

**CALGARY
ASSESSMENT REVIEW BOARD
REVISED 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 Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J.P. Acker, PRESIDING OFFICER

Y. Nesry, MEMBER

D. Pollard, 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 2010 Assessment Roll as follows:

| | |
|--------------------------|-----------------------------|
| ROLL NUMBER: | 200714012 |
| LOCATION ADDRESS: | 5260 126 Avenue S.E. |
| HEARING NUMBER: | 56414 |
| ASSESSMENT: | \$283,000 |

This complaint was heard on the 23th day of August, 2010 at the office of the Assessment Review Board located at 3rd Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #9.

Appeared on behalf of the Complainant:

- *Mr. Andrew Izard, Agent, Altus Group Ltd., representing Shepherd Development Corporation*

Appeared on behalf of the Respondent:

- *Mr. Kelly Gardiner, Assessor, City of Calgary*

Property Description:

This property is a crescent shaped parcel owned by the City of Calgary, registered as a road plan. This property is slated for future LRT right-of-way and was closed as a public roadway by city bylaw 5C2005. It was subsequently leased to Shepherd Development Corporation to provide access to the building site on an adjacent property for the purposes of constructing a warehouse facility with no setback immediately adjacent to the subject parcel. Under the authority of the *Municipal Government Act* s 304(1)(c); the Complainant, as the lessee, is the assessed person.

Issues:

Is the assessed value in excess of market value?

Is the use, quality and physical condition of the property reflected in the assessment?

Is the classification of the property incorrect?

Are the property details used for assessment purposes incorrect?

Complainant's Requested Value: \$ 750

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

The Complainant indicated that the lessee acquired a lease on the subject property solely to provide access and working space for the construction of an improvement on the adjacent parcel of land. He indicated that the current use is a closed public road right of way intended for future development of an LRT right-of-way. He provided the board equity comparables suggesting that the lands should be exempt from assessment or valued at a nominal value to reflect its limited potential for any use beyond that of public transportation. In his statement of issues, the Complainant listed a number of sections of the *MGA* that he alleged were offended by the subject assessment.

The Respondent indicated that the reductions from normal vacant land value were applied to the subject and this resulted in an assessed value substantially below normal market value. He indicated that the assessed person was appropriately indicated since the Complainant had entered into a lease agreement with the City of Calgary for use of the land. He did not dispute that the land is unimproved and that its only future use would be for LRT right-of-way purposes.

Board's Decision:

The Board considered the evidence and testimony of the parties and determined that the subject is a closed registered road right of way. Its current condition and use is as vacant land. Although a lease was not entered into evidence, both parties agreed that the subject lands were held by the complainant under a lease agreement which provided access to the adjacent property for construction access purposes only and that the lease terminated in December 2009 following the completion of construction. Neither party indicated that any use beyond that of access to the adjacent property was made of the subject land.

The Board reviewed the *Municipal Government Act* (the *Act*) in light of the complaint and focused on s 298(1) (i) regarding non-assessable property which reads as follows:

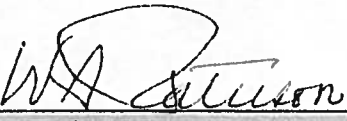
298(1) No assessment is to be prepared for the following property:

(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than as a road;

Accordingly, based on the testimony that no other use was put to the subject beyond use for access to the adjacent property, the Board found that section 298(1)(i) applies to the subject and it is therefore not subject to assessment. The Board found that there are two conditions which bring a road into an assessable state: (1) that a lease, license or permit exists; and (2) that the property is used for a purpose other than a road. Since no use beyond that of providing access to the adjacent property was indicated by either party, the Board held that it continued in use as a road for the purposes of interpreting the *Act*.

The assessment is therefore set aside and the value for assessment purposes is zero.

DATED AT THE CITY OF CALGARY THIS *September 23rd*, 2010.


for **J. P. Acker**
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.*