



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:

CIDEX DEVELOPMENTS LTD.,
(as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Glenn, PRESIDING OFFICER
B. Jerchel, BOARD MEMBER
J. Kerrison, 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: | 067233106 |
| LOCATION ADDRESS: | 1301-9th Ave SW |
| FILE NUMBER: | 74499 |
| ASSESSMENT: | \$3,460,000 |

This complaint was heard on Wednesday, the 11th day of June, 2014 at the offices of the Assessment Review Board located at Floor Number 3, at 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 8.

Appeared on behalf of the Complainant:

- M. Cameron, Agent, Altus Group

Appeared on behalf of the Respondent:

- S. Gill, Assessor, City of Calgary

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

[1] There were no questions of Procedure or Jurisdiction raised prior to, or during the hearing. However, the Complainant requested prior to the hearing beginning that the argument and evidence from CARB 75368-2014-P be applied to this matter. The Respondent agreed. The Board confirmed this was acceptable, and so ordered.

Property Description:

[2] The subject property consists of a 0.47 acre land parcel with a 7,837 sf single storey owner occupied "B" class building, year of construction unknown, which currently houses the owner's headquarters office, located on 9th Ave one block west of 11th St SW.

Issues:

[3] Whether the subject parcel should be assessed for its current use utilizing the Income Approach to Value, as advocated by the Complainant, or, as vacant land for the highest and best use as determined by the Respondent.

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

Board's Decision:

[4] The Board confirms that the subject assessment is the correct value.

Position of the Parties

Complainant's Position:

[5] The Complainant argued that currently vacancy rates are increasing. They suggested

that the most accurate way to assess the subject would be to use the Income Approach to Value, based on the fact that there was an ongoing business in the subject property. In argument, the Complainant argued the subject was a "C" class building based on age, however, the building class is irrelevant here as the issue is land only value versus income approach.

[6] The Complainant also provided a substantial number of "C" class downtown office comparables of varying sizes which were about the same age as the subject and several of which were located close to the subject. All of the comparables were assessed somewhat lower than the subject and most were larger (some much larger) than the subject.

[7] The Complainant also presented some case law from: **CARB 1827-2012-P** which suggested that properties with an ongoing business can be assessed on an income approach to value basis, if there is no evidence that alternative uses of the subject property would be manifest in the near future. The case law goes on to state that: "In any highest and best use analysis, an alternative use cannot be based on conjecture and unsupported opinion".

[8] The Complainant continued their argument stating that the current owner of the subject had a functioning office on the property on Dec.31st, 2013, and that the office would carry on in that premises for the foreseeable future.

[9] On cross-examination, the Complainant admitted that they had not considered land area in their presentation of comparables, nor had they considered Floor Area Ratio (FARs) of the comparables. They also confirmed that their comparables were all Direct Control Land Use.

[10] The Board also queried the Complainant as to whether in their opinion highest and best use was synonymous with value. The Complainant responded that: "the highest and best use depends on the owners business".

[11] In summary, the Complainant argued that the Respondent was taking a speculative approach, and that the subject should be assessed on function, not on speculation. They stated that the subject should be equitably assessed.

[12] The Complainant summarized by stating that where there is not a willing seller, as in this case, there cannot be a proper sale, so, the fact that there are no redevelopment plans means that the subject should be valued by the income it generates, not by its "speculative" market value. They comment that the Respondent's comparables are all downtown redevelopment sites.

Respondent's Position:

[13] The Respondent argued that the subject property is grossly underdeveloped. They relied on case law from: **CARB 73278-2013-P** for the following support for their position:

"However, the fact that a property with improvements is generating income does not automatically mean that the income approach to value must be used to determine the assessed value of the property. If that were so, even a minimal improvement that generates a small amount of income could be used to drive down the assessment of the property. This would lead to properties with minimal improvements being assessed lower than a neighbouring property sitting as vacant. This result would be inequitable."

[14] The Respondent's position was further clarified with additional case law from Board decision: **ARB 1191-2010-P**: which states:

"If the improvements to a given property are of such an age or design or other influence that results in that property being incapable of producing a capitalized income value

that exceeds the established land value, then the land value represents the market value of the property”.

[15] The Respondent goes on to present post facto land sales comparables which show that land values are trending upward. They summarize by stating that the subject is in a prime downtown location, and if it were sold, it certainly would not sell for its income value. The Respondents state that the subject is severely “underimproved”.

[16] The Respondents complete their presentation by stating that the City is not in the business of calculating Highest and Best Use.

Board’s Reasons for Decision:

[17] Essentially, the Complainant argued land use, whereas the Respondent argued land value. The Complainant’s argument and evidence did not convince the Board that the subject assessment was inappropriate. The case law presented by the Respondent, while not binding on the Board provided sound reasoning to reject the Complainant’s stated position.

[18] The possibility that even a small or minimal improvement that generates a small amount of income could be used to drive down the assessment of a property is determinative in this case. The Board found that the value of the subject is the market value, not the value of income earned.

[19] Accordingly, the subject assessment is confirmed in the amount of \$3,460,000.

DATED AT THE CITY OF CALGARY THIS 14 DAY of July, 2014.



R. Glenn
Presiding Officer

APPENDIX “A”

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|-------|------------------------|
| 1. C1 | Complainant Disclosure |
| 2. 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 Use Only

| Appeal Type | Property Type | Property type | Sub- | Issue | Sub-issue |
|-------------|---------------|------------------|------|----------------------------------|--------------------------|
| CARB | Vacant Land | Land Development | with | Assessment: Highest and Best Use | Income Approach to Value |