

**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 Limited, COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

***H. Kim, PRESIDING OFFICER
D. Cochrane, MEMBER
J. Kerriston, 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:	067244400
LOCATION ADDRESS:	1310 10 Ave SW
HEARING NUMBER:	60411
ASSESSMENT:	\$2,060,000

This complaint was heard on the 3rd of December, 2010 at the office of the Assessment Review Board located on the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Property Description:

The subject property is an 11,325 SF vacant parcel located in the BL4 zone of the Beltline district between the CPR tracks and 10th Avenue SW. The parcel is assessed as vacant land at market value of \$215/SF with a -15% adjustment for abutting a train track. Community Natural Foods Ltd. owns the subject parcel as well as the adjacent parcel to the east located at 1300 11 Ave SW, which is improved with a 16,745 SF retail food building. The subject has 35 parking stalls used for customer parking for the retail food building.

Issues:

The Complainant identified a number of issues on the Complaint form, however at the hearing the only issue argued was whether the parcel provides parking spaces required for the adjacent property, and therefore should be assessed at the nominal parking rate of \$750 per parcel.

There is no dispute that the nominal parking rate for vacant parcels used to fulfil a parking requirement on another parcel is \$750. The matter under dispute is whether this rate should apply to the subject parcel to satisfy equity with comparable parcels.

Complainant's Requested Value: \$750

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

The subject parcel had initially been assessed for 2010 at the nominal parking rate (\$750 per parcel) but an amended assessment was sent on June 17, 2010 raising the assessment to the market vacant land rate. This parcel had been assessed at the nominal parking rate in previous years and nothing had changed. The subject parcel provides 35 customer parking stalls for the Community Natural Foods store on the adjacent parcel which has only 10 parking stalls. The Complainant presented excerpts from the Land Use Bylaw 1P2007 to support his position that the store parcel required 32 stalls and was deficient in parking. The two parcels are operated as one unit. The Complainant presented the Assessment Request for Information (ARFI) return for 1300 10 Ave SW which indicated 34 public day use surface parking stalls at \$0 and 16,745 SF of owner-occupied leased area.

The Complainant presented the Assessment Summary Report for the Community Natural Foods store. It is assessed on the sales comparable approach at \$4,130,000 or \$182/SF of land. Comparable stores are assessed on the income approach, including the Calgary Co-op at 1130 11 Ave SW which is assessed at \$135/SF of land, the Safeway at 813 11 Ave SW assessed at \$62/SF of land and the Safeway at 410 10 St NW assessed at \$85/SF of land.

Parcels that are required for parking are assessed by the Respondent at a nominal rate of \$750 per parcel. The Complainant presented photographs and Assessment Summary Reports of 57 comparable parcels in all four quadrants of the City. The assessable land areas varied from 275 SF to 90,097 SF but all were assessed at \$750. The Community Natural Food store is

clearly deficient in parking. Equity with the comparable parcels dictates that the subject parcel should be assessed at the nominal parking value of \$750.

Respondent's position:

A vacant parcel used for parking is assessed at the nominal parking rate if it fulfils the parking requirement for an improved parcel that is deficient, and the value of the parking parcel is captured in the assessment of the improved parcel for which it provides parking. The Respondent submitted an analysis of parking required for the most recent development permit application for the Community Natural Foods building. It was a 1996 application for "Addition of mezzanine to existing warehouse" at 1300 10 Ave SW legally described as 1423LK block 48. It does not refer to the subject lot in any context.

If there was no additional parking required at the time the development permit was approved, the building would not be required to conform to the current parking requirements. Under the new Land Use bylaw 1P2007, the retail store is required to have 15 stalls, and 10 are provided on site. Only 5 stalls out of the 35 on the subject parcel would be required, but Section 116 of the bylaw states:

116 All motor vehicle parking stalls, visitor parking stalls, bicycle parking stalls and loading stalls required by this Bylaw for a *development* must be located on the same *parcel* as the *development*.

Therefore, even if the store did have to conform to current requirements and the parking stalls were determined to be insufficient, the stalls on the subject lots could not be used to fulfil the parking requirement.

There is no legal tie between the two parcels. The only registration on the title is a mortgage and accompanying caveat re: assignment of rents. There are no other documents on title to suggest that the use of the subject lot is restricted in any way.

The comparables presented have the value of the parking parcels captured in the assessments of the related improved parcels. In support of this, the Income Approach Valuation for Westhills Towne Centre retail buildings and theatre were presented. The improvements are assessed on the income approach, and the rental rate used includes customer parking. In the subject case, the assessment of the Community Natural Foods store is based on land value alone, not on the income approach to value. The subject parcel is also assessed as vacant land. Therefore if the two properties were to be consolidated they would be assessed as the sum of the current assessments. The Respondent noted that the 2010 assessment of the store parcel was appealed and confirmed in CARB 1782/2010-P.

The subject and adjacent store parcels are zoned CC-X which allows a base Floor Area Ratio (FAR) of 5.0 and up to 12.0 with bonusing. The vacant land value exceeds the value supported by income; therefore they are assessed on the sales comparable approach as vacant land. The Respondent noted that the assessment for the Co-op site had been amended and it was also assessed as vacant land and not on the income approach. The subject land has greater development potential than the Co-op site, which is zoned Direct Control under a 2001 bylaw which allows 8.0 maximum FAR. The two Safeway stores are not comparable because they are both zoned Direct Control under bylaws adopted in 1996 and 1998. The DC bylaw in each case allows only a food store of the exact size and height that exists on the sites. There is no redevelopment potential therefore they are assessed on the income approach.

The Respondent presented a map of land rates in the Beltline and a list of 98 properties in the BL4 zone of the Beltline that all had base land rates of \$215/SF. The parcels abutting the train tracks, including the subject, all receive an adjustment of -15% for an adjusted land rate of \$182/SF. The subject is assessed equitably with similar properties and should be confirmed.

Decision and Reasons:

The *Municipal Government Act* sets out the requirements for property assessment:

- 293(1)** In preparing an assessment, the assessor must, in a fair and equitable manner,
 (a) apply the valuation and other standards set out in the regulations, ...

The standard for vacant land is market value. Board finds that applying the nominal parking rate creates an inequity, and should only be applied to a vacant parcel when its application is clearly justified. In order to maintain equity in a situation where an assessment is far below market value, the Board finds three conditions must exist:

1. The improved parcel to which the vacant parcel is linked must be deficient in parking, and the parking provided on the vacant land must be necessary to satisfy the deficiency,
2. A contractual arrangement must exist whereby the property cannot be readily sold for redevelopment separate from the improved parcel, and
3. The value of the vacant parcel must be captured in the value of the improved property to which it is linked, i.e the total value of vacant parcel and linked improved parcel must reflect market value.

The parties disputed the amount of parking required for the retail store. The Board reviewed the parking provisions of the CC-X district of Bylaw 1P2007:

1177 (1) Unless otherwise specified in this section, the minimum number of required **motor vehicle parking stalls, visitor parking stalls, bicycle parking stalls- class 1** and **bicycle parking stalls – class 2** is the requirement specified in the General Rules for Centre City Commercial Land Use Districts referenced in Part 11, Division 4.

(2) For the area bounded by the CPR tracks, the Elbow River, 12 Avenue and 14 Street SW, the **motor vehicle parking stall** requirement is:

- ...
- (b) unless specified in subsection (b.1), a minimum of 1.0 stall per 100.0 square metres of **gross usable floor area** for ... **Retail Store** ...;
- (b.1) no requirement for ... **Retail Store**, located on the ground floor of a **building** where:
- (i) the **building** contains a **Dwelling Unit, Hotel, Multi-Residential Development, or Office** located above the ground floor; or
 - (ii) the **use area** is less than 465 square metres;

If Bylaw 1P2007 were to apply to the site, the parking requirement would be 1 stall per 100 m² of gross usable floor area. The building area is 1,556 m² therefore the parking requirement would be in the range of 16 parking stalls. However, there was no evidence to dispute the Respondent's contention that the original permit had not required additional parking stalls and therefore the 10 stalls provided were sufficient under the previous bylaw.

Regardless of the bylaw requirement, the amount of parking provided by Community Natural Foods and the three comparables (Co-op and the two Safeway stores) indicate that a greater amount of parking than the minimum bylaw requirement is typical. Rental rates applied in an income approach valuation would be based on provision of the typical amount of customer

parking. However, in the subject case, the retail store is assessed as vacant land, and under that scenario the value of the subject parcel would not be captured in the assessment of the retail store. Accordingly, the parcel does not meet the conditions necessary to justify assessment at the nominal parking rate.

The Complainant argued equity with other parcels that did receive the nominal rate. There were 57 parcels submitted, but the Assessment Summary Report and photographs did not provide sufficient details to determine whether the assessments of the other parcels demonstrated inequity. Moreover, the assessment information indicated a report date of May 14, 2010, and three of the 57 parcels submitted (the subject and two parcels that had been heard the previous day) had been amended on June 17, 2010 to market value land rates.

Accordingly, the Board found that the assessment of the subject parcel is not inequitable with other similar parcels, and that the application of the nominal parking rate is not supported.

Board's Decision:

The complaint is denied and the assessment confirmed at \$2,060,000.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF December 2010.


H. Kim

Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1	Complainant Form
C2	Complainant's submission
R1	Respondent's submission

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
Brendan Neeson	Altus Group Limited, Complainant
Daniel Lidgren	Assessor, City of Calgary, Respondent
Dan Satoor	Assessor, City of Calgary, Respondent

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.*