Okotoks
Historic Past, Sustainable Future

Assessment Review Board
403-938-8905

November 1, 2012

Christine VanStaden
Altus Group
1200, 333 11th Avenue SW
CALGARY, AB T2R 1L9

E-mail: CalgaryTax@AltusGroup.com

Dear Ms. VanStaden:

Re: Composite Assessment Review Board Hearing on Roll Number 0052340

Attached please find the Okotoks Composite Assessment Review Board Order for the hearing held regarding the above-noted roll number.

Please do not hesitate to contact me if you require any further information.

Sincerely,

L Turnbull

Linda Turnbull
Assessment Review Board Clerk
lturnbull@okotoks.ca

c: Town of Okotoks Assessment Services
Minister of Municipal Affairs

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/07/2012-M

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the Municipal Government Act (the Act), Chapter M-26 Section 460, Revised Statutes of Alberta (2000).

BETWEEN:

Okotoks Air Ranch Inc. - Complainant

and

The Town of Okotoks - Respondent

BEFORE:

William Gagnon, Presiding Officer
Lyle Buchholz, Member
Dennis Rasmussen, Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered into the 2011 Assessment Roll as follows:

Roll Number	Address	Assessment
0052340	**2 Winters Way**	**$ 2,295,000**

This complaint was heard by the Composite Assessment Review Board on the 4th day of October, 2012 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group (Agent for the Complainant) - Christine VanStaden

Appearing on behalf of the Respondent:

- Paul Huskinson, Assessor, Town of Okotoks

Attending for the ARB:

- Dianne Scott, ARB Assistant

Procedural/Jurisdictional Matters:

Disclosure under Section 299

At the outset of the hearing, the Complainant withdrew concerns which she had raised prior to the hearing concerning disclosure and exclusion of evidence under sections 299 and 300 of the Act. The Complainant advised the Board that all information necessary to proceed with this hearing had been disclosed and properly exchanged by the Assessor. This aspect of the complaint was abandoned.

Order for Non-Disclosure or "sealing" of Evidence

During the course of the hearing, the Complainant requested that the Board rule that four pieces of evidence be sealed and subject to a non-disclosure ruling. The first piece of evidence consists of what purports to be an email dated May 1, 2012 from a representative of the Complainant to a construction firm asking for a price quote to essentially reconstruct and resurface the entire runway. The second consists of what purports to be an email response to the first email from a contracting company dated May 4, 2012 setting out what appears to be prices for various kinds of work which may or may not have been proposed for the runway and taxiway. This evidence is relevant to the Complainant's argument concerning a cost approach to value. The third piece of evidence is what purports to be the Complainant's actual 2011 Profit and Loss statement, while the fourth piece is a modified work-up of the Complainant's 2011 income and expenses prepared by Altus entitled simply Income Information, which is tendered not only in support of an income approach to value but also to indicate the profitability of operating this airport.

In considering orders for non-disclosure, the Board is concerned about the balance between transparency and confidentiality on one hand, and the relevance and necessity to use information provided by the parties in our analysis. All hearings before the Board ought to be conducted in as transparent a manner as possible to allow reasonable assurance to the general public that decisions of the Board are not made in secret, or for reasons that are not fully disclosed. At the same time, evidence that is confidential ought to be protected if disclosure might result in harm to any of the parties to a Board hearing.

The conflict arises when information that is confidential by its nature and would cause harm if disclosed, is at the same time highly relevant, probative and essential to the decision-making process of the Board. Although the Respondent did not object to the Complainant's request for orders of non-disclosure, the Board's concern is for the relevance or probative value of the evidence. In other words, does the Board need to use and disclose details of the evidence in order to make its decision? Indeed, does the Board need to rely on this evidence at all?

The Complainant says that financial information is by its nature confidential. No further support was given for this position, nor was such support required. The Board takes the position that financial information is inherently confidential and should not be disclosed except when necessary to justify the Board's decision. In this case, the financial information was tendered both to show the financial health of the Complainant, and only incidentally to demonstrate how the Net Operating Income (NOI) might be derived for the purposes of determining an income approach to value.

The Board finds that the financial status of the Complainant is not directly relevant to matters concerning assessment. The Board does not require this information to make its' decision. The Board hereby orders that the Complainant's actual financial statements (the "Profit & Loss" statement) be sealed and prevented from disclosure. Similarly, the Board hereby orders that the document entitled "Income Information" be sealed and prevented from disclosure on the basis that it discloses the names of clients and fees paid by them. The Board may take whatever inferences that may reasonably be drawn from such evidence however, and may give whatever weight to this evidence the Board considers appropriate.

The Board does not agree, however, that the two emails pertaining to costs are confidential. These are in the nature of very simple requests for prices and costs that presumably would be exchanged in the normal course of business. They are not firm or fixed-price requests or tendered prices, nor are they elaborate. The request contains two brief sentences. The response is also very brief. Both are merely one-page in length. However, this information is probative and relevant for the purposes of determining costs associated with repairing the taxiway and runway. The Board finds that such information may be necessary to disclose in the course of its deliberations. The weight given to this evidence will be considered along with such other evidence as the parties may present in regards to costs to repair, depreciation, etc.

Property Description:

This is a complaint by Altus Group Limited on behalf of Okotoks Air Ranch Inc., the owner of the subject property comprising 31.42 acres in the area generally described as Okotoks Air Ranch, in Okotoks, Alberta which is essentially a privately owned and operated airport surrounded by a number of independently owned properties including individually titled parcels and bare land condominiums. The subject property consists of an aircraft runway, taxiway, and an ancillary building which serves as an aircraft hangar and office space. The subject property is zoned Aerodrome District (AD) which allows for the airport facility and a range of other discretionary uses.

Issues:

An amendment to the original assessment was issued and resulted in the current assessment of $2,295,000. The Complainant requests that the Board reduce the assessment to $955,900.

The parties agree that the subject parcel is somewhat unique, and that a cost approach to value is indicated.

The parties agree that the assessment of the aircraft hangar and office space is correct at $117,995; employing a cost approach to value and using Marshall & Swift as a reference to confirm this value. Both parties also agree with the assessed value of the land on which the aircraft hangar and office space is located, namely $140,000 based on $200,000 per acre covering the .7 acre site on which the building is located.

The parties disagree as to the assessed value in respect of the taxiway and runway. The Complainant says that the assessed value of the runway and taxiway land comprising 30.72 acres should be set at "0", nil, or no value, even though it comprises the largest physical part of the subject property. The parties disagree also on the value of the improvements to the taxiway and runway lands, which essentially is the grading, preparation, and runway surface.

The only issue for consideration is the correctness of the assessment, and in particular the assessment as it pertains to the taxiway and runway and the improvements thereto.

Summary of Positions:

Complainant's Position

The Complainant argues that the assessment of the subject property is in excess of market value and admits that the onus is on the Complainant to persuade the Board that there is sufficient evidence to justify reductions or alteration to the assessment.

The Complainant responds by saying that the onus is discharged and reverts back to the Respondent to defend the assessment when a prima facie case is made that the assessment is in error. She says that this can be accomplished simply by raising a doubt, and that the evidence put before the Board raises such doubt. The Board must therefore assess whether there is sufficient credible evidence to create such doubt.

The Complainant presented a number of arguments in support of the conclusion that the assessment should be altered. The Complainant argued that the runway and taxiway were essentially common property for the use of adjacent owners and the general public, and as such should not to be subject to assessment or assessed at a nil value.

The Complainant provided no evidence that the subject property should be exempt from assessment or from taxation under the Act. The Complainant provided no evidence that the owner was a non-profit corporation or registered charity. The evidence provided by the Respondent shows that the Complainant, Okotoks Air Ranch Partner Inc., is owned by Okotoks Air Ranch General Partner Holding Company; both of which are Alberta Corporations. The Complainant provided no evidence concerning the nature of the partnership.

The evidence presented by the Complainant consists of financial information which has been the subject of a sealing order. This evidence was tendered to suggest that the business of operating this particular hangar, runway and taxiway is not profitable; at least not in the manner in which it was portrayed. The Complainant did not provide financial information in respect of the Okotoks Air Ranch General Partner Holding Company, the owner of the general partner, and no evidence of the financial records of the partnership was provided. The Complainant was unable to confirm whether there were any other arrangements between the adjacent land owners respecting the costs of operating or maintaining the taxiway and/or runway. In answer to questions from the Board she indicated that any loss from operating the airport might be made up by the owner/operator in the sale of adjacent lands, but there was no evidence on which to base this conclusion. The Complainant provided no documentary evidence or verbal testimony of witnesses to explain the business relationship, if any, or any cost-sharing arrangement, if any, linking the owners of adjacent land to the subject property.

The Complainant argued that the mere fact that the subject property was an airport required the owner to allow access to all aircraft, and in particular, to any aircraft in distress. The Complainant provided no evidence of any law, regulation, agreement or other requirement to maintain the subject property for this purpose. The Complainant argued that the highest and best use of the subject property is its current use; namely, as a hangar, runway and taxiway. It was stated that the subject property is encumbered by the requirement that they continue to be used as such, which precludes any other use. The Complainant however provided no evidence to support this argument. The Complainant provided no evidence that the title to the subject property is encumbered by any requirement that the land remain in its current use.

The Respondent provided Exhibit R-2 as a partial copy of the Certificate of Title to the subject property, but neglected to include anything more than the front page indicating ownership. No evidence of encumbrances on the subject property was before the Board.

The Complainant argued that the runway and taxiway are essentially "common property" to the condominium and privately-owned properties which surround it, and that the value of the overall complex is reflected in the assessed value of the surrounding properties and condominium units and ought not be attributed to the subject property. No evidence was presented to show that the subject property is common property, nor that the subject property is a condominium. On the contrary, the information contained in Exhibit R-2 indicates that the subject property is represented by a single certificate of title covering all 31.42 acres.

No evidence was provided by the Complainant to show that the property is encumbered by any obligation to maintain the property in its current use.

The Complainant argued that the land on which the runway and taxiway is located should be assessed at "zero", or nil, on the basis that the set-backs required for airports essentially sterilize the land from any development. However, the Complainant provided no evidence of any applications having been made to further develop all or portions of the subject property.

The Complainant says that the condition of the runway and taxiway is such that the improvements should be subject to a high degree of depreciation; namely 2/3 for the runway, and 75% for the taxiway. The Complainant however provided no evidence as to the condition of the runway and taxiway except one photograph of an adjacent hangar building taken at the edge of a field occupied by grass and weeds growing through.

Respondent's Position

The Respondent acknowledged agreement between the parties on the valuation of the aircraft hangar and office building both employing the cost approach to value. The Respondent's focus in this hearing was on the value of land and improvements to the runway and taxiway only.

The Respondent acknowledged the uniqueness of the subject property. He did not provide evidence of similar comparable properties and instead when preparing the assessment relied upon a cost approach to value.

The Respondent compared the runway and taxiway to that of local roads or highways in looking for comparable costs. He relied upon an industry standard for such comparisons; namely, the City of Calgary Unit Rates Schedule set out in Exhibit R-3. The Respondent said that this schedule was a general rule-of-thumb for roadway costs in the Calgary area (including Okotoks) used in the taxation year, although he confessed that the prices tended to be somewhat low when compared to tenders for actual projects.

The Respondent argued that there was no evidence that the runway or taxiway had depreciated to a point where they needed to be entirely reconstructed and resurfaced. Indeed, both were currently used and integral to the airport facilities. The Respondent had no historical or reliable evidence of the condition of the land when the airway and taxiway were originally constructed. He had no information on which to calculate depreciation and attributed no specific value to the underlying grading or roadway preparation. Instead, recognizing that there was some value in those improvements, he arbitrarily set off such costs to account for depreciation. Employing this methodology, the Respondent came to a value of $1,115,685 for the improvements to the runway and taxiway, calculated based only on the current cost of resurfacing in accordance with the costs set out in Exhibit R-3.

In determining values for the land on which the runway and taxiway are located, the Respondent compared other lands in or around Okotoks. He compared other lands which were used for light industrial uses similar to those discretionary uses which might be available to the Complainant under the Aerodrome District zoning if an application for redevelopment was made. Employing this methodology, the Respondent came to a value of $921,600 for the land based on a per acre assessment of $30,000, for a total assessment of the subject property (including the hangar/office and associated land component valued at $257,995) at $2,295,000.

In summary, the Respondent argued that the Complainant had not provided sufficient evidence to discharge the onus of proof required for the Board to amend or alter this assessment.

In support of this position the Respondent provided the following quotations from the authorities. The first quotation excerpt cited was from Manyluk v. Calgary (City), MGB 036/03 at paragraph 20 at page 8:

"Every opportunity is provided to both parties to present evidence and arguments in support of their positions. The ultimate burden of proof or onus rests on the Appellant [now Complainant], at an assessment appeal, to convince the MGB their arguments, facts and evidence are more credible than that of the Respondent. However, if the Appellant [Complainant] **leads sufficient evidence** at the onset to establish a prima facie case, the evidentiary onus shifts to the Respondent. In order to establish a prima facie case, the Appellant must convince the MGB panel that there is merit to the appeal." (emphasis added)

The second excerpt is taken from Imperial Parking Ltd. V Calgary (City) [2002] MGB 140/02 at paragraph 37:

"In absence of any **substantive evidence** that would lead a reasonable person to conclude that there might be a problem of equity with the subject assessments, the MGB must agree with the Respondent that the Appellant has failed the onus test. In failing the onus test, the MGB must conclude that the City correctly assessed the subject property..." (emphasis added)

The Respondent says that the Complainant has failed to discharge this onus and the assessment must stand.

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Findings and Reasons:

The Board finds that evidence of financial status of the owner is not directly relevant to the preparation of an assessment. While evidence was presented by the Complainant concerning the financial condition of the owner, by itself this evidence is insufficient for the Board to rely upon to make any judgment concerning the overall financial viability of the airport and related business dealings. In the absence of further evidence, the Board is unable to draw any inference as to whether the airport is profitable, and what inferences pertaining to assessment practices, if any, should be drawn from such evidence.

There is no evidence before the Board to conclude that there is any blight or extraordinary circumstances which would prevent the owner from renting the property to someone for one of the uses that are available under the current Aerodrome District zoning.

The Board finds no evidence on which to support the argument that the owner of the subject property must allow access to virtually anyone who wants, or needs, to use or access it. While it may be convenient for the owners of adjacent properties to use the airport facilities, the Board finds no evidence for the argument that the owner of the subject property is required to allow them to do so.

The Board finds that there is no evidence that the subject property is a condominium or that the runway or taxiway is common property.

The Board finds that there is no evidence in support of the argument that the subject property must be employed in its current use.

While it may be true, there is insufficient evidence for the Board to conclude that the set-backs described in the Aerodrome District would prevent the subject land from being further developed. The Board finds no evidence of applications of any discretionary or permitted use to have been made and rejected on this basis. While it may also be true, there is no evidence on which to conclude that all or a portion of the subject property could not be put to any other use.

The Board finds that there is no evidence on which to base a finding as to the condition of the existing runway and taxiway. Nor is there any evidence that the existing runway or taxiway need to be entirely reconstructed and resurfaced. The Board is reluctant to speculate whether the grass and weeds growing at the edge of the taxiway (as shown in a photograph contained in Exhibit C-1) is indicative of the condition of the entire runaway and taxiway.

The Complainant provided a number of precedents of this Board and other authorities dealing with the value of excess land or land that is not used or useful to the owner in a particular use.

The Board finds no evidence in support of a valuation of "nil" for excess lands. In Big Red Holdings v. City of Calgary, ARB 0490/2010-P the Calgary Assessment Review Board set a nominal assessment value of $1.00 for lands designated as environmental lands (wetlands). The subject lands are not however prohibited from development on the basis that they are "environmental" lands, or wetlands. The Board finds that facts in Big Red Holdings are not similar and the findings not relevant to the circumstances of the case at hand.

Similarly, in Altus v. City of Calgary, CARB 1696/2010P the CARB set the value of certain wetlands at a nominal value of $375/acre based on evidence that these lands could not be disturbed. This is not the case for the subject property.

The Board does not consider the subject property to be in the nature of an environmental reserve, recreational land, wetlands, or land intended to be transferred to the municipality at some future time for nominal consideration, all of which have been used as the basis for nominal assessments in other cases. Instead, the evidence suggests that the subject property can and perhaps should be used for one or more of the discretionary uses set out in the Aerodrome District zoning, including its current use as an airport.

Board's Decision:

The Board finds that there is insufficient evidence on which to satisfy the onus placed on the Complainant to present a prima facie case that the assessment is incorrect, or inequitable. The Board found insufficient evidence on which to support the Complainant's case. Saying that a prima facie case exists does not make it so. No matter how strong the arguments may be that an assessment is incorrect, such arguments must be supported by relevant and credible evidence. The "doubt" that the Complainant says must be raised cannot be created or achieved merely by alleging that an assessment is wrong, or that it might possibly be wrong if there was evidence in support of the argument, but instead upon evidence that the assessment is or may be in error. Such evidence need not be compelling or determinative to create a prima facie case, but must provide some evidentiary basis on which to justify the Board to embark upon an examination of the evidence to contrast the merits for or against the assessment. When such evidence is shown, only then does the onus shift to require the assessment to be defended by the assessor, which in turn will allow the Board to judge the merits of each side and to find, on balance, which side has the strongest evidence in support of their argument.

In the case at hand, the Complainant's arguments were very strong, however very little relevant evidence was presented to support the central arguments put forward by the Complainant. It would be inappropriate for the Board to speculate whether other evidence exists to support the arguments for or against the assessment.

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The Board does not agree that the current Aerodrome District zoning necessarily prohibits all kinds of future development. The current zoning for the subject property reflects in many ways the uses which may be made of other comparable properties zoned for light industrial use. The current Aerodrome District zoning provides for a range of discretionary uses but no evidence was presented to show that these uses could not be allowed by virtue of any over-riding legislation or regulation. The Board finds no evidence to support the Complainant's view that neighbours would oppose further development. Accordingly, it is speculative whether the subject properties might be further developed, or whether proposed development would be prohibited or refused.

The obligation is on the Complainant to provide sufficient credible evidence on which to raise a prima facie case to suggest that the Respondent's assessment is either incorrect or inequitable. The Board finds that there is insufficient evidence to support the Complainant's requests and that a prima facie case has not been made. Accordingly, the Board finds no reason to disrupt the assessment values as set by the Respondent.

Had the prima facie case been made, in having balanced the evidence before it, the Board is of the opinion that the best evidence of value is that provided by the Respondent.

The Board's decision is to confirm the subject property's assessed value at $2,295,000.

No submissions in respect to costs of this hearing have been made by the parties and accordingly none will be ordered.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 31st day of October, 2012.

William E. (Bill) Gagnon
Presiding Officer

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Appendix "A" – Documents Received and Considered by the CARB

EXHIBIT	
C-1	EVIDENCE SUBMISSION OF COMPLAINANT TO THE 2012 ASSESSMENT REVIEW BOARD RE: ROLL #0052340
R-1	TOWN OF OKOTOKS ASSESSMENT BRIEF
R-2	2 WINTERS WAY: COPY OF TITLE AND OWNERSHIP CORPORATE REGISTRATION
R-3	ADDENDUM 2: CITY OF CALGARY 2011 MASTER DEVELOPMENT AGREEMENT PAVING UNIOT RATES SCHEDULE
R-4	AERIAL PHOTOGRAPH OF LOCATION OF AIRCRAFT HANGAR/OFFICES