

**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(4).

between:

Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, Presiding Officer

Y. Nesry, Member

J. Massey, Member

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	116007402
LOCATION ADDRESS:	4415 – 72 Avenue SE, Calgary AB
HEARING NUMBER:	59967
ASSESSMENT:	\$3,170,000

This complaint was heard on the 22nd day of June, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- John Smiley

Appeared on behalf of the Respondent:

- Ian Baigent, Irene Pau

Property Description:

The property which is the subject of this complaint is a 25,344 square foot industrial building in Foothills Industrial. About 5 percent of this area is developed as offices. Assessment records show the year of construction as 1979. The area of the subject lot is 2.19 acres indicating a site coverage ratio of 26.56 percent.

Issues:

The Complainant raised the following matters in section 4 of the complaint form: Assessment amount and Assessment class.

The Complainant also raised the following specific issues in section 5 of the Complaint form:

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Regulation 220/2004.
2. The use, quality and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289(2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. The information requested from the municipality pursuant to Section 299 or 300 of the Municipal Government Act was not provided.
5. The assessment of the subject property is in excess of its market value for assessment purposes when using the direct sales comparison approach.
6. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
7. There exists a recent sale of the subject in an arm's-length, market value transaction indicating that the assessment is not reflective of the market value of the property.

At the hearing, the Complainant stated that only issue 7 from the above list would be pursued.

Complainant's Requested Value:

\$2,210,000

Board's Decision in Respect of the Issue:**Issue:**

There was a sale of the subject property in June 2007 at a price of \$2,350,000. A commercial sales reporting company, RealNet Canada Inc. reported the sale as a "market" sale between 1274253 Alberta Inc. and Foothills Properties Inc. RealNet did not indicate the involvement of agents or Realtors in the transaction, one of the factors that the Respondent claimed made this a non-arm's-length transaction.

The Complainant produced a copy of a letter from Kelly Hess, Team Leader, Data and Tribunal Management Services, The City of Calgary Assessment to R. Brazzell, Senior Director, Altus Group dated February 25, 2010 wherein Ms. Hess explained facets of the industrial property assessment process. One of the attachments to that letter was a list of industrial properties, titled "2010 Improved Industrial Properties Sales Used." For each property in the list, the information provided was: Roll Number, Address, Sale Date, Sale Price, Property Use and TASP (Time Adjusted Sale Price). The Complainant pointed out that the subject property was included in this list with details of the June 2007 sale at \$2,350,000. For 2010 assessment purposes (effective valuation date of July 1, 2009), the price had been time adjusted to \$2,212,814. The Complainant stated in oral testimony that, on appeal, the 2009 assessment had been reduced to the same amount as the 2007 sale price, however, there was no written decision in the evidence brief to support this statement.

The Respondent's evidence included, among other things, copies of RealNet sales reports for the subject property, copies of Land Titles Office documents, copies of Corporate Registry searches, a completed Assessment Request For Information (ARFI) form, a list of industrial property sales and a list of properties intended to show that the subject property is equitably assessed when compared to similar properties.

The only issue pursued by the Complainant was the sale of the subject property. For that reason, the matter of equity will not be addressed in this decision.

Based on documents in the evidence brief, the Respondent opined that the sale of the subject property was a non-arm's-length sale between related parties. Land Titles Office transfer documents dated October 22, 2001 showed a transfer from Triwest Trading (Canada) Ltd. to Triwest Enterprises Inc. An April 12, 2006 transfer showed a transfer of the property from Triwest Enterprises Inc. to Triwest Trading (Canada) Ltd. A transfer dated October 30, 2006 showed a transfer of the property from Triwest Trading (Canada) Ltd. to 1274253 Alberta Inc. Corporate registry searches indicated that some of the principals were common to this numbered company and the Triwest company.

The list of property sales in the Respondent's evidence provided information on nine property sales, including the June 2007 sale of the subject. It can be seen in the list that the subject property sale was at the lowest price per square foot of the nine sales. The Respondent considered this to be another indication that the subject sale was not an open market, arm's-length sale. The other eight sales were of comparable size to the subject, however, there were other characteristics that would have required adjustments in making comparisons, such as site coverage ratio, building age and ratio of office finish.


The ARFI shows that there was a lease for the building with a start date of November 1, 2006. The lease was between related parties (Landlord: 1274253 Alberta Inc. – Tenant: Triwest Trading). The lease was to expire in 2011 and it was still in place when Foothills Properties acquired the property in June 2007.

Board's Findings and Decision:

The June 2007 sale of the subject property is an arm's-length sale of the property. The documentation in the Respondent's evidence did indicate that there had been a series of non-arm's length transfers of the property between 2001 and 2006; however none of those documents indicated that the 2007 sale to Foothills Properties was not at arm's-length. The fact that there were no agents/Realtors involved in the transaction is not relevant. Many property sales transact without agent/Realtor involvement. It has been established in many cases that an arm's-length sale of the subject property is the best indicator of the market value of that property. Finally, the City of Calgary Assessment department relied upon the sale as one of those used in establishing values for the 2010 industrial property assessment. The time adjusted (to July 1, 2009) price in the City list of sales was \$2,212,814.

The 2010 assessment for the subject property is therefore set at \$2,210,000.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF July 2010.



W. Kipp
Presiding Officer

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.*