

**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(4).

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Steven C. Kashuba, PRESIDING OFFICER
R. Deschaine, 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: 055502405*

LOCATION ADDRESS: 10 – 807 Manning Rd NE

HEARING NUMBER: 57594

ASSESSMENT: \$1,970,000

***This is a lead file for a total of 21 additional condominium properties as follows:**

Address	Roll#	Assessed Value
32 – 12 Manning Cl. NE	055502843	\$1,520,000
31 – 12 Manning Cl. NE	055502827	\$1,670,000
29 – 8 Manning Cl. NE	055502785	\$1,990,000
28 – 8 Manning Cl. NE	055502769	\$1,920,000
27 – 4 Manning Cl. NE	055502744	\$1,810,000
26 – 4 Manning Cl. NE	055502728	\$1,710,000
25 – 802 Manning Rd. NE	055502702	\$472,500
24 – 802 Manning Rd. NE	055502686	\$342,500

22 – 801 Manning Rd. NE	055502645	\$1,950,000
21 – 801 Manning Rd. NE	055502629	\$2,000,000
20 – 801 Manning Rd. NE	055502603	\$1,910,000
19 – 803 Manning Rd. NE	055502587	\$1,700,000
18 – 803 Manning Rd. NE	055502561	\$1,760,000
17 – 803 Manning Rd. NE	055502546	\$1,640,000
16 – 805 Manning Rd. NE	055502520	\$2,040,000
11 – 807 Manning Rd. NE	055502421	\$2,030,000
9 – 809 Manning Rd. NE	055502389	\$1,710,000
8 – 809 Manning Rd. NE	055502363	\$1,760,000
7 – 809 Manning Rd. NE	055502348	\$953,500
6 – 811 Manning Rd. NE	055502322	\$2,040,000
5 – 811 Manning Rd. NE	055502306	\$1,560,000

This complaint was heard on 5th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- D. Chabot and B. Hamilton
-

Appeared on behalf of the Respondent:

- D. Kozak

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

No procedural or jurisdictional matters presented.

Property Description:

Located in the NE sector of the City, the subject property consists of 22 condominium properties under one corporate ownership. The lead file is Roll Number 055502405. It has a floor area of 11,269 square feet and is assessed at \$175 per square foot. The basic particulars for the other 21 condominiums are listed above (see also Exhibit 1-C for specific information about each condominium property).

Issue:

1. Is the assessment of the subject property correct when considering its selling price and using the income approach to value?

Complainant's Requested Value: \$1,183,000 (\$105 per square foot)

Board's Decision in Respect of Market Issue:

Position of Complainant

Rather than dealing with each condominium unit as a residential property, it is the request of the Complainant that the 22 condominium units be treated as an investment property. It is the

submission of the Complainant that were this the case, the assessment value would be based upon a comparable rental rate per square foot of office or warehouse properties, applied to the square footage of each condo within the complex, and the result would be a reduced assessment.

Using this method would allow the Complainant to use the income approach to value. This could be accomplished by determining the total square footage of the complex and applying the basic rental rate per square foot to the floor area of each condo.

In this respect, the Complainant submitted that the capitalization rate to be applied to the net operating income for each unit is not at issue. As for sales comparables, it is the position of the Complainant that the sale of commercial properties could be used to support assessment values. In defence of this latter request, the Complainant noted that very few condominium complexes sold in recent years, making it all the more difficult to use condo sales as comparables.

As for the condo complex, the Complainant submitted that the subject property (22 condominiums) sold on the 27th day of July in 2009 at a total price of \$27,500,000. Having regard for the total square footage of the 22 condo units constituting 285,813 square feet of floor space and the values per square foot of similar properties, the Complainant requested that a value of \$105 per square foot of floor space be applied to the 22 condo units under complaint.

As regards the recent sale of the property, a memo from Royal Canadian Properties Limited (1-C, page 45) to Altus Group Limited assured them that *'...although the property was not officially listed, it was on the market and had been considered by other potential buyers in the spring of 2009.'* The letter goes on to say that *'...we contend our purchase was clearly a market transaction conducted at arm's length.'*

Since the transaction occurred after the valuation date of July 1, 2009, the Complainant submitted a Court of Queen's Bench of Alberta decision (1-C, pages 48 – 54) which addressed the question of a post-facto sale (1-C, page 52) and which, in part concludes, *'...I think generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value.'*

In further support of the requested assessment, the Complainant turned to an income approach to value and submitted a Requested Assessment Valuation (1-C, page 55) which shows a rentable area of 283,487 square feet of floor space with a net market value of \$11 per square foot and, when capitalized at a rate of 8%, a value of \$27,475,000 is derived. In support of this method to determine value, the Complainant made reference to two assessment review board decisions; ARB/2007-P, and ARB 0506/2010-P.

As for Rebuttal evidence, the Complainant presented a recent board decision, ARB 0757/2010-P, which dealt with a multi-bay, multi-tenant warehouse property. This decision was presented in support of their request to apply an income approach to value.

Finally, the Complainant presented a CB Richard Ellis Report dealing with Commercial Lease Summary, a 2009 – 2010 BOMA Calgary Building Guide report, an Avison Young Calgary Office Market Report – First Quarter 2009, and a Cushman & Wakefield Marketbeat Report to support a request to establish a market value for office properties and thereby a value per square foot of condominium property floor space.

Position of Respondent

The Respondent presented a series of photographs depicting the subject property, a plot plan, geographic location in the City, and a 2010 Commercial Condo Assessment Explanation Summary for each of the 22 condominium properties.

To support the assessment of each unit, the Respondent presented, for purposes of equity, the assessment amount for each condo unit within the complex wherein the values per square foot range from \$165 to \$300 while the subject property is assessed at \$175 per square foot. In addition and in support of the assessment, the Respondent presented an Avison Young Spring 2008 Calgary Business Condominium Report and a recent board decision, ARB 0361/2009-P.

Decision of board as regards market value

The board places little weight upon the value derived from the sale of the subject property in that it is a post-facto sale having occurred after the valuation date of July 1, 2009. In addition, the board notes that the property was not advertised through MLS but rather took place without the benefit of mass advertising and exposure to the greater public or the investment community.

A similar decision of the board is applied to the Complainant's sales comparables. These sales, in the view of the board, do not reflect the characteristics of condominium properties specifically built to accommodate the living quarters of families. The comparables are commercial properties wherein the income approach to value is used as opposed to the use sales comparables when dealing with residential properties. In particular, the application of a rental rate per square foot to the total floor area within the subject complex, after having regard for several units which are tax exempt, would not result in the determination of a fair and correct assessment value.

Since the sale of the subject property (which occurred after the valuation date of July 1, 2009) took place without the benefit of mass advertising and exposure to the wider public, does bring into question the element of a transaction taking place at *arm's length*.

In contrast, the board places considerable weight upon the equity comparables presented by the Respondent, all of which are located within the same complex.

Board's Decision:

It is the decision of the board to confirm the assessment of the subject property for 2010 at \$1,970,000.

(Note: The board's decision of confirmation of assessment applies to an additional 21 roll numbers as presented on the cover page.)

Reasons:

The board places little weight upon the Complainant's sales comparison of the subject property in that the sale occurred after the valuation date and, perhaps, not at arm's length. As well, the board rejects the notion that an income approach to value can be used for condominiums which are primarily used for residential purposes. In this regard, the board also rejects the notion that a base rental rate can be established for floor space in condos by using rental rates from warehouse or office complexes as comparables.

In contrast, the board places considerable weight upon the Respondent's submission that the subject condominiums are assessed equitably and fairly based upon their equity and sales comparables.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF August 2010.



Steven C. Kashuba
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.*