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:

Boardwalk REIT Properties Holdings (Alberta) LTD. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
I. Fraser, MEMBER
R. Deschaine, 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:	**130052715**
LOCATION ADDRESS:	**364 – 99 AV SE**
HEARING NUMBER:	**62619**
ASSESSMENT:	**$9,430,000**

This complaint was heard on 27th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *Mr. J. Weber, Altus Group LTD.*
- *Mr. D. Mewha, Altus Group LTD.*

Appeared on behalf of the Respondent:

- *Mr. H. Yau Assessor, City of Calgary*
- *Mr. N. Domenie Assessor, City of Calgary*

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

None

Property Description:

The subject is a suburban 1969 era 2.5-storey three-building low-rise residential apartment building complex at 364 – 99 AV SE in Calgary. It contains 6 bachelor; 20 one-bedroom; 28 two-bedroom; and 12 three-bedroom suites assessed at a "typical" $775; $975; $1,100; and $1,200 per month respectively. The subject is assessed using a typical 5.5% vacancy and 12.00 Gross Income Multiplier (GIM) at $9,430,000.

Issues:

1. The Gross Income Multiplier (GIM) should be 11.00 and not 12.00.

2. The vacancy rate should be reduced from 5.50% to 5.00%

Complainant's Requested Value: $8,696,490.

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

Issue # 1: "The Gross Income Multiplier (GIM) should be 11.00 and not 12.00."

Complainant's Perspective:

The Complainant provided his Brief C-1 and described the location and attributes of the subject.

The Complainant argued on page 7 of C-1 that accepted appraisal theory suggests the following:

> "To derive a gross income multiplier from market data, sales of properties that were rented at the time of sale or were anticipated to be rented within a short time must be available. The ratio of the sale price to the annual gross income *at the time of sale* or projected over the first year or several years of ownership is the gross income multiplier."

On page 8 of C-1 the Complainant added:

> "....Again, it is imperative that the appraiser analyze comparable sales and derive their capitalization rates in the same manner used to analyze the subject property and capitalize it's income."

On page 9 of C-1 the Complainant also added:

> "The Altus Group surveyed all investment sales of suburban low-rise multi-residential properties larger than 40 units that occurred from July 2008 – December 2010. We chose sales of 40+ units because there is a much smaller and specific base of investors capable of purchasing buildings of this size and they sell less frequently. This is supported by existing jurisprudence and Appraisal methodology."

The Complainant referenced a matrix of 3 sales on page 11 of C-1 and argued that for 2011 the typical market GIM of suburban low-rise buildings should remain at the 2010 assessed value of 11.00 and not 12.00. His argument was based on the "Altus Suburban Low-Rise GIM Study" matrix on page 11 prepared by the Altus Appraisal Division. He noted that the matrix contained three property sales which had occurred "in the base year" (i.e. 2010) and therefore they did not need to be time-adjusted. The matrix viewed as follows;

	Acadia Place 331/333 Heritage DR SE	Castleview Pk. 79 Castleridge Dr NE	Bonaventure Court 205 Heritage Dr. SE
Sale price	$9,022,000	$14,650,000	$24,976,508
Sale date	1-Oct-09	21- Dec--10	6-Jul-10
No. Of suites	58	120	195
No. Bachelor	5		15
1- Br	12	84	60
2- Br	14	36	120
3- Br	27		
Age	**1964**	**1981**	**1977**

Bachelor rent	$825		$775
1 Br rent	$1,050	$950	$975
2 Br rent	$1,275	$1,050	$1,100
3 Br rent	$1,350		
Residential Income	$852,300	$1,411,200	$2,425,500
Vacancy %	5%	5%	5%
Vacancy $	$42,615	$70,560	$121,275
EGI	$809,685	$1,340,640	$2,304,225
GIM	11.14	10.93	10.84
Appraisal GIM	11.22	10.97	11.06

Average	10.93
Median	10.97

The Complainant argued that two of the three property sales – one at 331/333 Heritage DR SE, and the other at 205 Heritage DR SE are comparable because they are both low-rise multi-residential properties in the same neighbourhood area. The third sale at 79 Castleridge DR NE is located in NE Calgary and removed from the Heritage DR sites. He noted that the indicated GIM of each of the three sales suggested to him that the GIM for the subject (and other similar properties) should be 11.00 and not the assessed 12.00.

The Complainant clarified that in its analysis of the 3 sales on page 11 of C-1, and except for the Castleridge DR property, Altus had used "typical" assessed rents for the assessment class pertaining to each of the "sold properties" instead of the "actual rents in place" for each property, at the time of sale.

The Complainant clarified that both he and the City agree with the data presented by the first sale at 331/333 Heritage DR SE. On pages 14 and 15 he provided the Altus "Transaction Data Sheets" for the sale. However, he acknowledged that there was some disagreement regarding the other two sales in the matrix. For example, he noted that the Castleridge DR property was deemed by the City to be "Post Facto" and hence invalid for study in this 2011 assessment cycle. Nevertheless, he considered the sale to have merit because it occurred in 2010 which he again described as "the base year".

In addition, the Complainant clarified that while he had identified the typical "Vacancy Rate" of 5.5% as applied to the subject to be an issue, suggesting it should be reduced to 5%, nevertheless after further consideration he concluded that it did not matter which rate was used in the assessment calculation. He argued that either the 5% or the 5.5% rate when inserted into his calculations, would demonstrate an over-assessment. The Complainant provided no market evidence to support or refute either of the vacancy values.

On page 12 of C-1 the Complainant provided a second matrix entitled "Altus Downtown/Beltline High-Rise ASR Analysis" using the same 3 sales as on his page 11. He argued that by using an 11.00 GIM for each of the 3 sales as a test for his methodology for example, the "Assessment To Sale Ratio" (ASR) approaches the desired 100%. For Acadia Place the ASR is 98.72%; for Castle View Park the ASR is 100.66%; and for Bonaventure Court the ASR is 101.48%. He argued, the market indicates an 11.00 GIM for these properties and the subject. In addition, he reiterated that none of his 3 market sales have been time-adjusted because they all occurred in what he considered to be the assessment "base year".

On page 17 of C-1 the Complainant provided a City of Calgary matrix of four "2009 Assessment Comparables" for the two Heritage Drive properties. On page 21 he provided another similar City of Calgary matrix of four other "2009 Assessment Comparables" for the Castleridge property. This matrix was repeated on page 24. It was noted in the document (C-1) that the two City matrices were provided "....to demonstrate that the comparables are in the same market zone as the subject."

On page 16 of C-1 the Complainant provided a City of Calgary 2010 assessment information sheet titled "Multi-Residential Detail Report" for a property comparable in SE Calgary. On page 20 he provided a small matrix containing four property comparables in north-east Calgary. On page 23 he provided an additional small matrix of 2 property comparables, also in SE Calgary. The stated purpose of these three documents was that they were "Provided as support for assessed rents applied in Altus GIM analysis".

On page 13 of C-1 the Complainant provided a list of 41 high-rise and low-rise suburban multi-unit residential properties, which identified the year-over-year change in Gross Income Multiplier (GIM) from 2010 to 2011. It was noted that the GIM of 29 properties increased from 11.00 to 12.00, and the GIM of 12 properties increased from 11.50 to 12.00.

The Complainant provided his rebuttal document C-2 which included several 2011 City of Calgary matrices identifying the assessed GIM for both high-rise mixed-use, and low rise multi-unit residential properties. They appeared on pages 8, 9, and 10. On page 12 he provided a 2010 City of Calgary "High Rise GIM Study Summary" matrix. On pages 13 to 17 of C-2 he provided several 2008 matrices identifying City assessed GIM values for several different market zones in the City. He argued that it is appropriate to use a median value to establish a GIM when market sales are analyzed.

On pages 30 and 31of C-2 the Complainant provided the RealNet transaction sheets for his third sale at 205 Bonaventure Drive SE as illustrated on page 11 of C-1. He noted that while the City may allege that this sale is "tainted" and invalid because of foreclosure, the RealNet sheets show it was "on the market" for about two months before it was purchased. He argued the sale is a valid arm's length sale between a willing buyer and a willing seller. On pages 32 to 42 of C-2 the Complainant provided copies of Calgary Assessment Review Board Decisions ARB 0789-2010-P and CARB 2285-2010-P which dealt with "post facto" sales and "willing buyer" sales respectively. He provided an excerpt of Municipal Government Board Order 044/05 which dealt with "post facto" evidence, suggesting that in certain circumstances, this is acceptable.

Respondent's Perspective;

The Respondent tendered his Brief R-1 and argued that the entire basis of the Complainant's GIM argument is significantly flawed. He pointed to the following;

Firstly, the Respondent referenced the Complainant's Altus GIM Study on page 11 of C-1. He argued that one of the three sale properties the Complainant is using is not comparable to the subject or to the other two sale properties. He identified the Bonaventure Court sale at 205 Heritage Dr. SE as a Condominium property – unlike both of the other two sales in the matrix and the subject.

Secondly, the Respondent argued that the 205 Heritage Dr. SE sale is in fact a "tainted" sale because it was "Court Ordered". On pages 133 to 156 of R-1 the Respondent provided the Court and land transfer documents dealing with the foreclosure of the property. On pages 157 to 161 he further referenced excerpts of marketing materials from Mainstreet Equity Corp. who bought the property. The materials indicate, he argued, that they buy "distressed" properties "below market value" and reposition them in the market. The Respondent argued on page 160 of R-1 that Mainstreet marketing materials show they had purchased the site for $24,960,000 then later appraised it for $27,230,000. He argued all of the foregoing evidence indicates that this sale cannot be considered a valid "arms length" despite its two months on the market.

Thirdly, the Respondent argued that while the Complainant purports to use "typical" rents for each of the bachelor, one, and two bedroom suites in the Bonaventure Court sale, nevertheless the rents themselves are incorrect. The Complainant has used $775 instead of 'typical" $725 for bachelor suites; $975 instead of "typical" $875 for one-bedroom suites; and $1,100 instead of "typical" $1,000 for two-bedroom suites, values the City actually used to assess the site. In addition, he noted that the "reported rents" at the time of sale were still lower than those used in the Complainant's GIM study. Specifically, the Respondent pointed to page 22 of the Complainant's evidence package and the "Altus Appraisal Division sale write-up" sheet for this site. He noted that the "market rents" used to evaluate this sale by Altus were "estimated" and not "actual" rents. He argued the Complainant's calculations of value for this property – particularly the GIM, are flawed.

Fourthly, the Complainant has used a 5% vacancy rate in its analysis of the Bonaventure Court sale, whereas because the property is in Market Zone 8, the typical assessed vacancy rate for that zone is 5.5%. He argued this further skews the calculations of value for this property.

The Respondent referenced the Complainant's second sale (page 11, C-1) at 79 Castleridge Dr. NE which he argued was "*post facto*" to the current assessment cycle. That is, it occurred after June 30, 2010. It sold December 21, 2010, some 6 months after the Legislated cut-off for assessment purposes. Hence, he argued, any purchaser on July 1, 2010 for example would have no knowledge of a later sale (post facto) that might occur in 2010. Therefore, this sale would not have been used for the 2011 assessment cycle to calculate the GIM for any comparable property types, including the subject. To do so he argued is improper as confirmed by a recent Assessment Review Board Decision, ARB 0665/2011-P which he provided on page 127 of R-1.

In addition, on pages 122 to 126 of R-1 the Respondent provided excerpts from Alberta Municipal Affairs documents regarding provincial assessment audit matters. On pages 125/6 he referenced Municipal Government Board (MGB) and "Judicial Review" precedents with respect to "*Post Facto*" evidence. In particular he referenced MGB 145/07 noting it was "Judicially reviewed in 697604 Alberta Ltd. Et al v. The City of Calgary and the Municipal Government Board, (December 11, 2008), Calgary, 0801-06228, ABQB (oral decision), (herein referred to as 697604 Alberta Ltd. et al)". On page 126 he argued:

> "Justice Lutz in his decision stated post facto information cannot be used for the determination of a value. This is very clear direction from Justice Lutz and Court of Queen's Bench. This is also supported by many board orders and decisions.
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> |---|---|---|---|
> | MGB 209/98 | MGB 073/04 | No. 0098 441/10 | No. 0098 442/10 |
> | MGB 115/09 | MGB 213/98 | DL 081-06 | MGB 065/08 |
> | No. 0098 17/10 | DL 055/01 | | |
>
> The above mentioned decisions, including MGB 145/07 and judicial review of that, state a very similar point. You cannot use post facto (evidence) to establish an assessment."

The Respondent argued that the Complainant has provided no rent rolls for any of his comparable buildings and is therefore arbitrarily and erroneously using assessed rents (incorrectly in some cases) from other non-comparable buildings. The Respondent again argued that this leads to flawed results. He clarified that the City uses and analyzes "Assessment Request For Information" (ARFI) documents from similar properties throughout each City market zone, to identify "typical" rent values for each unit type in each zone. These values are then used to calculate assessments. He argued that hypothetically speaking, if the Complainant agrees with the "typical" rents, which he appears to when he uses them in his calculations, then he must by default therefore agree with the GIM – which he does not.

The Respondent indicated that for 2011, the "Market Zone" concept is a primary factor in assessing these properties. On page 79 he provided a listing of vacancy rates used in each of 9 market zones for example. He argued that an analyst must use data from the same market zone in order for the results to be valid. He argued the Complainant's methodology is contrary to generally-accepted appraisal theory and practice which is used by the City.

The Respondent also argued that the Complainant is incorrect when he asserts that using the median GIM of three sales is appropriate. The Respondent argued that "mathematically speaking" it is erroneous and technically flawed analysis to presume that one can secure a reliable median value from three sales or even three numbers. This represents a fundamental mathematical error. In such cases, the Respondent argued that a true market indication of GIM is derived from an "average" of – in this case, three GIM values. He clarified that in the City's analysis of the market, they have used an average GIM value in assessing similar properties.

The Respondent argued that accuracy of rents in assessments is important and therefore, as noted above, the City relies on its ARFI process to provide this basic data. He argued that while the Complainant has provided one *post facto* and one Court Ordered sale, hypothetically speaking, when the correct typical rent and related parameters are inserted into the Complainant's calculations of value for those two sales, the Gross Income Multiplier (GIM) is 11.91 which supports the assessed GIM of 12. In addition, the Respondent noted that while the Complainant argues that it is unimportant whether or not the vacancy rate used in the assessment calculation is 5% or 5.5%, in his view, it does matter because each value will yield different resulting estimates of market.

On page 81 of R-1 the Respondent presented a matrix of three market sales. He clarified that all three sales had been time-adjusted as per sound appraisal practice whereas the Complainant's were not. He noted that both he and the Complainant had used a sale at 331 Heritage DR SE which was the Respondent's sale #2. He also provided the RealNet sheets detailing each sale, commencing on page 82 of R-1.

	330 2 AV NE	331 Heritage DR SE	1820 14 AV NE
Market area	MR3	MR9	MR7
Community	Crescent Hts.	Acadia	Mayland Hts
No. Of suites	40	58	65
No. Bachelor	0	5	0
1- Br	25	12	4
2- Br	15	14	52
3-Br	0	27	9
Year of construction	1971	1964	1969
Bachelor rent	0	825	0
1 Br rent	$800	$1,050	$1,025
2 Br rent	$950	$1,275	$1,200
3 Br rent	0	$1,350	$1,425
PGI	$411,000	$852,300	$951,900
vacancy	4.5%	5%	5%
Year of sale income used	2010	2009	2009
Typical EGI – year of sale	$392,505	$809,685	$904,305
GIM sale price/typical EGI year of sale	14.01	11.14	11.30
Sale date	03- Mar- 10	10-Sep-09	22-Dec-09
Sale price	$5,500,000	$9,022,000	$10,223,000
Time/adjusted sale price	$5,500,000	$9,022,000	$10,223,000

2011 assessment	$4,710,000	$8,680,000	$10,280,000
ASR (sale price)	86%	96%	101%
ASR (time adjusted sale price)	86%	96%	101%
2011 GIM used	12	12	12

The Respondent clarified that to correctly value each of his 3 market sale properties in the sale year, the City uses the typical valuation parameters that were common to that year – i.e. for 2009 sales, the 2009 typical valuation inputs are used, and for 2010 sales the typical 2010 valuation inputs are used. He clarified that the Complainant has not followed this methodology and hence his results are flawed and unreliable.

The Respondent argued that having used year-specific values, the City's analysis of its three market sales (shown above) reveal GIM values that support the 12 GIM used to assess the subject. The Respondent argued that when the sales – particularly those of the Complainant's (three sales), are time-adjusted and the correct year valuation parameters used, not only is the correct GIM achieved, but the Assessment-To-Sale Ratios (ASR) fall within the mandated range of 95% to 105% under Mass Appraisal.

The Respondent argued that the information illustrated in the foregoing matrix contains time-adjusted year-of-sale specific data, as well as confirmed site data from building-specific rent rolls and ARFI documents and is therefore accurate and reliable. He argued that this process has been consistently used to produce assessments, not only in 2011, but in previous years as well. He argued this data demonstrates that the City's market data, inputs, and analytical processes, have produced a realistic and accurate GIM of 12 which has also been consistently applied to all other comparable properties.

Board's Decision in Respect of Issue #1 - Reasons

The Board considers that the Complainant's position regarding Issue #1 fails for the following reasons:

1. The Complainant provided three market sales, one of which is *post facto* and the other is a foreclosure:

    a. In the "*post facto*" sale at 79 Castleridge Dr. NE, it is clear to the Board that this sale would not have been available to the City – or indeed the Complainant, as of June 30, 2010 for analysis or use in preparing the 2011 assessment for the subject. Previous Court, Municipal Government Board, and Calgary Assessment Review Boards have commented on the folly of using *post facto* evidence in this manner – particularly evidence that is, in this case, 6 months *post facto*.

    b. In the "foreclosure" sale at 205 Heritage Dr. SE, the Board concurs with the Respondent that this "distressed" or "foreclosure" sale is not a valid arm's length sale. The Court and Transfer documents, as well as the purchaser's marketing materials, all as provided by the Respondent, indicate that this sale, while it was marketed for two months, was clearly not a valid "open market" sale.

    These two sales cannot be considered as being comparable properties for the purposes of determining the subject assessment. The Board places no weight on these two sales.

2. Furthermore, the Complainant's sale at 205 Heritage Dr. SE is a 195-unit Condominium property which two of the Complainant's three sales and the subject are not. This sale cannot be considered as being a comparable property for the purposes of determining the subject assessment.

3. The Board accepts the Respondent's evidence which demonstrates that the Complainant's sale at 205 Heritage Dr. SE SW as shown on pages 11 and 12 of C-1 contains several factual errors, and hence the indicated GIM and the Assessment to Sale Ratio (ASR) calculated from its parameters are unreliable. In addition, the Complainant has used data from different market zones (i.e downtown vs suburban) for inputs to his calculations and the Board concurs with the Respondent that this is flawed.

4. The Complainant is then left with one sale which the City has accepted as valid and has used in its broader analysis of the market. However the Board considers that this one sale is insufficient to demonstrate that the "typical" GIM of 12 used by the City for the subject and several comparable properties is incorrect.

5. The Board accepts that the City has adjusted and analyzed its 2009 and 2010 market sales by using year-of-sale-specific parameters to identify appropriate GIM values in a consistent manner. It has then used those values in the 2011 assessment cycle. The Complainant has opted instead to use current year "typical" assessment parameters which have resulted in unreliable flawed values. Assessed rents are just that – they are not market rents. The Complainant also failed to provide any market evidence in the form of rent rolls or other similar data from his comparables to support his rent values.

6. In addition, unlike the Respondent, the Complainant has failed to "time-adjust" his sales pursuant to accepted industry practice. The Board does not accept the Complainant's argument that just because the sales occurred in the so-called "base year" they do not need to be time-adjusted at all.

7. The Board accepts the three time-adjusted market sales as advanced by the Respondent as having been consistently and properly analyzed with sale-date-specific data, based upon a broader analysis of the market zone in which they are located. These sales on the whole were largely unchallenged by the Complainant and support the assessed GIM of 12. They also demonstrate Assessment to Sale Ratios (ASR's) that are within the accepted .95 to 1.05 range for Mass Appraisal.

8. The Board accepts that the Respondent has used average values for determining typical market zone GIM values whereas the Complainant has used a median value from a small sample base. The Board considers the Complainant's methodology to be flawed.

9. Given the foregoing, the Board will not reduce the GIM from 12 to 11 as requested by the Complainant.

Issue #2 : "The vacancy rate should be reduced from 5.50% to 5.00%"

Complainant's Perspective

The Complainant clarified that while he had raised this matter as an issue previously, he confirmed to the Board and the Respondent that this issue was largely irrelevant to his broader argument that the assessed GIM of 12.00 for the subject was incorrect. He claimed it did not matter whether the vacancy rate was 5% or 5.5% as he had previously advanced, but rather this input variable was a minor consideration in his overall calculation of the GIM in his quest for alternate value for the subject.

The Respondent argued to the contrary. He argued that the vacancy rate is important to the assessment calculation. However, he noted that the Complainant has provided no market evidence whatsoever to support his original request for 5% instead of the assessed 5.5%. Furthermore, he noted that the Complainant appears to have abandoned this issue altogether. Therefore, the Respondent requested that the Board deny the Complainant's request in this issue.

Board's Decision in Respect of Issue #2 - Reasons

The Board considers that the Complainant's position regarding this Issue fails for the following reasons:

1. The Board finds from the argument presented by both parties that the Complainant has provided no market or related evidence whatsoever to convince the Board that the vacancy rate should be reduced from the assessed 5.5% to 5%. The Complainant advanced argument during the hearing that suggests quite clearly to the Board and Respondent that he has effectively abandoned this issue altogether.

2. The Board finds that the Respondent's evidence/argument supports the 5.5% assessed vacancy value and the Board will make no change to that rate.

Board's Decision:

The assessment is confirmed at $9,430,000.

DATED AT THE CITY OF CALGARY THIS 28 **DAY OF** October **2011.**

K. D. Kelly,
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure
3. R-1	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.

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Multi-family	low rise	Income vs comparable market value Approach - GIM	Market zone comparisons