

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Cushman & Wakefield Property Tax Services, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***H. Kim, PRESIDING OFFICER
K. Coolidge, MEMBER
E. Reuther, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	067001818
LOCATION ADDRESS:	706 2 Ave SW
HEARING NUMBER:	57750
ASSESSMENT:	2,660,000

This complaint was heard on the 30 day of July, 2010 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *Jan Goresht*

Appeared on behalf of the Respondent:

- *Dorian Thistle*

Property Description:

The subject complaint is a 9180 sq. ft. vacant parcel in the Eau Claire area of downtown. It is adjacent to a 24,923 sq. ft. low-rise office building constructed in 1912 and is used for 21 surface parking stalls that serve the office building. The building and the vacant parcel have the same property owner, and the same zoning, DC4Z2001. They are operated as a single parcel, however the building and vacant lot are on separate titles and are therefore assessed separately.

Initially the parking revenue from the vacant lot was assessed to the office building, adding \$945,000 to its assessment, however that was corrected and the assessment of the office building was reduced from the calculated value of \$7,848,888 to \$6,800,000. The assessment of the building includes an exempt component. The complaint is only on the vacant land, not on the building.

The subject assessment is based on the direct sales comparison approach at a rate of \$290 per square foot of site area.

Issues:

The Complainant identified three issues on the Complaint form:

1. The assessment is too high.
2. The assessment is inequitable in comparison with similar properties.
3. The assessment is above market value. The assessment is incorrect as to the nature, the size, the use, the condition, the actual and potential income, the actual and typical expenses, the appropriate sales comparables, the correct cap rate, and the inherent obsolescence of the property.

At the hearing, the issues argued and considered were:

1. Market value and equity as determined by the development potential of the subject due to size, shape and zoning compared to other similar vacant parcels in the area.
2. Market value due to requirement for use as parking for the adjacent building.

Complainant's Requested Value:

\$1,800,000 revised to \$797,000 at the hearing

Board's Decision in Respect of Each Matter or Issue:**Issue 1 – Development potential****Complainant's position:**

The property is a narrow strip just under 50 feet in width. The DC zoning allows a limited range of mostly residential uses, with commercial uses only permitted within the existing 1912 building. The DC guidelines require substantial side yard setbacks resulting in a building envelop only 27 feet wide, and provide for a maximum Floor Area Ratio (FAR) of 3.5 which translates into maximum buildable area for the subject at 31,878 sq. ft.

He presented an analysis of sale price per buildable sq. ft. (SP/BSF) for comparable parcels:

No.	Address	Zoning	Max FAR	Sale date	Sale price	Area	SP/SF	SP/BSF
1	1021 5 Ave SW	DC	7	Nov-06	14,500,000	37,788	383.72	54.82
2	1110 9 Ave SW	DC	7	Sep-06	22,750,000	94,090	241.79	34.54
3	1121 8 Ave SW	DC	7	Nov-06	800,000	3,250	246.15	35.16
4	1127 8 Ave SW	DC	7	Nov-06	1,500,000	6,500	230.77	32.97
5	1129 8 Ave SW	Dc	7	Sep-06	1,000,000	6,500	153.85	21.98
6	526-530 4 Ave SW	CM-2	20	May-07	14,500,000	31,537	459.78	22.99
7	905 15 St SW	DC	2	Jun-07	4,727,280	78,713	60.06	30.03
8	5 Ave/10 St SW	DC	7	Feb-08	20,838,710	46,487	448.27	64.04
9	633 3 Ave SW	CM-2	15	May-08	20,650,000	32,500	635.38	42.36
10	517 10 Ave SW	DC	12	Aug-09	23,500,000	47,577	493.94	41.16
11	1334 & 1400 10 Ave SW	DC	11	Feb-10	7,900,000	63,270	124.86	11.35
12	731 & 739 10 Ave SW	CC-X	8	Feb-10	4,000,000	19,500	205.13	25.64
13	401 4 Ave SE	DC	7	Feb-09	10,653,855	42,689	249.57	35.65
14	633 10 Ave SW	CC-X	8	Sep-09	3,600,000	16,248	221.57	27.70

The Complainant noted that Sales #10, 12 and 14 were court ordered sales and Sale #11 is a listing that had recently been reduced, however he stated that they could still be an indicator of market value since the receivers in forced sales would be required to maximize the asset recovery for creditors, and a listing would indicate the upper end of market value. He stated that the sale prices per sq. ft. cover a wide range, but that the sale price per buildable sq. ft. are a much tighter range. It is clear that vacant land transacts based on its development potential.

The analysis applied adjustments totalling +5% to -30% for differences in location, size, utility, conditions of sale and sale date, resulting in a range of adjusted price per buildable sq. ft. of \$10.78 to \$38.37. Time adjustment was determined based on paired analysis of two properties at 633 10 Ave SW and 919 5 Ave SW that sold multiple times between December 2004 and September 2009. The sale prices were plotted on a graph to illustrate a trend in market value. The conclusion was that values increased 1% per month in 2007 and ½% per month in early 2008, peaking in July 2008 with a decrease of 1% per month thereafter up to the valuation date of July 2009.

The report concluded that the market value of the subject property would be between \$20 and

\$30 per buildable sq. ft. or \$797,000 based on \$25 per BSF.

The Complainant also submitted that the assessment is not equitable with similar properties when analyzed for development potential. The Complainant presented the 2010 assessments for the sales comparables and compared them to the subject:

No.	Address	Zoning	Max FAR	2010 Assessment	Area	Assmt per SF	Assmt per BSF
1	1021 5 Ave SW	DC	7	650,500	3,253	199.97	28.57
2	1110 9 Ave SW	DC	7	20,210,000	93,864	215.31	30.76
3	1121 8 Ave SW	DC	7	649,500	3,250	199.85	28.55
4	1127 8 Ave SW	DC	7	1,290,000	6,500	198.46	28.35
5	1129 8 Ave SW	DC	7	649,500	3,249	199.91	28.56
6	526-530 4 Ave SW	CM-2	20	10,070,000	27,987	359.81	17.99
7	905 15 St SW	DC	2	1,880,000	78,713	23.88	11.94
8	5 Ave/10 St SW	DC	7	9,266,500	46,487	199.34	28.48
9	633 3 Ave SW	CM-2	15	9,890,000	32,500	304.31	20.29
10	517 10 Ave SW	DC	12	21,940,000	46,550	471.32	39.28
11	1334 & 1400 10 Ave SW	DC	11	17,060,000	63,215	269.87	24.53
12	731& 739 10 Ave SW	CC-X	8	4,250,000	19,526	217.66	27.21
13	401 4 Ave SE	DC	7	6,170,000	42,596	144.85	20.69
14	633 10 Ave SW	CC-X	8	3,670,000	16,261	225.69	28.21
	Subject	DC	3.5	2,660,000	9,180	289.76	82.79

The Complainant stated that when analyzed for development potential the assessment of the subject was inequitable with other properties, with an assessment of \$83/BSF compared to the assessment of the sales comparables in the \$20 to \$30 range.

Respondent's position:

The Respondent stated that the assessment is prepared based on value per sq. ft. of land area and not based on development potential. The use of FAR values of 15 and 20 is misleading as these amounts can only be achieved through bonuses which are not guaranteed.

The Respondent also disputed the use of listings and forced sales in the analysis, arguing that a listing is not a sale, and that a forced sale does not have a willing seller and is therefore not market value by definition under the Act:

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Sale #13 was a purchase by the City of Calgary of a property that had been a problem in the area. The Respondent presented news articles in support of his position that the City was an unusually motivated purchaser. The property is in the East Village, not at all comparable in location to Eau Claire. Sale #7 is the Greyhound bus terminal and not within the boundaries of downtown. The Respondent also disputed the use of 20 FAR for sale 6: at the time of sale the parcel had an FAR of 7 and it was rezoned to CM-2 after the sale took place. Based on 7 FAR, the sale price per square foot would be \$66.34 not \$22.99 as suggested by the Complainant.

The Respondent also disputed the time adjusted sales analysis of the Complainant. The six sales of 919 5 Ave SW were presented along with certificates of title and transfer documents to support his contention that these were non-arms length sales and no conclusion could be drawn with respect to time adjustment. Therefore, the adjustments used in the Complainant's analysis are not supportable.

If the adjustments are removed and Sales #10-12 and 14 are excluded, the average value per buildable sq. ft. is \$40.72, substantially higher than the \$25 requested by the Complainant.

The Respondent submitted this information to discredit the Complainant's analysis. The Respondent does not agree with the use of price per buildable sq. ft. as an appropriate measure of market value. The assessment is prepared based on value per sq. ft. of site area, and the values are equitable within the various market zones of the downtown area. The Respondent submitted a map that showed land in Eau Claire was \$300/sq. ft. and that the boundaries of the market zone was adjusted so that the subject, while within Eau Claire, was in DT2E for assessment purposes at \$290/sq. ft. The Respondent stated that this rate was fair and equitable with similar properties.

In support of the rates used, the Respondent presented 3 sales within the downtown area

Address	Sale Date	Site area	Sale Price	SP/SF
928 6 Ave SW	August 27 2007	19,500	7,160,000	367.18
633 3 Ave SW	June 2 2008	32,498	20,500,000	630.81
907 9 Ave SW	September 12 2008	30,928	8,250,000	266.75

The last sale backs on the railroad tracks which has a negative adjustment of 15%. There are no influences applied to the subject, therefore that sale supports the rate of \$290 used. The Respondent also entered a post-facto forced sale that also supports the assessment:

919 5 Ave SW	October 5 2009	9,764	3,500,000	358.46
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The Respondent stated that the same argument had been raised in an appeal to the MGB with respect to the 2008 assessment of the Metro Ford site. In MGB Board Order 025/10 the assessment was confirmed. The Respondent submitted that this decision supports the City's valuation methodology of value per sq. ft. site area and that the assessment was both equitable and reflective of market value.

Decision and Reasons:

The Board agrees with the Complainant that the market value of a vacant parcel would be impacted by its potential for development. All other things being equal, it is not reasonable to expect that land developable to 3.5 FAR would command the same unit price as land with much greater development potential.

The Board is of the opinion that price per buildable sq. ft. better accounts for these differences and provides a more reasonable comparison of value. A review of MGB Board Order 025/10 showed that the MGB did not reject price per buildable sq. ft. in determining value but found the supporting evidence lacking, and considered that the assessment at \$150/sq. ft. of site area when sales indicated \$250/sq. ft. could already reflect the difference in development potential. The Complainant in the subject case provided copies of the relevant land use bylaws to support his contention that the sales comparables had much greater development potential than the

subject. Under these circumstances, it is the opinion of the Board that it is both not reflective of market value and inequitable to ignore these differences and assess all vacant parcels in the area at \$290/sq. ft. of site area. Nevertheless, the Board agrees with the Respondent that not all of the sales used in the Complainant's analysis are valid sales. A forced sale value could be expected to be lower, as a willing seller might be expected to hold off selling in anticipation of improved market conditions. The reported sale price of 919 5 Ave SW submitted by the Respondent merely reflected the outstanding mortgage principal, and the sale date was the foreclosure date. Accordingly, while the Board agrees with the methodology, it does not believe \$25/BSF is an accurate reflection of market value or equity. Removing sales #7 and #10-14, the resultant average is \$38.60/BSF based on sales comparables and \$28.44 based on equity comparables.

Issue 2 – Market value as parking required for adjacent building

Complainant's position:

The subject property provides 21 parking spaces for the adjacent office building. The DC bylaw states that parking is required for the office use. If the owner were to sell this property for development, the parking spaces would need to be found elsewhere because the land use bylaw specifies that cash-in-lieu is only allowed where it is not reasonably practical to provide the required parking on site. This makes it impractical if not impossible to sell the vacant parcel separately from the office building, therefore the value of the vacant parcel should be the incremental value to the office building as determined by the income from parking. That value can be ascertained by the income approach valuation for the office building. Prior to the parking spaces being removed, the valuation was as follows:

21 stalls @ \$3600 = \$75,600 effective gross income from parking.

Vacancy, reserves and vacancy shortfall was not applied to the parking revenue so the net operating income is also \$75,600. The NOI capitalized at 8%, the rate used for the office assessment, results in an assessment attributable to the parking component represented by the vacant lot at \$945,000.

The Complainant stated that the portions of the office building that extended out from the face of the building, visible on the photographs, were the entrances to the offices from the parking lot, as well as garbage or loading facilities, and ramps for handicapped access. He could not confirm whether they were on the subject property or on the office parcel.

Respondent's position:

The Respondent stated that there was no evidence to consider the parcel to be restricted to parking for the office building. He submitted a copy of the certificate of title and said there were no restrictions registered on title. The parcel is on a separate title and must be assessed separately.

Decision and Reasons:

Several aerial photographs were submitted, and it is the opinion of the Board that they clearly show that three portions of the office building extend onto the subject land. The Act provides

the basis on which assessments are prepared:

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

The act defines the terms used:

284(1)(r) "property" means

- (i) a parcel of land,
- (ii) an improvement, or
- (iii) a parcel of land and the improvements to it;

1(1)(v) "parcel of land" means

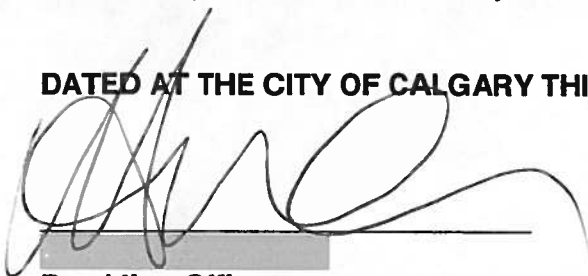
- (i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;
- (ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

In the subject case, the office building has been built on 2 or more lots shown on a plan of subdivision, therefore the office building and the associated parking form one property as defined in the Act. To the extent that a different roll number was assigned to the vacant parcel, it should be assessed at the incremental value to the total property.

Board's Decision:

The complaint is allowed, in part, and the assessment is reduced to \$945,000. This is \$30 per buildable sq. ft. and also reasonably reflects market value and equity with other vacant parcels.

DATED AT THE CITY OF CALGARY THIS 11 DAY OF August 2010.



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.*