

**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:

***NEW URBAN (CURTIS BLOCK) GP LTD., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member E. BRUTON
Board Member B. JERCHEL***

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: 068141902

LOCATION ADDRESS: 232 13 AVENUE SE

FILE NUMBER: 67013

ASSESSMENT: \$1,060,000.00

This complaint was heard on 23rd day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- M. Cameron, Altus Group Ltd. – Representing New Urban (Curtis Block) GP Ltd.
- D. Genereux, Altus Group Ltd. – Representing New Urban (Curtis Block) GP Ltd

Appeared on behalf of the Respondent:

- E. Currie – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

[3] The subject parcel is an improved parcel located at 232 13 Avenue SE in the Beltline community. Currently situated on the property is a 1,714 square foot house built in 1905, and renovated in later years, and a 705 square foot garage built in 2000. Parcel size is 6,858 square feet.

[4] The Land Use designation is CC-X or City Centre Mixed Use.

[5] The subject property is assessed as a vacant commercial land at a rate of \$155.00 per square foot.

6,858 sq.ft. @ \$155.00/sq.ft. = \$1,062,990.00 (Rounded to \$1,060,000.00).

Issues:

[6] Should the correct Property Use classification be Residential, not the current classification as Commercial, resulting in a change to the applied Mill Rate from Non-Residential to Residential?

Complainant's Requested Value: \$1,060,000.00. The Complainant accepts the current assessed value, but requests the change to the Property Use and the corresponding Mill Rate.

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

[7] In the interest 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.

[8] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[9] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue: What is the correct Property Use for the subject property?

Complainant's Evidence:

[10] The complainant argued that the subject property was historically assessed as a residential property with an applicable residential mill rate.

[11] The Complainant presented a table "232 13 Av SE Property Tax History" which set out the assessments, the assessment class, the tax mill rate and tax levy and the percentage change for the years 2009, 2010, 2011 and 2012, as well as the requested values. (C1, Pg. 18)

	2009	2010	2011	2012	Requested
Final Assessment	\$1,710,000	\$1,470,000	\$1,330,000	\$1,060,000	\$1,060,000
Assessment Class	Residential	Residential	Residential	Non-Residential	Residential
Tax Mill Rate	0.0050001	0.0058734	0.0056680	0.0162453	0.0061658
Final Property Tax Levy	\$8,550	\$8,634	\$7,538	\$17,220	\$6,536
Year to Year Assessment Change %	--	-14.04%	-9.52%	-20.30%	-20.30%
Year to Year Tax Change %	--	0.98%	-12.69%	128.43%	-13.30%
Year to Year Mill Rate Change %	--	17.47%	-3.50%	186.61%	8.78%

[12] The Complainant requested the assessment remain unchanged at \$1,060,000.00, but the assessment classification and related mill rate be changed to residential, with the application

of a residential class tax mill rate at 0.0061658.

[13] The complainant testified the structures on the site were demolished in January 2012 and submitted the demolition permit issued November 15, 2011. (C1, Pg. 22) Further verification was supplied in a copy of an email from Olga Leonova, Property Manager for Barclay Street Real Estate, which stated the structures were "demoed in Mid January of 2012, not in 2011". (C1, Pg. 25)

[14] The Complainant submitted a copy of a lease document which outlined the "Mixed Use Redevelopment Site" which is proposed for the area, including the subject property. The development would incorporate 60,599 square feet of retail space, 72,800 square feet of office space, 266 parking stalls, a residential tower and 7 townhouses of unknown area. The townhouses would be situated on the subject parcel and an adjacent parcel. (C1, Pg. 38-41) The document was undated.

[15] The Complainant submitted a portion of the Land Use Bylaw – 1P2007, which sets out the permitted uses for Centre City Mixed Use District (CC-X). (C1, Pg. 27-37) Highlighted was Section 1164(3)(u), which listed 'Multi-Residential Development' as a discretionary use in the CC-X district.

[16] In summation, the Complainat requested the application of the residential tax mill rate on the commercial land assessment.

Respondent's Evidence:

[17] The Respondent submitted the assessment calculation for the subject property as a vacant parcel at a commercial land rate of \$155.00 per square foot -

6,858 sq.ft. @ \$155.00/sq.ft. = \$1,062,990.00 (Rounded to \$1,060,000.00). (R1, Pg. 6)

[18] Photographs showing a number of the windows in the subject building were presented into evidence in support of the City of Calgary's claim the subject building was no longer occupied and was to be demolished. (R1, Pg. 8-12)

[19] Also submitted was a copy of the 'Construction Permit Application' issued November 15, 2011 for the demolition of the property at 232 13 Avenue SE. (R1, Pg. 16)

[20] The Respondent submitted correspondence between The City of Calgary and TRL Real Estate Syndicate Ltd. which indicated the only development permit issues for the Curtis Block development had been classified as inactive. The original development request was applied for under the Land Use Bylaw 2P80, which has now been replaced with 1P2007.

[21] A copy of the "2011 Assessment Request for Information – Residential Property Occupancy and Use" submitted by Colton Kent of New Urban Consulting, indicated the property was not used for residential living accommodations – Question 1. In response to Question 5 it was indicated that no part of the property was used for commercial purposes. The Respondent stated, that based upon the information from the survey, the owner was contacted, who advised the City of Calgary the property had been vacant since the purchase May 27, 2011. (R1, Pg.19)

[22] An Alberta Data Search document for the sales of 1203C Macleod Trail SE, which included 232 and 228 13 Avenue SE and 209, 215, 227 and 231 12 Avenue SE was entered into evidence. The document indicated the properties were sold as vacant land for re-development. (R1, Pg. 20)

[23] The Respondent showed, through copies of permits issued for the subject and adjacent

properties that the development permit taken out in 2007 was now cancelled and no new development permit application was currently on the subject property. (R1, Pg. 21-23)

[24] In summation, the Respondent stated the owner had verified the buildings on the subject property were vacant and scheduled for demolition. Further, no new development permit had been applied for by the owner, so there was no plan as to the development of the site. In the absence of a development permit the assessment class is set as non-residential.

Findings of The Board:

[25] The Board was not receptive to the request of the Complainant to use the mix of assessment variables. Specifically the commercial vacant land rate and a residential tax mill rate. Since the Complainant was prepared to accept the assessment based upon the market value for non-residential land, it is therefore necessary to accept the corresponding tax mill rate. The assessment process is not one of mixing and matching the various components, like a buffet, to derive the best result.

[26] The Complainant shows there is a possibility for the subject property to become a part of a larger retail/office/residential development with a portion being set aside for townhouse development in the area of the subject property. No evidence was submitted to show a development permit had been requested from the City of Calgary by the owner of the property.

[27] The Board found the Respondent provided sufficient evidence to support the classification of the subject property as vacant commercial land. The owner had advised the City of Calgary that the structures had been vacant before December 31, 2011 and there was a clear intent to demolish the structures. A demolition permit was issued in November of 2011. With the demolition coming so close to the December 31, 2011 date for the characteristics and physical conditions of the property (MGA Section 298(2)) it is only reasonable to look to the classification of the property based upon its use and condition. As the structure was vacant and the utilities disconnected, it is not unreasonable to determine the market value of the property was in its land component only. The Board noted that if the demolition had occurred in December then this argument would not have been brought forward by the Complainant.

[28] The Board in its deliberation looked closely at the evidence submitted and the prior Board decision submitted.

[29] The Board found there had been a 2007 development permit in place up to April of 2009 when it lapsed due to lack of activity on the site. The Board found the property had been sold as a re-development site in 2011, but there has been no new application for a development permit by the purchaser.

[30] The Board found the zoning of CC-X district under Land Use Bylaw 2P2007 allowed for a range of activities, both residential and non-residential. The Board accepted the opinion of the City of Calgary that use of the Development Permit to indicate intended use is a logical process when zoning is not specific as to assessment class.

[31] The Board found in this situation that as of December 31, 2011 the lack of activity by the owner, the owner's indication the property was vacant and to be demolished and the lapsing of the development permit did not support the "intention" to develop the site for residential use.

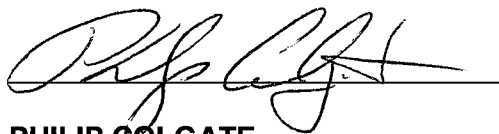
[32] In conclusion, the Board rejects the request of the Complainant to use the commercial land value for the assessment and applying a residential tax mill rate.

[33] Based upon the evidence submitted and considered, the Board concluded that the "non-residential" assessment class applied to the subject property is correct for the 2012 assessment year.

Board's Decision:

[34] Based upon the reasons given, the Board confirms the assessment at \$1,060,000.00 and the assessment class as 100% non-residential.

DATED AT THE CITY OF CALGARY THIS 16th DAY OF November 2012.



PHILIP GOLGATE
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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Type	Vacant Land	Assessment Class	Non-residential v. Residential