

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:

Concord Pacific Alberta Properties Inc. & BCIMC Realty Corporation (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, Mr. J. Fleming
Board Member Mr. D. Morice
Board Member Mr. J. Joseph***

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

Owner	Address	Roll Number	Hearing Number	Assessment
Concord Pacific Alberta Properties Inc.	700 1 st Ave SW	067234203	66352	\$14,310,000
BCIMC Realty Corporation	601 Eau Claire Ave. SW	067234708	67916	\$18,760,000
BCIMC Realty Corporation	660 2 nd Ave. SW	067234807	67918	\$15,500,000
BCIMC Realty Corporation	501 Eau Claire Ave. SW	067234906	67920	\$14,010,000
BCIMC Realty Corporation	520 2 nd Ave. SW.	067235002	67923	\$11,790,000

This complaint was heard on 9th day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4th 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Mr. J. Weber*

Appeared on behalf of the Respondent:

- *Mr. R. Fegan*

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

- [1] There were no procedural or preliminary matters.
- [2] There were no objections to the composition of the panel.

Property Description:

- [3] The properties are all parcels of undeveloped land in the Eau Claire area and are mainly used for parking. The sites total 317,855 square feet sq. ft. (as detailed in the table below) and have a land use designation of Direct Control (DC). Four of the sites are contiguous and form complete city blocks between 2nd Ave. SW and Eau Claire Ave. SW.(south and north), and from 4th St. SW to 6th St. SW. (east and west). The fifth site is kitty corner to the north west corner of the west block and extends to the river. This site (700 1st Ave. SW), contains 96,979 sq. ft., but 33,382 sq. ft. of the site is on a separate roll number (and is exempt from taxation) as it provides access and egress to the new pedestrian bridge crossing the Bow River. The properties are valued on the Direct Sales Comparison method (DSC).

Address	Site Area Square feet	Calculated FAR
700 1 st Ave SW	63,597	3.5
601 Eau Claire Ave. SW	79,426	4.0
660 2 nd Ave. SW	65,612	4.0
501 Eau Claire Ave. SW	59,342	4.0
520 2 nd Ave. SW.	49,909	4.0

- [4] The table above also includes the "base" FAR calculations, provided by the Complainant, for each of the subjects. The City has restricted the development potential of the subject properties through the land use controls of properties located close to the river in order to limit the impact of shading and to promote a more pleasant streetscape and promote amenities closer to the river.

Issues:

- [5] Should the property value be based on its development potential as denoted by its Floor Area Ratio (FAR)?
- [6] Should the property receive an adjustment for DC land use designation?

Complainant's Requested Value:

- [7] The Complainant requested assessments which reflected the appropriate value based on the Board's decision on the issues and as outlined in the following table.

Address	Equity (Buildable)	Market (Buildable)	2011 Value Time Adjusted	-20% for DC development limitations	Comparable Analysis (Buildable)
700 1 st Ave SW	\$4,894,582	\$7,119,392	\$11,320,000	\$11,448,000	\$7,190,000
601 Eau Claire Ave. SW	\$6,989,488	\$10,166,528	\$14,140,000	\$15,008,000	\$10,270,000
660 2 nd Ave. SW	\$5,773,856	\$8,398,336	\$11,680,000	\$12,400,000	\$ 8,480,000
501 Eau Claire Ave. SW	\$5,222,096	\$7,595,776	\$10,570,000	\$11,208,000	\$ 7,670,000
520 2 nd Ave. SW.	\$ 4,391,992	\$ 6,388,352	\$ 8,890,000	\$ 9,432,000	\$ 6,450,000

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

[8] The Complaint is denied and the assessment is confirmed as set out in the following table.

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Board's Decision:

[9] The Complainant provided five suggested values each of which were based on a different and in some cases similar analysis as set out in the table below.

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[10] The principal argument from the Complainant centred on the assertion that the best "fit" for the evaluation of sales prices for the subject properties was based on the buildable potential of the site as established primarily on the FAR.

[11] Three of the five valuation requests (Equity (Buildable), Market (Buildable), Comparable Analysis (Buildable)) relied on this premise to frame their argument. To

support this concept they supplied information from Appraisal theory (Ex. C1, pgs 52 – 54) that there was a strong linear relationship between sales price and FAR such that a property selling price should correspond to the developable potential for the site.

- [12] The Complainant outlined their case for each of the five valuation methods as set out below:

Equity (Buildable) (Ex. C1, pg. 56)

- [13] The Complainant provided 2012 Assessments for 11 properties (which were also used in the Market analysis) located throughout the downtown zone. The assessment per sq. ft. ranged from \$113.43 to \$308.71 with an average of \$187.03 and a median of \$168.37. The Complainant also calculated the assessment per buildable sq. ft. for these properties which yielded a range of \$11.43 to \$29.73 and had an average of \$21.30 and a median of \$22.14. They argued that the Buildable analysis produced a tighter range and therefore a better fit to explain the values than the basic assessment per sq. ft. and supported a request for the properties based on the buildable median value of \$22.00 per sq. ft. When this base rate was applied to the buildable sq. footage of the subjects, it resulted in the requests outlined in the column "Equity (Buildable)" in the table above.

Market (Buildable) (Ex. C1, pg 55)

- [14] The Complainant provided sales details 11 properties (the same 11 properties used in the equity analysis above) located throughout the downtown zone. The sales prices per sq. ft. ranged from \$153.85 – \$630.01 with an average of \$299.67 and a median of \$243.97. The Complainant also calculated the assessment per buildable sq. ft. for these properties which yielded a range of \$21.98 – \$54.82 and had an average of \$31.17 and a median of \$31.58. They argued that the Buildable analysis produced a tighter range and therefore a better fit to explain the values than the basic assessment per sq. ft. and supported a request for the properties based on the buildable median value of \$32.00 per sq. ft. When this base rate was applied to the buildable sq. footage of the subjects, it resulted in the requests outlined in the column "Market (Buildable)" in the table above. It should be noted that there was no mention of the sales data being time adjusted.

2011 Value Time Adjusted (Ex. C1, pg 75)

- [15] The Complainant provided a copy of the 2011 CARB decision on all of these properties with the exception of 700 1st Ave. SW. (Ex. C1, pgs 57 – 64). This decision had reduced the base rate on the properties from \$275.00 to \$215.00 per sq. ft. which when adjusted for influences (corner lot) produced a rate for four of the subjects under complaint of \$225.00 per sq. ft.
- [16] The Complainant noted that the base rate for 2011 was calculated (in part) from the sales price of 700 1st Ave. SW for which a time adjustment had been calculated to produce the \$215.00 per sq. ft. noted in the previous paragraph. The Complainant's introduced a chart (Ex. C1, pg. 75) which incorporated all of the City assessed rates for downtown properties in the various zones from 2008 to 2012. Using this chart, the Complainant calculated a value difference for each of the downtown zones. It was noted that the Eau Claire zone (the zone of the subjects) was not established as a separate zone until 2010 when it was segregated from zone DT1 as is reflected by the values in

the chart. The Complainant selected the "lowest" value difference of 35%, and applied this reduction to the \$274.06 per sq. ft. sale of 700 1st Ave. SW to produce an adjusted value of \$178.14 per sq. ft. which they applied to the area of the subject sites to produce the values outlined in the column "2011 Value, Time Adjusted" The Complainant argued that this too produced a series of alternative acceptable values.

20% Land Use Adjustment (Ex. C1, pg. 65 – 70)

- [17] In years prior to 2012, the City had included a -20% Land Use Restriction (DC) adjustment in their Downtown Influence Chart. The Complainant noted that according to the City, the Land Use Restriction was designed for a property with a caveat, covenant or Direct Control By Law which inhibits its development in a way that similar properties do not experience. The Complainant indicated that the City said this was not applied in 2012, but the Complainant said that the subject properties certainly continued to meet this requirement of inhibited development which should qualify for some adjustment. The application of this adjustment resulted in the values noted in the "20% Land Use Adjustment column above which the Complainant said produced another valid acceptable alternative valuation.

Comparable Analysis (Ex. C1, pg. 76 – 77)

- [18] This method was based on the assessment of a neighbouring property to the subjects. This property (600 3rd Ave. SW) was in the same neighbourhood a couple of blocks west (although located in zone DT2E in the City classification as opposed to the Eau Claire zone for the subjects). The complainant introduced the "Property Assessment Summary Report" for the property at 600 3rd Ave. SW showing a 2012 assessment of \$20,660,000. They represented that the property had an FAR of 8.0 times site area which they calculated produced an Assessment per Buildable sq. ft. of \$32.24. They highlighted that the land use for this property permitted office uses, and suggested that even with the greater FAR and potential office uses, applying the Assessment per Buildable rate of \$32.34 per sq. ft. to the subject properties resulted in a reduction as noted in the column "Comparable Analysis Buildable" in the above chart.
- [19] They concluded noting that any of the proposed valuations would be acceptable, and encouraged the CARB to carefully consider their analyses.
- [20] The Respondent indicated that their main argument concerning the FAR analysis is that it is highly prone to error, it is difficult to apply especially, and for instance, when multiple FAR options may apply based on use. In summary they felt it was very difficult to correctly analyse and apply the proper FAR, and so the process was inherently unreliable. In support, they put forward their analysis of the Complainant's information. In one case they showed that based on their calculations of minimum and maximum FAR's for the subjects the assessment for the properties was at the low to mid end of the range (Ex. R1, pg. 26). In a second set of their calculations, they suggested that their assessment calculations were in the middle between the median and the average calculated by the Complainant. The City claimed that both of these analyses showed that their assessments were reasonable.
- [21] Further, they prepared an analysis of the Complainant's sales (Ex. R1, pg. 25) which

demonstrated the impact of changes in the Land Use Designations (LUD) between the date of sale to the current situation. This analysis they said, showed the problems with a FAR buildable analysis based on changes in land use and FARs. They also challenged two of the Complainant's sales; one was the sale of a lane (524 4 St. SW) and the other was a court ordered transfer (923 8th Ave. SW). The Respondent showed that these increased the medians and averages in a meaningful way (Ex. R1, pg. 34).

[22] The Respondent advised that there were really no current sales of vacant land in the subjects' zone; however they did provide sales in the DT1, DT2E and the Muni zone in support of their downtown land rate calculations.

[23] The Respondent indicated that the Land Use Restriction was not applied in 2012, and further, they intimated that with the lack of sales in the Eau Clair zone, they carried forward the CARB's decision on value from the previous year at \$225.00 per sq. ft.

[24] In their rebuttal, the Complainant highlighted errors and seeming contradictions in the testimony of the Respondent. In particular, the Complainant highlighted there were no sales in the area of the subjects' and the fact that in their opinion, the Respondent had argued that FAR's were important in analysing downtown sales.

[25] The CARB considered all of the evidence and argument. With respect to the FAR based vacant land valuation put forward for three of the Complainant's valuations, the CARB notes that while the theory has some merit, the CARB concludes that there must be similarity in the land use for properties in order to apply a "common" number. It makes sense to the CARB that offices may sell at one level and residential or multi use might sell for a different number. In its experience, the CARB is prepared to accept that commercial office land does sell based on its development potential, but without a "focused" evaluation of residentially zoned properties (which is the zoning for the subjects), the CARB is not prepared to accept that there is "one" number for all the downtown zones. There was no evidence isolating and/or supporting a distinctly residential sales number. The CARB also noted that the land sales used by the Complainant were located all over downtown in a variety of the downtown zones established by the City for assessment purposes, and had assessed values ranging from \$120.00 per sq. ft. to \$325.00 per sq. ft. This led the CARB to conclude that the Complainant's land sales were not similar enough to provide a common base of comparison. The Complainant's Rebuttal attempted to address some of these issues, but the CARB concluded that the Respondent had accepted the general concept of the FAR, but saw no relevance because of the propensity for errors in the establishment of the "actual" FAR, and its application for different properties.

[26] In addition, the CARB was persuaded by the Respondent's argument that the FAR calculation can be unreliable, particularly in the case of four of the subjects which the Respondent represents have increased their FAR potential to 6.0.

[27] This brings us to consideration of the Complainant's sales and equity evidence, (both used the same properties). Two of these properties were excluded by the City as noted above. The CARB agrees with the City's reason for removal as one was a lane (with limited use or marketability, and the other was a court ordered sale which limits the applicability as a "market" sale. The CARB also notes that none of the sales are located in the same zone as the subjects. Four of the sites are less than 10,000 sq. ft. which is

ft. which is very much smaller than the subjects, and in fact only one of the sales is in the same general size range (1110 9th Ave. SW). Finally, five of the sites have a CM-2 LUD which has a much wider range of uses including offices and FARS that can go up to 20 times site areas. The CARB is left to wonder why the sale of 700 1st Ave. SW (one of the subjects under complaint) was not included in comparable sales given that the property sold later than other included properties and was in the same market zone. The CARB also noted that both parties appeared to recognize the diversity of the downtown by making use of the City's downtown vacant land rates in their analysis.

[28] For these reasons, the CARB puts less weight on the FAR influenced analysis principally because the properties are dissimilar, and collaterally because the Complainant did not demonstrate support for a residential value calculation.

[29] With respect to the Comparable Analysis to 600 3rd Ave. SW, arguments, the CARB reviewed the assessment and determined that the assessment was based on the City's method of valuation: that is the assessed base seems to have been \$225.00 per sq. ft. (which is consistent with the City's 2012 Vacant Land Rates for that location). The CARB then added +15% to reflect 5% corner lot and +10% transition allowance adjustments. All of these figures totalled \$258.00 (rounded) the actual assessment per sq. ft. of the property (see Ex. C1, pg 76 for the Assessment Summary Report).

[30] Based on the method of calculation, the CARB concludes that the assessment was not related to the FAR attributable to the site but rather the City's assessment model based on a base rate plus or minus adjustments. Accordingly, calculations purported to reflect the FAR on the site are not valid, because the FAR was not shown to be the basis for the assessment, and in this case, the assessment was prepared using the same method as was used to prepare the assessment for the properties under complaint. Accordingly, the CARB puts little weight on this argument.

[31] So, in the final analysis the CARB rejects all of the methods put forward by the Complainant for the reasons summarized below:

[32] For those valuations using the FAR valuation argument (Equity (Buildable), Market (Buildable) and Comparable Analysis (Buildable)), the CARB concluded that the proposed comparables were too dissimilar as to use, location, and development potential and so could not provide a dependable number on which to base a valuation for primarily residential property.

[33] For the time adjusted sales value, the CARB concludes that while the value difference does appear to reflect a drop in values from 2011 to 2012 (Ex. C1, pg. 75), the CARB notes that, in fact, the values for the Eau Claire area for 2011 were \$225.00 per sq. ft. (based on the 2011 CARB decision), and there was insufficient evidence produced to show that the Eau Claire land values dropped further from 2011 to 2012. Particularly because of the lack of sales in the subject area, the limited amount of vacant land in Eau Claire (with the exception of the subject properties) the CARB is inclined to accept the comment from the Respondent that they simply carried forward the 2011 CARB decision rates for the 2012 valuation.

[34] Finally, for the 20% land use reduction, the CARB notes that this adjustment was not included in the "2012 DT Land Influence" table (Ex. R1, pg.64). The Complainant's

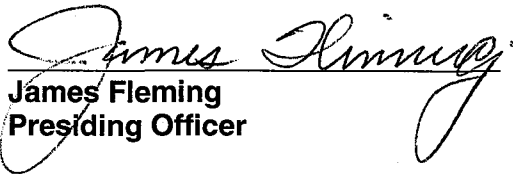
evidence shows that it was allowed in 2011. No explanation was given by either party for the discontinuance of this adjustment. The CARB is left to surmise that the adjustment is "leftover" from when the Eau Clair lands were considered part of DT1 which had greater development potential and a higher value. This adjustment would serve to reduce the price to reflect the difference in use and potential. Once the Eau Clair area was segregated on its own with much lower values, this adjustment was no longer necessary because it was imbedded in the land value. The fact that it was allowed in 2011 was most likely an oversight not having recognized the Eau Clair area which was established as a separate zone in 2010.

[35] In any event, the -20% adjustment was not awarded in 2012, and the CARB finds no compelling argument to implement it again for the subject properties.

[36] Accordingly, for the reasons above, the assessments are confirmed for all properties under complaint as noted above.

[37] As part of its detailed review of the evidence, the CARB noted that one of the properties (520 2nd Ave. SW.) appears to be in the transition zone, and has not received a transition zone adjustment. Perhaps this matter should be reviewed by the parties and any changes made prior to the next assessment.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF November 2012.


James Fleming
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	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 Official Use Only:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Cost/Sales Approach	Land Value