

**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:

Brookfield Properties (CHS) Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. McEwen, PRESIDING OFFICER

B. Jerchel, MEMBER

R. Deschaine, 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: 201412756

LOCATION ADDRESS: 605 1 ST SW

HEARING NUMBER: 64667

ASSESSMENT: \$24,400,000

This complaint was heard on 20th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- D. Chabot
- G. Kerslake

Appeared on behalf of the Respondent:

- R. Fagen

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

The Respondent asked to submit a rebuttal to the Complainant's rebuttal in order to address evidence within the Complainant's rebuttal that allegedly had not been properly disclosed. The Complainant stated that if new rebuttal evidence was accepted by the Board, a mandatory seven day review period must be granted in order for the Complainant to prepare an adequate response.

The Board considered the matter and decided that, in the interests of Natural Justice, it was prepared to consider new evidence from both sides. The Complainant, however, objected to any finding that the evidence provided in the Complainant's rebuttal was new without it being presented and again, requested a seven day postponement in order to review the Respondent's rebuttal. The Respondent stated that the evidence within the Respondent's rebuttal was minimal, some photographs and sales information on two properties. The Respondent asked if seven days was really necessary and suggested the request to enter the undisclosed rebuttal would be withdrawn if it meant moving forward with the hearing.

The Respondent agreed to withdraw the undisclosed rebuttal evidence and the Board stated that any new evidence before it from either party would be weighed accordingly.

Property Description:

The subject property is The Calgary Herald Building, a 76,642 improved parcel located in the DT2 district of downtown Calgary. The site is improved with four contiguous buildings and a small parking lot, consolidated under a single roll number. The subject has been assessed as vacant land and receives a negative influence for the proximity of the Light Rail Transit (LRT) system.

Issues:

Is the subject property assessed higher than market value and is the subject assessment, therefore, inequitable to comparable properties? Specifically;

1. Should the subject property be assessed using the Income Approach to Value?

Complainant's Requested Value:

\$18,990,000

Board's Findings and Reasons in Respect of Each Matter or Issue:

The subject property was assessed on highest and best use at an assessed rate of \$375 per square foot. The Complainant argued that highest and best was not appropriate in this case as the subject property was both improved and a going concern; four buildings, actively marketed and with new leases in place. Further, the owner of the property had no plans to redevelop the site and there were no development permit applications before the city. The Complainant argued that assessment of highest and best use as though vacant land required that four criteria be met. That is, the highest and best use must be:

- Physically possible
- Legally permissible
- Financially feasible
- Maximally productive

The Complainant then argued that highest and best use implied redevelopment and, therefore, that the subject assessment was in error as redevelopment of the subject site was not financially feasible under current market conditions. The Complainant described the current downtown office space as oversupplied and provided as evidence a Calgary Herald article dated June 17, 2010 that referred to a Cushman & Wakefield report estimating a central office vacancy rate in Calgary of 20% in 2012. Further, the Complainant provided an overhead map of the downtown core identifying all of the vacant land parking lot sites within the core. The Complainant argued that many of the parking lot sites were preferable development sites to the subject because, unlike the subject, they required little demolition and were not encumbered by the LRT. The Complainant argued that it would take years for office demand to catch up with the current supply of office space and, for this reason, with the exception of the Bow and 8th Avenue Place, there was no new office construction either underway or anticipated within the core. The Complainant described both of the aforementioned projects as ongoing and resulting from decisions made well before the economic downturn. The Complainant supported the argument that the subject property was an ongoing concern by providing the subject rent roll dated January 31, 2010 which indicated some current leasing activity and existing leases extending to 2015. The Complainant argued that the rent roll supported the position that redevelopment of the subject site was not imminent and not foreseeable under current economic conditions.

The Complainant argued that the subject property should be assessed using the Income Approach to Value as a DT1 C-class office building. The Complainant provided Income Approach Valuations and photographs of comparable C-class buildings in the core to support the suggested classification of the subject property. Using the rent, vacancy and operating cost inputs from these comparables, the Complainant provided an Income Approach Valuation for the subject property which supported the requested assessment of \$18,990,000.

The Respondent argued that the subject property met the four criteria of highest and best use described by the Complainant. The requirement that redevelopment of the site be financially feasible was met because a new development would generate higher income and, therefore, support the invested capital. The Respondent described the subject as a preferred development

site due to its size and central location. The Respondent further argued that the vacant parking lot sites identified by the Complainant were typically small and located on the periphery of the downtown core. The Respondent described the Bow and 8th Avenue Place projects as new and referred to recently announced second phases of these developments as evidence that the demand and supply of core office space in Calgary was in balance. The Respondent provided four sales of property assessed as vacant land to support the DT1 vacant land rate of \$375. The sales, from 2007 and 2008, indicate a median selling price of \$567 per square foot.

In rebuttal, the Complainant argued that redevelopment of the subject site was neither imminent nor foreseeable and there was no evidence to suggest otherwise. The Complainant further argued that highest and best use had to be more than theoretical; the financial feasibility test had to withstand rigorous financial analysis. Under the current and foreseeable circumstances of high vacancy rates of core office space, an abundance of developable land and a dearth of investors, development of the subject site was a non-starter. Consequently, it should be assessed for what it is; a C-class office building with reasonable occupancy and leases extending to 2015. The Complainant described the new phases of the Bow and 8th Avenue Place as extensions of existing projects and, again, argued that there have been no new developments announced in years. The Complainant questioned the derivation of the vacant land rate. Where did \$375 per square foot come from if the median of the Respondent's sales analysis was \$567 per square foot? The Complainant also argued that none of the sites used in the Respondent's analysis have, in fact, been developed.

The Board finds:

- the Complainant's argument that the reality of the marketplace and the uncertainty of our economic times make imminent and foreseeable development of the subject property unlikely.
- the Respondent's onus to provide an effective counter argument regarding the potential development of the subject site and to support the derivation of the vacant land rate applied against the subject for assessment purposes is not met.
- the four sales used in the Respondent's vacant land analysis too old to provide the Board a clear understanding of current land values in DT1. There is little information before the Board to explain how the \$375 per square foot rate was derived from a small sample of sales indicating a median value of \$567 per square foot.
- the classification of the Herald Building as a DT1 C-class office building to be correct as it was not challenged by the Respondent.
- the Income Approach to Value inputs provided by the Complainant to be correct as the Respondent did not challenge either the derivation of the inputs or their values.

Board's Decision:

The assessment is reduced to \$18,990,000.

DATED AT THE CITY OF CALGARY THIS 10th DAY OF AUGUST 2011.

C. McEwen

C. McEwen
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal
4. C3	Complainant (Enhancement)

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.*