

**CALGARY  
COMPOSITE 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, Revised Statutes of Alberta 2000 (the Act).

**Between**

***Altus Group Limited, representing Alsa Group Inc., COMPLAINANT***

**And**

***The City Of Calgary, RESPONDENT***

**Before**

***M. Chilibeck, PRESIDING OFFICER  
P. McKenna, MEMBER  
B. Jerchel, 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 2012 Assessment Roll as follows:

**ROLL NUMBER: 077027720**

**LOCATION ADDRESS: 1603 – 24 AV SE**

**HEARING NUMBER: 68013**

**ASSESSMENT: \$3,000,000**

[1] This complaint was heard by the Composite Assessment Review Board on 4th day of July, 2012 in Boardroom 4 on Floor Number 4 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

R. Worthington, Agent  
M. Robinson, Observer

Appeared on behalf of the Respondent:

R.T. Luchak, Property Assessor

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

**Jurisdiction**

[2] Neither party raised any objections to a member of the Board hearing the subject complaint.

**Procedural**

[3] The Respondent brought forward a preliminary matter regarding section 5 of the Assessment Review Board Complaint wherein the issue of contamination was not specifically mentioned but was mentioned in the Complainant's disclosure of evidence. The Respondent requested that the Board not hear or accept any evidence regarding this issue.

[4] The Complainant advised that their disclosure of evidence specifically notes that "soil contamination" is at issue and acknowledged that the Assessment Review Board Complaint form, schedule of issues, notes "other influences". The Complainant made reference to Canadian Natural Resources Limited (CNRL) versus Wood Buffalo (2012 ABQB 177) decision regarding the analysis of "an issue in its Complainant Form" and argued the circumstances in this case are very similar and asserted the issue of contamination is properly before the Board.

[5] The Board finds that the schedule of issues attached to the Complaint Form lists some 24 issues that appear to cover anything and everything possible to be wrong with the assessment. However the Complainant did narrow down the number of issues to eight in their disclosure of evidence and did mention soil contamination. Also, the Respondent had 28 days within which to respond to this issue together with the other issues and the Board believes the Respondent was not disadvantaged or prejudiced in this case. The Respondent is aware of the contamination issue as evidenced by previous Board decisions. Also the Board affirms the Court's comments in CNRL at paragraph 141 that "...the general principle is that pleadings should be read liberally, whether in civil litigation or administrative disputes." and at paragraph 143 that "...the CARB cannot elevate form over substance in interpreting CNRL's Complainant Form." Based on the foregoing the Board denies the Respondent's request to exclude all evidence related to contamination.

**Property Description:**

[6] The subject consists of 3.23 acres of land with 28,586 square foot building constructed in 1911 located on Alyth Road in between 24<sup>th</sup> Avenue and 26<sup>th</sup> Avenue in the Alyth/Bonnybrook

district in the SE quadrant of The City of Calgary. It is categorized as being in Non Residential Zone (NRZ) AL1 and subject to Land Use Designation (LUD), Industrial Heavy (IH). The building contains a footprint area of 28,211 square feet and an assessable building area of 28,586 square feet and has 27% of its area in retail/office finish. The site coverage is 20.03%.

**Issues:**

[7] The Complainant identified the matters of an assessment amount and assessment classification on the Assessment Review Board Complaint (Complaint Form) and attached a schedule listing several reasons for the complaint. At the hearing the Complainant advised that the assessment amount is under complaint and the Board identified the issues as follows:

1. Should the assessed value for the excess land be removed from the assessment?
2. Should the subject assessment be reduced by 30% to recognize the onsite contamination?
3. Should the subject assessment be reduced because it is not assessed equitably with other similar property?

**Complainant's Requested Value:** \$1,940,000

**Board's Findings in Respect of Each Issue:**

[8] The subject property is assessed by using the sales comparison method at \$105.07 per square foot of assessable building area which includes the value of 1.07 acres of excess land. The land is subject to LUD IH and is valued at \$350,000 per acre. No adjustment for site contamination was recognized in the assessment.

[9] The Complainant is requesting a change in the assessment to recognize that the excess land has no value, the site is contaminated and it is not equitable to the assessed comparables of contaminated properties and non-contaminated properties.

**1) Excess Land**

[10] The Complainant argued there should be no assessment for the excess land because usually the assessment for the excess land is associated with the potential expansion of the existing building; this is not contemplated by the owner as it does not make sense in this case to expand or add onto a 1911 building. The Board is not convinced that the excess land in this case has no value. Excess land has no value when use of the land for building expansion is not possible. The argument, that there is value only when there is a potential for expansion, is not supported by any evidence. Excess land provides an opportunity to build a new building or add to the existing building, especially in this case where the building is old but has been "completely re-done" as indicated on the subject sale report of February, 2007.

**2) Site Contamination**

[11] The Complainant also argued that the subject assessment should be negatively adjusted to recognize that the parcel is contaminated. A copy of an Environmental Assessment (Preliminary Remediation/Risk Management Plan) for the subject, by Environmental Diagnostics Inc. (ED) dated May, 2009, was disclosed in evidence to support the requested assessment reduction of 30%.

[12] The Respondent argued that the ED report is dated, being May 2009, and a more recent report as to the environmental condition together with quantification of the contamination and related cost to cure would assist in determining the amount of adjustment. It was asserted that the practice/policy of the Respondent is to recognize an adjustment for contamination upon receipt of a Phase 2 report that identifies the degree of contamination and the related cost to remedy the soil. The adjustment would be to a maximum of 30% or the cost to remediate, whichever is less.

[13] The Board is not persuaded to allow an adjustment for contamination. The ED report does not identify the cost to remediate the contaminated land. Furthermore the report is incomplete as only five pages of the twelve were provided in evidence; the document is not titled, and not signed or certified by a professional engineer.

[14] Two board decisions were provided by the complainant. A 2010 CARB decision for the subject reducing the assessment referencing a 2009 ARB decision wherein the assessment was also reduced based on the sale of the subject in 2007 for \$2,800,000 and onsite contamination issue. A 2007 ARB decision for a comparable was provided wherein it was alleged that the assessment failed to consider the contamination and the assessment was reduced based on equity.

[15] According to the Onus of Proof document from the Complainant, it states:

It has often been stated that "a fundamental requirement of any judicial system is that the person who desires the court to take action must prove his case to its satisfaction...These general principles have been refined further to include the following premises:

- a) That the onus is always on a person who asserts a proposition of fact that is not self evident; and
- b) That where the subject matter of the allegation lies particularly within the knowledge of one of the parties, that party must prove it whether it be of an affirmative or negative character...

[16] In this case, the Board affirms that the onus is on the Complainant to supply more recent information that would quantify the extent of the contamination and the associated costs. If this is not in the possession of the Complainant/owner, the burden and/or the onus of proof dictates that one would be obtained to prove and support the extent of the relief/adjustment requested in the assessment of the subject.

[17] Without the quantification and associated remediation cost, the Board is not able to make an adjustment as requested. If comparables have been given an adjustment, the Board would expect that certain criteria would have been met, such as in this case the provision of current quantification and related remedial costs.

### **3) Equity**

[18] The Complainant provided nine assessment comparables and argued these have much newer buildings and the lands are not contaminated. The median assessment rate is \$103 per square foot of building area versus the subject at \$105 and identified one with a building

constructed in 1955 that is assessed at the same rate as the subject. The Board is not persuaded by these comparables to reduce the subject assessment. One significant characteristic of the comparables that is different than the subject is the site coverage; the subject at 20% versus the comparables that range from 31% to 36%. The Board finds the characteristics of these comparables not sufficiently similar to the subject to support the requested reduction.

**Board's Decision:**

[19] The Board confirms the assessment at \$3,000,000.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF August 2012.



M. Chilibeck  
Presiding Officer

## APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD**

NO.	ITEM
1. C1	Complainant's Disclosure – Parts 1 & 2 of 2
2. R1	Respondent's Disclosure

*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.

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Decision No. 046-0727-2012P			Roll No. 077027720	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Warehouse	Warehouse Single Tenant	Cost/Sales Approach	Equity Comparables
			Cost/Sales Approach	Land Value
			Contamination	Petro chemical Contamination