

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:

J & B Holdings Inc. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

H. Ang, BOARD MEMBER

R. Kodak, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (the 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 NUMBERS:	057160905	057161002
LOCATION ADDRESS:	614 Marsh Rd NE	618 Marsh Rd NE
FILE NUMBERS:	74984	74983
ASSESSMENT:	\$356,500	\$274,000

This complaint was heard on the 19th day of August, 2014 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:

- *D. Main, Agent, Altus Group Limited*
- *K. Fong, Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- *N. Sunderji, Assessor, City of Calgary*

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

[1] The Complainant and the Respondent requested that the two Complaints be heard together given that they are adjacent parcels under the same ownership and also that documents submitted with files 75736 and 75921 and all related argument, questions and responses be carried forward to these files. The Board agreed.

[2] The Respondent requested that page 33 of his disclosure document for file 74984 and page 20 of his disclosure for file 74983 be deleted from the files. The Board agreed.

Property Description:

[3] The subject parcels are 4,223 square foot (sq.ft.) (74984) and 2,815 sq.ft (74983) vacant lots located in the Bridgeland/Riverside Community adjacent to an improved parcel that is developed with a furniture store. The land use designation is Commercial-Corridor 2 (C-Cor2) and the parcels are used to provide parking for the adjacent retail premises. They are assessed as land only, using the Sales Comparison approach to value with land rates specific to the C-COR district at \$130 per sq.ft. for the first 3,000 sq.ft. and \$70 per sq.ft for the remainder up to 20,000 sq.ft.. The assessments were adjusted for shape (-25% on 74984) and size (-25% on 74983). The retail parcel was not the subject of a complaint nor was it included with the complaints filed on these parcel.

Issues:

[4] Should the properties (the parking parcels) be more correctly and equitably assessed with a nominal rate to reflect that they provide parking required under the Land Use Bylaw for the adjacent parcel (the retail parcel) which was assessed on the Income approach?

Complainant's Requested Value:

[5] The requested value for each file was \$1,000.

Board's Decision:

[6] That the 2014 Assessment for file 74984 be reduced to \$1,000 and that the assessment for file 74983 be reduced to \$1,000.

Legislative Authority, Requirements and Considerations:

[7] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

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.

Sections 2 and 4 of the Matters Relating to Assessment and Taxation Regulations (*MRAT*) state:

- (2) An assessment of property based on market value
 - (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.
- 4(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.

Position of the Parties**Complainant's Position:**

[8] It was the Complainant's contention that the adjacent retail parcel is required to provide 29 parking stalls in order to conform to the current Land Use Bylaw under the C-Cor2 district. Further, those requirements could not be met on the store site, 100 per cent (%) of which is developed by a retail building that was constructed in 1911. Seventeen parking stalls are provided on the adjacent, subject parcels which display signage that restricts parking to customers of the furniture store. The deficiency that still exists in the required parking reflects the age of the building and the requirements of earlier bylaws. He stated, however, that without the parking that is being provided on the subject lots, the retail operation would not be permitted. He pointed out that, from a practical standpoint, the furniture store could not operate without parking for its customers.

[9] The retail parcel was assessed using the Income approach to value at \$2,170,000 using various rental rates. This, alleged the Complainant, would not be achievable in the marketplace in the absence of the required parking. There was no deduction from this assessment in recognition of an on-site parking deficiency.

[10] The Complainant pointed to other retail properties, assessed on the Income approach, where the required parking was provided on a separately titled parcel that was assessed on the land rate, but where the assessed value of the parking parcel was subtracted, as a parking

deficiency, from the income-based assessment of the retail property. In at least one other instance, the Respondent applied a nominal rate of \$1,000 to the parking parcel.

[11] The Complainant produced the assessment calculations for other retail properties assessed on the Income approach that provided for their required parking on-site. In those cases, the Complainant said, there was no additional assessment for the land used for parking – the rental rate captured that value.

[12] The Complainant provided a number of CARB decisions that, he said, supported his position including a very recently released decision – Westhills – CARB 74178P-2014. Additionally, the Complainant cited *908118 Alberta Ltd v Calgary (City)*, 2013 ABQB in which Madam Justice C.L. Kenny granted leave to appeal on this and related issues.

[13] In Rebuttal, the Complainant provided a large number of CARB decisions, records of sales, Land Titles' documents and assessment records in order to demonstrate that, at best, the Respondent was inconsistent in applying an assessment approach as well as in his treatment of parcels that provided required parking for a related retail property.

Respondent's Position:

[14] The Respondent pointed to the City's 2014 Commercial Land Values chart that showed the land rate for the subject parcel at the various rates for C-COR which are cited above and referenced this to a chart of Commercial Land Sales 2014 that were intended to support the applied rate.

[15] It was the Respondent's position that, firstly, there is no nominal value policy in the City and, secondly, he is unable to apply a nominal value to a property because MRAT, as cited above, states that the valuation standard for a parcel of land is market value and cites *Edmonton (City) v. Edmonton Composite Assessment Review Board*, 2012 ABQB 439 in which Mr. Justice Peter Michalshyn granted leave to appeal on this issue.

[16] The Respondent provided a number of CARB decisions that, he contended, supported his position and also reported two sales, one in 2014 and one in 2011 that compared the parcels as fully assessed based on market value on July 1, 2013 versus assessed with one at a nominal value. He contended that the Assessment to Sales Ratio (ASR) that was produced demonstrated a closer relationship to the sales price using the first calculation than it did with the second.

[17] To show that parking parcels do have value, the Respondent provided lease rates for four parking parcels that ranged from \$0.75 to \$1.80 per sq.ft. and, in addition, contended that no other similar parcels had been assessed a nominal value as shown in a chart of some 18 parcels.

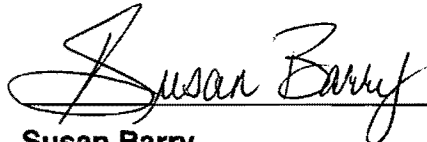
Board's Findings and Reasons for Decision:

[18] In the first instance, the Respondent was unable to support the assessed land rate; while there were sales in the relevant land use district there was no analysis to show how the stratification by parcel size was achieved. The Respondent tried to show that parking lots generated income and therefore had value, however the lease rates did not generate anywhere close to the assessed value of the parcels. The lease income was indeed, nominal. Similarly, the Board agreed with the Complainant that the ASR calculations did not add value to the Board's determination given the context of the calculation.

[19] The Respondent stated that each assessment year brings a new assessment and that historical values are not relevant to the current year. The test, he says, is market value. The Board, however, notes that MRAT also requires that the assessment "must reflect typical market conditions for properties similar to that property." Additionally, the Act requires the assessor to apply this valuation standard of market value in "a fair and equitable manner". When one property has its market value assessment reduced for a parking deficiency, which is supplied by an adjacent parcel, and another does not, then an inequity is created.

[20] The Complainant has adequately demonstrated that the Assessor does take into consideration the value of the land used for required parking on a separate parcel when coming to an adjustment to the Income value of the associated retail parcel. In this case, the Board cannot adjust the Income-derived assessment from the related retail parcel by reducing it for the parking deficiency because it is not before us. Equity demands that this inequity be addressed and, while the appropriate value for the subject, having regard to the Respondent's most frequent practice, would be \$1, the Complainant has requested a nominal value of \$1,000 for each parcel and, for the reasons stated above, the Board agreed.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF August 2014.


Susan Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. C2	Complainant's Rebuttal
3. R1	Respondent's Disclosure for 74984
4. R2	Respondent's Disclosure for 74983

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

Municipality	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary	057160905	Retail	Vacant Land	Parking	Nominal
Calgary	057161002	Retail	Vacant Land	Parking	Nominal