

**COMPOSITE
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 (MGA).

between:

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

and

The City Of Calgary, RESPONDENT

before:

**C. J. Griffin, Presiding Officer
Y. Nesry, MEMBER
B. Bickford, MEMBER**

This is a complaint to the 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:

ROLL NUMBER: 068244607

LOCATION ADDRESS: 111 – 2nd Street SW

HEARING NUMBER: 66452

ASSESSMENT: \$48,140,000.

This complaint was heard on 27th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- C. Hartley

Appeared on behalf of the Respondent:

- M. Ryan

Procedural Matters:

[1] The Complainant advised the CARB that all of the evidence and argument to be presented in this case is also applicable to the various pad sites which are also associated with this property, are also under complaint and are scheduled to be heard by this same panel of the CARB before these same parties this same week. Accordingly the Complainant explained that the evidence packages of both the Complainant (C1) and the Respondent (R1) are the same for all the cases and it would be expedient for the CARB to hear the evidence in chief in this Hearing and then to carry same forward to become applicable to the pad site Hearings to follow. The Respondent agreed with the Complainant that such an approach would expedite the Hearing process for these complaints. Accordingly the CARB agrees that the evidence, questions and responses of both parties will be carried forward and be applied, where applicable, to the pad site Hearings to follow.

Property Description:

[2] A detailed physical description of the property was not provided by either party; however, the CARB was able to discern, largely from the Particulars section of the Complainant's brief (Exhibit C1 pg. 2), together with the photographs contained in Exhibit R1, that the subject is widely recognized as being a failed attempt at an urban market which is commonly known as Eau Claire Market. The property consists of the main Market (the subject of this Hearing) and three pad sites which are occupied by the *Barley Mill*, *Joey Tomato's* and *Kids and Company Daycare* (formerly the *Hard Rock Cafe*). The property was constructed in 1994. Originally the subject property sat on a restrictive land lease with the City of Calgary being the land owner. Occupation and development restrictions tied to the said land lease made the *Eau Claire Market* (the Market) unique in Calgary, but also, according to the Complainant, destined the festival market for failure.

[3] The City of Calgary sold the underlying site(s) to the current ownership group in February 2009 for \$13,500,000. This transaction had reportedly been in process for some time and had originally been expected to close in the Fall of 2008. In conjunction with the sale there were requirements of the purchaser to re-zone the property and guarantee that there would be a redevelopment of the site (a comprehensive mixed use development) by 2017. This development is to include improved retail, office and residential uses. The agreement also reportedly states that in the event that the purchaser does not proceed with the redevelopment of the site then the site can be reacquired by the City.

[4] Currently the Market has tenants that are paying very little in the way of rent in order to encourage them to stay. Many are reportedly on gross leases, are paying operating costs only or are on pure percentage rent. The site is scheduled for redevelopment in 2017 so any and all leases contain a termination clause in favour of the landlord.

[5] The subject lands are, according to the Complainant, contaminated as a result of their having been used as the Calgary Transit bus barn for many years. The City acknowledges this situation and has entered into a remediation agreement with the purchaser as a part of the transaction.

[6] The value for assessment purposes is based upon the land value only as derived through application of the Direct Comparison (Sales) Approach. The assessed value is based on a land rate of \$225/Sq. Ft. applied to the 215,189 Sq. Ft. site underlying the Market less \$277,000 for an exempt portion of the property.

Issues:

[7] There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. Based upon the current income being generated by the property, and in recognition of the limited investment horizon due to the redevelopment plan, the current assessment is too high.
2. The underlying site is contaminated and as a result it should be granted a reduction in the assessed value.

Complainant's Requested Value: \$28,170,000. (Exhibit C1 pg. 14)

Party Positions:**Complainant's Position**

[8] The Complainant contends that the redevelopment of the site scheduled for 2017 means that the income of the site cannot be capitalized in perpetuity as the investment horizon is restricted to not more than five years. Their brief (Exhibit C1) provides considerable detail relating to the current leases and the poor income being generated as a result of same. The Complainant derived their requested assessed value through application of, in the judgment of the CARB, a somewhat convoluted technique whereby they have based their requested value on the last known assessed value based on the income stream (2010 assessment) of \$41,650,000 less the land value of \$13,500,000 thus providing an indication as to the improvement value being \$28,150,000. Then, as the Complainant details (Exhibit C1 pg. 14):

"With a maximum life span of 9 years from the purchase date (based upon the requirement to redevelop by 2017 as a condition of the transaction by the City of Calgary), this means that the value of the improvements that remains is 6/9ths of the value assuming income in perpetuity = \$18,766,666 plus the land value - \$9,406,336 = \$28,170,000 (rounded)."

[9] The Complainant further contends that the subject site is heavily contaminated and that this situation has been recognized by the City as they are a party to the "Remediation Agreement" (Exhibit C1 pgs. 86 – 107) which is a condition of the land sale dated July 23/07. This contamination warrants a 25% reduction to the assessed value of the subject property.

Respondent's Position

[10] The Respondent pointed out to the CARB that the assessed value of the subject property is based upon land value only using a base rate of \$225/Sq. Ft. (Exhibit R1 pg. 7). The Respondent argued that while the Complainant has provided considerable detail relating to the current income and the limited potential of the income stream, all of that is moot as it is the land value only that should be considered. The Respondent provided (Exhibit R1 pg. 83) a copy of the 2012 Vacant Land Rates Map as produced by The City of Calgary Assessment department. This map indicates that the subject lies within the Eau Claire District which has a base land value of \$225/Sq. Ft. assigned to it and that this rate is the same as that assigned to the Downtown 2 East District (DT2E). The Respondent provides (Exhibit R1 pg. 94) a summary of

the seven (7) sales utilized to derive the \$225/Sq. Ft. land rate but acknowledges that three of the sales were Court Ordered transactions. These sales indicate an average value of \$377/Sq. Ft. and a Median value of \$363/Sq. Ft. The Respondent also acknowledged that three of the four non Court Ordered sales were recorded in either 2007 or 2008.

[11] The Respondent maintains that the sale of the subject lands together with the adjoining pad sites (Exhibit R1 pgs. 146 – 149) is not a reliable indicator as to the land value since this sale did not involve a Broker but rather was the result of direct negotiations between the landowner (City) and the purchaser (leasehold owner). Additionally, the Respondent pointed out that the third party sales summary indicates (Exhibit R1 pg. 147) the purchaser had previously purchased the leasehold interest in July 2004 and that this is a further indication that the sale is not truly indicative of the land value.

[12] The Respondent indicated that their interpretation of the alleged contamination issue is that there is no detail as to the existence or extent of any contamination therefore there is insufficient evidence to warrant a reduction in the assessed value related to same.

Board's Decision:

[13] The assessment is **reduced** to **\$36,100,000**.

Decision Reasons:

[14] The CARB finds the methodology employed by the Complainant to derive their requested assessed value to be conjectural. While the mathematics of the process is clear, it is predicated on numerous assumptions. As a result of the foregoing the CARB does not accept the value indication for the subject property as suggested by the Complainant. In addition, the CARB finds it challenging when the assessment of any given property is developed through one particular approach to value but it is being challenged on the basis of a different approach to value.

[15] The CARB does not find much in the way of support for the base land rate applied to the subject and finds it interesting that the Respondent has utilized three Court Ordered sales in support of same when they have repeatedly asserted, in previous Hearings, that such sales are not given consideration by the Assessor. In addition such sales are not to be found on the *Assessment Business Unit* (ABU) web site which provides a listing of all sales considered by the Assessor. The CARB would suggest that the Respondent make a determination one way or another as to the status of Court Ordered or Foreclosure sales and the import of same in determining values. If such sales are to be considered, or are not to be considered, so be it; however, it is unreasonable to expect the CARB to give consideration to such sales in one Hearing but not in other Hearings.

[16] The CARB agrees with the Complainant that there is sufficient evidence to suggest that the site underlying the subject is contaminated to some degree as indicated in the *Remediation Agreement* (Exhibit C1 Pgs. 86 – 107). The CARB finds it somewhat incredulous that in spite of this evidence, the Respondent sees no evidence of contamination. The CARB is of the judgment that if the level of contamination is sufficient to warrant the City being a party to a *Remediation Agreement*, then it is most likely of sufficient level to warrant a 25% reduction to the applied base land rate and that is the basis for the amendment to the assessed value.

[17] The CARB finds it equally incredulous that the Assessor does not accept the sale of the subject site to be an indication as to the land value. The Assessor maintains this interpretation is based upon the fact that no real estate agents or brokers were involved with the sale. The Assessor was unconvinced by the Complainant's reminder, and the CARB's acknowledgment that the City of Calgary is mandated, under the MGA, to sell property at market value.

[18] The CARB is concerned that the Respondent was, in this case, not the assessor responsible for estimating the assessed value of the subject property. Further the Respondent's representative was not familiar with the property and was unable to answer fairly basic questions pertaining to the property. It should be noted that this is **not** a criticism of the individual who appeared before the CARB as we recognize it was not his decision to make. It is difficult to understand how the Respondent can expect their position to be adequately defended under such circumstances.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF September 2012.


C. J. Griffin,
Presiding Officer

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

- (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).

(a) the assessment review board, and

(b) any other persons as the judge directs.

Decision No. 1687-2012-P			Roll No. 068244607	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Bare Land (Retail)	Land Value	Contamination	Base Land Rate