

**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:

Atco Investments Limited, as represented by Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

D. Julien, MEMBER

J. Rankin, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	067102202
LOCATION ADDRESS:	1102 9 St. SW
HEARING NUMBER:	68360
ASSESSMENT:	\$844,000

This complaint was heard on the 15th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *D. Genereux, Altus Group Limited*

Appeared on behalf of the Respondent:

- *L. Wong, City of Calgary*

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

- [1] There were no procedural or jurisdictional matters raised.

Property Description:

[2] The property under complaint is a 5,186 square foot (sq.ft.) parcel located on the south east corner of 11th Av and 9th St SW at 1102 9 St. SW. It is located in the Beltline district and is assessed using the commercial land rates developed for that area with the Sales Comparison method. The applied rate is \$155 per sq.ft. with an adjustment for corner influences. The Land Use Designation for the parcel is Centre City Mixed Use District.

Issues:

- [3] The Complainant raised the following issues:

1. **Should the parcel be assessed based on its actual use or on its land value based on sales comparisons with other parcels?**
2. **Should the market value assessment reflect the nominal rate associated with linked parking as a matter of equity?**

Complainant's Requested Value:

- [4] The Complainant requested that the assessment be reduced to either \$750 or \$1,000

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

[5] The Complainant contended that the subject property, in conjunction with two other adjoining parcels, serves as a parking lot for the adjacent Atco towers. Atco 1 contains 188,491 sq.ft. Atco 2 contains 132,032 sq.ft. It was his position that the combined parking lots are for the sole use of the employees in the Atco towers, that no public parking is permitted and that the buildings and the parking lots are under the same ownership. Access to the lots is controlled as evidenced through pictures in the Complainant's C1 disclosure document.

[6] It was the Complainant's contention that the Respondent, in applying a land only rate based on sales comparisons of other lands within the area, was valuing the land based on its potential uses if sold or developed and not on its actual use. The Complainant pointed to a number of court decisions, CARB and Municipal Government Board (MGB) decisions and also to extracts from a 2010 "*Workshop 158 Highest and Best Use*" document produced by the International Association of Assessing Officers (IAAO). These documents support the contention that, for the purposes of preparing an assessment for taxation purposes, speculation as to possible future uses should be avoided and that only the use on the assessment date is to be considered. Another IAAO document called "Property Assessment Valuation", states at page 98: "If an appraiser knows the use of a property on the assessment date, that use remains in effect until the next assessment date". It was argued that because assessment is an annual function, a sale or development or change of use of the subject lands can be dealt with in the subsequent year's assessment. The Complainant referenced s. 289(2) of the Act and noted that on December 31, 2011 the physical characteristic of the parcel was a private parking lot, tied to the tenants in the adjoining two buildings.

[7] The Complainant buttressed his argument by exploring the ways parcels can be linked: by title, by ownership, by lease, by use, by occupancy, by zoning and noted that, while the parking lot is on a separate title from the buildings, it is owned by the same owners as the buildings. This was supported by Certificates of Title provided by both Parties. He argued that they are demonstrably linked by use and occupancy.

[8] As a matter of equity, the Complainant provided a list of 12 parcels that are linked to other parcels for the purpose of parking and which are assessed at either \$1,000 (11 of the parcels) or \$750 (one of the parcels). In 10 of the 12 examples, the properties are held by the same owner; in one case the parking parcel is owned by the City of Calgary and, in another, the relationship is not in evidence. In all but one instance the primary parcel has a different street address from the parking parcel and in all instances, they have different legal descriptions. This evidence was supported by property assessment summary reports and map searches obtained from the City's website.

[9] The Respondent contested the Complainant's claim that the land was assessed at its development potential. Nothing in the assessment documents, he said, supported that contention. With respect to the land value applied to the subject parcel for assessment purposes, the Respondent provided a one page summary of the non-residential land rates applicable to the Beltline zones but did not provide any actual sales comparables to support the rate. With respect to the value for linked parcels, the Respondent stated that the one \$750 rate was an error in that it was carried forward without change from the previous year. The current rate for linked parcels was \$1,000.

[10] He disputed that the parking was required for the adjacent buildings. In support of the latter he produced a RealNet office transaction summary that says, under the heading Physical Details, that there is "one . . . building . . . of 188,461 sq.ft. and contains 115 underground parking spaces, six surface spaces and a lease of 65 additional spaces in the adjacent building". It was the Respondent's contention that this report encompassed both buildings since they are not physically detached and was evidence that no additional external parking was required by the City. He also suggested that there would have been parking requirements for the second building but he did not know what they were.

[11] The Respondent also took the position that the parcel under complaint was not linked to

the buildings because there were no legal ties, in the form of caveats or otherwise, to create that linkage. With respect to the Complainant's equity comparables, it was his contention that the parking parcels are governed by caveats linking them to the primary parcels that prevented them from being sold or used for other than parking because of a deficiency of parking on the primary parcels. In support of this argument, the Respondent supplied Certificates of Titles (CoT) for the subject against which no caveats were registered and for 10 of the Complainant's comparables. None of the actual caveats were supplied.

[12] The Board allowed the Complaint for the following reasons:

[13] The Complainant argued common ownership, related use and equity with other "linked" parcels. The Respondent did not contest the use of the parking lot or that, from an operational point of view, it was restricted to the tenants of the two buildings. The Respondent did not contest the common ownership of the parcels. The Respondent appeared to argue that caveats were evidence of linkage and yet he produced no policy from the City that articulated that as a criterion for determining linkage; nor did he provide any evidence that the equity comparable parcels were linked by caveat to protect the parking requirements of one of the linked parcels.

[14] The RealNet report does not demonstrate that there is no parking deficiency within the buildings. It refers only to one building, Atco 1, and it was deficient to the extent that 65 stalls were required to be provided in Atco 2. There is no evidence of the parking requirements for Atco 2.

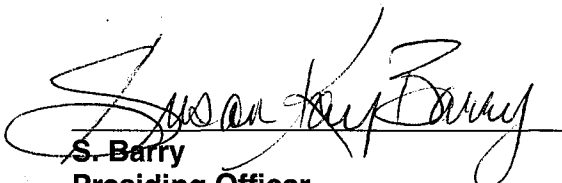
[15] The Respondent argued that the sales comparison approach does not demonstrate assessment based on future use. However, logical considerations suggest that vacant land is purchased, in the absence of evidence to the contrary, for some future use. It is hard to image commercial land being purchased in order that it remains vacant in perpetuity. Even granting a land rate for assessment purposes, the Respondent provided no evidence to support that rate.

[16] The Board was persuaded that the parking parcel should be assessed on its current use as employee parking lot and that the subject is indeed linked to the buildings. The Board accepted that the current rate for such parcels is \$1,000.

Board's Decision:

The 2012 Assessment is reduced to \$1,000

DATED AT THE CITY OF CALGARY THIS 30 DAY OF August 2012.


S. Barry
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal

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.*

For MGB Administrative Use Only

Decision No.: 1507/2012-P		Roll No.:067102202		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Other	Parking	Sales Compar Land Value	Nominal Value Equity