

**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 Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

J. O'Hearn, 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:	757110101
LOCATION ADDRESS:	255 SHAWVILLE BV SE
HEARING NUMBER:	59234
ASSESSMENT:	\$905,500

This complaint was heard on the 19th day of November, 2010 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:

- Mr. A. Izard (Altus Group Ltd.)
- *Mr. D. Hamilton (Altus Group Ltd.)t*

Appeared on behalf of the Respondent:

- Mr. P. Sembrat
- Mr. P. Frank (Preliminary Matters only)

Others

Mr. B. Brazzell (Preliminary Matters only)

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

Issue Attendance of Mr. Frank as a representative of the respondent.

The Complainant provided a copy of an email exchange between himself and Mr. Sembrat, labelled C-1. The email advised Mr. Izard of the attendance of a solicitor for the City of Calgary at the hearing. In response, Mr. Izard objected to the late notification.

The Complainant noted the attendance of Mr. Frank, a solicitor for the Respondent, and inquired as to Mr. Frank's role in the proceedings. He was concerned that he was unable to make arrangements for legal assistance for his client without sufficient notification.

Mr. Frank advised that he was not giving testimony, nor was he giving evidence. He was in attendance to hear arguments and respond to the preliminary issue that he had been advised was going to be presented by the Complainant. Mr. Frank further advised that the Respondent was not barred from having legal representation.

The Complainant was satisfied with Mr. Frank's response.

Issue Abuse of Process

The Complainant submitted Canadian Tire Gas Bar.....Preliminary Issue labelled C-2.

The Complainant advised that this appeal is for the 2010 property assessment of a Canadian Tire Gas Bar located at 255 Shawville Blvd. S. E. in Calgary. The assessment had been prepared by the City of Calgary utilizing the Income Approach to Value.

The Complainant further advised that the Assessment Review Board Complaint form contained 8 Grounds for Appeal but the only outstanding issue was #8, namely; "The Gas Bar assessed rental area has been incorrectly applied and should be increased from 1 to a minimum of 1,000 sq.ft. with a total PGI of no higher than \$45,000."

The Complainant further advised that during the disclosure process, he was advised by the City that they had utilized the Income Approach to Value in error and that they would be changing the assessment methodology. Further they would be requesting an increase in the assessment.

The Complainant stated that because the City had changed the evaluation method, he was required to cobble together resources to prepare different evidence and argument, with only 7 days notice. He suggested he had incurred additional costs to do so, and this was an abuse of process. He advised he was reserving his right to claim costs.

The Complainant requested that the merit hearing proceed, but the Respondent be restricted to only presenting evidence or argument as it relates to the Income Approach to Value which had been utilized to prepare the assessment. The Complainant referred to Matters Relating to Assessment Complaints Regulation (MRAC) Section 9(1) "A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form" as support for his request.

The Respondent argued that it is in fact the Complainant that is restricted by MRAC Section 9(1) and further that the Respondent is entitled to put forward whatever evidence they choose to defend their assessment.

The Respondent submitted that they had met their obligations to disclose and that due process had been followed.

The Board denied the Complainant's request to restrict the Respondent's ability to defend the assessment. The Assessment Review Board Complaint form Issue #3 stated "the assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts".

The assessed value is clearly on the Complaint form and the Respondent has the right to defend the assessed value.

The merit hearing proceeded.

Property Description:

The subject property is a 0.72 acre parcel located in the Shawnessy community in SE Calgary, within what is commonly referred to as the Shawnessy Power Centre. The site contains a free standing gas bar (year of construction unknown) that is considered to be of B+ quality. The gas bar area is 774 sq. ft.

Issues:

The Assessment Review Board Complaint form contained 8 Grounds for Appeal. At the outset of the hearing the Complainant advised there were 2 outstanding issues, namely:

1. The assessment of this particular Gas Bar is incorrect, as the area is less than 1,000 sq.ft. and should be assessed with a PGI of \$45,000 and not \$70,000, as currently applied.
2. This is based on the income information and the equitable valuation for Gas Bars and the treatment of Gas Bars within the municipality.

Complainant's Requested Value: \$582,000

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

The Complainant submitted Evidence Submission labelled C-3.

The Complainant, at page 11, provided the Assessment Summary Report and noted the assessment had been prepared utilizing the Income Valuation Approach.

The Complainant, at page 12, provided the Non-Residential Properties – Income Approach Valuation and noted that the Market Net Rental Rate utilized in the calculation was \$70,000. He went on to explain that the City of Calgary had established parameters for Gas Bars that they applied for assessment purposes. He further advised that Gas Bars with an area of less than 1,000 sq. ft. are assigned a Market Net Rental Rate of \$45,000 and Gas Bars greater than 1,000 sq. ft. are assigned a Net Market Rental Rate of \$70,000. He further advised that the Respondent had confirmed the area of the Gas Bar to be 774 sq. ft.

The Complainant, at page 105 provided Altus's Equity Comparables for Gas Bars less than 1000 sq. ft. and noted that all of them with areas of less than 1,000 sq. ft. (21 of 23) had an assessed PGI of \$45,000.

The Complainant argued that because the subject was a Gas Bar with an area of less than 1,000 sq. ft. that the assigned Net Market Rental Rate should have been \$45,000, which when utilized in the Income Valuation formula would result in a market value of \$582,117.

The Respondent submitted Assessment Brief labelled R-1.

The Respondent advised that the assessment had been prepared utilizing the Income Approach Valuation. He further advised that the subject gas bar is a single use, single occupant gas bar property. As a gas bar/convenience store combination it is among 196 fuel sales properties which are equitably assessed using the cost approach in 2009. These usually trade as gas bars or for redevelopment.

He argued that the assessment was in error because it had been prepared utilizing the Income Approach, and that it should have been prepared utilizing the Cost Approach to Value.

The respondent, at page 37, provided the Cost Approach Worksheet which calculated the Total Value to be \$2,442,930 and requested the assessment be changed to reflect that value.

The Complainant submitted a 500 page Rebuttal Submission labelled C-4, in support of his argument that the Cost Approach should only be utilized for "special purpose buildings" where no market exists, and further that utilizing the Cost Approach to Value in this instance would create an inequity in the market place.

The Board finds that while the Cost Approach may be utilized for determining market value, to do so would require a determination of the market value of the land as if vacant. The Respondent did not provide any market evidence in support of the value assigned to the land component. The Board therefore placed no weight on the value derived by the cost approach.

The Board finds that the subject is a gas bar, the gas bar has an area less than 1,000 sq. ft and therefore the Net Market rental rate is \$45,000.

Board's Decision:

Substituting the Net Market Rent value of \$45,000 into the Income valuation and retaining the parameters for Vacancy (2%), Non Recoverables (1%) and Operating Costs (\$9.00 /sq. ft.) yields a Net Operating Income (NOI) of \$43,658 which when capitalized at 7.5% yields a market value of \$582,117.

The 2010 assessment is reduced to \$582,000.

DATED AT THE CITY OF CALGARY THIS 1st DAY OF December 2010.



B. Horrocks
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.*