

**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.

between:

***Concord Real Estate Developments Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
J. Mathias, MEMBER
J. Rankin, MEMBER***

[1] 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 2011 Assessment Roll as follows:

ROLL NUMBER:	049005804
LOCATION ADDRESS:	3131 27 ST SE
HEARING NUMBER:	63373
ASSESSMENT:	\$3,860,000

[2] This complaint was heard by a Composite Assessment Review Board on September 7th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

[3] Appeared on behalf of the Complainant:

- *Mr. J. Weber* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Mr. A. Cornick* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] There were no procedural or jurisdictional matters before the Board.

PROPERTY DESCRIPTION:

[6] The subject property is a vacant land parcel located on 27th Street, north of 32nd Avenue NE, within the Horizon district in NE Calgary. The record shows the 2.56 acre parcel is zoned C-COR3 f1.0h12 and is valued at a base rate of \$65/square foot (sf) for the first 20,000sf and a residual rate of \$28/sf for the remaining land.

REGARDING BREVITY:

[7] In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[8] The matter identified by the Complainant as the basis for this complaint is "an assessment amount". While the Assessment Review Board Complaint form (complaint form) also indicates "an assessment class" to be under question, the Complainant indicated at the time of the hearing that there was no objection to the classification of the subject property.

[9] The Board finds the Complainant has presented the following issues for deliberation:

1. **Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**
2. **Does the assessment properly reflect the characteristics of the subject property?**
3. **Does the Complainant's market analysis produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**
4. **Has the Respondent established the 2009 sale of the subject property as an appropriate basis for the determination of market value for assessment purposes**

as of July 1, 2010?

COMPLAINANT'S REQUESTED VALUE:

[10] \$2,390,000 as per Doc C-1, pg 12. The Complainant's requested valuation is based on a revision of the residual land rate from \$28/sf to \$12/sf.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act (MGA)** Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004 (MRAT)** Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)** Division 2 and Schedule 1.

[12] Both parties also placed Assessment Review Board decisions before this Board in support of their position. While the Board has the utmost respect for the decisions rendered by these tribunals, it is also recognized that these decisions were made in respect of issues and evidence that may be dissimilar to that before this Board. This Board will therefore not give much weight to these decisions unless the issues and evidence are shown to be timely, relevant and materially identical to the subject complaint.

[13] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [12] above). The Board is to determine if (within the direction of the **MGA** and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st 2010, should be revised.

[14] With regard to the issues identified above the Board's findings are as follows:

1. Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

[15] The Complainant referenced 4 purported comparable developed properties under C-1, pg 12. The Complainant has developed a residual land rate by accepting the base rate of \$65/sf for the first 20,000sf of land. In the case of the first location (3305 32 Street NE) a building value is determined as per the Marshall & Swift valuation calculator to arrive at a value for the improvements. Upon subtracting the base land value and building cost value the Complainant looks to a residual land rate of \$12/sf.

[16] For the remaining 3 equity references the Complainant makes no allowance for the value of improvements as the 2011 assessment is below the potential land value if calculated under the same parameters as the subject property. The resulting residual land rates vary from

\$18/sf to \$24/sf and the Complainant does not afford them any weight. The Board is puzzled that these developed properties appear to be assessed lower than vacant land might be but in that the Complainant has not pursued these as appropriate equity comparables it finds no reason to delve into this matter.

[17] The Board finds the Complainant has relied on one property for its equity argument – one that is varies from the subject in terms of location and development. In light of these unexplained variances the Board is not swayed to accept this as an appropriate reference for the subject property.

[18] The Board finds the Complainant's equity evidence does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

2. Does the assessment properly address the characteristics of the subject property?

[19] The maps and photos provided by the Complainant illustrate the subject property is located at the end of a dead-end street (27th Street). Under C-1, pg 60 the Complainant provides a table of "*Land Rate Adjustments*" prepared by the City. It is the Complainant's position that the subject property's location warrants an adjustment for "Limited Access/Uses" as shown on the table, and the indicated adjustment of -25%.

[20] In support the Complainant references a property on Macleod Trail SW assessed on the same basis as the subject (see C-1, pg 50) with a -25% adjustment for "Limited Access/Uses". The Complainant reasons access to the subject property would be certainly restricted compared to one on Macleod Trail (which does not appear to be restricted as per the provided maps and photos).

[21] The Respondent has not made any influence adjustments to the subject assessment. It was the Respondent's position that notwithstanding the dead-end street the value of the subject property was not affected by any influences.

[22] The Board finds the Complainant has established the subject property has limited access options. Furthermore, the Board finds these concerns have been subjectively dismissed by the Respondent. In that the "*Land Rate Adjustments*" have not been refuted by the Respondent, the Board finds the Complainant's requested adjustment of -25% is reasonable.

[23] The Board concludes that the assessment does not properly address the characteristics of the subject property.

3. Does the Complainant's market analysis produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

[24] The Complainant advanced 3 sales – all developed properties along 32 Avenue NE and identically zoned to the subject. The Complainant's analysis as provided under C-1, pg 13 assumes varying land residual determinations in an effort to address the residual land rate of \$28/sf applied to land beyond 20,000sf as per [6] above. This is purportedly supported by the realtor's opinion for land values along 32nd Avenue NE.

[25] The Board notes the Complainant uses the Marshall & Swift valuation calculator to arrive at a land residual for 3305 32 St NE and then appears to reflect that finding (not site specific calculations) to adjust the other 2 sales. Furthermore, the sale at 2701 32 AV NE is reported to be a foreclosure. In light of these irregularities the Board does not find this to be a convincing portrayal of the market reality.

[26] The Board finds the Complainant's market analysis does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

4. Has the Respondent established the 2009 sale of the subject property as an appropriate basis for the determination of market value for assessment purposes as of July 1, 2010?

[27] The Respondent looked to support the assessment through the reported sale of the subject property for \$3,950,000, including the *Transfer of Land* dated January 16, 2009 (C-1, pg 17) and the *Affidavit re Land Value* dated January 16, 2009 (C-1, pg 18) and signed by the Complainant's representative before this Board.

[28] The Complainant provided the Alberta Datasearch and Real Net reports on the sale of the subject property to show the transaction was not arm's-length. Corporation searches were also provided to show the vendor and purchaser are related. The affidavit was dismissed as not being a market based value indicator.

[29] The Board is troubled that the sworn affidavit is dismissed by the signatory as not market based. However, the parties are shown to be related and the sale is not accepted as an arm's-length transaction.

[30] The Board finds the Respondent did not established the 2009 sale of the subject property as an appropriate basis for the determination of market value for assessment purposes as of July 1, 2010.

BOARD'S DECISION:

[31] The Board finds the limited access to the subject property as per the dead-end road warrants a -25% adjustment for "Limited Access/Uses". The Complainant has not established that a land rate revision is appropriate and the Respondent has not established the sale of the subject property as an appropriate market value indicator.

[32] The assessment is reduced by 25% to \$2,890,000 (rounded).

DATED AT THE CITY OF CALGARY THIS 17 DAY OF October 2011.


I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Submission & Addenda
2. Doc. C-2	Complainant's Rebuttal
3. Doc. R-1	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.*