



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:

WESTHILLS EQUITIES INC.
(as represented by Altus Group Limited)

COMPLAINANT

and

THE CITY OF CALGARY

RESPONDENT

before:

T. SHANDRO, PRESIDING OFFICER
J. RANKIN, BOARD MEMBER
A. MACIAG, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 085068104

LOCATION ADDRESS: 251 Stewart Green SW

FILE NUMBER: 74178

ASSESSMENT: \$2,380,000

This complaint was heard on June 10, 2014, 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:

- B. Neeson, Agent, Altus Group Limited

Appeared on behalf of the Respondent:

- C. Yee, Assessor, The City of Calgary

Procedural or Jurisdictional Matters

- [1] There were no procedural or jurisdictional matters arising.

Property Description

[2] The subject property is a servient, vacant land parcel located behind the Cineplex Westhills movie theatre (the "dominant parcel"), which is being used as the parking lot for the dominant parcel. It is separately titled from the dominant parcel.

[3] In previous years the Respondent has assessed the subject property, and all similar parcels which are servient, separately-titled parking lots, as having a nominal value of \$1,000. The Board heard from the parties that the Respondent recently has changed its policy regarding these sites and is now assessing these parcels using the Respondent's Land Value Rate (sometimes referred to by the parties as a Vacant Land Rate), which is a rate determined by the Respondent from analysing the sales of land-only parcels for different regions of the City of Calgary.

[4] The Assessment Explanation Supplement (the "AES") provided by the Respondent states that the "Valuation Approach" used by the Respondent was "Cost". At the hearing the Respondent advised this was a typographical error and that the subject property was in fact assessed using the Respondent's Land Value Rate. The AES does not actually state what amount was used by the Respondent for the Land Value Rate. It only states that influences adjustments for Shape Factor (minus 25%) and Corner Lot (plus 5%) were used. However, the parties advised the Board that the Respondent used the following amounts for its Land Value Rate:

- (a) \$70 per square foot ("SF") for the first 10,000 SF;
- (b) \$35/SF for 10,001 to 40,000 SF; and
- (c) \$10/SF for the remainder.

[5] Although the AES states that the Shape Factor was applied to the subject property, it appears the amount was not actually deducted from the assessment.

Issues

[6] The Board identified the issue as follows:

1. Should a servient property which is separately titled parking be assessed using the Respondent's Land Value Rate?

Complainant's Requested Value

[7] The Complainant requested a reduced assessment of \$1,000.

Board's Decision

[8] The Board reduces the assessment of the subject property to \$1,000.

Legislative Authority, Requirements and Considerations

[9] Section 293 of the Act requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 - (a) apply the valuation and other standards set out in the regulations, and
 - (b) follow the procedures set out in the regulations.

[10] Section 4 of the *Matters Relating to Assessment and Taxation Regulation* ("MRAT") states:

- (1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Complainant's Position

[11] The Complainant advised the Board that the subject property was assessed historically at \$750 in 2010 and 2011, and at \$1,000 in 2012 and 2013. The difference in this year's assessment is that the Respondent is taking the position that the subject property may be sold and developed. The Respondent therefore has assessed using a Land Value Rate.

[12] The Complainant submitted that the subject property, which is separately-titled but servient, is required as parking for the dominant parcel to operate as a movie theatre pursuant to the Land Use Bylaw. The Complainant submitted therefore that the Respondent was ignoring the parking requirements for the dominant parcel, which assumedly would also be established in the dominant parcel's development permit.

[13] The Complainant conceded the subject property has value but argued that value is captured in the income approach for the dominant parcel.

Respondent's Position

[14] The Respondent submitted that the shape factor should not apply to the subject property, because it is a two acre lot. E.g., the Respondent submitted that a KFC could easily be developed on the subject property.

[15] The Respondent further appeared to concede to an extent the Complainant's position that the value of a servient parcel used for parking would be captured in the income valuation for a dominant parcel. The Respondent suggested that it would in the future be deducting the market value of a servient parcel, or at least a portion thereof, from the market value of the dominant parcel. In its summary, the Respondent submitted that the net effect for the two parcels would be the same.

[16] There was however no evidence before the Board that the market value of the subject property was being deducted from the market value of any other property. The Board raised the concern that that double taxation is occurring. The Respondent provided the Board with no evidence to the contrary.

Reasons for Decision

[17] The principle of "highest and best use" in appraising real estate value is not an abstract idea where one can simply imagine what *could* be the value of a parcel of land. It is tied to real and practical considerations. The Respondent must instead be determining what *is* the case. That is, the Respondent must consider what is legally permissible, physically possible and financially feasible. There are therefore significant concerns with the Respondent's position in its policy to assess servient, separately-titled parcels using the Respondent's Land Value Rates.

[18] Section 4 of MRAT requires parcels to be assessed using market value. The question however is whether the Respondent's Land Value Rate reflects the market value of a servient parcel. The Board concludes that these rates can reflect the market value of such a parcel, but only if the dominant parcel is also assessed with the same Land Value Rate. The dominant parcel in this matter, the Westhills movie theatre, is not being assessed in such a manner, which leads the Board to conclude for the following reasons that the Land Value Rate is the incorrect method for assessing a servient, separately-titled parcel.

[19] First, the subject site has a number of encumbrances which would prohibit the development of the subject property or its sale. Not least of which would be the fact that development of the subject property would result in the dominant parcel (and possibly other parcels) being in contravention of its development permit. Any building on a dominant parcel would then lose its use, which would affect the market value of such a parcel significantly. The Respondent took the position that this would not affect the market value of the dominant parcel, but no evidence was before the Board to confirm this claim. From the information before the Board, we conclude that the dominant parcel's market value would be affected

[20] Second, the Respondent argued that all the Complainant needed to do is apply for a development permit, and it could build a fast food restaurant on the subject property. But there is no evidence before the Board that such an approval could be approved by the City of Calgary within one year. Section 289 of the Act requires that the assessment for the subject property must reflect the characteristics and physical conditions of the property on December 31. It is difficult for the Board to agree that a development permit, especially one facing significant questions about its legal permissibility, could be obtained within a given assessment year. In any event, the Respondent provided no evidence to suggest that a development permit for the subject property could be obtained within a given assessment year. Therefore the Board

concludes that the characteristics and physical conditions of subject property as at December 31 do not support the use of a Land Value Rate in assessing the subject property.

[21] Third, the value of a servient parcel is captured within the value of a dominant parcel if the dominant parcel is assessed using an income approach, as it is in this case. It is because (a) a tenant and a landlord are in compliance with a development permit, and (b) patrons have places to park, that the tenant is able to operate as a movie theatre and the landlord is able to execute a lease for the dominant parcel. If not for the servient parcel, the landlord would not be able to execute a lease and receive income monthly for such a lease. By assessing the subject property at a Land Value Rate, and by not subtracting same from the market value of the dominant parcel, the Respondent is creating an issue of double taxation.

[22] The Board therefore reduces the assessment value of the subject property to \$1,000.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF August 2014.



T. Shandro

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
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 Purposes Only

Property Type	Property Sub-Type	Issue	Sub-Issue
Retail	Power Centre	Land Value	Nominal