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:

Paulina Holdings Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
R. Deschaine, MEMBER
J. Pratt, 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:	**034 198 200**
LOCATION ADDRESS:	**3811 Edmonton Trail NE, Calgary AB**
HEARING NUMBER:	**63199**
ASSESSMENT:	**$1,310,000 (Taxable portion)**

This complaint was heard on the 19th day of September, 2011 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *D. Chabot (Altus Group)*

Appeared on behalf of the Respondent:

- *G. Good (Assessment Business Unit)*

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

There were no procedural or jurisdictional matters to be resolved.

Property Description:

The property that is the subject of this complaint is a two storey office building on a 22,041 square foot lot facing Edmonton Trail on the south side of 38 Avenue NE. The building, constructed in 1958, contains a rentable area of 12,060 square feet. The site coverage ratio is 54.72%. The main floor is leased to a tenant. Second floor space is typically leased on a month-to-month basis because of low demand for that type of space in this location.

There is another building that encroaches onto the subject site but it is fully assessed to another roll number.

The 2011 assessment is a market valuation of only the land. Using the City of Calgary land valuation formula, 20,000 square feet are valued at $65.00 per square foot and the balance of 2,041 square feet is valued at $28.00 per square foot. A portion of the building is occupied by a tenant that is exempt from property taxation. The portion of the assessment attributed to this tenant is $106,500, leaving a taxable assessment amount of $1,310,000 which is the amount under complaint.

Issues:

The Assessment Review Board Complaint form, filed March 7, 2011, had boxes 3 (Assessment amount) and 4 (Assessment class) checked. Section 5 stated numerous reasons/grounds for the complaint.

The property is currently assessed as vacant commercial land. At the hearing, the Complainant argued that it is insufficient to simply look at the value as vacant land and the value as improved and then use the highest value as the assessment. A thorough highest and best use analysis is necessary before such a determination can be made.

The issues were, 1. the subject property should be assessed as currently improved using an income approach to value and 2. if the assessment is of land value only, the assessed rate is too high.

Complainant's Requested Value: $1,070,000 **before** deduction of the tax exempt amount;
$1,010,000 **after** deduction of tax exempt amount.

Party Positions on the Issues:

Complainant's Position:

Issue 1. Should the property be assessed using an income approach to value?

If the Respondent is going to assess the subject property as a vacant land parcel, then it must support that position with a thorough highest and best use study that includes consideration of all four of the factors that determine highest and best use (Physically possible, Legally permitted, financially feasible and maximally productive). The Respondent customarily values the property as vacant land and again as improved and then selects the higher value as the assessment. In this case, the adoption of only the land value implies that the highest and best use is as a redevelopment commercial site.

The Respondent has not considered the last two criteria of the highest and best use analysis. A test of financial feasibility, including a supply and demand analysis, shows that there is no demand for redevelopment sites in the Greenview area where the subject property is located. There has been no recent land redevelopment in the area. When building demolition costs are factored in, no investor would have purchased this property for redevelopment as at the effective valuation date. If the property was redeveloped for some form of commercial use, it is unlikely that a tenant could be found to pay the rent that would be necessary to justify the investment in land, old building demolition and new building construction.

For the 2010 assessment, the property was valued by the income approach. The Respondent placed the property into the Class "C" suburban office category.

For the 2011 assessment of this class of property, the assessment parameters are:

Office rent rate	$10.00 per square foot
Office Vacancy rate	12.0%
Operating cost rate	$12.50 per square foot
Non-recoverable expense allowance	2.0%
Capitalization rate	8.75%

A market rent analysis based on lease transactions in five northeast Calgary suburban offices indicated that an office rental rate of $10.75 per square foot would be more reflective of a typical rent.

If this rent rate is input into the income approach formula along with all other parameters for the class (see above), the indicated property value is $1,070,000. Those same parameters applied to the tax exempt area of the building yields a value of $81,900. When this is deducted from the whole property value, the assessed value (truncated) is $1,010,000.

Issue 2. If the assessment is of land value only, what is the correct assessed rate?

The C-Cor 3 land use designation allows a floor area ratio (FAR) of 1.0 times the site area.

Twelve land sales were examined by the Complainant. These were C-Cor 1, C-Cor 2, C-Cor 3 and I-R sites in various areas of the city. The industrial I-R site was considered because it was the only sale property located in Greenview. The sales were analyzed on the basis of permitted floor area ratios (1.0 to 6.0 FAR) and time until redevelopment could occur, among other factors. After adjustment for variances in FAR's, the median sale price was $40.07 per square foot of site area. For sites with a FAR of 1.0, the median was $43.42 per square foot. There was no evidence to support a higher rate for the first 20,000 square feet of area so no such valuation approach was used by the Complainant. The outcome of the land analysis was that the subject land value should be between $881,640 and $947,763 rather than the $1,425,005 value arrived at by the Respondent.

Respondent's Position:

Issue 1. Should the property be assessed using an income approach to value?

The Respondent referred the Board to the definition of market value in Section 1(1)(n) of the Municipal Government Act: "*the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.*"

In defence of the assessment methodology, the Respondent stated that no highest and best use study is undertaken. "Value in exchange" is the concept employed which results in the land value being accepted as the property value. The improved property is valued by the income approach and then the higher of land value or income based property value is selected as the assessment.

In the subject instance, the income approach using Class "C" suburban office parameters yielded a value of $970,903 which was lower than the land value of $1,425,005 so the land value became the assessment. The tax exempt portion was deducted by estimating the depreciated cost of the area of the building occupied by the tax exempt tenant.

Issue 2. If the assessment is of land value only, what is the correct assessed rate?

The Respondent drew the attention of the Board to some of the land sales reported by the Complainant, pointing out features or factors that brought their validity as arms-length land sale transactions into question.

There were eight C-Cor land sales presented by the Respondent to support the land valuation. Site areas ranged from 3,670 to 218,323 square feet (22,041 square feet subject). Time adjusted prices ranged from $29.99 to $112.16 per square foot of site area. From these sales, the assessment rate for C-Cor 1, 2 and 3 land was set at $65.00 per square foot for the first 20,000 square feet with $28.00 per square foot applied to any area over 20,000 square feet. No consideration is given to floor area ratios by the Respondent.

Board's Decision:

The assessment is reduced to $1,070,000 **before** deduction of the tax exempt amount;
$990,300 **after** deduction of tax exempt amount

The Complainant erred in calculating the taxable assessment request by using an incorrect rental rate on tax exempt office space ($11.00 versus $10.75 per square foot). Revised calculations set the taxable portion of the assessment at $990,300.

Reasons for the Decision:

The Respondent provided a definition of market value to the Board and then stated that assessments were based on "value in exchange." That latter term was not defined. Any market value estimate must be related to the highest and best use of the property being valued.

The Complainant has established to a sufficient degree that the 2011 assessment on the subject property was not based on a properly considered market value process and the Respondent did not successfully refute that premise by convincing the Board that value in exchange was a better way to value properties like the subject, especially when the legislation talks of "market value."

The Matters Relating to Assessment and Taxation Regulation (MRAT) at Part 1(2)(c) states that an assessment of property based on market value *"must reflect typical market conditions for properties similar to that property."* To the Board, this means that the assessment based on land value only could perhaps be justified if "similar" properties are bought and sold on the basis of land value regardless of any improvements that may exist. That market trend has not been demonstrated to the Board. To the contrary, the Complainant has argued (albeit without market evidence) that there have been no recent land redevelopments in Greenview and there is no current demand for redevelopment sites in that community.

As a result, the Board accepts the Complainant's income approach valuation which was not challenged by the Respondent.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF October 2011.

W. Kipp
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	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:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach ------------ Sales Approach	 Land value