

**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:

S. Barry, PRESIDING OFFICER

J. O'Hearn, MEMBER

P. Pask, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	201492204
LOCATION ADDRESS:	5155 130 Av, S.E., Calgary, Ab
HEARING NUMBER:	59818
ASSESSMENT:	\$6,780,000

This complaint was heard on 8th day of December, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *A. Izard, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *R. Farkas, City of Calgary*

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

There were no Procedural or Jurisdictional Matters raised before the Board at the outset of the hearing.

Property Description:

The property under complaint is an irregularly shaped, commercial parcel of 6 acres located within the community of McKenzie Town, specifically the East Shepard Industrial area.

Issues:

On the Complaint Form some seventeen, generic Grounds for Appeal were listed. Of these, few are specific to the property under complaint. From this list the Complainant, at the hearing, identified market value and issues of fairness and equity as matters that would be addressed.

Complainant's Requested Value:

On the Complaint Form the requested assessment was \$4,800,000. The Complainant's Brief revised this to \$750 as well as an alternate assessment of \$5,640,000.

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

The Complainant's argument is that the parcel is intended to be used for parking as evidenced by an application for a development permit in August of 2010 for a change of use to an at-grade parking lot. In that regard, the Complainant has identified a large number of parking lot parcels that are assessed by the City at \$750 where this use is required by the Land Use Bylaw to serve an adjacent development. In this case, the subject site was subdivided from a larger parcel, the southerly portion of which is being developed as a Lowes shopping centre. The Complainant references the Lowes site as the dominant tenement and the subject parcel as the subservient tenement, ostensibly required to provide parking for the Lowes site. On that basis, the site should be assessed equitably with other similar parking lots at \$750.

The Respondent argues that, in the first place, the development permit application is post facto of the valuation date and does not affect the characteristics and physical condition of the property on

December 31, 2009. Additionally, there is no evidence that the subject parcel is required by Lowes for parking. In fact, the current LUB, specific to this site and through the General Rules, requires that each development must provide its required parking on the same parcel as the development. The Respondent notes that the two parcels are held by different owners and there is no documentation to indicate an agreement between them as to parking now or in the future.

The Board concurs with the Respondent that the parking lot argument fails because, with the development permit application being made in mid to late 2010, it does not meet the test of the *Municipal Government Act*, Chapter M-26.1 (MGA), s. 289(2) having regard to the characteristics and physical condition of the property on December 31, 2009. At that time it was a vacant commercial site. As well, the Board acknowledges s.3 of *Matters Relating to Assessment and Taxation Regulation* AR 220/2004 (M.R.A.T) which requires that an assessment "must be an estimate of the value of a property on July 1, of the assessment year", in this case, July 1, 2009.

In the alternative, the Complainant requests that the Board have regard to the restrictions of use that pertain to the irregularly shaped portion of the parcel, estimated as five per cent of the six acre site and which this decision references as the "handle". The "handle" appears to have been constructed as a road and one of these restrictions, according to the Complainant, relates to a legal requirement that this road is required to provide access to a condominium project to the south and west. Because of this restriction, the "handle" cannot be developed for other uses. The Complainant's disclosure documents do not provide evidence of this legal restriction and without such evidence the Board places little, if any, weight on this argument.

Another restriction to use raised by the Complainant is the size and shape of the "handle" and its ability to be developed given that configuration. The Complainant provided an alternate assessment based on a per acre calculation for an equity comparable contained in his disclosure document with respect to a 12.95 ac parcel close to the subject site. That assessment approximates \$940,000 per acre and the Complainant used that to arrive at the alternate request of \$5,640,000. He believes that an additional adjustment of at least 5 per cent should be applied for shape but does not suggest how the restriction on use should be dealt with. The Complainant notes that the City Land Rate Table allows, at the discretion of the Assessor, negative adjustments of up to 30 per cent for shape and up to 25 per cent for limited use.

The Respondent argues that the issue of shape is not identified in the disclosure documents and therefore was not addressed by him. The Board agrees; however, the grounds for appeal on the Complaint Form do reference the failure to adjust for, among other things, shape. The Board notes that the shape of this parcel is clear and apparent to anyone looking at the plans and ortho maps before the Board. The Board notes that the Respondent also brought into his disclosure the influence adjustments that may be applied by the Assessor.

The Respondent further argued that the rate used by the Complainant from the comparable does not reflect the valuation method used by the City which is based on a square foot value for the first 30,000 sq.ft. for this land use district and a different rate for the remainder of the parcel. For parcels that exceed 10 acres, as is the case in the Complainant's comparable, there is reduction of between 15 and 5 per cent, depending upon the actual parcel size. The comparable does not have the same 5 per cent upward adjustment for corner influence that applies to the subject. The Respondent produced a table with three comparables of different sizes to show how the Land Rate Table would be applied with resulting, quite different, per square foot rates depending on the comparable used. The Board finds that there is no evidence to support the alternate assessment.

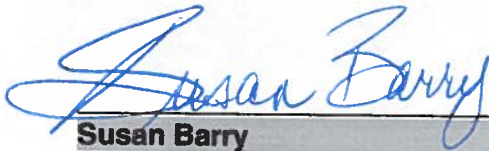
Without any evidence before it in the nature of the conditions of the subdivision approval or

conditions that might be considered by the City with respect to the outstanding development permit or without any evidence from a certificate of title to show how this parcel is legally impacted by the issues raised by the Complainant there is, with one exception, no reason to change the assessment. The one exception is a shape adjustment. It is clear on the face of it that the parcel is irregularly shaped to a significant degree over, approximately, 5 per cent of its area. There has been no argument that the shape positively affects the value of the parcel; on the contrary, the City's adjustment table for various influences only addresses shape as a negative influence on market value. The Board has decided to apply a negative 5 per cent adjustment to the 2010 assessment of \$6,780,000 for shape.

Board's Decision:

The 2010 assessment is set at \$6,440,000

DATED AT THE CITY OF CALGARY THIS 16th DAY OF DECEMBER 2010.



Susan Barry
Presiding Officer

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:****NO. ITEM**

- | NO. | ITEM |
|-----|--------------------------------------|
| 1. | Complaint Form for Roll #: 201492204 |
| 2. | Complainant's Assessment Brief |
| 3. | Respondent's Assessment 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.*