

**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:

***Shepard Development Corporation
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
B. Kodak, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	201492204
LOCATION ADDRESS:	5155 130 Ave SE
HEARING NUMBER:	63061
ASSESSMENT:	\$14,820,000

The complaint was heard on July 14, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- B. Neeson

Appeared on behalf of the Respondent:

- I. McDermott

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

The subject property is a 261,356 sq.ft. (square foot) parcel of vacant commercial land, assessed at a rate of \$25.50 per sq.ft. An improvement assessment in the amount of \$8,156,175 has also been attributed to the subject property based on the partial value of a development permit.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount.

The Complainant set out 13 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$10,716,000, however at the hearing the Complainant withdrew all grounds with the exception of #7, #12 and # 13, and led evidence and argument only in relation to the following issues:

Issue 1: The assessment of the subject property includes a value attributable to an improvement; the parcel is vacant.

Issue 2: The 41,622 sq.ft. portion of the subject property used as a road to neighbouring parcels is exempt from assessment pursuant to s.298(1)(i) of the *Municipal Government Act*.

Issue 3: If the roadway is found not to be exempt from assessment, then the shape of the subject property warrants an influence adjustment in the amount of 25%.

Complainant's Requested Value:

At the hearing the Complainant requested the assessment be revised to \$5,599,000.

Board's Decision in Respect of the Issues:

Issue 1: The assessment of the subject property includes a value attributable to an improvement; the parcel is vacant.

The Complainant argued that the assessment of the subject property erroneously includes an improvement value of \$8,156,175 that is applicable to an adjoining parcel.

The Respondent conceded that an improvement assessment was erroneously attributed to the subject property, and recommended that the assessment be reduced to the value of the land at \$6,665,899, truncated to \$6,660,000.

Decision: Issue 1

The Board accepts the Respondent's recommendation to remove the improvement assessment of \$8,156,175 from the total assessment.

Issue 2: The 41,622 sq.ft. portion of the subject property used as a road to neighbouring parcels is exempt from assessment pursuant to s.298(1)(i) of the *Municipal Government Act*.

The Complainant argued that a portion of the subject property is a road that is used to access neighbouring properties, and pursuant to s.298(1)(i) of the *Municipal Government Act*, this area of the parcel is exempt from assessment. In support of the argument, the Complainant provided site maps to illustrate the areas referenced, and a copy of a caveat registered on the current title [C1, pp.24-46].

In cross examination the Complainant conceded that the caveat is not in respect of the roadway in question, but rather, prohibits direct vehicular access to and from 52 St SE.

The Respondent argued that there was no evidence submitted by the Complainant to indicate that the area of the parcel referred to as a road was anything other than privately held lands which are not exempt pursuant to s.298 of the Act.

Decision: Issue 2

The Board finds that the 41,622 sq.ft. portion of the subject property used as a roadway to neighbouring parcels is not exempt from assessment pursuant to s.298(1)(i) of the *Municipal Government Act*.

The Board referred to the following sections of the Act:

298(1) *No assessment is to be prepared for the following property:*

- (i) *roads, but not including a road right of way that is held under a lease, license or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than as a road;*

1(1) *In this Act,*

(z) *“road” means land*

(i) *shown as a road on a plan of survey that has been filed or registered in a land titles office, or*

(ii) *used as a public road*

The Complainant's plan of subdivision clearly sets out the parcel boundaries and the area in question is included within those boundaries and not shown as a road. Although it could be argued that as the public currently uses the area as a road to access neighbouring parcels it meets the definition in s.1(1)(z)(ii), there is no evidence to indicate that the subject property is restricted to that use in any way.

Issue 3: If the roadway is found not to be exempt from assessment, then the shape of the subject property warrants an influence adjustment in the amount of - 25%.

The Complainant indicated that the assessor typically applies a negative 25% adjustment to reflect the lower value of irregularly shaped parcels, and submitted the Respondent's schedule of influence adjustments to verify the - 25% factor [C1, p.50]. The Complainant argued that a - 25% adjustment is warranted in this instance to reflect a “panhandle” shaped utility corridor that forms part of the subject property.

Further, the Complainant presented a 2010 Assessment Review Board decision, CARB 2258/2010-P, relating to the subject property and submitted that the Board had recognized a loss in value due to the shape of the property in the prior year [C1, pp.51-55].

In cross examination the Complainant conceded that the Board in CARB 2258/2010-P awarded a 5% adjustment to reflect the diminished value of the property due to shape, and not the 25% adjustment that the Complainant was currently seeking.

The Respondent argued that the - 25% adjustment was reserved for instances when potential development of a parcel is affected, and that a - 25% adjustment is not warranted in the valuation of the subject property.

Decision: Issue 3

The Board finds that the irregular shape of the subject property is not reflected in the property assessment.

The Board concurs with the conclusion of the Board in CARB 2258/2010-P: “it is clear on the face of it that the parcel is irregularly shaped to a significant degree over, approximately, 5% of its area”.

Although there was no evidence of how this area may be of benefit to the site with respect to density allocation on the remainder of the parcel, the Board finds the shape of the property is not typical for development and therefore cannot be valued as a typical parcel without some adjustment. However, the Board is not prepared to restrict itself to an adjustment of - 25% as

requested by the Complainant, and set out in the Respondent's schedule of adjustments to reflect a condition that affects approximately 5% of the land area.

The Board finds the approach relied upon by the Board in CARB 2258/2010-P to be a reasonable approach to reflect the unique characteristics of the subject property, and applies a negative 5% adjustment to the calculated base land assessment.

Board's Decision:

The improvement assessment is reduced from:	\$ 8,156,175	to:	\$0.
The land assessment is reduced from:	\$ 6,665,899	to:	\$6,348,000

The assessment is revised from:	\$14,820,000	to:	\$6,348,000.
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DATED AT THE CITY OF CALGARY THIS 19 DAY OF AUGUST, 2011.



J. Kryse,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission

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.*