

**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: 068245109 / 068245000 / 068244508

LOCATION ADDRESS: 208 / 201 / 101 – Barclay Parade SW

HEARING NUMBER: 66457 / 66459 / 66460

ASSESSMENT: \$4,060,000. / \$1,390,000. / \$1,500,000.

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] In accordance with the Procedural Matter brought forward and resolved under CARB Decision 1687-2012-P, the CARB acknowledges that the evidence, questions and responses of both parties, as presented in the aforementioned Hearing, will be carried forward and be applied, where applicable, to this pad site Hearing.

Property Description:

[2] This Hearing deals with three pad sites which constitute a component of, and which are under the same ownership as, the *Eau Claire Market* (CARB 1687-2012-P) property. These sites are currently occupied by the *Barley Mill*, *Joey Tomato's* and *Kids and Company Day Care* (formerly the *Hard Rock Cafe*) respectively. These sites have been valued, for assessment purposes, as land only with the valuation being based upon the Direct Comparison (Sales) Approach. The applied base land rate is \$225/Sq. Ft. of site area.

[3] The City of Calgary sold the subject sites, together with the site underlying the *Eau Claire Market*, 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 that would 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 City has the option to reacquire the property.

[4] Currently the pads are leased; however, as a result of a schedule for redevelopment in 2017 any and all leases contain a termination clause in favour of the landlord. As previously noted, the sites have been valued as land only so the income performance of the property is, in this case, a moot point.

[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/owner as a part of the transaction.

Issues:

[6] 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. The assessed values are too high and not indicative of market value.
2. The sites are contaminated and, accordingly, warrant a reduction in the assessed value.
3. The location of Roll # 068245109 (Joey Tomato's) warrants a restricted access reduction.
4. Roll # 068244508 is designated as being PE in terms of Land Use and this designation renders the site to near undevelopable status and, as a result, the assessed value should be nominal.

<u>Complainant's Requested Value:</u>	Roll # 068245109	\$1,885,000. (Exhibit C1 pg. 15)
	Roll # 068245000	\$1,114,000. (Exhibit C1 pg. 15)
	Roll # 068244508	\$1,870,000. (Exhibit C1 pg. 15)

Party Positions:

Complainant's Position

[7] The Complainant contends that the redevelopment of the site scheduled for 2017 means that the income derived from the pad sites cannot be capitalized in perpetuity as the investment horizon is restricted to not more than five years. The Complainant derived their requested assessed value through application of, in the judgment of the CARB, a somewhat convoluted technique whereby they have based the requested value on the last known assessed value based on the income stream (2010 assessment) where the lease rate applied to the subject pads was \$28/Sq. Ft. of net rentable building area. Based upon this income, together with "the other income parameters associated with the property" the Complainant derived a value estimate of \$265/Sq. Ft. for the value of the land and improvements (Exhibit C1 pg. 12). From the estimated land and improvement value the Complainant then calculates the remaining value of the improvements based upon 6/9 of the value and then adds their estimate as to the various pad land values based upon their interpretation of the reported purchase price (Exhibit C1 pg. 15). This exercise forms the basis for the Complainant's requested values. (ibid)

[8] 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.

[9] The Complainant argues that the site underlying what is currently used as a Day Care facility is, by virtue of its PE, Public Park, School & Recreation District Land Use Designation restricts the future development potential of the site and this warrants a significant reduction in the assessed value or, as the Complainant suggests, a nominal value of \$1,000. In support of this argument the Complainant introduced (Exhibit C1 pg. 130) the Land Use Bylaw 20Z2008 which, under the Heading Site 4 states that:

"The Permitted and Discretionary Uses of the PE Public Park, School and Recreation Districts shall be the Permitted and Discretionary uses with the additional Discretionary of Restaurants-Licensed, Child care facilities, Athletic facilities and Retail stores within the building existing on site as of the date of passage of this bylaw."

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 pgs. 8 - 13) and while the Complainant has provided considerable detail relating to the current income and the limited potential of the income stream etc., all of that is moot as it is the land value only that should be considered. Additionally, and for the same reason, the Respondent has not considered the remaining economic life of the improvements in the assessed values. 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/Assessor 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 as 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 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/Assessor indicated that their interpretation of the alleged contamination issue is that there is no evidence 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 assessments are **reduced** as follows:

Roll # 068245109	\$2,580,000.
Roll # 068245000	\$1,040,000.
Roll # 068244508	\$1,120,000.

Decision Reasons:

[14] The CARB finds the value methodology employed by the Complainant to derive their requested assessed values to be conjectural as, while the mathematics of the process is clear, it is predicated on numerous assumptions including the Complainant's unsupported proportionate share of the purchase price which they have attributed to the various land components. As a result of the foregoing the CARB does not accept the value indication for the subject properties 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. Evidently the Complainant shares this challenge as, in the case of roll # 068244508, the requested assessed value is some \$480,000 in excess of the current assessed value.

[15] The CARB does not find much in the way of support for the base land rate applied to the subject properties and finds it interesting that the Assessor has utilized three Court Ordered sales in support of same. The Assessor has repeatedly asserted, in previous Hearings, that such sales are not given consideration by the Assessor and that 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 Assessor 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) and 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 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 and further that the Assessor'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 Assessor can expect their position to be adequately defended under such circumstances.

[19] The Complainant did not provide the CARB with convincing evidence to suggest that the Assessor's applied base land rate of \$225/Sq. Ft. is incorrect and while the CARB agrees that the Assessor has not provided strong support for same we are not convinced that a change to this rate is warranted. The CARB does agree with the Complainant that the subject lands are contaminated to some degree and on this basis has applied a 25% discount to the assessed values. Additionally, the CARB agrees with the Complainant that roll # 068245109 (Joey Tomato's) should be given the same restricted access influence that has been given to roll # 068245000 (Barley Mill) as it shares the same private road/restricted access. The CARB does not agree with the Complainant's claim that the Land Use Designation applied to roll # 068244508 is so restrictive that it warrants a nominal assessed value be applied as there are a number of uses allowed for the existing building including retail stores and/or licensed restaurants. The CARB requires evidence of other such situations where a nominal value has been applied and the Complainant did not provide same. Additionally, the CARB notes that the Complainant's requested value is not the nominal value suggested.

DATED AT THE CITY OF CALGARY THIS 27 DAY OF September 2012.



C. J. Griffin,
Presiding Officer

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

NO.	ITEM
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. 1688-2012-P		Roll No. 068245109 / 068245000 / 068244508		
<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