

**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:

1023825 Alberta LTD. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

P. Grace, MEMBER

R. Deschaine, 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:	068054600
LOCATION ADDRESS:	214 – 6 AV SW
HEARING NUMBER:	67972
ASSESSMENT:	\$4,540,000

This complaint was heard on 4th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 2.

Appeared on behalf of the Complainant:

- *Mr. M. Cameron – Altus Group Limited*
- *Mr. G. Kerslake – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. D. Grandbois - 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] None.

Property Description:

[3] The subject is a 13,999 square foot (SF) vacant land parcel used as a landscaped and fenced park in the downtown one (DT-1) district of Calgary. The subject fronts onto the north side of 6 AV SW and is surrounded on three sides by Bow Valley Square #1 - #4 inclusive. It is assessed at \$325 per SF for a total assessment of \$4,540,000.

Issue:

[4] What is the market value of the subject downtown vacant land parcel given the constraints placed upon it by the City's Land Use Direct Control Bylaw 87D2008?

[5] **Complainant's Requested Value:** \$3,410,000 (a 25% reduction)

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

[6] The Complainant Mr. Cameron clarified that this vacant land parcel has been landscaped and fenced by the owners and is used as "open" or park space. Its location lies between and among three buildings of the Bow Valley Square complex. He clarified that Direct Control Bylaw 87D2008 – a site-specific bylaw passed in 2008, restricts the land uses on the site to a Floor Area Ratio (FAR) of 8.15. He argued that compared to other "Downtown One" (DT-1) market zone properties zoned CM-2, and which are permitted an FAR of 20, this relatively small 8.15 FAR adversely affects the value of the subject. He argued that this difference in allowable FAR makes the subject atypical.

[7] The Complainant argued in his Brief C-1 that "...the Land Use Bylaw applied to the subject restricts the potential for development in comparison to other downtown properties and therefore a land use restriction adjustment should be made." The Complainant argued that the adjustment should be a negative 25%. This would reduce the assessment from \$4,540,000 at \$325 per SF to \$3,410,000 or \$243 per SF.

[8] In support of his position the Complainant provided excerpts of Amendment LOC2008-0056 to Bylaw 87D2008 being the Direct Control Land Use Bylaw passed in 2008 and specifically applicable to the subject. He noted that the Discretionary Uses in the Bylaw would permit offices at an 8.15 FAR maximum. For the subject this would mean that its 13,999 SF of land area, at 8.15 FAR, could accommodate 114,091 SF of office floor space.

[9] He also provided an excerpt of section 42.3 CM-2 Downtown Business District in the City's Land Use Bylaw outlining "offices" as a Discretionary Use, but which could, under a detailed "bonus system" of amenity and structural design, permit up to a maximum of 20 FAR, or 20 times the site area. The Complainant argued that the differing bylaw restrictions create an inequity which would be rectified by reducing the subject's assessment by 25%.

[10] The Complainant provided a copy of CARB Decision 2876/2011-P wherein the Board reduced the assessment of a vacant land property at 217 – 1 ST SW by 20% for perceived value differences in allowable land use bylaw uses and densities. The Board in that case appeared to have been presented with market sales evidence by the Complainant.

[11] The Complainant clarified under questioning by the Respondent that while he accepts \$325 per SF as a "base land rate" for the subject, nevertheless he provided no market sales comparables to support his requested 25% reduction in value because there have been "few, to no sales in the last seven years, and it is difficult to find market comparables." In addition, he clarified that he was relying in part on CARB decision 2876/2011-P for his current requested 25% reduction as noted above.

[12] The Complainant provided maps and photographs of the site, and a current history of the Development Permit status for the property, noting its current 2010/2011 application for and use by the owners, as a park site. The Complainant requested that the assessment be reduced to \$3,410,000.

[13] The Respondent argued that while the Complainant accepted the \$325 per SF used to assess the subject, he nevertheless seeks an "arbitrary" 25% reduction in assessed value based upon a 2011 CARB Decision (2876/2011-P) for a different property. He clarified that while the Complainant had submitted market evidence for that hearing last year, the Complainant acknowledges that he has no market evidence for 2012 for this current hearing for the subject. Moreover, he argued, the subject's assessment last year using a base rate of \$375 per SF, was confirmed in CARB decision 1263-2011-P (copy provided) whereas the subject's base rate is \$325 per SF this year.

[14] The Respondent argued that based on analysis of the market, the City has assessed all DT-1 vacant land parcels at \$325 per SF. He also provided a chart outlining the various site "influence" values applicable to DT-1 properties for assessment purposes. He noted that the City does not provide, and consistently has not provided a reduction in value as proposed by the Complainant for differentials in allowable FAR either under the Land Use Bylaw generally, or specifically under Direct Control (DC) Bylaw guidelines such as those applicable to the subject.

[15] The Respondent clarified that a 20 FAR as referenced by the Complainant is not an "automatic" right under the Land Use Bylaw. He clarified that the base FAR for CM-2 zoned lands is 7 and can only increase to 20 under an extensive bonus system based on amenities and design. He noted that the subject's base FAR is a larger 8.5 but cannot increase. He argued that while the Complainant has argued that there is an inequitable value difference created by and perpetuated in the two different sections of the Land Use Bylaw, he has provided no market or assessment equity evidence to substantiate this point.

[16] The Respondent argued that CARB Decision 2876/2011-P does not support a 25% reduction as alleged by the Complainant because the circumstances and evidence in that hearing are significantly different than the case before the Board today. The Respondent requested that the Board confirm the assessment.

Board Findings

[17] The Board finds that the Complainant provided no comparative market or assessment equity evidence to provide a range of values that support his argument that the market value of the subject is affected by the zoning on the property when compared to other DT-1 sites.

[18] The Board finds that the excerpts of Direct Control Bylaw 87D2008 applying to the subject, and Bylaw CM-2 applying to other DT-1 lands, – both as provided by the Complainant, contain numerous similar and complementary "Discretionary" uses available for development on affected properties – office densities notwithstanding.

[19] The Board finds that the Complainant provided no Policy, market, or assessment equity evidence to confirm that the City applies, or should apply, a "land use restriction adjustment" of negative 25% in assessed value to the subject.

[20] The Board finds that CARB decision 2876/2011-P does not support the Complainant's position in this appeal because the evidence and facts of that decision are materially different from this matter before the Board.

[21] The Board finds that while it may have regard to previous CARB decisions, it is not bound by them and must decide the merits of this appeal on the basis of the evidence and argument provided at this hearing.

Board's Decision:

[22] The assessment is confirmed at \$4,540,000.

DATED AT THE CITY OF CALGARY THIS 4th DAY OF October 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. C-2	Complainant Disclosure – Rebuttal
3. 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.*

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Vacant land	Vacant land parcel	Market value	Zoning constraints