property was assessed based on the Direct Sales approach (as though vacant land) at a land rate of \$195 psf with a downward adjustment of (-15%) for the site influence of Abutting a Train Track.

**Issues:**

1. The subject property should be assessed based on the Income Approach to value.

**Complainant's Requested Value:** \$2,330,000

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

1. The subject property should be assessed based on the Income Approach to value.

The Complainant submitted that the Respondent had incorrectly applied the principles of *Highest and Best Use* by assessing the subject property as vacant land. He stated this was a light industrial warehouse converted into retail and there is no evidence to suggest that this property will be redeveloped in the imminent term. He argued that the 2010 and 2011 assessments determined that this is a redevelopment site yet there have been no physical changes to the property during this time. He argued there is a lack of economic motivation to redevelop not only this site but also the vacant parking lots surrounding the subject property. He indicated that assessing the subject property as though vacant is a rudimentary and simplistic

way to value the subject property.

The Complainant brought forward several examples of recent retail property sales located in the Beltline. He argued that at the time of purchase, there were no plans to tear down the buildings and the properties were not purchased as "land only". These buildings were renovated and were then either owner occupied or leased out (Exhibit C1 pages 116 - 257). For ease of reference, the Board has incorporated these sales into a chart as follows:

Name	Address	YOC	Building Area (sq. ft.)	Land Area (sq. ft.)	LUC	Sale Date	Sale Price	Price PSF
Sunshine Village Snow Central	1037 - 11 AV SW	1979	6,978	7,079	CC-X	8/12/2008	*\$1,650,000	\$236
Halloween Store	1129 17 AV SW	1967	8,176	11,950	C-COR 1	9/18/2008	\$4,000,000	\$489
Avocado Restaurant	340 17 Av SW	1964	3,200	7,405	C-COR 1	1/15/2009	\$1,550,000	\$484
	731 - 739 10 AV SW	1928	20,208	19,526	CC-X	4/1/2009	**\$4,000,000	\$198

\*sale included 1102 & 1104 10 St SW

\*\* sale included 3 buildings

The Complainant submitted that the subject property should have been assessed based on the Income Approach to value similar to other retail buildings. He also argued there are long term leases in place, and there would be a cost associated to break those leases. The Complainant submitted based on the current valuation of the subject property, if it was assessed based on the Income Approach to value, it would have to generate an assessed rental rate of \$40.25 psf (Exhibit C1 page 12). However the subject property is only generating lease rates of \$22.00 psf. The Complainant submitted the Assessment Request for Information ("ARFI") dated April 2010 which reflects two tenants in the building: the first tenant leases 4,426 sq. ft. for \$22.00 psf and the second tenant leases 5,635 sq. ft. for \$22.50 psf. Both leases commenced in 2007 (Exhibit C1 pages 216 - 218). He submitted an ARFI of another property located at 839 10 AV SW (also owned by the Copez Properties Ltd.), as further support of (typical) lease rates of \$23.00 - \$25.00 psf (Exhibit 220 - 223).

The Complainant argued if there is no evidence submitted that the highest and best use is redevelopment, then an income producing property should be assessed based on its income and submitted CARB 2315-2010-P as well as several other MGB and court decisions in support of his position.

The Respondent submitted the subject property was assessed based on a land rate of \$195.00 psf (26,790 sq. ft.) and a downward adjustment (-15%) was made to reflect the site influence of Abutting a Train Track (Exhibit R1 page 21). The Respondent indicated that four properties surrounding the subject property have been assessed in a similar manner (Exhibit R1 pages 38 - 41).

The Respondent submitted five arms' length transactions that were used to develop the \$195.00 psf assessed land rate (Exhibit R1 page 44). He noted four of the five sales had improvements on sites but were old and vacant. Therefore the Respondent extracted the improvement value based on a *Marshall & Swift* calculation to derive the residual land value. The Board has set out a condensed version of that chart for ease of reference as follows:

Address	LUD	Sale Date	Sale Price	M & S Depreciated Improvement Value	Land Area	Adjusted Sale Price PSF	Residual Land Rate PSF
340 17 AV SW	C-COR 1	1/15/2009	\$1,550,000	\$ 44,974	7,267	\$203	\$196
739 & 731 10 AV SW	CC-X	4/1/2009	\$4,000,000	\$246,165	19,526	\$195	\$182
1509 8 St SW	CC-COR	3/15/2010	\$ 425,000	\$ 19,141	1,251	\$340	\$324
508 15 Av SW	CC-COR	4/16/2010	\$1,200,000	\$218,179	6,505	\$184	\$151
2207 4 ST SW	C-COR 1	5/31/2010	\$3,600,000	N/A (land only)	12,002	\$285	\$285
Mean						\$241	\$228
Median						\$203	\$196
Weighted Mean						\$220	\$210

The Respondent noted the property located at 739 & 731 10 Av SW is located directly across from the subject property and was vacant at the time of sale. It has a similar zoning as the subject (CC-X) and it has a land area of 19,526 sq. ft. It had sold for \$4,000,000 in April 2009. He also submitted CARB decision 1503-2010-P in which the Board confirmed the assessment for those properties (Exhibit R1 pages 256 – 259). The Respondent included court ordered sales and foreclosures in support of the base rate but he stated they were not used to develop the base rate (Exhibit R1 page 110, 171 - 177).

The Respondent argued that the subject property has not been developed to its full potential and submitted the Land Use Bylaw excerpt for CC-X lands (Exhibit R1 pages 23 – 33). He indicated the current improvement equates to a Floor Area Ratio ("FAR") of 1.04, however, the allowable FAR is 8.0; illustrating the subject property is not developed to its maximum potential. This may explain, in part, why the current income, capitalized, does not establish a value greater than that of the underlying land (as though vacant).

The Respondent argued that the Complainant's request based on the Income Approach indicates a land value of \$88.00 psf which was not supported by any evidence. The Respondent argued the value of the property cannot be less than its bare land value. He submitted several CARB decisions from 2010 which support the valuation of improved properties using the sales approach (as though vacant) (Exhibit R1 pages 179 - 250).

The Board finds that a property cannot be valued for less than its basic land value unless there are exceptional circumstances. In this instance, there is evidence to suggest the subject property has not been built to its maximum development potential, and in fact, is underdeveloped. The property in its current state is unable to generate sufficient income, when capitalized, to exceed the market value of the underlying land at \$195.00 psf; therefore, the building does not add any contributory value to the market value of the land. Moreover the Complainant failed to provide any evidence to suggest the current assessed land rate of \$195.00 psf is incorrect. As such, the Board finds the Complainant failed to provide sufficient evidence to bring the assessment into question.

#### **Board's Decision:**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$4,440,000.

DATED AT THE CITY OF CALGARY THIS 15 DAY OF DECEMBER 2011.

  
Lana J. Wood, Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Submission
2. C2A	Complainant's Rebuttal
3. C2B	Complainant's Rebuttal
4. C3	Complainant's Rebuttal
5. C4	Complainant's Rebuttal
6. R1	Respondent's Submission

*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	Warehouse		Sales Approach	Land Value