CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

REVISED – TYPO CORRECTION ON 2ND PAGE

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:

Anthem Level Erlton Ltd.
(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER
A. Zindler, MEMBER
T. Usselman, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	**201341716**
LOCATION ADDRESS:	**2418 ERLTON RD SW**
FILE NUMBER:	**67739**
ASSESSMENT:	**$5,400,000**

This complaint was heard on 18th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *A. Izard*

Appeared on behalf of the Respondent:

- *R.C. Ford*
- *J. Tran*

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

[1] The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. The Complainant requested that evidence and argument from Exhibit C3 (see Exhibit C3 below) in hearing File #67058, be brought forward to this hearing. Procedural issues were raised during the course of that hearing involving the Complainant's rebuttal document, Exhibit C3. The following rulings were made with regards to Exhibit C3:

1) The CARB ruled that evidence and argument specific to 2388 Crestwood Road SE was new evidence and not rebuttal to evidence that arose from the Respondent's evidence or argument. Therefore, all evidence or argument specific to 2388 Crestwood Road SE would not be heard.

2) The Respondent objected to evidence and argument regarding copies of development permits related to the Complainant's Macleod Trail sales comparables. The Respondent argued that this was essentially new evidence. The Complainant argued that the development permits were evidence in support of his use "Effective Age" rather than "Actual Age" of the improvements in the *Marshall & Swift* residual land value calculation of his sales comparables. The CARB ruled that the development permits were new evidence, or at the very least, evidence that should have been presented in the Complainant's disclosure document and not in the rebuttal document. The Complainant's failure to include the development permits in support of the evidence in his disclosure document (see Exhibit C1 or C2 below) would not allow the Respondent the sufficient detail he requires to respond or rebut the evidence of the Complainant. In the opinion of the CARB, the intent of the *Matters Relating to Assessment Complaints Regulation (MRAC), Section 8* is quite clear, both parties must disclose to each other, information in sufficient detail to enable either party to respond or rebut the evidence of the other party. The Complainant's tactic of providing insufficient detail in his disclosure document, and then expanding on or providing very detailed and supportive information in his rebuttal document is not in keeping with the intent of *MRAC.* Therefore, all evidence and argument related to the development permits of the Complainant's comparables will not be heard.

[2] With consideration given to the above procedural rulings, the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

[3] According to the information provided, the subject property contains five buildings including a trailer, two garages, a warehouse and an office. The buildings range in size from 808 square feet (SF) to 4,500 SF and were constructed at various times from 1945 to 1998. The buildings are situated on an assessable land area of 76,749 SF, with a land use designation of Direct Control District (DC).

[4] The subject is assessed using the Sales Comparison Approach to Value. The buildings are assessed no value. The assessment is for land value only and uses an assessment rate of $100.00 per SF on the first 20,000 SF and $60.00 per SF on the residual SF.

Issues:

[5] The Complainant addressed the following issue at this hearing:

1) The assessment rate applied to the first 20,000 SF of land is not supported by market evidence and should be reduced to $60.00 per SF.

Complainant's Requested Value:

[6] $2,500,000 on the complaint form. $4,604,000 within the disclosure document.

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

ISSUE 1: The assessment rate applied to the first 20,000 SF of land is not supported by market evidence and should be reduced to $60.00 per SF.

The Complainant provided a 55 page disclosure document entitled "2012 Assessment Review Board – Evidence Submission" that was entered as "Exhibit C1". The Complainant requested that evidence and argument from a related 100 page appendix document entitled "2012 Assessment Review Board – Evidence Appendix" that was entered as "Exhibit C2" in hearing File #67058, be brought forward to this hearing. The Complainant along with Exhibit C1 and Exhibit C2 provided the following evidence or argument with respect to this issue:

[7] A table of four Commercial - Corridor (C-COR) sales comparables along Macleod Trail. This methodology involved calculating the depreciated value of the building or improvement using the *Marshall & Swift Valuation Service* and then removing this value from the total sale, leaving a residual value for land. It was noted that the Complainant used "effective age" rather than "actual age" in determining the depreciated value of the respective buildings, arguing that the buildings had been renovated or improved over the years, thereby extending their useful lives. The following is a summary of that evidence:

1) 5720 Macleod Trail SW was sold on November 18, 2009 for $3,500,000. At the time of sale, the property contained a 34 year old building, 28,566 SF in size and was situated on a land area of approximately 31,363 SF. The Complainant used an "effective age" of 29 years for the building rather than the "actual age" of 34 years for the building in determining its depreciated value of $1,612,750. The

resulting residual land value was $1,887,250 or $60.17 per SF.

2) 7212 Macleod Trail SE was sold on November 13, 2009 for $2,900,000. At the time of sale, the property contained a 37 year old building, 6,405 SF in size and was situated on a land area of approximately 44,867 SF. The Complainant used an "effective age" of 20 years for the building rather than the "actual age" of 37 years for the building in determining its depreciated value of $481,879. The resulting residual land value was $2,418,121 or $53.90 per SF.

3) 7425 Macleod Trail SW was sold on February 15, 2010 for $2,900,000. At the time of sale, the property contained a 44 year old building, 6,250 SF in size and was situated on a land area of approximately 23,980 SF. The Complainant used an "effective age" of 25 years for the building rather than the "actual age" of 44 years for the building in determining its depreciated value of $1,004,805. The resulting residual land value was $1,895,195 or $79.03 per SF.

4) 9110 Macleod Trail SW was sold on July 5, 2010 for $15,000,000. At the time of sale, the property contained 22 year old buildings, 42,079 SF in size and was situated on a land area of approximately 165,528 SF. The Complainant used an "effective age" of 15 years for the buildings rather than the "actual age" of 22 years for the buildings in determining its depreciated value of $5,299,000. The resulting residual land value was $9,701,000 or $58.61 per SF.

[8] The Complainant concluded that based on the average residual land sales rate of $62.93 and a median of $59.39 for the above properties, the subject is over-assessed on the first 20,000 SF of land and should be reduced to $60.00 per SF.

[9] A table of two Commercial - Corridor 2 (C-COR2) land sales comparables that were not on Macleod Trail at 4504 17 AV SE and 4523 Monterey AV NW. These sales comparables had sales dates of March 6, 2010 and October 12, 2010 respectively. The sales rate per SF of land was $49.42 and $59.10 respectively. The table included a grid of assessment rates showing that the City of Calgary Assessment Department assesses comparable land that is not on Macleod Trail as follows:

1) The first 20,000 SF @ $60.00 per SF,
2) The next 135,000 SF@ $28.00 per SF,
3) And the remainder @ $8.00 per SF.

The Respondent provided a 125 page document entitled "Assessment Brief" that was entered as "Exhibit R1" and a 10 page copy of Bylaw No. 118Z2007 that was entered as "Exhibit R2". The Respondent requested that all related evidence and argument from hearing File #67058 be brought forward to this hearing and along with Exhibit R1 and R2, provided the following evidence or argument with respect to this issue:

[10] A table of 2012 Commercial Land Values. The table outlines that properties with commercial land use designations and along Macleod Trail (MT2, MT3, MT4 & MT5) are assessed as follows:

1) The first 20,000 SF @ $100.00 per SF,
2) The next 135,000 SF@ $60.00 per SF,
3) And the remainder @ $28.00 per SF.

[11] In support of the above table, the Respondent provided 2 property sales that were not on Macleod Trail, with Commercial - Corridor 1 (C-COR1) land use designations. The following is a summary of that evidence:

1) 505 16 AV NE was sold on February 5, 2010 for $2,060,000. The property contained a land area of approximately 16,988 SF. Adjusting for time (the sale date was 17 months prior to the assessment date), the Respondent reduced the sale price by 6.25% to $1,931,250, resulting in a time-adjusted land sales rate of $108.27 per SF, including a positive corner lot influence.

2) 210 16 AV NE was sold on May 31, 2011 for $625,000. The property contained a land area of approximately 6,241 SF. There was no adjustment for time as the sale date was 1 month prior to the assessment date. Therefore the land sales rate of $100.14 per SF.

[12] A RealNet Retail Transaction Summary Report of the Complainant's sales comparable at 5720 Macleod Trail SW. It is noted by the CARB that the property was assessed a value of $4,680,000 in 2009, had a land use designation of Commercial – Corridor 3 (C-COR3) and contained 1 building that was constructed in 1975.

[13] A RealNet Retail Transaction Summary Report of the Complainant's sales comparable at 7212 Macleod Trail SE. It is noted by the CARB that the property was assessed a value of $2,670,000 in 2009, had a land use designation of C-COR3 and contained 1 building.

[14] A RealNet Retail Transaction Summary Report of the Complainant's sales comparable at 7425 Macleod Trail SW. It is noted by the CARB that the property was assessed a value of $1,910,000 in 2010, had a land use designation of C-COR3 and contained 1 building that was constructed in 1967.

[15] A RealNet Retail Transaction Summary Report of the Complainant's sales comparable at 9110 Macleod Trail SW. It is noted by the CARB that the property was assessed a value of $10,140,000 in 2010, had a land use designation of C-COR3 and contained 5 buildings that were constructed in 1988.

[16] Documentation concerning the use of "effective age" in the *Marshall & Swift Valuation Service.*

[17] Documentation concerning retail stores, fast food restaurants, office buildings, their respective construction details and associated related rankings when using the *Marshall & Swift Valuation Service.*

[18] A Marshall & Swift Valuation Service depreciation table. The table compares effective ages with life expectancy of buildings and provides associated depreciation percentages.

[19] A table comparing the Complainant's sales comparables residual land value calculation using effective ages of the improvements and the Respondent's recalculation of the same sales comparables using actual ages of the improvements. The following is a summary of that evidence:

1) 5720 Macleod Trail SW. The Respondent used an actual age of 34 years for the building rather than the effective age of 29 years that was used by the Complainant and determined a depreciated value of $1,191,691. The resulting residual land value was $2,308,309 or $73.60 per SF. In addition, the Respondent adjusted for a 30% topography negative influence that affected the property resulting in an adjusted residual land rate of $105.14 per SF.

2) 7212 Macleod Trail SE. The Respondent used an actual age of 37 years for the building rather than the effective age of 20 years that was used by the Complainant and determined a depreciated value of $0. The resulting residual land value was $2,900,000 or $64.64 per SF.

3) 7425 Macleod Trail SW. The Respondent used an actual age of 44 years for the building rather than the effective age of 25 years that was used by the Complainant and determined a depreciated value of $510,417. The resulting residual land value was $2,389,583 or $99.65 per SF.

4) 9110 Macleod Trail SW. The Respondent used an actual age of 22 years for the building rather than the effective age of 15 years that was used by the Complainant and determined a depreciated value of $4,037,660. The resulting residual land value was $10,962,340 or $66.23 per SF. In addition, the Respondent adjusted for a 5% corner lot positive influence that affected the property resulting in an adjusted residual land rate of $63.07 per SF.

The Complainant requested that evidence and argument from a related 273 page rebuttal document entitled "2012 Assessment Review Board – Rebuttal Submission" that was entered as "Exhibit C3" in hearing File #67058, be brought forward to this hearing. Subject to the CARB rulings highlighted above under the heading "Board's Decision in Respect of Procedural or Jurisdictional Matters", the Complainant along with Exhibit C3 provided the following evidence or argument with respect to this issue:

[20] Documentation suggesting the Respondent's sales comparable located at 210 16 AV NE that was sold on May 31, 2011 for $625,000 or $100.14 per SF, was not vacant land as it contained a small 1,316 SF building or improvement. The building or improvement was not accounted for by the Respondent in his land rate calculation. Further, the property had a land use designation of C-COR1, with a FAR of 4.00, which is significantly different from the subject and would likely attract a higher land sales rate.

[21] Documentation suggesting the Respondent's vacant land sale comparable located at 6550 Macleod Trail SW was a post-facto sale and has a land use designation that is significantly different from the subject's C-COR-2 designation. Therefore, this sale should not be considered comparable.

[22] Documentation suggesting the Respondent's sales comparable located at 505 16 AV NE that was sold on February 5, 2010 for $2,060,000 or $108.27 per SF, was a non-market sale. The property sold without a real estate broker and was purchased directly from the vendor by First Calgary Savings & Credit Union Ltd. The argument was that the property was not sold on the open market and available to all potential purchasers and should therefore be disregarded as evidence of a market sale. Further, the property had a land use designation of C-COR1 with a FAR of 4.50, which is significantly different from the subject and would likely attract a higher land sales rate.

[23] That the Respondent's use of actual year of construction (AYOC) of the improvements, in the residual land value calculation of the four comparable land sales used by the Complainant, was without merit. The Complainant provided documentation of examples where the Respondent assessed other properties using the Cost Approach and applied an effective age rather than the AYOC to the improvements that had been properly maintained or renovated over the years. Therefore, the Complainant's use of effective age of the improvement in the Macleod Trail sales comparables was warranted and consistent with practices used by the

Respondent in the assessment of properties using a Cost Approach and incorporating a residual land value calculation.

[24] An analysis of the Respondent's recalculation of the Complainant's sales comparables using actual ages of the improvements in their land residual value calculation. The following is a summary of that analysis:

1) 5720 Macleod Trail SW. The Respondent adjusted for a 30% topography negative influence that affected the property, resulting in an adjusted residual land rate of $105.14 per SF. The Complainant pointed out that the Respondent's calculation was incorrect and when corrected, would result in a residual land rate of $95.68 per SF. Further, the Complainant provided evidence of adjacent properties that did not receive a 30% negative influence adjustment in spite of having similar topography. Therefore, without consideration given to topography the Respondent's calculation would result in a residual land value of $73.60 per SF.

2) That with consideration given to the recalculated residual land value of $73.60 per SF for the property located at 5720 Macleod Trail SW, the average residual land value of the Complainant's four comparable land sales as calculated by the Respondent, would be $81.54 per SF, with a median of $82.15 per SF. This is not supportive of the $100 per SF assessment rate applied to the subject.

[25] The Complainant pointed out that the Respondent calculated residual land value of $64.64 per SF for the Complainant's sales comparable located at 7212 Macleod Trail SE. The Complainant argued that this is perhaps the best market evidence of a comparable sale, in that even without consideration to the improvement; the underlying land value would support the requested $60.00 per SF assessment rate on the first 20,000 SF.

The CARB finds the following with respect to this issue:

[26] That no evidence was provided by the Respondent that linked how comparable sales of properties along 16 AV NE are in the same submarket as properties located in the vicinity of the subject along south Macleod Trail.

[27] That no evidence was provided by the Respondent that supported a higher assessment rate on the first 20,000 SF of land for properties located on Macleod Trail than for those located off Macleod Trail.

[28] That the vacant land sale located at 6550 Macleod Trail SW was a post facto sale and not a good indicator of market value for the 2012 assessment.

[29] That in using the Cost Approach to valuation, the use of effective age for improvements in a residual land value calculation is an accepted practice of the Respondent.

Board's Decision:

[30] The complaint is accepted and the assessment is revised at $4,600,000 (truncated).

The CARB provides the following reasons for the decision:

[31] The comparable sale at 7212 Macleod Trail SE provided the best evidence that the subject property is likely over-assessed. The property is located in relative proximity to the subject and avoids the argument surrounding effective age versus actual age of the improvement in the residual land value calculation. The Respondent proved that even in ascribing no value to the improvement, the underlying residual land value is supportive of the Complainant's requested assessment rate of $60.00 per SF on the first 20,000 SF of land. Moreover, the Respondent's recalculation of the Complainant's sales comparables' land residual values using AYOC for the improvements, failed to adequately support the assessment rate of $100.00 per SF on the first 20,000 SF for the subject.

[32] The failure of the Respondent to establish a market link between their sales comparables on 16 AV NE and South Macleod Trail left the Respondent with little evidence to support an assessment rate of $100.00 per SF on the first 20,000 SF for the subject.

DATED AT THE CITY OF CALGARY THIS 23rd **DAY OF** October **2012.**

[redacted]

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
2. R1	Respondent Disclosure
3. R2	City of Calgary Bylaw No. 118Z2007
3. C3	Complainant 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 Office Only)

Column 1	Column 2	Column 3	Column 4	Column 5
CARB	Retail	Stand Alone	Sales Approach	Land Value