

**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:**

***Enjay Holdings Alberta Ltd. (as represented by Altus Group Ltd.), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***L. Wood, PRESIDING OFFICER***

***D. Julien, MEMBER***

***P. Charuk, 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:

|                          |                     |
|--------------------------|---------------------|
| <b>ROLL NUMBER:</b>      | <b>068134501</b>    |
| <b>LOCATION ADDRESS:</b> | <b>344 12 AV SW</b> |
| <b>HEARING NUMBER:</b>   | <b>62740</b>        |
| <b>ASSESSMENT:</b>       | <b>\$1,860,000</b>  |

This complaint was heard on 13 day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- Mr. A. Izard Agent, Altus Group Ltd.
- Ms. S. Sweeney - Cooper Agent, Altus Group Ltd. (observer)

Appeared on behalf of the Respondent:

- Mr. R. Natyshen Assessor, City of Calgary

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

At the commencement of the hearing, the parties requested that the evidence and argument submitted in file #63808 be carried forward to this complaint as well. The Board agreed with the parties' request.

During the course of the hearing, the Respondent raised an objection in regards to the Complainant's conduct which he indicated was similar to the previous day's hearing (file #63808). In response, the Complainant argued that he would start his presentation again by reading into the record his two page summary of testimonial evidence. The Board indicated that, it too, had concerns with the Complainant's conduct. The hearing scheduled for file #63808 could have reasonably been concluded within 3 hours yet it took in excess of 7 hours primarily because of the Complainant's behaviour at that hearing. The Board noted the agent was provided ample opportunity to make his case that day. Given the amount of cross referencing between the two files, the Board expected that this hearing would be dealt with in an expeditious manner. The Board shared a few of its observations in regards to the previous day's hearing with the parties and specifically directs its comments to the Complainant as follows:

- the Complainant insisted on presenting his argument first (as opposed to his evidence in support of his issues). This resulted in the Complainant arguing the concept of "*highest and best use*" for 1.5 hours at the outset of the hearing without clearly identifying to the Board the type of property and/or issues that were in dispute;
- the Complainant insisted on arguing the same points repeatedly throughout his presentation even those conceded to by the opposing party (*i.e. construction projects were stalled over the last few years; the Respondent did not use court - ordered sales or listings in their sales analysis etc.*);
- the Complainant refused to take direction from the Board when asked continuously to move forward in his presentation;
- the Complainant included a considerable amount of duplication in his rebuttal submission. A cursory look shows the 569 - page rebuttal document contains 175 pages that were reproduced from either the initial submission or within the rebuttal document itself (**over 30%**);
- the Complainant appears to have deliberately included the duplicated pages as he took the opportunity to argue the same documents throughout his presentation;
- the Complainant's rebuttal also included an additional 100 pages of CARB decisions and

case law which were not addressed; the relevance of those cases is unknown (Exhibit C3 pages 55 - 156); and

- the Complainant's verbal testimony included an insufferable amount of personal rhetoric which only served to inflate his case and prolong the hearing as it was unrelated to the case at hand (*i.e. this is a really good restaurant; this is where I go to eat Tacos; I'm in this photograph; this restaurant has the best calamari; this place sells the best muffins; my girlfriend lives in this building etc.*).

The Board advised the parties that they would be provided a full opportunity to present their case. Moreover, the Board is willing to give the parties some latitude in this regard, assuming that latitude will not be abused. A balance must be struck between a party having the right to be heard and the Board running a fair and efficient hearing. The Board notes this is an experienced property tax agent who is quite familiar with the assessment review board hearing process and is fully capable of putting forward a concise, coherent and persuasive case, although it was not apparent at that hearing.

Furthermore, the Board perceives an abuse by the Complainant, particularly in regards to the excessive duplication contained within the rebuttal document, which could be subject to costs if it occurs again in the future. The Board finds the Complainant's rebuttal contains over 30% of duplicated pages already produced in either the Complainant's initial submission or within the rebuttal document itself. This is a serious concern to the Board.

The parties are fully aware of the disclosure requirements set out in section 8 of *Matters Relating to Assessment Complaints Regulation AR 310/09 ("MRAC")*. The disclosure requirements provide a regulated timeframe for the parties to disclose to each other (and the assessment review board) prior to the hearing, the evidence that each intends to present at the hearing. The disclosure requirements are put in place to prevent the parties from ambushing each other at the hearing. The disclosure requirements also provide the Complainant an opportunity to rebut the evidence and argument contained within the Respondent's disclosure. Moreover the Board notes that the disclosure requirements only allow a short period of time for the Respondent to review the Complainant's rebuttal prior to the hearing in order to respond or rebut that evidence at the hearing. The Board has included the following tables to illustrate the extent of the repetition found within the Complainant's rebuttal:

| <b>Exhibit C1<br/>Initial Submission</b>   | <b>Exhibit C3<br/>Rebuttal</b> | <b>Exhibit C4<br/>Rebuttal</b> |
|--|--------------------------------|--------------------------------|
| Highest & Best Use Argument<br><b>pp. 26 – 41</b>  | pp. 10 – 32                    | pp. 5 - 20                     |
| <i>697604 Alberta Ltd. v. Calgary (City of)</i> , 2005 ABQB 512 <b>pp. 44 – 50</b>                           | pp. 35 – 41                    | pp. 37 - 43                    |
| <i>Ford Motor Co. of Canada v Calgary (City)</i> 2004 A.M.G.B.O. No. 181 <b>pp. 71 – 82</b>                  | pp. 43 – 54                    | pp. 23 - 34                    |
| <i>City of Calgary v. Calgary Cooperative Association Ltd.</i> 2005 A.M.G.B.O. No. 132/05 <b>pp. 85 – 90</b> | pp. 99 – 104                   |                                |
| Legal Arguments <b>pp. 260 - 286</b>   | pp. 197 – 223                  |                                |
| <b>Duplicated Pages</b>  | <b>68</b>                      | <b>35</b>                      |

| <b>Exhibit C1<br/>Initial Submission</b>  | <b>Exhibit C2A<br/>Rebuttal</b> |
|---|---------------------------------|
| CARB decision 2315-2010-P<br><b>pp. 102- 114</b>  | pp. 7 – 19                      |
| RealNet Transaction Summary<br>Avocado Restaurant <b>pp. 151 - 152</b>                                | pp. 27 – 28                     |
| City of Calgary 2010 Business<br>Assessment Comparable<br>Report <b>p. 159</b>                        | p. 36                           |
| City of Calgary 2010 Lease<br>Comparable Report <b>p. 160</b>   | p. 37                           |
| 2010 Assessment Parameters<br><b>p. 161</b>   | p. 38                           |
| Photograph Local 510 Tavern &<br>Avocado Restaurant <b>p. 162</b>                                     | p. 40                           |
| RealNet Transaction 731 10 <sup>th</sup><br>Ave SW & 739 10 <sup>th</sup> Ave SW <b>pp. 172 - 174</b> | pp. 46 - 48                     |
| Photographs <b>pp. 196, 199</b>   | pp. 56, 59                      |
| Assessment Request for<br>Information <b>pp. 216, 218, 220, 222, 223</b>                              | pp. 71, 72, 74, 75, 76          |
| <b>Duplicated Pages</b>   | <b>30</b>                       |

| <b>Exhibit C2B<br/>Rebuttal</b>                                       | <b>Exhibit C2B<br/>Rebuttal</b> |
|---|---------------------------------|
| CARB decision 1356-2010-P<br><b>pp. 106 - 109</b>                     | pp. 177 - 180                   |
| Court Ordered/ Foreclosure<br>Sales – Beltline <b>p. 134</b>          | pp. 139, 164, 182               |
| Opus Campus <b>pp. 102 - 104</b>                                      | pp. 173 - 175                   |
| Municipal Affairs, Principles of<br>Assessment, Excerpt <b>p. 137</b> | p. 206                          |
| <b>Duplicated Pages</b>   | <b>11</b>                       |

| <b>Exhibit C2B<br/>Rebuttal</b>                   | <b>Exhibit C3<br/>Rebuttal</b> |
|---|--------------------------------|
| CARB decision 1853-2011-P<br><b>pp. 196 - 203</b> | pp. 139 - 146                  |
| <b>Duplicated Pages</b>                           | <b>8</b>                       |

| <b>Exhibit C2B<br/>Rebuttal</b>  | <b>Exhibit C4<br/>Rebuttal</b> |
|--|--------------------------------|
| <i>Bill 205 Municipal Government (Delayed Construction) Amendment Act, 2011 pp. 123 – 129</i>          | pp. 71 - 77                    |
| John Mar Website " <i>Calgarians on Mission to fill Hole in the Soul</i> " p. 117                      | p. 62                          |
| Dave Taylor Website " <i>Provincial Bill aims to solve problems like Mission's Pit</i> " pp. 118 - 119 | pp. 64 - 65                    |
| " <i>Provincial Bill aims to solve problems like Mission's Pit</i> " pp. 120 - 121                     | pp. 67 - 68                    |
| <b>Duplicated Pages</b>  | <b>12</b>                      |

| <b>Exhibit C3<br/>Rebuttal</b> | <b>Exhibit C2A<br/>Rebuttal</b> |
|--------------------------------|---------------------------------|
| Beltline Land Sales p. 8       | pp. 24, 26, 42, 79, 95          |
| <b>Duplicated Pages</b>        | <b>5</b>                        |

| <b>Exhibit C4<br/>Rebuttal</b>                  | <b>Exhibit C4<br/>Rebuttal</b> |
|---|--------------------------------|
| Inventory of Major AB Projects- April 2011 p. 8 | pp. 79, 83, 90, 121, 125       |
| Calgary Market Outlook p. 46                    | p. 47                          |
| <b>Duplicated Pages</b>                         | <b>6</b>                       |

|                               |            |
|-------------------------------|------------|
| <b>Total Duplicated Pages</b> | <b>175</b> |
|-------------------------------|------------|

This clearly does not constitute "rebuttal" pursuant to s. 8(2)(c) of *MRAC*.

It could be inferred the Complainant's 569 - page rebuttal was submitted in bad faith due to the excessive duplication and that only a fraction of the rebuttal addressed the Respondent's evidence. This type of submission places an undue hardship on both the Respondent and the Board because those materials have to be reviewed. If it is the intent of the Complainant to overwhelm the opposing party (or the Board) with voluminous but irrelevant submissions in an attempt to confuse the issues at hand or prolong the proceedings unnecessarily, this too, could be subject to costs in the future.

The Board strongly suggests to the parties to eliminate excessive duplication in their submissions in the future, otherwise, it could be perceived as an abuse of process and subject to costs. It is highly expected that all parties appearing before the assessment review board act in good faith.

After providing its observations to the parties, the Board asked the Complainant to start his presentation again but this time with a succinct description of the subject property, identification of the issues, and explanation of the evidence in support of those issues. The Board acknowledges that the Complainant curtailed his presentation significantly as per the Board's instructions, to his credit. It is expected that the agent maintains that level of professionalism in the future when he appears before the assessment review board.

**Property Description:**

The subject property is known as Lacey Court. It is an office building comprised of 6,965 sq. ft. located on a 0.24 acre site in the Beltline. The building was constructed in 1956. The land use designation is CC-X, Centre City Mixed Use District. There is an exempt tenant in the building, the Thai Consulate, and therefore there is an exempt value of \$184,000 associated with this tax roll account. There are also 8 parking stalls associated with this site.

The subject property was assessed based on the direct sales approach (as though vacant land).

**Issues:**

1. The subject property should be assessed based on the Income Approach to value.

**Complainant's Requested Value:** \$960,000 (taxable)

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

1. The subject property should be assessed based on the Income Approach to value.

The parties had indicated that their evidence and argument be carried forward from file #63808. In that case, the Complainant submitted that the Respondent had incorrectly applied the principles of *Highest and Best Use* by assessing that property, a light industrial warehouse converted to retail, as vacant land. In that case, he argued there was no evidence to suggest that the warehouse would be redeveloped in the imminent term. He argued that the 2010 and 2011 assessments determined that it was a redevelopment site yet there have been no physical changes to the property during this time. He argued there is a lack of economic motivation to redevelop not only that site but also the vacant parking lots surrounding that property. He indicated that assessing the subject property as though vacant is a rudimentary and simplistic way to value the subject property. The same could be said about the subject property, a suburban office.

The Complainant brought forward several examples of recent retail property sales located in the Beltline. He argued that at the time of purchase, there were no plans to tear down the buildings and the properties were not purchased as "land only". These buildings were renovated and were then either owner occupied or leased out (File #63808, Exhibit C1 pages 116 - 257). For ease of reference, the Board has incorporated these sales into a chart as follows:

| Name                          | Address            | YOC  | Building Area (sq. ft.) | Land Area (sq. ft.) | LUC     | Sale Date | Sale Price    | Price PSF |
|-------------------------------|--------------------|------|-------------------------|---------------------|---------|-----------|---------------|-----------|
| Sunshine Village Snow Central | 1037 - 11 AV SW    | 1979 | 6,978                   | 7,079               | CC-X    | 8/12/2008 | *\$1,650,000  | \$236     |
| Halloween Store               | 1129 17 AV SW      | 1967 | 8,176                   | 11,950              | C-COR 1 | 9/18/2008 | \$4,000,000   | \$489     |
| Avocado Restaurant            | 340 17 Av SW       | 1964 | 3,200                   | 7,405               | C-COR 1 | 1/15/2009 | \$1,550,000   | \$484     |
|                               | 731 - 739 10 AV SW | 1928 | 20,208                  | 19,526              | CC-X    | 4/1/2009  | **\$4,000,000 | \$198     |

\* sale included 1102 & 1104 10 St SW

\*\* sale included 3 buildings

In the case at hand, the Complainant submitted the Assessment Request for Information ("ARFI") dated April 2010 to show that the property is generating income (Exhibit C1 pages 21 – 28). The ARFI indicates there is 6,965 sq. ft. of total rentable area but 1,326 sq. ft. is vacant. There are two 2007 leases in place which indicate a current lease rate of \$11.00 and \$23.00 psf. The Complainant submitted seven lease rates that commenced in 2009. The leases areas are 1,604 sq. ft. – 4,100 sq. ft. and the lease rates are \$7.75 psf - \$17.00 psf for a median of \$14.00 psf (Exhibit C1 page 66). It is the median of \$14.00 psf in which the Complainant applied to his analysis for the subject property. The \$14.00 psf rate is further supported by the Respondent's 2011 Beltline Office Net Rental Rates which they applied to a B building whereas the subject property is a C building which could have been assessed at a \$10.00 psf rate (Exhibit C1 page 67). The Complainant could not understand why the municipality would request income information if they were going to assess the property as though vacant land.

The Complainant submitted five equity comparables of Beltline offices to illustrate the subject property is over – assessed (Exhibit C1 page 70). The building areas were 15,108 sq. ft. – 30,948 sq. ft. and based on the typical income parameters including a \$14.00 psf rental rate, the overall assessed rates are \$101.27 psf - \$131.19 psf for a median of \$108.19 psf. The subject property is assessed at \$266.43. He argued if the same income parameters were applied to the subject property the assessed rate would be \$137.93 psf.

He argued the subject property should be assessed based on the income approach to value and presented several past decisions for the subject property in which the Board found it was the appropriate methodology to assess the subject property. The Complainant argued if there is no evidence submitted that the highest and best use is redevelopment, then an income producing property should be assessed based on its income and submitted CARB 2315-2010-P as well as several other MGB and court decisions in support of his position.

The Complainant was unsure as to how the Respondent had calculated the exempt proportion of the subject property but requested \$95,709 based on 9% of the total assessed value.

The Respondent submitted the subject property was assessed based on a land rate of \$195.00 psf. The Respondent submitted five arms' length transactions that were used to develop the \$195.00 psf assessed land rate (File #63808, Exhibit R1 page 44). He noted four of the five sales had improvements on sites but were old and vacant. Therefore the Respondent extracted the improvement value based on a *Marshall & Swift* calculation to derive the residual land value. The Board has set out a condensed version of that chart for ease of reference as follows:

| Address               | LUD     | Sale Date | Sale Price  | M & S<br>Depreciated<br>Improvement<br>Value | Land<br>Area | Adjusted<br>Sale Price<br>PSF | Residual<br>Land<br>Rate<br>PSF |
|-----------------------|---------|-----------|-------------|--|--------------|-------------------------------|---------------------------------|
| 340 17 AV SW          | C-COR 1 | 1/15/2009 | \$1,550,000 | \$ 44,974                                    | 7,267        | \$203                         | \$196                           |
| 739 & 731 10<br>AV SW | CC-X    | 4/1/2009  | \$4,000,000 | \$246,165                                    | 19,526       | \$195                         | \$182                           |
| 1509 8 St SW          | CC-COR  | 3/15/2010 | \$ 425,000  | \$ 19,141                                    | 1,251        | \$340                         | \$324                           |
| 508 15 Av SW          | CC-COR  | 4/16/2010 | \$1,200,000 | \$218,179                                    | 6,505        | \$184                         | \$151                           |
| 2207 4 ST SW          | C-COR 1 | 5/31/2010 | \$3,600,000 | N/A (land only)                              | 12,002       | \$285                         | \$285                           |
| Mean                  |         |           |             |  |              | \$241                         | \$228                           |
| Median                |         |           |             |  |              | \$203                         | \$196                           |
| Weighted Mean         |         |           |             |  |              | \$220                         | \$210                           |

The Respondent included court ordered sales and foreclosures in support of the base rate but he stated they were not used to develop the base rate (File #63808, Exhibit R1 page 110, 171 - 177).

The Respondent argued that the Complainant's equity comparables have buildings that are much larger than the subject property and are able to generate more income. The Respondent provided a Building to Land Ratio analysis of the Complainant's comparables (Exhibit R1 page 91). The Building to Land Ratio was 2.20 – 2.52 whereas the subject property is 0.66. The Assessment to Land Area of the Complainant's comparables is \$222 psf - \$312 psf whereas the subject property is \$195 psf.

The Respondent argued that the Complainant's request based on the Income Approach indicates a land value of \$101 psf which was not supported by any evidence. The Respondent argued the value of the property cannot be less than its bare land value. He submitted several CARB decisions from 2010 which support the valuation of improved properties using the sales approach (as though vacant) (File #63808, Exhibit R1 pages 179 - 250).

The Respondent indicated that he was unsure as to how the exempt portion was calculated.

The Board's reasons are similar to those found in file #63808 which is set out as follows: the Board finds that a property cannot be valued for less than its basic land value unless there are exceptional circumstances. In this instance, there is evidence to suggest the subject property has not been built to its maximum development potential, and in fact, is underdeveloped. The property in its current state is unable to generate sufficient income, when capitalized, to exceed the market value of the underlying land at \$195.00 psf; therefore, the building does not add any contributory value to the market value of the land. Moreover the Complainant failed to provide any evidence to suggest the current assessed land rate of \$195.00 psf is incorrect. As such, the Board finds the Complainant failed to provide sufficient evidence to bring the assessment into question.

#### **Board's Decision:**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$1,860,000 and the exempt portion of \$184,000 remains unchanged.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF DECEMBER 2011.

  
Lana J. Wood, Presiding Officer



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

| <b>EXHIBIT NO.</b> | <b>ITEM</b>                       |
|--------------------|-----------------------------------|
| 1. C1              | Complainant's Submission (#62740) |
| 2. C2A             | Complainant's Rebuttal (#62740)   |
| 3. C2B             | Complainant's Rebuttal (#62740)   |
| 4. R1              | Respondent's Submission (#62740)  |
| 5. C1              | Complainant's Submission (#63808) |
| 6. C2A             | Complainant's Rebuttal (#63808)   |
| 7. C2B             | Complainant's Rebuttal (#63808)   |
| 8. C3              | Complainant's Rebuttal (#63808)   |
| 9. C4              | Complainant's Rebuttal (#63808)   |
| 10. R1             | Respondent's Submission (#63808)  |

*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    | Office        | Low Rise            | Sales Approach | Land Value  |