

**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:

***Shepard Development Corporation, as represented by Altus Group Limited,
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***S. Barry, PRESIDING OFFICER
J. Joseph, MEMBER
E. Reuther, MEMBER***

This is a complaint to the Composite Assessment Review Board (CARB) 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:	200714012
LOCATION ADDRESS:	5260 126 Av S.E. Calgary, AB
HEARING NUMBER:	63524
ASSESSMENT:	\$167,000

This complaint was heard on the 20th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *A. Izard, Altus Group Limited*

Appeared on behalf of the Respondent:

- *R. Fegan, City of Calgary*
- *C. Lee, City of Calgary*

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

During the course of the hearing, the Complainant objected to the introduction of page 25 of the Respondent's Disclosure document because it differed from the information provided to the Complainant. The difference is in the statement of Influence Percentage – being 75% on p.25 and being 0% on the pre-complaint correspondence with the Complainant. The Roll Value, however, is the same on both. The Board advised that it would accept the page since it met the disclosure guidelines and was accompanied by an email explaining the discrepancy.

Property Description:

The property under complaint is an arc-shaped, 1.28 acre parcel, located at 5260 126 Av, S.E., in the vicinity of 52 St. S.E. and 126 Av S.E. It is designated as Industrial-General (I-G) under the City's Land Use Bylaw and assessed, using the sales comparison approach, at \$167,000. The parcel is owned by the City of Calgary and leased to the Complainant.

Issues:

Is the parcel exempt from assessment and, if not, does the assessment correctly reflect market value having regard for the part of the parcel that is being used and the restrictions to use imposed on it as well as various negative influences?

Complainant's Requested Value: The Complainant's primary request is that the assessment be reduced to \$0. In the alternative, the Complainant requests that the assessment be reduced by 80 per cent which, by Board calculation, would result in \$33,400.

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

The City of Calgary owns the property under complaint and leases it to the Complainant. The lease was entered into evidence as part of the Respondent's Disclosure package, R1. The City of Calgary has also passed a road closure bylaw (No. 5C2005) that affects the subject property and closes it "from public use as a public street". The Bylaw was entered into evidence as part of the Complainant's Disclosure package C1. It is the agreed intention of the City to use the subject parcel as part of its LRT extension at some unspecified date in the future.

The Complainant offered several arguments in support of his request. First, that the land is exempt from assessment pursuant to section 298(1)(i) of the Act. Secondly, in 2010, CARB decision 1246/2010-P reduced the 2010 assessment to \$0 on the basis that the property continued to be used as a road in order to provide access to an adjacent property. Third, there are other parcels of land with similar constraints which the City has exempted from assessment. Fourth, the Complainant argued that only a small portion of the property, less than 5 per cent, is used by the Complainant and should be assessed only on the proportion of it that is being used. Finally, that there are significant negative factors that affect the property (limited access and uses; residual parcel and shape) that warrant a reduction to 80 per cent of its market value.

To assist in its determination, the Board examined the lease provided by the Respondent and noted the following facts: the lease was dated June 7, 2004 to take effect July 1, 2005 for a term of five years, renewable for two further five year periods terminating on June 30, 2020. The Complainant pays an annual rent for the property, commencing at \$11,264 in 2005; the lease provides for changes in the annual rent upon each renewal. By copy of a letter between the parties to the lease, provided by the Respondent, the rent for the current period commencing July 1, 2010 is \$18,000 plus G.S.T. The Lease stipulates that the rent is "net to the Landlord free and clear of" any "deduction for realty taxes . . . and the Tenant shall pay all such taxes, charges, rates, assessments . . ." Under the lease, the parcel "shall only be used for parking, and for ancillary purposes and for no other purpose whatsoever." Further, the "Tenant, shall have the right and privilege of appealing assessments. . ." The Lease references the requirement by the Tenant to obtain a development permit and, while there is no document submitted in support, the Complainant advised that the purpose of the development permit was to construct an access presumably from, and at right angles to, 126 Av S.E., across the subject parcel, terminating in a cul-de-sac, beyond the boundary of the disputed parcel, within an adjacent parcel.

The Board decided that the subject property is not exempt from assessment pursuant to s.298(1)(i) of the Act for the following reasons: first, the Act, s.1(1)(z) defines a road as meaning "land .. shown on plan of survey that has been filed or registered . . . or used as a public road." By virtue of the road closure bylaw, the parcel is, by definition, no longer a public road. The Certificate of Title supplied by the Complainant references the parcel as Area A, on the Plan of Survey, consistent with the Road Closure Bylaw, and does not reference it as a road or road right-of-way. Finally, the exemption to assessment pertains to a road right of way that is not held under a lease from a municipality and which is not used as a purpose other than a road. In this case the former right-of-way is leased by the municipality to the complainant and it is required to be used for purposes other than a road.

It is clear from our reading of CARB 1246/2010-P that the Decision was rendered on different evidence than that provided by to this Board and that Decision, on its own, does not support a reduction in assessment in 2011.

Additionally, while the Complainant references other properties that have similar circumstances to the subject, they are exempt from taxation and not from assessment. There is a difference between a property being exempt from taxation as opposed to being exempt from assessment and the Complainant provided no evidence or argument that the subject parcel is or should be exempt from taxation.

With respect to the actual uses of the parcel, the Board saw visual evidence from photography

provided by both parties that the portion of the property leading to the cul-de-sac is used for parking, and heard no evidence that the Complainant is barred from using the rest of the parcel for the purposes specified in the lease. The Board finds nothing compelling in the actual use of the parcel to reduce the assessment because greater use of it is not made by the Complainant.

It is agreed that the parcel is irregularly shaped and has other constraints but the evidence from the Respondent is that the parcel is assessed at fair market value of \$525,000 an acre - a value that was not disputed by the Complainant. The Respondent has reduced that calculated amount by 75 per cent to reach the current assessment. The Respondent further noted, and the Board concurred, that the parcel clearly has value to the Complainant as evidenced by the lease and the rents paid by him for that lease.

In conclusion, the parcel is assessable; it has value; its assessment reflects the physical characteristics of the land and the Board finds no merit in reducing the assessment.

Board's Decision:

The 2011 assessment is confirmed at \$167,000

DATED AT THE CITY OF CALGARY THIS 9 DAY OF November 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. 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.*