



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:

1656944 Alberta Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
P. Charuk, BOARD MEMBER
K. Farn, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	054010806
LOCATION ADDRESS:	1411 – 33 ST NE
FILE NUMBER:	73660
ASSESSMENT:	\$6,060,000

This complaint was heard on 10th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *M. Robinson – Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *B. Brocklebank – Assessor – City of Calgary*

Regarding Brevity

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None

Property Description:

[3] The subject is a 1976 single-tenant (IWS) industrial warehouse containing 62,660 square feet (SF) of assessable space. It is located in the Franklin industrial area and has a site area of 3.33 acres (Ac); a site coverage of 43.22%; and an internal finished area of 48%. It is assessed at \$96.75 per SF for a total indicated value of \$6,060,000.

Issues:

[4] Is the May 2012 "Court Ordered" sale of the subject for \$5,650,000 or \$90 per SF a valid indicator of value.

Complainant's Requested Value:

[5] The Complainant requests that the assessment be reduced to \$5,650,000.

Board's Decision:

[6] The Board reduced the assessment to \$5,650,000.

Legislative Authority, Requirements, and Considerations:

[7] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[8] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality."

[9] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

Positions of the Parties**(a) Complainant's Position:**

[10] The Complainant presented his brief C-1 and clarified that at the time of the sale, the subject was vacant. He noted that despite being on a corner lot, it suffered from certain access issues due to topographic constraints (large embankment) that restricted access along its north and west sideyards. He argued that the lack of vehicular access to and around the west side of the building in particular, somewhat hindered that part of the building's usefulness, and hence its value.

[11] The Complainant clarified that while the subject sold via "Court Order", the property had in fact been listed on the open market for \$4,500,000. He noted that on page 12 of C-1, a photograph of the subject shows a large CRBE (Richard Ellis) sign advertising the subject for sale. On page 18 of C-1 he also provided a copy of the CBRE listing. The Complainant advised that as a result of the site being listed and advertised, multiple offers had been received on it. He advised that the Court accepted the highest offer which was \$5,650,000 or \$90 per SF, or \$1,150,000 over list.

[12] On pages 22 and 23 of C-1 the Complainant provided a copy of the Court of Queens Bench Court Order – File number 1101-09387 which was pronounced on May 17, 2012. It Ordered the sale to the current owners 1656944 Alberta Ltd. for \$5,650,000 (GST inclusive). The document also identified that if 1656944 Alberta Ltd. failed to close as specified, then the Offer To Purchase for \$4,200,000 (plus GST) from a second company 1103402 Alberta Ltd. would be accepted. Pages 28 and 29 of C-1 provided copies of documents confirming completion of the sale to 1656944 Alberta Ltd. on May 28, 2012.

[13] On page 15 of C-1 the Complainant provided a matrix containing three property comparables he considered similar to the subject and that supported his request for an assessment of the subject based on \$90 per SF. He also provided the Alberta DataSearch (ADS) (now Commercial Edge) information sheets for the three properties. He reviewed the characteristics of each, noting however that one of his properties at 2835 – 23 ST NE, was “less comparable” to the subject than two other properties at 3905 - 29 ST NE and 3650 – 12 ST NE.

[14] The Complainant noted that the latter site at 3650 – 12 ST NE was also used by the Respondent as a property comparable. It sold, according to an ADS information sheet, for a time-adjusted sale price of \$89 per SF on July 6, 2011. It also displayed characteristics that are almost identical to the subject for size; age; land area; and site coverage. He argued that this value supports the 2012 sale value of the subject at \$90 per SF. He also argued that this value demonstrates that the Court Ordered sale value of \$5,650,000 should not be dismissed, just because it proceeded through the Courts.

[15] The Complainant provided a copy of “*Court of Queen's Bench – 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512 – Memorandum of Decision of the Honourable Madam Justice L.D. Acton*” in support of his argument that “a sale of a property is the best indication of its market value”. The Complainant also provided in his document C-2, a large number of previous CARB decisions which he argued supported his position in this issue.

[16] The Complainant provided the RealNet information sheet in his document C-2 page 4, and argued that one of the Respondent's three property comparables at 4410 – 46 AV SE is not comparable to the subject because it was a ten year “vendor-leaseback” transaction. In contrast, the sale of the subject involved a vacant building. Moreover, he argued that a fully-leased building would arguably sell for more in the marketplace than an empty building, and therefore the two properties are not comparable.

[17] The Complainant clarified that he had personally visited the subject prior to the hearing, and on the basis of the sale of the property, and the additional evidence he presented, requested that the Board reduce the assessment to \$5,650,000 or \$90 per SF.

(b) Respondent's Position:

[18] The Respondent provided his Brief R-1 and argued that the sale of the subject, being a Court Ordered sale, is not a valid indicator of market value. He argued that this sale in May 2012 is an atypical sale that would have been considered an invalid sale for assessment purposes, and not used by the Respondent to value the subject or other properties. He provided the RealNet information sheet which described the "Sale Type" of the subject as being a "Distress – Court Order" sale.

[19] The Respondent provided the RealNet information sheet detailing the particulars of the sale of the subject in 2012. He noted that there were four mortgages placed on the property to facilitate its sale through the Courts. He argued that this was also an atypical aspect to the sale, and therefore the City would not have used it in its analysis of the market for 2012.

[20] The Respondent argued that given the circumstances of the sale as Court Ordered, the seller would not likely have been a "willing" seller, whereas the buyer may well have been, given it paid well over the list price. Therefore, he argued, this is not a typical sale between a "willing buyer and willing seller" as is required for assessment valuation purposes under the Municipal Government Act (MGA) which states in part:

"Interpretation

1(1) In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;"

[21] The Respondent also argued that one of the Complainant's property comparables at 2835 – 23 ST NE is a multi-building (2 buildings) complex which the subject is not. He argued that the Complainant has incorrectly amalgamated the various site characteristics from the two buildings, then compared this data to the single-building subject. He argued that this is flawed analogy which has been rejected by many previous Assessment Appeal Boards. He provided several Calgary Assessment Appeal Board (CARB) decisions in support of this argument.

[22] On page 21 of R-1 the Respondent provided a matrix containing three property market sale comparables he considered were similar to the subject. He argued that these three time-adjusted market sales produced a range of values from \$85.94 per SF to \$112.55 per SF which supports the assessment at \$96.75 per SF. He acknowledged that his third comparable at 3650 – 12 ST NE, except for level of "finish" in the structure, is similar to the subject and is also used by the Complainant.

[23] The Respondent clarified that he is not the "assessor of record" regarding this file, and has not personally been to inspect the property. Nevertheless, on the basis of his documentary evidence and extended argument that the Court Ordered sale of the subject in 2012 cannot be relied upon as a valid indicator of value, the Respondent requested that the Board confirm the assessment at \$6,060,000.

Board's Reasons for Decision:

[24] The Board is persuaded that the 2012 Court Ordered sale of the subject represents a reasonably reliable indication of its market value because the property was, among other things, listed by a reputable broker and advertised on the open market. The Board also noted photographs of the listing agent's marketing sign (CBRE) erected on the property; the fact that it received multiple offers; and that it sold for substantially more than the list price - all of which indicated to the Board that many of the typical market influences were "at play". Therefore the Board accepts the 2012 sale value of \$5,650,000 as representative of market value for this site at that point in time.

[25] The Board finds that in this instance, given the facts presented to it in this hearing, the 2012 sale of the subject through the Courts does not materially offend the MGA definition of a "market sale" as alleged by the Respondent.

[26] The Board puts little weight on the Respondent's argument that the placement of multiple mortgages on the subject property to consummate its Court Ordered sale, somehow taints the transaction. The Board is satisfied that the Courts, in approving the sale, would not have done so if it considered the mortgaging of it to be somehow suspect.

[27] The Board finds that while the parties concur that the jointly-utilized market sale of property comparable 3650 - 12 ST NE may require certain adjustments to render it fully-comparable to the subject, the Board is persuaded from its own analysis, that several characteristics of this property very closely match those of the subject. Therefore the time-adjusted sale value of \$89 per SF for 3650 - 12 ST NE, clearly supports the Complainant's estimate of value for the subject at \$90 per SF as a result of its 2012 sale.

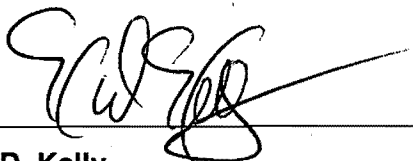
[28] The Board finds that it concurs with both parties that several of their property comparables - except for 3650 - 12 ST NE which was used by both parties, are not comparable to the subject for the reasons each outlined to the Board and as documented above.

[29] The Board finds that while the Complainant argued that fully-leased buildings sell for more in the marketplace than empty buildings, the Board received no documentary market evidence to substantiate this point.

[30] The Board finds that while the parties provided several Board decisions in support of their respective positions, and the Board does not ignore them, it is not bound by those decisions. The Board makes its decision based on the evidence and argument heard at this hearing.

[31] The Board finds that it concurs with the Complainant that the decision of Madam Justice L. D. Acton (para. [15] above) is applicable to the circumstances of this appeal – i.e. the sale of the subject is the best indicator of its value.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF October 2013.



K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure
3. R-1	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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	industrial	Single-tenant warehouse	market value	Court Ordered sale (validity)