

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a 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:

***Canada Lands Company CLC Limited
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
D. Julien, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	087034914
LOCATION ADDRESS:	4225 Crowchild Trail SW
HEARING NUMBER:	63819
ASSESSMENT:	\$37,150,000

The complaint was heard on September 8, 2011, in Boardroom 6 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- J. Weber

Appeared on behalf of the Respondent:

- M. Ryan

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

The Respondent brought a preliminary application to exclude the Complainant's rebuttal evidence submission, C2. The Respondent argued that the evidence was not proper rebuttal, but rather, new evidence that ought to have been included in the original disclosure of evidence.

The Complainant argued that the evidence is proper rebuttal to the Respondent's submission, as it rebuts the Respondent's recommended methodology and demonstrates that the Respondent has not employed a similar methodology in similar circumstances.

Board's Decision:

The Board finds that the Complainant's evidence in C2 is proper rebuttal evidence; however, it is accepted only with respect to the Respondent's methodology in similar circumstances. The evidence demonstrates that exemptions for some properties exhibiting site coverage ratios as low as 13%, have not been determined on the basis of the "footprint" approach proposed by the Respondent.

Property Description:

The subject property, known as the "Currie Barracks" redevelopment site, is a 155.63 acre parcel of land, improved with 502,464 sq.ft. (square feet) of various ex-military improvements currently used for various industrial, commercial and institutional uses.

Issues:

The Complainant identified matters 3, 4, and 10, in section 4 of the complaint form; however, no evidence or argument was submitted in relation to matters 3 and 4.

The Complainant set out seven grounds for the complaint in section 5 of the complaint form; however, at the hearing only the following issue was brought before the Board:

- What portion of the underlying lands should be exempt from taxation?

Complainant's Requested Value:

The Complainant requested an assessment value of \$29,350,000 [C1, p.2].

Parties' Positions

The Complainant argued that the subject property is comprised of several structures which are occupied by tenants entitled to a tax exemption; however, the assessor has exempted only the value of the occupied improvements and has not provided a corresponding exemption for the land associated with the improvements.

In support of the argument, the Complainant provided a detailed summary of the improvements, demonstrating that of the total 502,464 sq.ft. improvement area, 104,357 sq.ft. (**20.77%**) is exempt from taxation, and 398,107 sq.ft. (79.23%) is taxable. The Complainant argued that a proportionate share of the total land area should also be exempt from taxation, and provided the following calculation in support of the requested assessment:

Parcel Size:	155.63 Acres	
Exempt Proportion:	20.77 %	
Exempt Land Area:	32.32 Acres	
Land Rate:		\$ 241,123 per Acre
Land Value (Exempt from Taxation):		\$ 7,794,144
Assessment under Complaint:	\$ 37,150,000	
Requested Land Exemption:	<u>\$ 7,794,144</u>	
Requested Assessment:	\$ 29,355,856	\$ 29,350,000 (truncated)

The Respondent conceded that a portion of the underlying lands should be exempt from taxation; however, the Respondent argued the Complainant's requested proportionate share is excessive as it exempts lands surplus to the requirements of the exempt occupants as a result of the subject's large parcel size and low site coverage. The Respondent argued that the exempt portion should be reflective of only the sum of the exempt improvement "footprint" areas, which would exempt the land area actually in use by occupants entitled to an exemption.

The Respondent submitted the following recommendation, summarized as follows:

Total Footprint Area of Exempt Improvements:	2.21 Acres (96,452 sq.ft.)
Land Rate:	\$ 241,123 per Acre
Value Exempt from Taxation:	\$ 533,903
Assessed Value:	\$ 37,130,000
Recommended Land Exemption:	\$ 533,903
Recommended Assessment:	\$ 36,595,000 (rounded)

The Respondent further provided three income approach valuation worksheets to demonstrate that exemptions are applied only to specific areas occupied by an exempt tenant, and not to a proportion of common areas within an improvement.

In rebuttal, the Complainant argued that the Respondent's "footprint" methodology does not reflect typical land requirements for accessing the tenanted areas, or parking areas associated with the exempt occupancies. Further, it was argued that this approach creates an inequity as it was not applied in any other exempt premises in the municipality. The Complainant submitted that the income approach relied upon by the assessor for most other exempt spaces, reflects the value of the improvement and the land, including lands that may be surplus to the requirements of the exempt occupants. In support of that argument, the Complainant provided copies of the Respondent's income approach valuation worksheets for four properties with exempt occupants, to demonstrate that the income approach was employed on properties exhibiting a range of site coverage ratios from 13% to 24%.

In response to questions from the Board, both parties indicated that the legislation is silent with respect to procedures related to the issue before the Board.

Board's Decision in Respect of the Issue:

The Board finds that 14% of the land value related to the exempt improvements should be exempt from taxation.

The Board was not persuaded by the Respondent's "footprint" calculation, as it fails to account for any ancillary land used for accessing the property, parking, and other related uses commonly associated with a tenanted improvement. Further, the Respondent's methodology in this instance appears to contravene s.293(2) of the Act, as the evidence indicates that this particular methodology was not applied in any other instances.

Municipal Government Act

293(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

Although the Board accepts that an amount of ancillary land is required for access, parking, etc., the Board did not find the Complainant's methodology to be compelling, as there was no evidence to demonstrate that the occupants of the exempt improvements also have leasehold rights related to the entire 32.32 acres of land requested to be exempt. Further, the evidence of comparable properties from both parties demonstrates that the subject's 7.4% site coverage ratio is atypical, and implies that there is some quantity of "excess" land on the subject site; a portion of which is comprised of vacant land leases totalling 21.31 acres, and already exempted from taxation by the Respondent.

The Board finds that the land and improvements at issue are assessable, and a portion of the land assessment is exempt from taxation. Accordingly, any exemption apportionment of the land should be proportionate to the value of the improvements occupied by the exempt occupant, not the physical area of the improvements. The Board notes that an apportionment based on physical area may be appropriate if all of the areas are of equal value; however, if the areas have significantly differing values, as evident in this instance by Hanger #3, an apportionment based on physical areas may result in an inappropriate exemption determination.

The Board's decision is set out as follows:

Assessed Exempt Improvement Value:	\$ 841,080	14%
Assessed Taxable Improvement Value:	<u>\$ 5,160,003</u>	<u>86%</u>
Total Improvement Value:	\$ 6,001,083	100%

Parcel Size:	155.63 Acres
Less Vacant Land Leases:	- <u>21.31</u> Acres
Improved Land:	134.32 Acres
Land Apportioned to Exempt Improvements:	18.80 Acres (14%)
Land Rate:	\$ 241,123
Land Value related to with Exempt Improvements:	\$ 4,533,112

Total Property Value	\$43,527,083
Less Related Accounts	\$ 6,397,888
Less Exempt Land related to with Exempt Improvements	<u>\$ 4,533,112</u>
Net Taxable Property Value:	<u>\$32,596,083</u>

Board's Decision:

The assessment is **revised** from: \$37,150,000 to: **\$32,590,000.**

DATED AT THE CITY OF CALGARY THIS

29

DAY OF NOVEMBER, 2011.



J. Krysa
Presiding Officer

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

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

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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other		Exemption	Mixed Use