CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of the complaint against the Amended Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, Presiding Officer
K. Farn, Board Member
J. Rankin, Board Member

This is a complaint to the Calgary Assessment Review Board in respect of an Amended Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	**200 456 077**
LOCATION ADDRESS:	**1130 – 11 Avenue SW, Calgary**
HEARING NUMBER:	**60455**
ASSESSMENT:	**$12,490,000 (Amended)**

This complaint was heard on the 1st and 2nd days of February, 2011 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:

- R. Brazzell (Preliminary Issue Only)
- A. Izard
- D. Mewha

Appeared on behalf of the Respondent:

- D. Lidgren
- J. Young (Feb 1st Only)

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

The Complaint against a parking lot property that adjoins the subject property was heard by the Calgary CARB on December 17, 2010 and decision CARB 2308/2010-P was issued on December 21, 2010. The parking lot is operated in conjunction with the subject supermarket property. The parking lot hearing was before a different CARB panel than was scheduled to hear the subject complaint. By Email to the Chairman of the Calgary Assessment Review Board on January 27, 2011, a representative of the Complainant requested that the same panel be convened to hear this complaint because that panel had heard lengthy arguments by both parties and had a significant understanding of the issues being presented. Since the Respondent was going to draw a link between the two properties, it would be beneficial to all parties involved if the same panel was used.

The Respondent had no objection to the current panel but would not object if it was decided to use the same panel that heard the parking lot complaint.

Decision:

The CARB did not grant the Complainant's request.

The request from the Complainant on January 27th came just days before this hearing was scheduled. The ARB Chairman attempted to contact the members on the prior panel but was unsuccessful. In any event, the panel selection did not seem to be particularly relevant under the circumstances. The parking lot was on a different roll number than the supermarket property to be considered at this hearing. The decision made by the prior CARB panel was made on the merits of the evidence at the prior hearing involving just that parking lot property. If the Respondent wishes to draw a link between that property and the property currently being considered, it would have to be based on evidence tendered at this hearing so it does not matter which panel hears that argument and evidence.

Property Description and Assessment Background:

The property that is the subject of this complaint is a grocery supermarket, known as Midtown Market, owned and operated by the Calgary Co-operative Association Limited. The property

comprises a 48,073 square foot grocery supermarket (45,040 square feet on the ground floor and 3,033 square feet of mezzanine) on a 55,328 square foot site in the Beltline district of downtown Calgary. The building has an 86.99% site coverage ratio. The building was completed in 2004. Parking for the supermarket is provided on an adjoining 49,567 square foot lot.

In 2001, the entire block bounded by 10th Avenue SW on the north, 10th Street SW on the east, 11th Avenue SW on the south and 11th Street SW on the west was purchased. Subdivision Plan 0410314, registered in January 2004, split the block into three lots. Lot 41, on the east end of the block was sold and subsequently developed with a 24 storey condominium apartment building which was named Vantage Pointe. The centre lot, Lot 42 remained undeveloped for some time. The westerly Lot 44 (the subject lot) was developed with the existing grocery supermarket. At the same time, the centre lot was developed to provide parking for the subject grocery store.

For the 2008 tax year, the subject grocery store property had been assessed on the basis of land value and this was upheld by the Calgary Assessment Review Board (ARB) but on appeal, the Alberta Municipal Government Board (MGB) valued it as an income producing property and reduced the assessment accordingly. For the 2009 tax year, the Respondent again valued the property as land only but the Calgary ARB reduced the assessment by valuing the property using an income approach. The Respondent appealed that ARB decision to the MGB. The original 2010 assessment was prepared using an income approach. A $15.00 per square foot rental rate was applied to the ground floor store area and $1.00 per square foot was applied to the mezzanine level space. A vacancy allowance of 8.5% of potential gross income was deducted, operating costs of $12.00 per square foot were estimated and a 2.0% non-recoverable cost allowance was deducted. The resulting net operating income was capitalized at a capitalization rate of 7.5%, yielding an assessment of $7,450,000.

The 2009 assessment had been set by the ARB decision at $11,520,000. The Respondent City of Calgary appealed the ARB decision to the MGB. In an oral decision rendered on June 16, 2010, the MGB set the assessment at $15,210,000 which the Respondent claims was based on a value of the land as if vacant and valued at $275 per square foot of land area. By the time the MGB decision was issued, the Respondent had already prepared the 2010 assessments and assessment notices had been mailed to taxpayers. For 2010, the Respondent had reverted to an income approach as mandated by the 2008 MGB decision and the 2009 ARB decision. The notice sent out in January 2010 showed an assessment of $7,450,000. After receiving the MGB decision on the 2009 appeal, the Respondent revalued the property on the basis of land only, using a rate of $215 per square foot of land area and issued the Amended Assessment Notice on September 9, 2010 showing an amended assessment of $12,490,000. It is this amended assessment which is the subject of the complaint before this Board.

The assessment of property in Alberta is, in accordance with legislation, to represent market value as at July 1st of the year prior to the tax year. In the subject instance, the assessment was to be based on market value as at July 1, 2009. In addition, the assessor was to have regard to the characteristics and physical condition of the property as at December 31, 2009.

For improved properties in the Beltline area, the City of Calgary assessment policy is to first value the property using an income approach. Secondly, just the land is valued as if vacant at a rate per square foot based on the analysis of Beltline land sales. Then, the higher of the two valuations becomes the assessment. Rationale for this is that these improved properties "*would not reach their market value if valued based on the income approach.*"

Issues:

Complainant Issues:

The Complainant raised the following matters in section 4 of the complaint form: *Assessment Amount (No. 3 on the form) and Assessment Classification (No. 4 on the form).*

The Complainant also raised 13 specific issues in section 5 of the Complaint form, however, at the hearing, the following objectives were raised:

1. *"The City of Calgary has failed to take into consideration the site constraints of the subject site as well as the blatant equity concerns with between this site and the Canada Safeway site at 813 11th Ave (3 Blocks Due East) from the subject.*
2. *The City of Calgary Assessment has arbitrarily applied an analysis, which fails to adhere to even the most rudimentary concepts of Highest and Best Use and has not looked at the Economic constraints, nor the economic viability for a 5 year old building, nor taking into account the extensive planning required to produce a property that benefitted both requirements outlined by the City of Calgary Planning and Development Commission, the Victoria and Connaught Community Associations, nor did they acknowledge multiple MGB Decisions regarding how a Highest and Best Use study should be applied and conducted.*
3. *The gross inequity, coupled with the sales indicated that the assessment of the subject property is not only incorrectly assessed it is far outside the aperçus of what would constitute fair and equitable treatment.*
4. *The fact that the subject would have to sell 772,907 loaves of bread just to reach taxable parity with a competitor of equivalence located 3 blocks due east, clearly demonstrates the practical effect on the competitive business process when the required fair and equitable imposition of taxation is absent."*

Respondent Issue:

Pursuant to Section 467(1) of the *Municipal Government Act*, which permits an assessment review board to change an assessment, the Respondent requested that the CARB increase the 2010 assessment of the subject property to $23,140,000. The rationale for the request was that a different panel of the Calgary CARB had reduced the assessment on the adjoining parking lot property (Roll Number 200 449 429) from $10,650,000 to an arbitrary $750. The $10,649,250 of assessment has to go somewhere and the logical place for it is onto the subject store property assessment.

Requested Values:

Complainant: $7,450,000
Respondent: $23,140,000

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

The issue raised by the Respondent will be considered first.

The CARB will not increase the subject assessment to $23,140,000 for the following reasons: The other property, the "parking site," assessment was complained against and that complaint was heard by a different panel than the panel hearing this complaint against the grocery store property. Chief amongst the grounds for the reduction of the assessment of the parking lot property was that a restrictive covenant prevented development on the site. When the block was subdivided into three lots, separate titles were issued for each lot. When the application for development of the subject "store site" was made to the City of Calgary, a condition of development was that parking for the store would be provided on the parking lot property and the City required that a restrictive covenant be registered on the title to the parking site, even though both properties were owned by the same party, Calgary Co-operative Association Limited. The restrictive covenant subsequently placed on title tied the parking site (the servient tenement) to the store site (the dominant tenement). The restrictive covenant stated in part:

4. *Until such time as the store currently being constructed on the Store Site is demolished, no buildings or other improvements shall be constructed on that portion of the Parking Site within 7 meters of the store front of the store being constructed on the Store Site except for:*

(i) such improvements as are usually required in connection with a surface parking lot of the type being constructed on the Parking Site together with improvements for associated landscaped areas; and

(ii) such buildings or other improvements as the City may at any time hereafter approve, subject to compliance with all requirements and conditions imposed in connection therewith or required by any applicable laws, orders, regulations or enactments,

Subject however to the provisions of paragraph 6.

5. *The Grantor and Grantee covenant for themselves and their successors in title to the Parking Site and the Store Site not to amend or discharge this restrictive covenant agreement without first receiving the prior written consent of the City, . . .*

Paragraph 6 pertained to potential for construction of an underground parkade and the registration of a strata or condominium plan for the parkade.

The CARB decision to reduce the assessment on the parking site was based on the conditions of the restrictive covenant. The decision did not suggest that the value of the parking site was captured in the value of the store site, as the Respondent now claims.

The parking site and the store site are registered on separate titles.

The parking site and the store site are recorded on separate roll numbers by the City of Calgary Assessment business unit.

The assessment of the parking site was reduced on the basis of the evidence that was before that CARB panel. This CARB panel does not accept the Respondent's argument that the reduction in assessment on the parking site should be added to the assessment of the store site.

Complainant's Issues:

There was a significant amount of evidence before the Board and there were numerous overlaps in presentation and argument. Positions of each party will be summarized and then the Board's findings will be set out.

Complainant's Position:

For the original 2010 assessment, the Respondent had valued the property using an income approach. The Complainant did not have argument against the $15.00 per square foot rental rate, the vacancy rate, the operating cost rate, the non-recoverable cost rate or the capitalization rate. The assessment amount had been $7,450,000. The Complainant's income approach parameters were slightly different to some extent but the resulting value was essentially the same and the Complainant was therefore asking that the 2010 assessment be returned to $7,450,000.

There was no change to the subject property after the issuance of the first 2010 assessment. The Respondent chose to change the valuation method from income approach to land value because the land value indicator was higher.

The methodology employed by the Respondent is incorrect. Valuing the property on the basis of land value only suggests that the highest and best use of the property is as a redevelopment site and that is not the case for numerous reasons.

The Respondent has not undertaken a highest and best use study on this property. All it has done is prepare a land value which suggests that the highest and best use is for redevelopment.

A highest and best use study requires consideration of a number of factors:
1. The use must be physically possible on the site.
2. The use must be legally permissible. Existing land use controls are important but the possibility of a change in controls must be taken into account.
3. The use must be financially feasible. This economic condition relates directly to supply and demand, among other economic principles.
4. The use must provide the maximum return to the property over a period of time.

The store building was only five years old at the valuation date. The store is still in use as a grocery store and it will continue in that use for many more years.

A use must be probable, not speculative. Conjecture and unsupported opinions of alternative uses are insufficient evidence to show that the existing use is not highest and best use. The timing of an alternative use is critical but that is another factor that the Respondent has not addressed. The existing store on the property is near to the beginning of its economic life expectancy of up to 60 years. For that reason, very strong evidence would have to exist to show that the building is obsolete at such a young age.

The planning and development of the subject took a long time (land purchase in 2001, application for change of use and subdivision in 2003, store completion in December 2004). That extensive timing to get to the existing development cannot be written off without solid reasoning which has not been provided by the Respondent. Interests of others are included in that lengthy process. The Connaught and Victoria Park community associations favoured the store development. The Vantage Pointe condominium owners have a stake in what happens on adjoining property, particularly if some form of redevelopment is proposed.

There was no market demand for a change of use on the subject land, nor on any Beltline land for that matter. The Complainant provided evidence to support the contention that there was no demand for redevelopment sites. A summary of land sales showed that there were only two sales in

2009 and one of those was a property not really in the Beltline. During earlier years, there had been more sales: 2008 – 5 sales; 2007 – 16 sales; 2006 – 12 sales. Sales prices in 2006, 2007 and 2008 were all well over $200 per square foot but the two 2009 sales suggested an average of just $178 per square foot. At the market peak in late 2007-early 2008, the average price was between $330 and $450 per square foot. This substantial decline in volume of sales and average price per square foot is a clear indication that there was minimal demand for any Beltline land including redevelopment land.

The location of the subject, near the western edge of the Beltline was another factor that would reduce the redevelopment probability. The Respondent has assessed more than 130 Beltline properties as land only which implies that they are all underdeveloped and suitable for redevelopment to a higher and better use. Many of the sites are of comparable size to the subject and many of them are better located near the 4th Street SW prime artery leading to and from downtown.

Additional evidence of the change in demand came from an analysis of the sales relied upon by the Respondent. The 0.373 acre site at 633 – 10 Avenue SW was sold pursuant to a court order in September 2009 for $3,600,000, 33.7% less than a prior sale in April 2007. The 2009 purchaser had stated that the site would be used as a parking lot until such time as redevelopment becomes feasible. The small site with a building at 340 – 17 Avenue SW sold in January 2009 for $1,550,000, a 38% reduction from the price in a November 2006 sale. The 2009 purchaser, an experienced restaurant owner/operator, renovated the 3,200 square foot building to accommodate "The Avocado" restaurant. These 2009 sales, which the Respondent had relied upon in determining and supporting its $215/square foot land value rate were indications, it was argued, of the decline in market values since 2006-2007 and indicators of the decline in demand for land for redevelopment.

The Complainant also provided numerous newspaper stories and releases regarding project abandonments, cancellations and postponements around the time of the effective valuation date.

The Complainant stressed that none of the property sale information in its evidence was intended to be interpreted as sale price evidence to be relied upon in the assessment valuation. The purpose for its inclusion was solely to demonstrate how the market had changed over the approximately two to three year period ending in 2009.

From the equity perspective, the Complainant presented evidence of the assessment of a Safeway supermarket at 813 – 11 Avenue SW, just three blocks east of the subject. There were many similarities between the two properties. The Safeway property comprised a 101,830 square foot site, improved with a 38,200 square foot supermarket building that had been substantially upgraded in 1998. Customer parking was provided onsite whereas parking for the subject was on a separate adjoining lot. The Safeway property is assessed for 2010 using an income approach with the same input data (rent rate, vacancy rate, capitalization rate, etc.) as was used in the original assessment of the subject. The Safeway assessment is $6,330,000 for the building and all of the land. The subject amended assessment is $12,490,000 for just the store property. That is clearly an inequitable application of the assessment process.

The Sunterra market, another grocery store at 1100 – 1 Street SE is a part of a large development. The grocery store is assessed using an income approach where the rent rate is also set at $15.00 per square foot of building area. The Complainant argued that these were two prime examples of grocery store assessment practices and it is only appropriate to compare similar properties.

Throughout the evidence and rebuttal presentations of the Complainant, it was stressed that the

Respondent's practice of simply valuing improved properties as land only clearly violates sound valuation practices of first undertaking a thorough and reasoned highest and best use study. The Respondent had provided no support for its contention that the highest and best use of the subject property was for a redevelopment of the site to a more intensive use.

In rebuttal, the Complainant provided significant evidence to show that the sales relied upon by the Respondent were either not land sales (i.e., they were sales of improved properties) or that there were other factors, such as court ordered sale or vendor take-back financing that made them unreliable. Since the primary issue in this complaint is that the subject property should be valued using an income approach, the Complainant's analysis of the sales will not be set out in detail in this decision.

Respondent's Position:

The Respondent began with a review of legislation relating to how assessors must value property. The definition of market value is at Section 1(1)(n) of the *Municipal Government Act*. The requirement to use mass appraisal is in Section of 1(k) of the *Matters Relating to Assessment and Taxation Regulation* (MRAT). Section 2 of MRAT states:

"*An assessment of property based on market value*
(a) must be prepared using mass appraisal
(b) must be an estimate of the value of the fee simple estate in the property, and
(c) *must reflect typical market conditions for properties similar to that property.*"

An excerpt from *The Appraisal of Real Estate: Second Canadian Edition*, a recognized appraisal textbook was included to define Fee Simple:

> *"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power, and escheat."*

Nowhere in the legislation does it say which valuation approaches an assessor must use in valuing property at market value. That decision is left to the assessor.

For improved properties in the Beltline area of downtown Calgary, the Respondent applies two valuation approaches and then takes the higher amount to be the assessment. With regard to the building, an income approach is applied. Then, the land is valued by use of a comparison approach. In over 130 Beltline cases, it was found that land value was the highest value (note: many of the 130 cases were vacant land and thus, no income approach was applied). This is the City's approach to valuation of improved properties which would not reach their market value if valued based on the income approach.

In preparing the amended assessment of the subject property as land value only, the most important aspect for consideration was the land use designation.

The subject property is designated DC Direct Control by DC Bylaw 14Z2001. This bylaw, approved by City Council on February 28, 2001, covered the full block between 11th and 12th Avenues SW and 10th and 11th Streets SW. There were many Discretionary Uses listed in the bylaw, including apartment buildings, grocery stores and parking areas and structures. One of the Development Guideline rules stated that the maximum gross floor area of buildings on the block was 8.0 F.A.R. (Floor Area Ratio). By the Respondent's calculations, this meant that there could be a maximum

building floor area of 1,047,184 square feet developed on the block. The Vantage Pointe apartment building contained approximately 424,554 square feet and the subject grocery store contained 48,073 square feet, leaving potential for the development of an additional 574,557 square feet of buildings. The subject store on its 55,238 square foot site represented a F.A.R. of just 0.87 so there was potential for significantly more development. The conclusion was that the site could be redeveloped to a higher density and its value was in the redevelopment potential.

The Respondent presented an analysis of encumbrances registered on the title to the subject property. Many of these had to do with cross-access agreements between the three developed sites in the block, easements and restrictive covenants. In the Respondent's opinion, many of these favoured the subject store property, thereby enhancing its value. In response to a question from the Complainant, the Respondent confirmed that while the DC bylaw was approved in 2001, the restrictive covenants regarding parking were not registered until 2003 when a development plan had been created for the block.

By comparison, the Safeway property at 8th Street and 11th Avenue SW that been used as an equity comparable by the Complainant had different land use guidelines. That property was also covered by a DC bylaw, Bylaw DC 27Z96, approved by City Council on May 13, 1996. For the site, the only permitted use was a retail food store. The gross floor area of buildings was set at 38,200 square feet which was the size of the remodelled Safeway store. Required parking on the site was at the rate of 4.66 stalls per 1,000 square feet of building area. It was concluded from perusal of this bylaw that the Safeway property was improved to its maximum legal density and for that reason, it was assessed as an income property using the income approach to value.

For the subject property, the 2009 assessment had been set at $15,210,000 based on land value. The Complainant filed a complaint with the Calgary ARB which reduced the assessment to $11,520,000. Both the Complainant and the Respondent appealed this ARB decision to the MGB and in an oral decision rendered May 31, 2010, the MGB set the assessment at $15,210,000. It was this decision that prompted the Respondent to reassess the property for 2010 and issue the amended assessment notice that led to this CARB hearing.

In the Respondent's evidence brief was a list of over 130 Beltline properties that were assessed as land only at the rate of $215 per square foot, the same rate applied to the subject. Many of the properties in the list were vacant land but many were properties where land value exceeded the value of the property if valued by the income approach. The list of comparables was intended to show that the subject property was assessed in an equitable manner to other similar properties.

Details of seven Beltline sales were shown as support for the $215 per square foot land assessment rate. Five of the sales were direct evidence of value. These sales produced a mean average rate of $270 per square foot, a median of $233 per square foot and a weighted mean of $288 per square foot. One of the properties was vacant land and the others were improved with buildings which the Respondent considered to be obsolete and of no value to the property. The seventh sale was a "postfacto" sale, having occurred in September 2009 (about three months after the effective valuation date of July 1, 2009) but its sale price at $222 per square foot supported the $215 per square foot rate used in the land assessment. In response to a question by the Complainant, the Respondent stated that the maximum F.A.R. for some of its sale comparables was different than the 8.0 F.A.R. on the subject block but density did not appear to be a significant factor to the buyers and sellers involved in those sales. The sale properties were in various areas of the Beltline, were of varying sizes and had different density potential however there was insufficient evidence to indicate whether or not there should have been adjustments made for these factors.

The Respondent also provided an analysis of the land sales that had been put forward by the Complainant. Since these sales were not offered as evidence of land values at the effective date, the Board did not consider the analysis to be particularly relevant.

Board Findings

In view of the above considerations, the Composite Assessment Review Board (CARB) finds as follows with respect to the Issues:

- the assessor must assess properties such as the subject at market value as at July 1 of the year prior to the tax year with regard to the characteristics and physical condition as at December 31 or the valuation year.

- it is the fee simple estate that is to be valued. Ownership of the fee simple estate is absolute ownership subject only to four governmental powers, one of which is "police power." One of the factors under police power is land use controls so it is necessary to have regard to not only the current land use designation on a property but also the possibility of a reasonable change in the land use designation.

- when it is market value that is being estimated, the valuer must have regard to highest and best use. In rationalizing highest and best use, there are a number of criteria that must be analyzed:

- The use must be physically possible. The subject site is over one acre in size and it has a rectangular shape with frontage onto three streets. There are no topographical features that would prohibit development. Given the size and shape, there are many developments that could be physically accommodated on the site. Another physical factor is the existing supermarket building. It comprises a very large store building that was only four to five years old at the valuation and condition dates. It had a long remaining physical life and a long remaining economic life expectancy. It would be economically impractical to remove this building and any financial considerations regarding a new development would have to account for the write-off of most of the original $4,000,000+ cost of the store building.

- The use must be legally permissible. The subject property is one of three lots that were created in a block that had been designated Direct Control. The DC bylaw set out permitted and discretionary uses for the entire block and there were development guideline rules that went with the discretionary uses. One of these was density and that was set at 8.0 F.A.R. for the full block. After development approvals were obtained in 2003-2004, the block was legally subdivided into three lots and one of those lots was developed with a highrise apartment building that represented an approximately 16 F.A.R. on that lot. The subject lot was developed to a density of 0.87 and the third lot (the parking site) could not be developed with buildings. The Board was not informed of the circumstances under which the apartment site achieved a density of twice the F.A.R. that had been set for the full block. Perhaps some of that extra apartment building density had been transferred from one or both of the remaining lots but that is not known for certain.

When a property is designated for a particular use or development, that designation does not stay with the property in perpetuity. There have been many instances where a property has had a change in legal use. As long as the new use is one that is generally acceptable within a community, there is a reasonable chance of a redesignation. The decision is made by the municipal planning authority. A prime example of this is the Safeway property at 8th Street and 11th Avenue SW. When

Safeway wished to create a modern supermarket on the site during the 1990's, they applied for a land use change that would accommodate their specific development. The restrictive land use designation does not have to remain on the property forever. At any time, the property owner can decide that some other development would be more suited to the land and, as long as the proposed new development fits with general land use planning in the area, there is a strong likelihood that a legal change would be permitted by the planning authority. The Board does not put significant weight on the Respondent's contention that the current land use controls on the subject property are such that the site could be redeveloped to a much more dense use whereas the Safeway store site will forever be restricted to the existing or an identically sized store.

- The use must be financially feasible. Factors to consider here include supply and demand, costs of financing, development costs versus returns from the new development and so on. Included in the exhibits and argument was considerable evidence that there was a significant supply of redevelopment land in the Beltline but that there was little or no demand for such land. The Board was convinced that the market had changed between 2007-2008 and 2009 and, as at the valuation date, there was very limited demand for redevelopment land in the Beltline. Given the supply of Beltline redevelopment sites and the location of the subject, the demand for it as a redevelopment site was very low.

- The evidence before the Board included many ARB, CARB and MGB decisions, some of which supported the Complainant's position and some that supported the Respondent's position. From the written decisions, the Board was able to find supported reasons for many of the decisions. It was noted that in many cases, the board's decision was related more to lack of compelling evidence from one party rather than on an abundance of strong, convincing evidence from the other party. The Respondent relied upon an MGB decision on the 2009 assessment of the subject property to justify preparing the amended assessment that is the subject of this complaint. This Board is unable to place weight on that MGB decision because there is no evidence of what led to the decision. The Respondent argued that the City's valuation methodology was confirmed by the MGB because that board set the assessment at the same amount as was indicated by land value. To this CARB, that is insufficient support. The MGB decision could very well have been made as it was because the Complainant provided insufficient evidence to support its position. If it had been a written decision with detailed reasoning, this Board could have given it consideration.

- From the equity perspective, the Board finds the Respondent's evidence and rationalization confusing, particularly with regard to the Safeway store at 8th Street and 11th Avenue SW. The rationalization for assessing that property using an income approach was the restrictive land use classification which froze the density to the existing density. On the other hand, the subject could be developed to an F.A.R. greater than existed at the valuation date. There was no such rationalization for any other Beltline assessment even though there was a variety of land use designations that showed a range of potential densities. Further, the Respondent stated in the hearing that density did not appear to be a significant factor to buyers and sellers involved in the sales which the Respondent had relied upon in setting the $215 per square foot land rate. The Board does not find equity in applications where density is a factor in some instances whereas it is not a major consideration in other situations. There is apparently a consistent application of the valuation model for grocery stores across the city. That is, there is consistency in that it is the income approach that is used and the input factors for rent, vacancy, capitalization rate and so on are consistent. For the subject grocery store, and one other is the south downtown region, this valuation approach has been abandoned in favour of a "land only" valuation and there is insufficient support from the Respondent to justify this practice. The Respondent argues, on the one hand that the subject property is assessed in an equitable manner to another Safeway store on Elbow Drive at 26 Avenue SW (both are assessed as land only). Then, on the other hand, it is argued that there is no problem

with equity when a comparison is made between the subject property and the highly similar Safeway property located just three blocks away. If that Safeway was valued as land only, the assessment would be over $21,000,000. Instead, its assessment is $6,330,000 which includes all of the land for the store and the parking lot. For the subject, the assessment of just the store property is $12,490,000 which is 97.3% more than the Safeway assessment. On the basis of assessment per square foot of land area, the Safeway is at $62.16 per square foot whereas the subject is at $215 per square foot. On the basis of a comparison between these two highly similar properties, there is no equity in the assessments.

- Given the evidence supporting the position that the market value of the subject property is not solely in the land for redevelopment, the amended assessment is not accepted. The subject property is an operating grocery store and there are other similar operations in the Beltline that are assessed using an income approach. Without compelling evidence to support the contention that highest and best use is for redevelopment, the Board finds that the subject should also be assessed using an income approach. The original 2010 assessment that was based on income is adopted.

Board's Decision:

The 2010 assessment for this roll number 200456077 is reduced to $7,450,000.

DATED AT THE CITY OF CALGARY THIS 1 **DAY OF** March **2011.**

W. Kipp

W. Kipp
Presiding Officer

SUMMARY OF EXHIBITS

Exhibit

C1	Assessment Review Board Complaint Form
C2	Complainant's Email Correspondence RE: Preliminary – Panel Selection
C3	5 Parts – Complainant's Evidence package
C4	3 Parts – Complainant's Rebuttal Submission
R1	Respondent's Assessment Brief
R2	Respondent's Appendix A: Title Registrations
R3	Respondent's Appendix B: Development Permit Information
R4	Respondent's Appendix C: Beltline Land Sales
R5	Respondent's Appendix D: CARB Decisions

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.