



**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:

***Setter Developments (Kensington) Ltd. (as represented by Altus Group Limited),  
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:

<b>ROLL NUMBER:</b>	<b>058166802</b>
<b>LOCATION ADDRESS:</b>	<b>1436 Kensington Rd NW</b>
<b>FILE NUMBER:</b>	<b>75736</b>
<b>ASSESSMENT:</b>	<b>\$881,000</b>

This complaint was heard on the 18th 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 documents submitted with this Complaint and all related argument, questions and responses be carried forward to files: 75921, 74984 and 74983 to be heard during this hearing week with the same Board and Parties in attendance. The Board agreed.

[2] The Respondent requested that page 32 of his disclosure document be deleted from the file. The Board agreed.

**Property Description:**

[3] The subject parcel is a 5,684 square foot (sq.ft.) vacant lot located in the Hillhurst Community adjacent to an improved parcel that is developed with a Shoppers Drug Mart. Its land use designation is Commercial-Corridor 2 (C-Cor2) and it is used to provide parking for the adjacent retail premises. It is assessed as land only, using the Sales Comparison approach to value with land rates specific to the Kensington 1 (KN1) area of \$155 per sq.ft.. The retail parcel was not the subject of a complaint before this Board.

**Issues:**

[4] Should the property (the parking parcel) be more correctly and equitably assessed with a nominal rate to reflect that it provides parking required under the Land Use Bylaw for the adjacent parcel (the retail parcel) which was assessed using the Income approach?

**Complainant's Requested Value:**

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

**Board's Decision:**

[6] That the 2014 Assessment 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 20 parking stalls in order to conform to the Land Use Bylaw under the C-Cor2 district. Further, those requirements could not be met on site but were provided on the adjacent, subject parcel which displays signage that restricts parking to customers of the Shoppers Drug Mart. The subject site contains 23 parking stalls. He stated that without the required parking being provided the retail operation would not be permitted.

[9] He further documented that, in the last number of years, this relationship was recognized by the Respondent applying a nominal value to the parking parcel, rising from \$750 in 2009 to \$1,000 in 2013.

[10] The retail parcel was assessed using the Income approach to value at \$2,730,000 using a rental rate of \$20 per sq.ft. 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 a parking deficiency.

[11] 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. Of particular reference in this demonstration was the treatment of the Tarjan Block, which, he said, is directly across the street from and competes directly with the subject. The Complainant reproduced the Respondent's Income Approach Calculation to support his assertion that, on this parcel, the

Assessor reduced the Income assessment of the retail property by the amount that was assessed for the adjacent parking parcel. In at least one other instance, the Respondent applied a nominal rate of \$1,000 to the parking parcel.

[12] 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.

[13] 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.

[14] 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:**

[15] The Respondent pointed to the City's 2014 Commercial Land Values chart that showed the land rate for the subject parcel at \$155 per sq.ft. and referenced this to a chart of Commercial Land Sales 2014 that were intended to support the applied rate.

[16] 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 Michalyshyn granted leave to appeal on this issue.

[17] 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.

[18] 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.

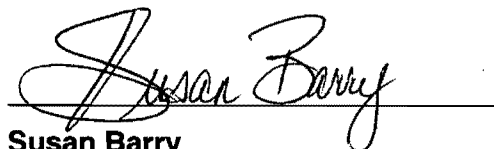
#### **Board's Findings and Reasons for Decision:**

[19] In the first instance the Respondent was unable to support the assessed land rate; there were no sales in the relevant district and, of the sales shown, the highest time adjusted sales rate was \$139.02 per sq.ft. as opposed to the assessed value of \$155 per sq.ft. While the Respondent tried to show that parking lots generated income and therefore had value, 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.

[20] 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.

[21] 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 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:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. C2	Complainant's Rebuttal
3. R1	Respondent's 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**

<b>Municipality</b>	<b>Roll Number</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
Calgary	058166802	Retail	Vacant Land	Parking	Nominal