# 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, Revised Statutes of Alberta 2000 (the Act).

**between:**

***17 Avenue Equities LTD. (as represented by Altus Group Limited), COMPLAINANT***

**and**

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

**before:**

***K. D. Kelly, PRESIDING OFFICER***
***J. Pratt, 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 2012 Assessment Roll as follows:

| | |
|---|---|
| **ROLL NUMBER:** | **080009400** |
| **LOCATION ADDRESS:** | **1037 – 17 AV SW** |
| **HEARING NUMBER:** | **68515** |
| **ASSESSMENT:** | **$845,500** |

This complaint was heard on 25th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Mr. D. Genereux – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. R. Natyshyn - Assessor – City of Calgary*

**REGARDING BREVITY:**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] The Respondent argued that the Complainant's Rebuttal Document C-2 is inadmissible because it does not comply with Alberta Regulation AR 310-2009 – 8 (2)(c) which requires a "Summary of Testimonial Evidence" to be provided in the document.

[3] The Respondent argued that the Complainant's Rebuttal Document C-2 contains new information which should not be admitted into the hearing.

[4] The Complainant argued that the information in his Rebuttal Document C-2 is not new, but rather it is clarification of evidence raised by the City in its Brief R-1.

[5] The Board clarified that at the point in this hearing where the Rebuttal Document C-2 is to be introduced, the matter would be considered and a Board decision made regarding the Respondent's challenge.

[6] Subsequently at the point in the hearing where rebuttal evidence was scheduled to be presented, the Board retired to consider the Respondent's challenge to Brief C-2.

**Board Findings with respect to Jurisdictional matters**

[7] The Board finds that Alberta Regulation AR 310-2009 – 8 (2)(c) is clear. The relevant sections of the Regulation applicable to the Respondent's challenge state the following:

> **"Disclosure of evidence**
> **8(1)** In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.
> **(2)** If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing."

[8] The Board finds that the Complainant has not provided a Summary of Testimonial Evidence for his Rebuttal document C-2 as required. Consequently Section 9(2) of Alberta Regulation AR 310-2009 is applicable.

"**Failure to disclose**
**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.
**(2)** A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."

[9] The Board finds that pursuant to the aforenoted Legislation, the Complainant's rebuttal document C-2 is barred from this hearing.

**Property Description:**

[10] The subject is a vacant land parcel of 5,458 square feet (SF) fronting on 17 AV SW which has signage and is used for parking by a TD Bank branch located in an abutting multi-tenant office building. Both the bank property and the subject are owned by the same company. The subject is assessed using the Market Approach to Value methodology at $155 per SF for an assessment of $845,500.

[11] **Issues:**

1. The subject is assessed using a "Highest and Best Use" valuation methodology which has been incorrectly and poorly-applied by the City.
2. The assessed value of the abutting (bank) parcel already incorporates and reflects the value of the subject.
3. The assessment is inequitable with other similar vacant land parcels which have a nominal assessed value.

[12] **Complainant's Requested Value:** $750.00

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

**Issue #1**

[13] The Complainant argued extensively that the subject was assessed by the City on the basis of a "Highest and Best Use" methodology and it failed to apply that methodology correctly. He argued that the City failed to consider that development of the site is not imminent and is not

even contemplated, and this is a key factor to consider when using this methodology. The Complainant offered an extensive range of documentation from professional organizations and Legal to Quasi-legal (CARB) Decisions, to support his position.

[14] The Complainant argued that Altus has calculated that an inventory of 1,908,375 SF of vacant land exists in the city's beltline and it would take 159 years to develop it all at current absorption rates. Therefore, he argued, it is inappropriate to value the subject at $155 per SF on the basis of a limited number of beltline market sales.

[15] The Respondent argued that the City did not use a "Highest and Best Use" Methodology to value the subject at all. The subject is assessed as a vacant lot according to market value. He clarified that after an extensive in-depth analysis of current market sales of comparable properties in the region of the subject, it was determined that a value of $155 per SF was warranted for the subject and similar vacant land properties in this locale. Therefore, he argued, the subject was assessed at $155 per SF, and the Complainant has not effectively challenged this value, nor has he provided any market evidence whatsoever to the contrary.

**Board Findings:**

[16] The Board finds that the subject was assessed by the Respondent as a vacant lot using the "Market Approach to Value" methodology and not on the basis of a "Highest and Best Use" analysis, as alleged by the Complainant. Therefore the Complainant's considerable evidence and argument regarding this issue in this hearing is not germane.

[17] The Board finds that while the Complainant briefly argued in response to questions from the Respondent that the $155 per SF used to assess the subject generally was "too high", he has in fact provided no market evidence to demonstrate that $155 per SF is incorrect.

[18] The Board finds that the Complainant's position in this issue is without merit.

**Issue #2**

[19] The Complainant argued that the value of the subject is included in the value of the abutting parcel. He argued that the apparent (but undocumented) $45 per SF rent rate paid by the abutting TD Bank branch, includes consideration for the several marked parking spaces used by the bank's customers on the subject. He argued that by assessing the subject at an independent market value, it was tantamount to "double taxation". The Complainant did not provide the TD Bank lease, or any lease/rent data whatsoever to support his position.

[20] The Complainant argued that the subject vacant land parcel, and the abutting developed parcel (containing the TD Bank and another business) are owned by the same company. Therefore, he reasoned, by virtue of this joint ownership, and the fact the subject is required for parking by tenants in the abutting parcel, this ensures that the subject could not and would not be sold. He acknowledged that other than a mortgage document, there was no caveat registered on title to either of the parcels linking them together which might hinder or prevent the disposition of one or other of the parcels. He argued that a legal arrangement such as a registered Caveat as advocated by the City is completely unnecessary.

[21] The Respondent argued that the Complainant has provided no leases, or similar market or other site-specific evidence of any kind, to demonstrate either that the Bank rent rate is $45 per SF, or that the market value of the subject is "captured" in a $45 per SF lease paid by the tenant on the abutting parcel. He argued that the subject has not been "double assessed" as alleged by the Complainant. He clarified that, as a legally-titled, separate, vacant land parcel, the subject has been assessed on the basis of its own market value as determined by detailed City analysis of current market sales of comparable properties in the locale.

[22] The Respondent argued that while the subject and the abutting parcel are jointly owned by the same company, the Complainant's arguments that they therefore cannot be sold individually because the subject provides required parking for a current tenant, are not valid. He argued that either parcel could be disposed of at any time, and/or the abutting TD Bank could also move out at any time.

[23] The Respondent also argued that a registered mortgage document is insufficient evidence to show that two parcels are "linked" and one or the other can't be sold. Therefore, he argued, the joint ownership and use of the parcel(s) is irrelevant to the assessment process under Mass Appraisal and pursuant to the Municipal Government Act.

[24] The Respondent also clarified that City Policy provides that where vacant land parcels are legally "bound" to another parcel by a Caveat Registered on Title, and are to be used for required parking purposes, a nominal assessed value may be applied to the vacant parcel. He provided copies of Alberta Land Titles documents for the subject and abutting parcel, and identified that no such legal arrangement exists between them. Therefore, he argued, the subject does not qualify for a nominal assessed value as alleged by the Complainant.

**Board Findings:**

[25] The Board finds that it received no market, lease, or other documentary evidence to substantiate that the assessed value of the subject is already reflected in the assessed value of the abutting (bank) parcel as alleged by the Complainant.

[26] The Board finds that it received insufficient evidence that the subject is "double – assessed" as alleged by the Complainant.

[27] The Board finds that it concurs with the Respondent that the ownership and use of a land parcel plays virtually no role in the valuation of property for assessment purposes under the Mass Appraisal process mandated by the provincial government under the Municipal Government Act.

[27] The Board finds that the Respondent confirmed that City assessment Policy may permit a nominal assessment to be applied to a land parcel used for required parking for another parcel, provided a Caveat confirming the same, and conforming to said Policy, is registered on title to the two affected parcels, and/or such other "linkage" measures as the City may accept pursuant to its Policy.

[29] The Board finds that it received documentary evidence from the Respondent, which was confirmed by the Complainant, that no Caveat is registered on Title to either the subject or its companion abutting parcel which would have the effect of legally "linking" the two land parcels for parking purposes.

[30] The Board finds that it concurs with the Respondent that common ownership of land parcels, and a mortgage document is insufficient evidence to qualify one or other of the parcels for a nominal assessment valuation under the City's Policy dealing with such matters.

[31] The Board finds that the Complainant provided insufficient evidence to support his arguments in this issue.

**Issue #3**

[32] The Complainant provided a chart containing eleven "linked" property comparables which he argued illustrated eleven example situations where a nominal assessment had been applied to a vacant land parcel which was "linked" by ownership to another nearby generally-assessed land parcel. He also provided individual maps for each site which illustrated the location of the nominally-assessed parcel with the other "linked" parcel nearby. The eleven sites were at various locations in the city, but generally in the vicinity of the subject.

[33] The Complainant provided the City's Property Assessment Summary Reports for each site and clarified that in each situation the "linked" parcels had the same owner. He concluded therefore that the nominal assessment applied to one of the "linked" parcels, was primarily due to the two parcels having common ownership. He also argued in response to questioning by the Respondent that the "link" is formed from how the property is used; it's ownership structure; common usage; and via "property integration". He argued therefore that to not apply a nominal assessment to the subject is inequitable.

[34] The Respondent provided a chart which analyzed four of the eleven "linked" or paired sites offered by the Complainant. He argued that one parcel in each of these four "linked" sites received a nominal assessment because they had restrictive Caveats registered on title to the affected parcels, legally "linking" them for parking purposes pursuant to the City's Policy. He emphasized that the fact that the "linked" sites had a common owner, was completely irrelevant in application of the Policy to these sites.

[35] The Respondent, like the Complainant, provided several CARB Decisions which he argued supported his position.

**Board Findings**

[36] The Board finds that while it may have regard to, it is not fettered by previous Board decisions and must decide the merits of this appeal on the basis of the oral and written evidence presented to it in this hearing.

[37] The Board finds that the Respondent City is governed by relevant provincial legislation regarding the preparation of assessments under Mass Appraisal and must prepare assessments based on current market data for each new assessment year. In the case of the subject property, the City has done this.

[38] The Board finds that the Respondent City, when using the Mass Appraisal process, is not fettered by previous Board decisions.

[39] The Board finds that as in Issue #2 above, it concurs with the Respondent that the ownership and use of a land parcel plays virtually no role in the valuation of property for assessment purposes under the Mass Appraisal process mandated by the provincial government under the Municipal Government Act.

[40] The Board finds that as in Issue #2 above, the Respondent confirmed that City assessment Policy may permit a nominal assessment to be applied to a land parcel used for required parking for another parcel, provided a Caveat confirming the same, and conforming to said Policy is registered on title to the two affected parcels, and/or such other "linkage" measures as the City may accept pursuant to its Policy.

[41] The Board finds that as in Issue #2 above, the Complainant provided insufficient evidence to support his arguments in this issue.

[42] The Board finds that given the evidence in this hearing, the assessment of the subject is fair and equitable.

**Board's Decision:**

[43] The assessment is confirmed at $845,500

**DATED AT THE CITY OF CALGARY THIS 9th DAY OF Aug 2012.**

**K. D. Kelly**
**Presiding Officer**

## APPENDIX "A"

## DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|---|---|
| 1. C-1 | Complainant Disclosure |
| 2. R-1 | Respondent 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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| Appeal Type | Property Type | Property Sub-type | Issue | Sub-Issue |
|---|---|---|---|---|
| CARB | Vacant land parcel | Vacant land | Market value - value of subject is in adjacent parcel | Nominal value due to use for parking |