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-26.1, Section 460(4).

between:

Altus Group Ltd., *COMPLAINANT*

and

The City Of Calgary, *RESPONDENT*

before:

J. Noonan, *PRESIDING OFFICER*
J. O'Hearn, *MEMBER*
B. Jerchel, *MEMBER*

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	**111101903**
LOCATION ADDRESS:	**6909 Macleod Trail SW**
HEARING NUMBER:	**59491**
ASSESSMENT:	**$11,270,000**

This complaint was heard on the 7th day of June, 2010 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- A. Izard - *Senior Advisor,* Altus Group

Appeared on behalf of the Respondent: -

- B. Duban, E. Lee, E. D'Altorio, *Assessors, The City of Calgary - Respondent*

Property Description:

The subject is located at 6909 Macleod Trail SW, Calgary. It is a Retail/Stand Alone property with 22,175 sq. ft. of main floor improvement dating to 1967, with the recent additions of a gas bar, carwash and liquor store, the new improvements considered 90% complete as of Dec 31, 2009. The assessed value is $11,270,000 determined by the cost approach, including land value of $10,221,981.

Jurisdictional or Procedural Issues Heard:

Should the Complainant's rebuttal evidence be excluded by reason of late disclosure?

The Respondent City applied to have the rebuttal evidence excluded as it had been received by the City the previous Monday, May 31 before the scheduled hearing date Monday, June 7. The Respondent took the position this evidence was due Friday, May 28 allowing seven clear days for consideration.

The Complainant was never notified that this preliminary matter would be raised, but argued that if rebuttal evidence was to be disclosed seven clear days in advance of a hearing, then the proper date was Sunday, a holiday, and therefore the next business day was the proper deadline. The Complainant showed examples of where a Monday deadline had been specified in advance of a Thursday hearing before a local ARB, where a three day disclosure rule applied.

Finding

The CARB examined the *Regulation 310/2009 (MRAC)* s 8 (2) (c) and the *Interpretation Act* s 22 (1), (2), and (3). The regulation calls for disclosure of rebuttal evidence "at least 7 days before the hearing date", and the *Interpretation Act* advises that when this language is used, "the days on which the events happen shall be excluded."

At the hearing, the CARB ruled that the rebuttal evidence would be allowed, as the date for disclosure of the primary evidence, required 42 days in advance of the hearing, had been set for a Monday. Employing the Respondent's logic, that evidence would have been required the previous Friday, but no objection had been raised. Although the reasoning of the CARB might be somewhat suspect, the propriety of the decision is not. The Interpretation Act at s 22 (2) squarely addresses what is to be done when the office at which a required filing is not open during its regular hours of business: it is to be done the next day it is open.

The Respondent is correct that the regulation requires seven clear days, as is the Complainant's view that here, Sunday means Monday. Although Sunday is not a holiday in the eyes of the *Interpretation Act*, it is a day when the offices for required filings are not open during regular hours of business. The complaint proceeded to hearing.

Overview:

The subject property was acquired by the current owner in January, 2007 for $12,600,000. Subsequently, half the improvement onsite was demolished, leaving the Liquidation World store at its current size described previously. The new improvements, namely a gas bar with

convenience store, carwash, and liquor store had a building permit value of some $4,000,000. On receiving the assessment complaint, the Respondent discovered that the new improvements had not been included in the original assessment, but was precluded from issuing an amended assessment during the complaint process. The City requested the assessment be increased to $12,450,000 to account for the new improvements.

The Complainant submitted that this property had been unfairly singled out for the application of the cost approach, and as with similar properties it should instead be assessed using the income approach and the typical parameters the Respondent employs. The income approach would yield a value of $6,280,000. The Respondent confirmed the major inputs used by the Complainant in the income approach: a cap rate of 8%, and an attributed PGI of $105,000 for the gas bar-carwash, vacancy allowance and shortfall, but did not necessarily agree with the rent rates used by the Complainant for the liquor store and ground floor retail.

The Complaint form had a two-page attachment listing the grounds for complaint, some of which were no longer applicable, others dealing with inputs to the income approach to value. From this lengthy list of grounds, the CARB distilled two broad issues:

Issues:

1. Does the cost approach yield a fair and equitable assessment?
2. If not, are the Complainant's income approach inputs typical?

The Respondent submitted that the income approach produced a value that was overwhelmed by the subject's land and improvement value, as well as the 2007 sale price, and consequently applied the cost approach. The land was valued at the Macleod Trail base rate of $85 per sq. ft. plus a 5% premium for corner lot influence. Sales comparables were introduced, showing a time-adjusted average sales price of $102 per sq. ft*****The gas bar-carwash improvement had been attributed a PGI of $105,000 minus allowances and a 90% complete factor, and the other improvements on estimated, depreciated cost.

The Complainant, in rebuttal, produced a list of 62 income producing properties along Macleod Trail with zoning similar or identical to the subject. In each case the assessment divided by the area produced values ranging from $21 to $71 per sq. ft., indicative that a base rate land value had not been applied to those assessments.

The Complainant presented examples of lease rate and assessment comparables showing that $15 per sq. ft. was typical for the box store component, and for the liquor store component, a range of $18 to $22.

Board's Findings in Respect of Each Matter or Issue:

Issue 1: The CARB agrees with the Respondent that the choice of assessment methodology is at the discretion of the assessor. The City's land sales would tend to support the land valuation of $85 per sq. ft. and the cost approach employed may well represent a fair assessment. However, the Complainant demonstrated that an equitable assessment was not achieved, as similar commercial properties on the Macleod Trail corridor had not been assessed using the cost approach, and had escaped the base rate land valuation. The CARB here finds that an equitable assessment is achieved by using the income approach to value.

Issue 2: The typical rent rate of $15 for the main floor retail as suggested by the

Complainant was supported by lease and assessment evidence. The CARB preferred a typical liquor store rent rate of $22 per sq. ft. as suggested by some of the evidence from the Complainant, rather than the $19 rate requested. The CARB noted that the temporary liquor store space being rented in the adjacent building was assessed at $22 per sq. ft rent rate, as were similar properties nearby on Macleod Trail. The Board employed the $22 rate and deducted typical 4% vacancy, typical operating shortfall, and a 90% complete factor. The 8% cap rate was not at issue.

Board Decisions on the Issues:

The Board reduces the assessment to $6,460,000.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF June 2010.

for **J. Noonan**
Presiding Officer

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.*