

**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:**

***Cushman & Wakefield Property Tax Services, COMPLAINANT***

**and**

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

**before:**

***M. Vercillo, PRESIDING OFFICER***

***D. Pollard, MEMBER***

***A. Zindler, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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: 067232306**

**LOCATION ADDRESS: 1009D 9 AV SW**

**HEARING NUMBER: 57835**

**ASSESSMENT: \$ 6,770,000**

This complaint was heard on 20<sup>th</sup> day of September, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #10.

Appeared on behalf of the Complainant:

- Mr. J. Goresht (Cushman & Wakefield Property Tax Services)
- Mr. L. Brunner (Cushman & Wakefield Property Tax Services)

Appeared on behalf of the Respondent:

- Mr. D. Grandbois (The City Of Calgary)

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

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

**Property Description:**

The subject property is a paved surface parking lot located in the Downtown market area of Calgary and in the sub-market area of DT2 West. It is in close proximity and influenced by the sub-market area DT2 East to the east, and the railroad tracks to the south dividing the Downtown market area from the Beltline district. The property contains a land area of 35,684 square feet (SF) and is zoned as DC53Z95, Direct Control.

The base assessment land rate applied to the property is \$200 per SF but is reduced 15% for the negative influence of the railroad tracks and increased 10% for the positive influence of the DT2 East sub-market.

**Issues:**

The CARB considered the complaint form together with the representations and materials presented by the parties. The matters or issues raised on the complaint form are as follows:

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.

However, as of the date of this hearing, only the following issue remained in dispute and is restated as follows:

1. The assessment of the subject property is not indicative of market value and is not assessed equitably when giving consideration to the development potential of the subject property due to its zoning restrictions in comparison to other similar properties.

**Complainant's Requested Value:**

\$4,800,000 on the complaint form revised to \$2,830,000 at this hearing.

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

**ISSUE 1:** The assessment of the subject property is not indicative of market value and is not assessed equitably when giving consideration to the development potential of the subject property due to its zoning restrictions in comparison to other similar properties.

**The Complainant** provided the following evidence with respect to this issue:

- A "Tax Assessment Appeal Evidence Report" authored by Mr. L. Brunner and dated August 5, 2010. The report provides an alternative approach to valuing vacant land properties by focusing on the development potential of the vacant land in comparison to other similar properties. A summary of the report's findings addressing the issue are as follows:
  - A summary of the land use bylaw DC53Z95 is provided. The summary highlights the types of the developments that are permitted on the subject property. The summary also analyzes the building restrictions as follows: "Building height is restricted to 12 meters (39 feet) or three stories for all building uses except hotels which allow for a 30 meter building height where the boundary does not abut a residential district or development for which the height limit is 10 meters or less, 1.2 meter setbacks on the rear and sides of the site.
  - Based on the above building restriction, the author concludes that the maximum buildable area is 33,687 SF (ground floor) X 3 (stories) which equal 101,061 SF. He calculates a floor area ratio (FAR) of 2.83 by taking the maximum building square footage of 101,061 and dividing it by the actual site area size of 35,682 SF.
  - A brief analysis of the assessment is given showing that the City of Calgary is applying a land rate per SF of \$200 and then adjusted for a negative 15% for the railway line and a positive 10% for location. He concludes that the assessment equates to a rate of \$189.72 per SF of land and a rate of \$67.04 per buildable SF (BSF).
  - A chart showing the affects of FAR on land value is provided. The chart compared land sales that sold within a reasonable time frame and were in close proximity to each other. The only variable between these sales is the allowable density as required by zoning. In comparing the sale of two properties with a FAR of 3 (similar to the subject) to the property sales with a FAR as high as 20, the author concludes that the higher the FAR the lower the sales price (SP) per BSF.
  - A Direct Comparison Approach chart is provided comparing sales of commercial/residential land located within close proximity to the subject. The analysis of SP/SF and SP/BSF for comparable parcels is summarized in the chart below:

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	1110A 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	448.26	64.03
9	633 3 Ave SW	CM-2	15	May-08	20,650,000	32,500	635.38	42.35
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-09	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	27.69

- o A land sale adjustment grid is provided attempting to adjust the SP/SF and the SP/BSF referenced in the last two columns of the above chart for variables such as; conditions of sale, time of sale location, size and other differences to the subject. Sales 10, 12 and 14 are noted as forced sales, but are adjusted by a factor of 15% to compensate for this event. Locational differences are adjusted anywhere from 10% to 25% either positively or negatively depending on whether they are deemed by the author to be superior or inferior to the subject. The result of these adjustments are as follows:

- SP/SF – ranged from \$60.06 to \$445.56 with an average of \$233.23
- SP/BSF - ranged from \$10.22 to \$43.85 with an average of \$26.95
- Indicated value for the subject's SP/SF is \$85.00 while the subject's SP/BSF is \$28.00

- o A final analysis is provided by the author where he concludes that the method of valuing land on the basis of price per buildable SF is superior to the method applied by the City of Calgary price per SF of land. He notes that sales 1 to 5 are also used by the Respondent in determining the assessed value of the subject. He concludes his analysis as follows:

$$[\text{Ground Floor Area (after setbacks)} \times \text{Allowable FAR}] \times [\text{Price Per Buildable Sq. Ft.}] = \text{Value}$$

$$[35,684 \text{ sq. ft.} \times 2.83 \text{ FAR}] \times \$28.00 = \$2,830,000$$

- A substantial amount of information is provided in support of the aforementioned Tax Assessment Appeal Evidence Report, including sales data of comparables, time value adjustment data, zoning schedules of comparables with FAR calculations and excerpts from professional appraisal manuals.
- A Land Assessment chart is provided analyzing assessment equities by comparing assessments of the same fourteen commercial/residential lands that were analyzed in the Tax Assessment Appeal Evidence Report, as well as other land assessments used by the City of Calgary in the purchase of land proposed in April 2009 for the development of the "West LRT Project". The chart is summarized below but restricted to the fourteen properties in the previous chart:

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	1013 5 Ave SW	DC	7	9,266,500	46,486	199.34	28.48
9	633 3 Ave SW	CM-2	15	9,890,000	32,498	304.33	20.29
10	517 10 Ave SW	DC	12	21,940,000	46,550	471.32	39.28
11	1334 10 Ave SW	DC	11	17,060,000	63,215	269.87	24.53
12	731 10 Ave SW	CC-X	8	4,250,000	19,526	217.66	27.21
13	401 4 Ave SE	CC-ET	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	2.83	6,770,000	35,684	189.72	67.04

The Complainant concludes that when analyzed for development potential the assessment of the subject was inequitable with other properties, with an assessment of \$67.04/BSF compared to the assessment of the sales comparables ranging from \$11.94 to \$39.28/BSF.

- In rebuttal to the Respondent's evidence the Complainant also provides a recent CARB decision #0979/2010-P. In that decision, similar arguments were put forward by the Complainant, i.e., development potential due to zoning restrictions of a 24,923 SF vacant land property in the Eau Claire area of downtown Calgary. The decision in that hearing was to accept the Complainant's decision in part and reduce the original assessment.

**The Respondent** provided the following evidence with respect to this issue:

- A "2010 assessment Explanation Supplement" showing a breakdown of the assessment particulars of the subject as follows:
  - Land Area: 35,684 SF
  - Location: DT2 East
  - Land rate per SF: \$200
  - Influences: abutting train track: -15%, SNC zone blend: 10%
  - Land Value: \$6,779,960
  - Assessment: \$6,770,000
- In rebuttal to the Complainant's 14 comparable properties, the Respondent argues that the use of FAR values can be misleading as these amounts can only be achieved through bonuses which are not guaranteed. The Respondent offers concerns with comparable sales numbers; 6,9,10,11,12,13 and 14. Among his concerns are 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;

- A chart of land sales with the same zoning as the subject at the time of sale. The chart lists four comparable properties of which three contain improvements. The SP/SF indicates a range from \$152 to \$269 with a median of \$233.13 and a mean of \$221.84.
- A chart of six DT2 West (same location as subject) vacant land sales. The six comparable properties are also used by the Complainant in their analysis. The SP/SF

indicates a range from \$153.85 to \$383.72 with a median of \$284.09 and a mean of \$243.97.

- MGB Board Order #025/10 is included as part of the Respondent's evidence. This Board Order concerns an adjacent property to the subject located at 1111- 9 Ave. SW. Although this property contains an auto dealership, the main thrust of Cushman Wakefield's (the "Appellant") argument is similar to this case. Namely, should the land component of the property be assessed on the basis of the building density that it can support? The decision of that Board was to deny the 2008 assessment appeal and confirm the original assessment. The original assessment valued the land component of the property using a value rate of \$150 per 136,296 gross SF of land.
- As in the case of the Complainant, the Respondent provides a substantial amount of information in support of his sales comparables and rebuttal evidence.

### **Decision: Issue 1**

In view of the above considerations, the CARB finds as follows with respect to Issue 1:

- 1) There were a surprising amount of errors contained in the Complainant's Tax Assessment Appeal Evidence Report. Examples of some of the errors are:
  - a) The "Executive Summary" claims the assessed value of the subject is \$9,830,000, which is incorrect.
  - b) The "Immediate Local Area Overview" highlights pictorially and describes the adjacent property to the subject.
  - c) The "Site Description" again graphically highlights the adjacent property to the subject.
  - d) The "Land Sale Comparison Map" once again incorrectly maps the property adjacent to the subject.
  - e) Differences were noted between the chart of sales comparables and the grid of adjustments for unadjusted SP/SF and SP/BSF for comparable sales 7 and 8.
  - f) The "Analysis" page refers to the subject's FAR ratio to be 2.89, yet uses a FAR of 2.83 in the calculation at the bottom of the page. It also states that comparable sale No. 1 with a reported \$54.82 SP/BSF is smaller than the subject and therefore the subject should get a SP/BSF below this rate, when in actuality comparable sale No. 1 is larger than the subject. Also, although net result of the calculation at the bottom of the page is correct, and uses a "Ground Floor Area (after setbacks)", the calculation indicates 35,684 SF which is before setbacks!

Although they cannot be characterized as fatal errors in and of themselves, they are numerous and cause the CARB to scrutinize the evidence contained therein with some degree of skepticism and caution.

- 2) The CARB accepts the notion that vacant land's value can be impacted by its development potential, and that the Complainant's variable of SP/BSF, seems to capture these differences as a reasonable comparison of value. However, in arriving at the SP/BSF, the Complainant's use of FAR in the determination of BSF can be misleading as these amounts can only be achieved through bonuses which are not guaranteed. Further, bonusing of larger building structures requires not only an additional investment in the size of the building but also the quality aspects or additional features involved. This seems to be ignored by the Respondent. In addition, the Complainant chooses to ignore the fact that the subject property can achieve a much higher FAR (approximately 7) and therefore lower SP/BSF for hotel developments. Although, the CARB recognizes that this would be a much smaller segment of the market, it does point out the subjectivity involved in the Complainant's generation of BSF for not only the subject but for the sales comparables as well. Further, the Complainant used FAR calculations for

the subject that considered building setbacks. Building setbacks do not seem to be considered with the comparables. While this inconsistency is probably not significant, it is nonetheless an inconsistency that causes the CARB further concern in accepting the data. The CARB is also troubled by the fact that the Complainant failed to perform a highest and best use analysis for the subject property, which was also asked for during questioning.

- 3) The CARB finds it difficult to accept the Complainant's use of adjustments to the sales comparables for such things as forced sales and location. We deem these adjustments to be subjective and generally unsupported. Therefore, in the following table, the CARB will rely on sales comparables in their unadjusted format as described by the Complainant. The CARB decided to place the most reliance on the sales comparables that were common to both parties evidence in support of their respective positions, i.e., the Complainant's comparables 1 thru 5 and 8. While the CARB agrees with the Complainant that market value of the subject can be impacted by its development potential, it is also reasonable to assume that a potential investor in the subject would investigate properties of equivalent sizes. Therefore, of the six comparables, the CARB placed the most weight on sales comparables 1 and 8 because they were the most similar in size to the subject. In comparing the two sales comparables to the subject the CARB notes the following:

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
8	5 Ave/10 St SW	DC	7	Feb-08	20,838,710	46,487	448.26	64.03
	Average	DC	7		17,669,355	42,138	415.99	59.43

In comparison to the above table, the subject with a gross land area of 35,684 SF and a BSF of 101,061 is currently assessed at \$6,770,000. This results in a rate of \$189.72/SF or \$67.04/BSF. Therefore, in restricting the sales comparables to sales 1 & 8, the CARB finds that the SP/BSF of the comparables, which is the main thrust of the Complainant's argument, is not significantly different from the subject's assessed value SP/BSF.

- 4) In keeping with the finding that sales comparables 1 and 8 would be the best sales comparables as described in the previous bullet, the CARB compares the Complainant's equity table as follows:

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
8	1013 5 Ave SW	DC	7	9,266,500	46,486	199.34	28.48
	Subject	DC	2.83	6,770,000	35,684	189.72	67.04

In restricting the equity table of the Complainant to sales comparables 1 & 8, one can see that the subject compares favourably in terms of Assmt/SF but unfavourably in terms of Assmt/BSF. The CARB notes that there is inconsistency with sales comparable #1 in the Complainant's equity analysis versus the Complainant's sales analysis. In the sales analysis the Complainant provides information on the 3,253 SF parcel with seven other adjacent parcels in what appears to be a land assembly totalling \$14,500,000. In the equity analysis, the Complainant provides information only on the 3,253 SF parcel without the other seven properties combined. We make no conclusions from this change

in the presentation on comparable #1 other than this is another example of an inconsistency in the Complainant's evidence.

- 5) The CARB finds that the Respondent's use of land sales with similar zoning as the subject, are not the best comparables to the subject because of the four comparables, 3 contain improvements and one was purchased by the City as part of the LRT expansion.

In summarizing the above findings on the evidence presented, the CARB finds that the Complainant failed to provide evidence that compelled the CARB to alter the assessment. The Complainant's evidence contained too many errors and inconsistencies, was prone to subjective reasoning, and on the whole, used comparables that were not sufficiently comparable to the subject in most respects. Although the CARB does not take issue with the rebuttal evidence submitted by the Complainant, we can only assume that the subject property and circumstances are significantly different in this case than that case, and therefore the conclusions drawn differ as well. The CARB finds that some of the reasoning used in MGB Board Order 025/10 applies in this case as well. "Comparing land parcels on the basis of developmental density is an acceptable comparison tool when land parcels are similar in most respects and there is reasonable certainty as to the density that may be achievable on each site used in the comparison".

**Board's Decision:**

The Board confirms the assessment at \$6,770,000.

DATED AT THE CITY OF CALGARY THIS 6<sup>th</sup> DAY OF OCTOBER 2010.



**Michael A. Vercillo**

**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.*