

**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:

Eau Claire Market Inc.
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Mowbrey, PRESIDING OFFICER
D. Morice, MEMBER
R. Roy, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER	LOCATION ADDRESS	HEARING NUMBER	ASSESSMENT
068244706	342 2 Avenue SW	66453	\$14,290,000
068244805	382 2 Avenue SW	66455	\$ 3,360,000

The complaint was heard on July 30, 2012, in Boardroom 10 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Hartley

Appeared on behalf of the Respondent:

- H. Neumann

Board's Decision in Respect of Procedural or Jurisdictional Matters

[1] At the beginning of the hearing the Complainant indicated that there were two properties to be heard and that the Complainant had one evidence package for the two properties. The Respondent stated that an evidence package was entered for each property. The Decision was to carry forward the Complainant's evidence to each of the properties being heard.

Property Description

[2] The subject properties are two surface parking lots in the Eau Claire community of Calgary and part of the Eau Claire Festival Market. The parking lots are individually titled and individually assessed as land only. Parking lot 1 is located at 342 2 Avenue SW, is 55,244 sq ft and assessed at \$14,290,000, parking lot 2 is located at 382 2 Avenue SW, is 13,013 sq ft and is assessed at \$3,360,000.

Issues

[3] The issue stated by the Complainant is based on equity.

1. Is the 2012 Assessment correct?

(a) Is the assessment reflective of the 2009 sale of the subject?

(b) Has the existence of potential environmental concerns been considered in the assessment?

Complainant's Requested Assessment

[4] The Complainant's requested assessment for the two properties are:

Property	Roll #	Assessment
342 2 Avenue SW	068244706	\$2,410,000
382 2 Avenue SW	068244805	\$ 560,000

Complainant's Position

[5] The Complainant's position was the Eau Claire Market, constructed in 1994, was a failed attempt at an urban market and existed on a restrictive land lease with the City of Calgary. In February 2009, the City of Calgary sold all of the parcels of land, 7.27 acres, at Eau Claire Market to the current ownership group for \$13,500,000 with the requirement of the purchaser to re-zone the property and guarantee comprehensive mixed use redevelopment. Failure to redevelop the land by a predetermined date would result in the property being returned to the City of Calgary at the option of the City.

[6] The Complainant explained the two subject parcels are a part of the 2009 sale of the Eau Claire Market lands and the assigned values by the Complainant for the subject properties are based on the sale price of \$13,500,000 or \$43.71 per sq ft.

Location	Size	Value
342 2 Avenue SW	55,244 sq ft	\$2,414,824
382 2 Avenue SW	13,013 sq ft	\$ 568,824

[7] The Complainant stated that it must be recognized that the Eau Claire Market lands are contaminated as it was the former City Bus Barn site and various contaminants had been allowed to enter the soil and noted that the City of Calgary accepted responsibility and entered into a remediation agreement with the purchaser as part of the transaction. The Complainant provided the 3rd party transaction report for the sale and the Land Titles transfer of land documents with various caveats attached to the title, including the transfer of leasehold title and the development agreement.

[8] The Complainant provided a 3rd party transaction report for the transfer of the Greyhound site, directly east of the subject, which reported it transferred at \$67 per sq ft and had a multi-use complex planned for the site.

Respondent's Position

[9] The Respondent's position was the subject properties were assessed by the mass appraisal methodology using typical market data and the subject properties were assessed using the sales comparison approach to value and specifically applied a land value rate to the parcel sizes.

[10] The Respondent stated that the 2009 sale price of \$13,500,000 for the subject lands does not represent market value indicating the definition of market value in the Municipal Government Act "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". The Respondent emphasized the sale of the subject lands was not an open market sale.

[11] The Respondent presented the 3rd party transaction summary which indicated the 2009 sale of the subject lands for \$13,500,000 and the general remarks indicated that it was understood that the transfer of the property was a result of a direct deal between the vendor and the purchaser and real estate brokers were not used.

[12] The Respondent provided the Land Titles transfer of documents for the sale of the subject lands, and pointed out that the vendor was the City of Calgary and the purchaser was Eau Claire Market Inc. and was an estate in fee simple subject to the registered encumbrances, liens and interests in the lands.

[13] The Respondent explained the Eau Claire Market Inc. had purchased a leasehold interest and title in the subject properties July 2004 for \$28,000,000, which expires December 2074, and remains on title. The Respondent noted that with 65 years that remain on the leasehold interest, it would indicate the purchaser held a significant portion of the fee simple interest in the properties. The Respondent referred to the definition of fee simple stated in the Appraisal of Real Estate Second Canadian Edition as "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the government powers of taxation, expropriation, police power, and escheat".

[14] The Respondent noted the City of Calgary maintains a purchaser's interest in the subject properties which was registered on title in the form of a caveat October 2009, which states if the subject lands are not redeveloped within a predetermined time the City has the option to take back the properties. The Respondent expressed that a reasonable person would pay less for a

property that the vendor could take back within a certain time frame if conditions are not met. The Respondent stated the sale of the subject lands was not an open market sale that represents the full fee simple interest in the property and was a sale with atypical conditions attached to it and therefore not a good indication of market value.

[15] The Respondent indicated there may be some contamination of the lands but there is no effect on value and referred to a lack of result from a search of Alberta Environment ESAR (Environmental Site Assessment Repository) relating to the subject lands but that recent documents clearly speak to a lack of contamination in the subject and surrounding lands.

[16] The Respondent stated the Eau Claire Market was built in 1990 with an underground parkade and that excavation of soil is usually not permitted if the lands are contaminated which suggests there was no contamination to limit development. The Respondent informed the Board that the lands to the east had recently been developed with a condominium building and underground parkade which indicates there was no contamination.

[17] The Respondent indicated the assessed land rate for the subject properties was \$225 per sq ft and supported with comparable sales of properties in the surrounding areas and indicated that DT2 East was the most similar:

Zone	Sales		2012 Assessed Rate
DT1	Average	\$650.15	\$325
	Median	\$623.18	
DT2 East	Average	\$377.27	\$225
	Median	\$362.98	
DT2 West	Average	\$275.56	\$150
	Median	\$246.23	
DT3	Average	\$166.90	\$120
	Median	\$172.94	
Muni	Average	\$214.79	\$215
	Median	\$214.79	
DT9 CHN	Average	\$331.96	\$165
	Median	\$331.96	

Decision

[18] The Decision of the Board is to confirm the 2012 Assessments for the subject properties.

Property Address	Roll #	Assessment
342 2 Avenue SW	068244706	\$14,290,000
382 2 Avenue SW	068244805	\$ 3,360,000

Reasons

[19] The Board reviewed and carefully considered the evidence of the Complainant and Respondent.

[20] In regard to the issue; is the assessment reflective of the 2009 sale of the subject, the Board reviewed the definition of market value and fee simple and concluded the 2009 sale of the Eau Claire Market lands transferred with many atypical encumbrances which included a caveat regarding the Purchaser's Interest namely a restrictive covenant running with or capable of being annexed to land, pursuant to a Remedial Action Agreement dated November 28, 2008.

[21] The Board finds the sale is not an open market sale as there is no evidence provided to indicate the lands were offered to the public and was reported in a 3rd party transaction summary that the sale was a deal between the vendor and the purchaser.

[22] The Board finds the 2009 transfer of the subject lands was not a fee simple estate as the title to the subject lands had numerous encumbrances, caveats and liens, and is atypical to a fee simple estate. The Board noted the Remedial Action Agreement referred to in a caveat on title stated that Eau Claire Market Inc leased lands from the City of Calgary for a term of 75 years, expiring on Dec 31, 2074. The Remedial Action Agreement details the roles and responsibilities of the City of Calgary and Eau Claire market Inc in the redevelopment of the lands and the remedial action to be taken.

[23] The Board placed greatest weight on the Respondents direct sales comparison approach to value and the sales comparables provided for the areas surrounding the subject properties, and accepts that the DT2 East zone is the most comparable to the subject with an assessed rate of \$225 per sq which supports the assessed rate for the subject properties of \$225 per sq ft.

[24] In regard to the issue has the existence of potential environmental concerns been considered in the assessment, the Board placed greatest weight on the Respondent's evidence of environmental reports for redevelopment of an adjacent property. The Board noted the lack of evidence provided by the Complainant.

[25] The Board finds that the existence of contamination of the subject lands has not been considered in the assessment and notes there was a remedial action agreement put in place at the time of purchase of the lands which outlines the roles and responsibilities of the vendor and purchaser in the various aspects of the land development. The Board finds the assessment is correct in not considering contamination.

[26] The Board noted the 3rd party transaction summary was presented by the Complainant for the sale of the Greyhound lands, which the Complainant indicated was located close to the subject lands, was similar in size, similar in contamination and sold in September 2005 for a sale price of \$16,000,000 or \$67 per sq ft. The Board finds the sale was dated, and there was no supporting documentation of the sale provided, therefore the Board was unable to consider the sale.

[27] The Board placed greatest weight on the Respondent's evidence.

[28] The Board finds the 2012 assessments for the subject properties correct, fair and equitable.

The assessments are **CONFIRMED**:

Property Address	Roll #	Assessment
342 2 Avenue SW	068244706	\$14,290,000
382 2 Avenue SW	068244805	\$ 3,360,000

DATED AT THE CITY OF CALGARY THIS 18 DAY OF Sept. , 2012.



Patricia Mowbrey
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant's Submission – Part 1 (217 pages)
2.	Complainant's Submission – Part 2 (114 pages)
3. R1	Respondent's Submission (277 pages) (1 submission for each roll number)

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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Sales Approach	Equity Comparables Contamination