

**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:

805098 Alberta Ltd., (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Hudson, PRESIDING OFFICER

H. Ang, MEMBER

J. Kerrison, 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: 090033945

LOCATION ADDRESS: 4303 Macleod TR SW

HEARING NUMBER: 64673

ASSESSMENT: \$1,300,000

This complaint was heard on the 26th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- A. Iazard

Appeared on behalf of the Respondent:

- E. D'Altorio

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

The Assessment Review Board (ARB) Clerk's Office noted in the disclosure file that as at October 21st, the Respondent had not submitted any disclosure material for this complaint. The Respondent advised that the lack of disclosure was an oversight, and that they wished to proceed. The Complainant advised that they were prepared to accept whatever ruling the Board considered appropriate in the circumstances.

The Board advised the Parties that there were two procedural options which could be considered under The Matters Relating to Assessment Complaints Regulation (MRAC), Alberta Regulation 310/2009.

Option 1 Abridgment or Expansion of Time: MRAC Division 2, Section 10 (2) and (3) allows the Board to abridge the timelines for disclosure either by written order; or with the written consent of the Complainant (i.e. in this case).

Option 2 Failure to Disclose: MRAC Division 2, Section 9 (2) states, "a composite assessment review board must not hear any evidence that has not been disclosed in accordance with Section 8".

Following due consideration, and with the consent of the Parties, the Board decided that the hearing would proceed as per MRAC Division 2, Section 9 (2).

Property Description:

The subject property is a 20,125 square foot (sf.) parcel of commercial land located in the Parkhill/Stanley Park community at 4303 Macleod TR SW. The parcel was improved in 1998 with an A quality retail fast food restaurant that has 3,090 square feet of net rentable area. The property was assessed for 2011 based on vacant land value. The assessment was calculated using Commercial Corridor 2 (C-COR2) vacant values of \$65 per square foot (psf.) for the first 20,000 sf, and \$28 psf. for any balance. The total current assessment is \$1,300,000 (rounded).

Issues:

The Complainant identified that the assessment amount exceeds market value, and is not equitable with the assessment of similar properties. The Complainant argued that the assessment method used by the Respondent, offends Section 289 (2) (a) of the Municipal Government Act (MGA), which requires that an assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is imposed. The property includes building improvements at December 31, 2010, but they are not included in the assessment. The subject property should continue to be assessed based on capitalized income using typical market factors, until a proper highest and best use analysis is conducted.

Complainant's Requested Value: \$790,000 (rounded).

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

The Board finds that the best market evidence supports a reduced assessment for the subject property, based on the income approach to value, and using typical valuation factors.

The Complainant argued that the vacant land value based assessment exceeded market value for the property and contravened Section 289 of the MGA. The referenced section of the MGA does state that the characteristics and physical condition of the property must be reflected in the assessment. Further, the Respondent provided no disclosure upon which to base a conclusion that the current use of the subject property is not the highest and best use, and therefore the method used by the Respondent to assess the property is not equitable.

The Respondent argued that when an improved property is incapable of producing a capitalized income value which exceeds the established land value, then the land value represents the market value of the property. However, the Respondent provided no disclosure in support of the C-COR2 vacant land rates used to prepare the assessment of the subject property.

Board's Decision: The assessment is reduced to \$790,000 (rounded).

DATED AT THE CITY OF CALGARY THIS 25 DAY OF NOVEMBER 2011.

A handwritten signature in black ink, appearing to read 'T. B. Hudson', written over a grey rectangular background.

T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2 & C3	Complainant Rebuttal

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.*

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<i>Decision No.</i>		<i>Roll No.</i>		
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Fast Food Restaurant	Vacant Land vs Income Value	Equity