

**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:

***G.U.G. ENTERPRISES LTD. and PATTEMORE PROPERTIES LTD.
(as represented by Cushman & Wakefield),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, Earl K. Williams
Board Member, Ann Huskinson
Board Member, Paul McKenna***

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 2012 Assessment Roll as follows:

Roll Number:	067232405	067232306
Location:	1111 9 AV SW	1009D 9 AV SW
Hearing Number:	66107	66106
Assessment:	\$19,180,000	\$5,080,000

This complaint was heard on 24 day of July, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- J. Goresht (Cushman Wakefield)
- L. Brunner (Deloitte)

Appeared on behalf of the Respondent:

- D. Grandbois

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

[1] The Complainant requested that file number 66106 and file number 66107 be heard together as the two properties adjoin each other and the evidence will be the same. The Respondent accepted that the files be heard together.

[2] The Complainant advised that the evidence which will be presented to the Board includes two Appraisal Reports prepared as of July 1, 2010 by Mr. Liam Brunner B.Comm., AACI, P.App., MRICS., an Associate Partner with Deloitte Real Estate. The Complainant advised that Mr. Brunner had been accepted as an expert witness in previous hearings and requested that the Board accept the credentials of Mr. Brunner as an expert witness for this hearing. The Respondent raised no objections. The Board accepted Mr. Brunner as an expert witness to present the appraisal reports and speak to matters related to land use and zoning.

Property Description:

[3] The subject properties are:

- 1111 9 AV SW is an improved property of 136,296 square feet (3.129 acres) of land with a 21,793 square foot purpose built automobile dealership, known as Metro Ford in the Non Residential Zone DT2 West located at the west end of the Downtown Core. The land use designation is governed by Bylaw 53Z95 which was passed in July 1995. The property has been assigned influence adjustments for Abutting Train Track (-15%), Corner Lot (5%) for a net influence adjustment of -10%.
- 1009D 9 AV SW is a 35,684 square feet (0.819 acres) parcel of unimproved land, which is used for surface parking, in the Non Residential Zone DT2 West located at the west end of the Downtown Core. The land use designation is governed by Bylaw 53Z95 which was passed in July 1995. The property has been assigned influence adjustments for Transition Zone (+10%) and Abutting Train Track (-15%) for a net influence adjustment of a -5%.

Issues:

[4] 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 the other similar properties.

Complainant's Requested Value:

[5] Roll Number 067232405: \$11,420,000

[6] Roll Number 067232306: \$3,820,000

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

[7] The Complainant and Respondent presented a wide range of relevant and less relevant evidence.

[8] The Complainant's evidence package included a Summary of Testimonial Evidence, including the City of Calgary 2012 Assessment Explanation Supplement, a site plan, copies of 2011 CARB decisions on the subject property, copy of a Municipal Government Board Order MGB022/11 on the subject property, a July 1 2010 appraisal of the subject properties prepared by Cushman & Wakefield, Real Net Land Transaction Summary for the comparables utilized in appraisal report, copies of City of Calgary Land Use Bylaws which are applicable to the subject property, copy of a Colliers International marketing material used for their listing of the subject property, analysis of land sales supported by the Real Net Land Transaction Summary, Property Assessment Summary Reports for comparables and information of appraisal standards.

[9] The Respondent's evidence package included a Summary of Testimonial Evidence, site plan and exterior photographs of the subject property, the City of Calgary 2012 Assessment Explanation Supplement, details of the City of Calgary 2012 Downtown 'Vacant Land' Zones, an analysis of the Cushman & Wakefield land sales, copies of the a number of CARB decisions including the 2010 CARB decisions on the subject properties, copy of a Municipal Government Board Order MGB095/04 and MGB025/10 on the subject property located at 1111 – 9 Ave SW, Real Net Land Transaction Summary for the comparables, copies of City of Calgary Land Use Bylaws, copy of a Colliers International marketing material used for their listing of the subject property.

Complainant

[10] The argument presented by the Complainant is based on the position that the market value of the land should take into account its development potential and that the subject properties have a lower development potential than the sales used by the Respondent to arrive at the value.

[11] The appraiser presented a Full Narrative Appraisal Reports prepared on the Direct Comparison Approach for each of the subject properties with the analysis of their market value at July 1, 2010.

[12] The purpose of the appraisals were to estimate the market value of the fee simple interest of the properties as assumed to be vacant and unimproved for

assessment review purposes. The principle of highest and best use is fundamental to the concept of value and may be defined as the reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible and that results in the highest value. The four criteria that must be met are legal permissibility, physical possibility, financial feasibility and maximum profitability. The appraisal concluded the sites' highest and best use was as raw land and ready for development.

[13] Mr. Brunner indicated that the restrictions on the subject as imposed by the DC53Z95 Bylaw have a resulting reduction in market value. The subject is in the only area of downtown Calgary that does not have an Area Structure Plan that gives insight into the future development of the area — thus creating greater uncertainty for subject properties.

[14] Mr. Brunner suggested an appropriate approach to value would be the use of the 'Buildable Square Foot' approach which utilizes a calculation of the potential site developability by multiplying the market value per square foot of developed space by the number of square feet per developable storey using the maximum site coverage to produce a market value for the property. Using this result, it is then possible to compare the subject with other developed properties that have transacted in the marketplace.

[15] The appraisal reports applicable to the subject properties are presented in Exhibit C-1. Specifically Tab 8 for the subject property at 1111 9 AV SW and Tab 9 for the subject property at 1009D 9 AV SW. The same methodology is used in the preparation of each appraisal. The reports differ in terms of the site specific information, the sales comparable's (4 comparables are used for both appraisals) and the adjustments applied to the comparable sales to arrive at the final estimates of value. The evidence presented by the Complainant for each of the subject properties is presented below.

1111 9 Av SW

[16] The Complainant advised that the method of assessing automobile dealerships in the City of Calgary is to value the land as if vacant and add to the value the depreciated replacement cost of the improvements to determine the total value of the property. As the subject is in the DT2 West Downtown Vacant Land Zone the land is assigned a value of \$150 per square foot ("psf") which for the subject is reduced to \$135psf based on the net influence adjustment of a negative 10%. The vacant land value is reported to be \$18,399,960. The depreciated replacement cost of the improvements based on Marshall Swift is \$789,137. The total assessment value is \$19,180,000. The 2012 Assessment Explanation Supplement Commercial Land and Cost (page 9 to 12 of Exhibit C-1) details the determination of the assessment value.

[17] The subject property is located in the CPR Special Study Area, and is without an Area Structure Plan. The subject is zoned DC53Z95, which allows for a mix of uses compatible with other uses in the downtown core. Under this zoning, the building height is restricted to 12 meters for all buildings with the exception of a hotel use which is allowed a maximum height of 30 meters. Based on this zoning and its restrictions and setbacks, a maximum Floor Area Ratio (FAR) of 2.89 was calculated based on the height restriction of 12 meters. The buildable square footage is 393,777 sq ft.

[18] The Table titled Comparable Sales – Downtown Commercial Land (pages 168

and 169 of Exhibit C-1) presents details of the analysis of 7 sales. The analysis presents the sale price calculated on the basis of site size expressed on a square foot (sq. ft.) basis as well as buildable square foot based on the zoning and FAR at date of the transaction.

[19] A review of the table determined that the transaction dates ranged from June 2007 to July 2010. The sale dated February 2009 was a forced sale. The two sales with a July 2010 transaction date were Foreclosure Sales, which should be excluded as such sales are merely an indication of the marketplace that are often less than true market value. With the foreclosure sales excluded the transaction dates for the 5 comparables are in the period June 2007 to April 2009 and the site sizes range from 0.45 to 1.807 acre compared to the subject of 3.129 acres. The Real Net ICI Land Transaction Summary for each of the comparables is presented in Tabs 10 to 16 of Exhibit C-1.

[20] The Complainant advised that a purchaser will consider what can be built on a site of land and such an approach is an accepted appraisal practice. To obtain this data an analysis is required that considers what is subsequently developed on a site based on the development permit approvals.

[21] The analysis of 12 properties with development permit approvals issued prior to the date of the appraisal are presented in the Table titled Density and Derivation of Comparable Floor Area Ratios on page 171 of Exhibit R-1. The analysis utilized a number of variables in the determination of the FAR for completed properties in the Downtown, specifically the zoning, GLA, site area, Actual FAR, Minimum Allowable FAR and Maximum Allowable FAR. For all zonings the median FAR was 9.92 and the average FAR was 11.38.

[22] An Adjustment Chart (page 173 of Exhibit C-1) was prepared for the 7 sales comparables utilized in the appraisal. The table presented both Economic and Property Characteristic Adjustments for each of the comparables. The adjustments were expressed as a positive or negative percentage. A sales summary reported the range, median and average sale price per square foot for the total sample. The determination of the sale price per buildable square foot was based on the FAR analysis.

[23] Based on the analysis of the unadjusted and adjusted sale prices for the sample of 7 comparables the buildable sale prices range was established. The analysis supports an average range of \$27.00 to \$29.00 per buildable square foot.

[24] The subject property has a buildable square feet of 393,777 based on the site area of 136,255 square feet and a FAR of 2.89. The \$29.00 per buildable square foot was considered appropriate for the subject property which provides an estimate of market value of \$11,420,000.

[25] In summary the Complainant's position is that Direct Comparison Approach is the preferred approach when valuing vacant land provided that there is sufficient and comparable activity. In the case of the subject property there is sufficient comparable activity which supports the estimate of market value of \$11,420,000.

1009D 9AV SW

[26] The Complainant advised that the method of assessing vacant land in the Downtown is to apply the applicable per square foot value. As the subject is in the

DT2 West Downtown Vacant Land Zone the land is assigned a value of \$150 per square foot ("psf") which for the subject is reduced to \$142.50psf based on the net influence adjustment of negative 5%. The vacant land of 35,684 square feet is assessed at \$5,084,970. The 2012 Assessment Explanation Supplement Commercial Land (page 15 of Exhibit C-1) details the determination of the assessment value.

[27] The subject property is located in the CPR Special Study Area, and is without an Area Structure Plan. The subject is zoned DC53Z95, which allows for a mix of uses compatible with other uses in the downtown core. Under this zoning, the building height is restricted to 12 meters for all buildings with the exception of a hotel use which is allowed a maximum height of 30 meters. Based on this zoning and its restrictions and setbacks, a maximum floor area ratio (FAR) of 2.89 was calculated (based on the height restriction of 12 meters). The buildable square footage is 35,719 sq ft.

[28] The Table titled Comparable Sales – Downtown Commercial Land (pages 244 and 245 of Exhibit C-1) presents details of the analysis of 11 sales. The analysis presented the sale price both on the basis of site size expressed on a square foot (sq.ft.) basis as well as buildable sq.ft. based on the zoning and FAR at date of the transaction.

[29] A review of the table determined that the transaction dates ranged from September 2006 to February 2009. The sale dated February 2009 was a forced sale. The site sizes for the 11 comparable sales range from 0.149 to 2.160 acre compared to the subject of 0.82 acres. The Real Net ICI Land Transaction Summary for each of the comparables are presented in Tabs X to Y of Exhibit R-1.

[30] The analysis of 12 properties with development permit approvals issued prior to the date of the appraisal are presented in the Table titled Density and Derivation of Comparable Floor Area Ratios on page 171 of Exhibit R-1. The analysis utilized a number of variables in the determination of the FAR for completed properties in the Downtown, specifically the zoning, GLA, site area, Actual FAR, Minimum Allowable FAR and Maximum Allowable FAR. For all zonings the median FAR was 9.92 and the average FAR was 11.38.

[31] An Adjustment Chart (page 249 of Exhibit C-1) was prepared for the 11 sales comparables utilized in the appraisal. The table presented both Economic and Property Characteristic Adjustments for each of the comparables. The adjustments were expressed as a positive or negative percentage. A sales summary reported the range, median and average sale price per square foot for the total sample. The determination of the sale price per buildable square foot was based on the FAR analysis.

[32] Based on the analysis of the unadjusted and adjusted sale prices for the sample of 11 comparables the buildable sale prices range was established. The analysis supports an average range of \$35.00 to \$37.00 per buildable square foot.

[33] The subject property has a buildable square feet of 103,228 based on the site area of 35,719 square feet and a FAR of 2.89. The \$37.00 per buildable square foot was considered appropriate for the subject property which provides an estimate of market value of \$3,820,000.

[34] As additional evidence the Complainant advised the Board that the subject property at 1111 9AV SW had been listed for sale by the owners with Collier's International off and on from early 2007 to early 2010. Correspondence between the Complainant and Colliers is presented on page 450 of Exhibit C-1. Colliers confirmed to the Complainant that they had advised the owners to expect offers around \$15,000,000, no written offers were ever received on the site, any interest was as redevelopment site and not on an as is basis.

[35] The Complainant advised the Board that the subject properties have been the subject of a number of appeals both to the CARB and MGB. The decisions related to these appeals were included as part of the evidence.

[36] In summary the Complainant argued that the restrictions on the subject as imposed by the DC53Z95 Bylaw have a resulting reduction in market value. The subject is in the only area of downtown Calgary that does not have an Area Structure Plan that gives insight into the future development of the area — thus creating greater uncertainty for subject properties. Further the July 1, 2010 appraisal based on the 'Buildable Square Foot' approach which utilizes a calculation of the potential site developability by multiplying the market value per square foot of developed space by the number of square feet per developable storey using the maximum site coverage to produce a market value for the property. Based on this appraisal the requested assessments of \$11,420,000 and \$3,820,000 are fair and equitable.

Respondent

[37] The Respondent reviewed details on the 2012 Downtown 'Vacant Land' Zones, the application of Downtown Land Influences and the sales data (pages 25-29 and pages 213-275 of Exhibit R-1).

[38] In support of the use of \$150 psf for vacant land in the D2T West Zone the Respondent reviewed the sales summary table on page 237 of Exhibit R-1. The chart presented 5 sales all with 2006 transaction dates. The average sale price was \$275.56 per square foot (psf) which when adjusted to 2012 is \$150.00 psf.

[39] The Respondent challenged the Complainant's use of the calculated buildable sq ft in the appraisal methodology which applied the value to the building square foot on the subject properties. The calculation of the comparable building square foot was not based on the FAR provided for in the Land Use Bylaws which were in effect at the transaction date. The Minimum FAR reported in the Respondent's tables on pages 171 and 248 of Exhibit C-1 are the guaranteed allowable and the Maximum FAR allowable are only achievable if certain requirements are met. In summary the Respondent challenged the use of the maximum allowable FAR in the appraisal method.

[40] In respect of the Complainant's sales comparables utilized for the appraisal of the subject property at 1111 9AV SW the Respondent commented that:

- 923 8 Ave SW (#5 in the table on page 169 Exhibit C-1) was a Court Ordered sale
- 221 – 9 AV SE (#6 in the table on page 169 Exhibit C-1) was a Court Ordered sale and has environmental issues
- 731-739 10 Ave SW (#3 in the table on page 168 Exhibit C-1) was not a comparable because it was a forced sale and located in the Beltline.
- 905 -15 St SW (#1 in the table on page 168 Exhibit C-1) was outside DT2W,

- 905 -15 St SW (#1 in the table on page 168 Exhibit C-1) was outside DT2W, has environmental issues and was resold June 29, 2010.
- 915 -15 St SW (#7 in the table on page 169 Exhibit C-1) was outside DT2W, has environmental issues and was resold June 29, 2010.
- In support of the above the Respondent's evidence included Real Net Transaction Summary and where required independent environmental reports (pages 31-120 of Exhibit R-1).

[41] The subject properties are zoned 53Z95. The Respondent presented on page 148 of Exhibit R-1 a table titled "Sales of Land with 53Z95 Zoning at the time of sale". The map identifying the location of the comparables is presented on page 210 of Exhibit R-1. Details on the provisions of 53Z95 and on each of the transactions are detailed on pages 149 to 210 in Exhibit R-1. The 4 comparables were transactions between June 2006 and July 2009. Only one of the transactions was located within the Downtown Vacant Land Zones and that was at 907 9AV SW which is in D2TE, immediately east of the subject properties. Two of the comparables are in the Beltline and one west of 14 Street SW. The median sale price was reported to be \$233 per square foot. The zoning for 3 of the 4 comparables was changed after the sale. The Respondent argued that the median sale price supports the assessment for the subject properties.

[42] The Respondent advised the Board that the subject properties have been the subject of a number of appeals both to the CARB and MGB. The decisions related to these appeals were included as part of the evidence.

[43] In summary the Respondent argued that the use of a buildable square feet sale price based is not consistent with Land use bylaws and includes 5 comparables which should be either excluded or adjustments applied to reflect issues such as environmental contamination. Further the D2TWest assessment rate is supported by market transactions and the method of assessing automobile dealerships is fair and equitable.

Board Findings

[44] The Complainant argues that the restrictions on the subject properties as imposed by the DC53Z95 Bylaw have a resulting reduction in market value. The July 1, 2010 appraisal reports utilizes a Direct Comparison Approach which is based on the use of the 'Buildable Square Foot' approach which utilizes a calculation of the potential site developability by multiplying the market value per square foot of developed space by the number of square feet per developable storey using the maximum site coverage to produce a market value for the property.

[45] The use of the buildable square foot requires that a number of assumptions be accepted in the determination of the FAR for a project to arrive at the buildable square foot sale price. Further the FAR analysis was not always based on the zoning in place as of the transaction date but at the date when approval was provided for development.

[46] The analysis presented by the Complainant in the appraisal report is based on a buildable square foot evaluation. This calculation is dependent upon an interpretation of the zoning to indicate the floor area ratio (FAR) that is then applied to the respective subject and comparable sales properties to derive the rate per

interpretation of the bylaw in determining the FAR for the subject. The analysis of FAR's for the comparable sales appears to employ a less strict interpretation. Furthermore, the "actual FAR" is typically between the "minimum FAR" and "maximum FAR", but can exceed the "maximum FAR" or be less than the "minimum FAR". The Board understands that in this analysis the "actual FAR" presented comes from the Development Permit while the "minimum FAR" and "maximum FAR" are derived from the land use bylaw. The Board concludes that this analysis demonstrates the "subjectivity" of using a land use bylaw to derive an FAR.

[47] Further the Board finds it difficult to accept the Complainant's comparable sales. The Respondent's analysis of the comparables identified that 5 of the 7 utilized in the appraisal for the subject property at 1111 9 AV SW are weak or should be excluded.

[48] In addition to the quality of the comparables the Board noted that the adjustments which were utilized by the Complainant for both of the subject properties to arrive at the adjusted sale price were subjective and generally unsupportable. For example the table on page 173 of Exhibit C-1 presents the adjustments to the comparables to the subject property at 1111 9 AV SW. In the column titled Market Conditions adjustments for inferior market conditions the adjustments are reported as 7.1% and 1.2% without detail supporting how that precise amount of an adjustment was determined. A further review of the table on page 173 and the adjustment table for the subject property at 1009D 9AV SW on page 248 of Exhibit C-1 determined that there are numerous examples of adjustments without an explanation of how that detail of an adjustment was determined.

[49] The Respondent's analysis of the sales comparables with the zoning 53Z95, the same as the subject properties, was limited to 4 transactions between June 2006 and July 2009. The lack of recent comparables is reflective of the development slowdown in the Downtown core. The median sale price psf of the 4 comparables as of the transaction date and with the 53Z95 zoning in place on the comparable, was reported to be \$233 per square foot. One of the transactions was located at 907 9AV SW which is in Downtown Vacant Land Zone D2TE, which is immediately east of the subject properties. The transaction date for that comparable was September 2008 and the sale price per square foot was \$269. This analysis of comparables with the same zoning as the subject supports the assessment for properties with the 53Z95 zoning.

[50] The Board was presented with considerable details regarding zoning and how zoning might impact the sale price of a property. The Board accepts that zoning, and the restrictions or limitations placed on a property through zoning; can and will affect its value. Generally, such factors should either be addressed via adjustments to similar properties; or properties that are dissimilar should not be used as "comparable" sales in an analysis. Furthermore, there are provisions that allow maximum densities in a zoning to be increased following a process of application to receipt of approvals from planning authority for a municipality.

[51] The Board notes that zoning is not always specific and without a building permit in place which determines the buildable square footage the FAR of a property is open to interpretation and is somewhat subjective.

[52] In summary, the Board found the Complainants approach to a direct sales comparison problematic. The Complainant's determination of the buildable square foot

comparison problematic. The Complainant's determination of the buildable square foot sale price and the adjustments applied to the comparable sales are in the view of the Board, based on subjective elements and assumptions which as much as possible should be excluded in determining value of the land. ***T.Eaton Company Ltd. v Alberta*** (Assessment Appeal Board), 1995 ABCA 361, paragraph 29 states:

Subjective elements of value associated with the concept of special value to a particular person and speculative factors such as possible changes in permitted use are to be excluded in arriving at the value of land for assessment purposes: Re Bramalea Ltd and Assessor for Area 9 (Vancouver); T. Eaton Co., Intervenor(1990), 76 D.L.R. (4th)53 (B.C.C.A.)

Board Decision

[53] Based on the evidence presented the Board the assessment of the subject properties is confirmed at:

Roll Number:	067232405	067232306
Location:	1111 9 AV SW	1009D 9 AV SW
Assessment:	\$19,180,000	\$5,080,000

DATED AT THE CITY OF CALGARY THIS 4 DAY OF October 2012.



Earl K. Williams
Presiding Officer

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

NO.	ITEM
1. R1	Respondent Disclosure
2. R2	Respondent Disclosure

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

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	OTHER	SPECIAL PROPERTY	COMPARISON APPROACH	LAND VALUE