CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD (CARB)
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:

The Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Fleming, PRESIDING OFFICER
A. Wong, MEMBER
I. Fraser, 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	LOCATION ADDRESS	HEARING NUMBER	ASSESSMENT
200597490	607 9 Ave. SE	59499	$4,700,000
200597508	641 9 Ave. SE	59519	$3,900,000
200597516	683 9 Ave. SE	59520	$2,940,000

This complaint was heard on the 28th day of Sept., 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *D. Mewha for the Complainant*

Appeared on behalf of the Respondent:

- D. Thistle; City of Calgary *for Respondent*

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

At the outset of the hearing, the Complainant submitted a letter of withdrawal for four of the properties slated to be heard on this agenda. Following that, the Respondent advised that it would be asking for costs for the remaining three properties on the agenda. The basis for the cost application was that the four properties which were withdrawn were adjacent to the properties remaining on the agenda and had identical issues and valuation parameters and therefore the Respondent felt it an inappropriate use of their time to defend the assessment for properties for which the valuation parameters had been accepted for similar adjacent properties with the same owners.

The Complainant indicated that they felt this was an ambush at the last minute because the complainant/owner had been discussing this matter with the City for some time. The Complainant further advised that the reason for the withdrawal was because the lots being withdrawn were effectively leased to the City, and the City would be responsible for payment of the taxes, therefore the owner had no interest in appealing the assessment because they would not be responsible for the property tax. The Owner would be responsible for the property taxes on the remaining three lots, and so instructed the Complainant to proceed with the Complaint on the remaining three properties.

The Respondent advised that the lessee of the four withdrawn lots was not the City, but rather the Calgary Municipal Land Corporation admitting that it was an arms-length wholly owned subsidiary. They further advised that in their opinion, the responsibility for paying property tax should have no bearing on the assessment appeal.

The Composite Assessment Review Board (the 'CARB') considered the request of the City and delivered an oral decision at the conclusion of a brief recess. Schedule 3 of *Matters Relating to Assessment Complaints Regulation AR 310/2009* (MRAT) on the matter of costs indicates that where "a hearing is required to determine a matter that did not have a reasonable chance of success, it may award costs....". The CARB finds that it was reasonable of the owner to withdraw the complaint on those properties for which they had no property tax liability. Likewise however, it was reasonable for them to exercise their right of complaint on those properties where they have the property tax burden and where they believe they have a reasonable chance of success. Accordingly the application for costs is denied.

In the context of discussions on the preliminary matter, Mr. Zacharopoulos indicated that he had knowledge of a previous sale of the subject properties, and so would be withdrawing from the hearing. Mr. Fraser joined the hearing for the Merit portion.

Finally, the parties agreed that it would be most efficient to hear the 3 appeals at the same time and one package of evidence was received for the three properties.

There were no other procedural or administrative matters raised.

Property Description:

The properties are three unimproved vacant parcels of land located just south of the proposed East Village redevelopment in Downtown. 607 9th Ave is 38,213 square feet, 641 9th Ave. SE is 31,467 square feet and 683 9th Ave. is 29,064 square feet. All three lots are zoned Direct Control (DC) 53Z95. All three lots have "Abutting a Train Track" and "Traffic Main" influences and the most westerly lot has a "Shape Factor" influence as well. All three lots are valued on the Sales

Comparison method.

Issues:

The Complaint forms (Ex. C1,C2,C3) included a number of grounds for complaint, and the Evidence Package (Ex. C4) included a subset. At the hearing, the Complainant advised that while they would be raising only three issues the final two issues hinged on the determination of the principal issue number 1.

1. The adjustment factors applied to the base rate are inequitable and do not adequately account for hindrances on the subject properties.
2. The subject properties are assessed in excess of their market value
3. The subject properties are inequitably assessed compared to similar and competing properties.

Complainant's Requested Value:

607 9th Ave. SE	$2,480,000
641 9th Ave. SE	$2,060,000
683 9th Ave. SE	$1,250,000

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

1. The adjustment factors for the properties adequately reflect the influences on the subject properties.
2. Based on the method of valuation, the properties are not assessed in excess of market value.
3. The properties are assessed equitably compared to similar and competing property.

Board's Decision:

The complaint is denied and the Assessments are confirmed as set out below:

607 9th Ave. SE	$4,700,000
641 9th Ave. SE	$3,900,000
683 9th Ave. SE	$2,940,000

REASONS:

Both parties agreed that the "base" land value for the subject property was $145.00 per square foot for the 2010 Assessment. This was based on comparable sales provided by the Respondent. It was noted by the Complainant that the land use designation of the comparables was primarily residential while the land use for the subject was Direct Control 53Z95 which permitted limited commercial uses however the Complainant did not argue for a different rate.

The heart of the Complainant's arguments rested with the value of the influence adjustments. The Respondent had allocated a negative 15% adjustment for the proximity to the railway tracks on all three lots and a shape adjustment of negative 15% for the most westerly lot.

The Complainant argued that the proximity to the railway deserved a negative 30% adjustment and also argued that land use restrictions (LUR) on the site justified a further negative 25% adjustment. They also felt the shape adjustment on the most westerly lot should remain.

With respect to the railway proximity adjustment, the Complainant provided data from the sales of properties in the Beltline along 10th Ave. south of the railway tracks (for the period January 2006 to April 2007) [Ex.C5 pg 177]. This data showed that for the lands adjacent to the tracks, the mean sale price was 40% less than the sale price for land across the street. The Complainant reported that they were unaware of any relevant sales of land either south or north of the tracks during the past year which would change this relative relationship and thus, they felt that the subject properties should be entitled to at least a negative 30% adjustment for proximity to the railway. The Respondent refuted this argument on two bases: first they pointed out that previous year's values have no bearing on the current year's assessment (providing Municipal Government Board (MGB) decisions in support of this [Ex. R1 pg 129]). More importantly, the Respondent advised that the current (2010) adjustment for railway proximity in the Beltline was negative 15%, the same adjustment applied to the subject properties and thereby negating the Complainant's argument.

With respect to the LUR adjustment, the Complainant argued two points. First he argued that the uses on the subject properties were limited compared to 1.) the uses on the land sales used to establish the base value and 2.) the"normal" industrial type uses that the current zoning on the property was most closely aligned to. Secondly, he provided three examples (two of which were virtually contiguous) in the northeast and northwest parts of the City where the City had provided LUR influences [Ex.C5 pgs. 207 – 231]. As far as the amount of the influence, the Complainant indicated the zoning on the subjects had previously been industrial and he provided City documentation showing that Land Use Restrictions for industrial land received a negative 25% influence adjustment [Ex. C5 pg. 173] and so the subject deserved that magnitude of an adjustment. He summarized by noting that the City clearly applied LUR influence adjustments and so the Complainant felt that the level of land use restriction influence adjustment (-25%) was appropriate. When the Complainant subsequently learned that downtown Land Use Restriction influences were at negative 15%, he indicated that this amount would be acceptable.

The Respondent countered that the Complainant's examples were located nowhere near the subjects and therefore not all comparable properties. Further, it was not clear in at least two of the examples what the magnitude of the land use restriction influence was. As well, the Respondent agreed that the City did recognize land use restriction influences where these were appropriate, but in the case in point, the City did not feel that a use restriction influence was warranted. They advised that there were properties in the Downtown which did receive a Land Use Restriction Influence of negative 15% based on a DC zoning, but these were principally sites such as utility buildings etc. where there was a demonstrable and readily evident land use restriction. The Respondent did not believe that the subjects fell into that category.

In "general" support of his request for a reduction, the Complainant also indicated that the 2010 assessment of the subject properties had gone up at rates averaging over 500% from the previous years; both 2008 and 2009 [Ex. C5 pg. 282]. The Complainant argued this was excessive in what was acknowledged to be a weak real estate market. The Respondent indicated that the previous year's assessments were wrong, and that the 2010 assessment on the properties was valid and correct.

The CARB reviewed the evidence of both parties. First, the CARB considered the year over year increases in the assessment of the subjects. The CARB accepts the Respondents argument that the previous year's assessments were wrong, and recognizes the Respondents right to assess the

subjects using a recognized approach to value. This may produce a value vastly different from the previous year, but that is permissible under the legislation. Accordingly, the CARB put little weight on this evidence.

In the matter of the Railway proximity adjustment, the CARB places more weight on the evidence of the Respondent which indicates that the 2010 adjustment for Railway proximity was the same for Beltline and Downtown at negative 15%. While the Complainant provided evidence of earlier Beltline differences, the CARB concludes that with no more recent evidence which demonstrated a continuing difference, the "current" year adjustment is more relevant for the 2010 railway proximity decision.

In determining whether the LUR influence should be applied, the CARB considered 2 issues. The first was whether there should be an LUR influence for the subjects, and if so what evidence was there to determine the amount of that influence. The CARB concludes that the examples provided by the Complainant were not similar properties because of their location and the fact that there were other issues which may have impacted the application of the influence. Nevertheless, it did show that the City has applied LUR to appropriate properties. However, when the CARB reviewed the Land Use designation for the subjects, it noted that there are a significant number of discretionary uses which could be developed on the property. The Board acknowledges the Complainants argument that a comparable I-G (Industrial General) designation may have more permitted uses, but there was insufficient evidence from the Complainant to convince the CARB that the potential uses would be so limited that they would impact the value. Likewise, the CARB did not receive sufficient evidence distinguishing any difference between the developability of the residential sites (which formed the basis for the base value) and the subjects. As a result of this analysis, it was not necessary to pursue the potential value of the LUR influence.

Accordingly, the CARB confirms the assessments for the subject properties as noted above.

DATED AT THE CITY OF CALGARY THIS 30 **DAY OF** September **2010.**

for W.A. Fleming

James Fleming
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

No.		Item
1.	Exhibit C1	Completed Complaint Form
2.	Exhibit C2	Completed Complaint Form
3.	Exhibit C3	Completed Complaint Form
4.	Exhibit C4	Complainant's Evidence Brief
5.	Exhibit C5	Complainant's Assessed Value Brief
6.	Exhibit R1	Respondent's Brief

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.