

**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:

***BCIMC Realty Corporation (as represented by Altus Group Limited), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***K. D. Kelly, PRESIDING OFFICER***

***P. Grace, 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 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>068240407</b>
<b>LOCATION ADDRESS:</b>	<b>217 – 1 ST SW</b>
<b>HEARING NUMBER:</b>	<b>68011</b>
<b>ASSESSMENT:</b>	<b>\$5,980,000</b>

This complaint was heard on 4th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 2.

Appeared on behalf of the Complainant:

- *Mr. M. Cameron – Altus Group Limited*
- *Mr. G. Kerslake – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. D. Grandbois - Assessor – City of Calgary*

### **REGARDING BREVITY:**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

### **Property Description:**

[3] The subject is a 19,376 square foot (SF) vacant land parcel used as a parking lot in the downtown one (DT-1) district of Calgary. The subject sits at the corner of 3 AV SW and 1 ST SW with access to the lot from the west side of 1 ST SW. The subject is on the west side of the City's market zone transition boundary running north/south along 1 ST SW between DT-1 and the Chinatown zones. It is assessed at \$325 per SF and is subject to a negative 10% "Transition Zone – Land Only Decrease", and a positive 5% increase for Corner Lot influence, (total : negative 5% adjustment) for a final assessment of \$5,980,000.

### **Issue:**

[4] What is the equitable market value of the subject downtown vacant land parcel when compared to other similar nearby vacant land parcels?

[5] **Complainant's Requested Value:** \$3,670,000.

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

#### **Complainant's Position**

[6] The Complainant's agent Mr. Kerslake clarified that this downtown vacant land parcel is used as a parking lot. It is located immediately south of the Chinese Cultural Centre and private school complex and is separated from it by a laneway. He noted that the owners intended to include it as part of the adjacent "Livingston" office building development, but were declined by the City.

[7] The Complainant clarified that Direct Control Bylaw 49Z84 – a site-specific bylaw, restricts the land uses on the subject site to non-office uses and a Floor Area Ratio (FAR) of 6.5. He argued that compared to other “Downtown One” (DT-1) market zone properties zoned CM-2, and which are permitted an office space FAR of 20 via a “bonus system”, the relatively small 6.5 non-office FAR allowed the subject, adversely affects its value. He argued that this difference in allowable land uses and FAR makes the subject atypical and less valuable in the market.

[8] In support of his position the Complainant provided excerpts of Amendment 84/022 to Bylaw 49Z84 being the Direct Control Land Use Bylaw specifically applicable to the subject. He noted that the Discretionary Land Uses for “Site 2” (the subject) in the Bylaw do not permit offices, but would permit a 6.5 FAR maximum development of other uses. For the subject this would mean that its 19,376 SF of land area, at 6.5 FAR, could accommodate 125,944 SF of development space. He noted that the maximum density that can be built on the subject is 7.5 FAR, which may be achieved through a “bonus” system as identified in the bylaw.

[9] The Complainant also provided an excerpt of section 42.3 CM-2 Downtown Business District in the City’s Land Use Bylaw outlining “offices” as a Discretionary Use, but which could, under a detailed “bonus system” of amenity and structural design, permit up to a maximum of 20 FAR, or 20 times the site area. The Complainant argued that the restrictive bylaw requirements applicable to the subject create an inequity for it when compared to other DT-1 and CM-2 zoned lands.

[10] The Complainant provided a brief excerpt (maps and photographs) of the City’s 1986 “Chinatown Area Redevelopment Plan” which was adopted by the City under Bylaw 3P86 and consolidated in June 2009. He clarified that this plan is still an active and valid planning tool. He noted that the subject is contained within the boundaries of this plan. He argued that the Assessor has incorrectly included the subject in the DT-1 district for assessment purposes, when he should have included it in the Chinatown district and compared it to properties there. He also provided several maps and related civic documents which generally referred to the subject as being in Chinatown.

[11] The Complainant provided an excerpt of Amendment No. 84/049 to Bylaw No. 70Z84, being elements of the Chinatown Land Use Bylaw. He noted that this bylaw permits offices, and FAR densities - with bonus credits - to 7.5 FAR, a density of use similar to the subject. He argued therefore that the subject should have been compared to vacant land parcels in the Chinatown district and not the DT-1 district and this is inequitable.

[12] The Complainant argued that there are no current, only “dated”, market sales of comparable properties in the downtown area, therefore he did not provide any sales in support of his position. Instead he provided a matrix of nine assessment equity comparables of vacant land parcels – all from the Chinatown district and east of First ST SW. The parcels ranged in size from 3,497 SF to 17,487 SF. Five parcels were assessed at \$164 per SF; three at \$165 per SF; and one at \$173 per SF. He noted that the zoning on all parcels permitted an FAR density of 7.5 like the subject. He provided the Property Assessment Summary Reports and “My Property” maps for each property comparable.

[13] The Complainant clarified that the subject is located on the west side of First St SW, a "transition zone" between DT-1 and Chinatown. He noted that the subject therefore receives a 10% reduction in assessed value due to its location along the transition zone. He also noted that because the subject is a corner lot, it is assessed an additional 5% in assessed value. The net result he noted, is that the subject receives a 5% reduction in assessed value due to its location. He argued that the City's market zone boundary between DT-1 and Chinatown is incorrectly placed.

[14] The Complainant provided a City of Calgary Assessment Business Unit chart titled "2012 Non-Residential Non-Core Land Influence Table" which identified a 25% negative adjustment for properties experiencing "Land Use Restrictions". He argued that this information suggests that the subject, experiencing land use bylaw restrictions when compared to other nearby properties, should receive an additional 25% reduction in assessed value.

[15] The Complainant concluded that at least four valuation scenarios for the subject emerge from the evidence he has provided. The scenarios are as follows:

	Land Area	Base Land Rate (per SF)	Transition Zone	Corner Lot	Land Use Restriction	Total Influence	Indicated Assessment Value \$	Roll Value \$
As assessed	19,376	\$325	-10%	5%	-----	-5%	5,982,340	5,980,000
Value for Equity Approach	19,376	\$165	10%	5%	-----	15%	3,676,596	3,670,000
Value for Land Use Adjustment	19,376	\$325	-10%	5%	-25%	-30%	4,408,040	4,400,000
Value for Corrected Transition Zone Adjustment	19,376	\$245	0%	5%	-25%	-20%	3,797,696	3,790,000

[16] The Complainant considered scenario #2 - "Value For Equity Approach" to be the best indication of equitable market value for the subject at \$3,670,000. He requested that the Board reduce the assessment to \$3,670,000.

[17] The Complainant also argued that selected legislative passages and Court Decisions have spoken to the principle of "Fairness and Equity". He referenced the following;

- section 467(3) of the Alberta Municipal Government Act, R.S.A. 2000, c. M-26 [MGA]
- The British Columbia Court of Appeal, in Assessor for Area 9 – Vancouver v. Bramalea Limited, (1990) 52 BC.C.A. [Bramalea]
- Alberta Court of Queen's Bench - Mountain View (County) v. Alberta (Assessment Appeal Board) 2000 ABQB 594 [Mountain View]
- Bentall Retail Services et al. V. Assessor of Area #09 = Vancouver, [2006] BCSC 424

- Dutchcad Bil Investments v. Assessor of Area #19 – Kelowna

[18] The Complainant provided a copy of Calgary Composite Assessment Review Board Decision CARB 2876/2011-P which dealt with an appeal regarding the 2011 assessment of the subject wherein, in part, the Board reduced the assessment. He also provided copies of CARB 2870/2011-P and CARB 0717/2012-P dealing with arguments regarding equity. The Complainant requested that the assessment be reduced to \$3,670,000 based upon equity.

#### **Respondent's Position**

[19] The Respondent provided four market sales - two from 2007 and two from 2008, to support the \$325 per SF value applied to the assessment of the subject, and all other DT-1 vacant land parcels. He also provided the Alberta DataSearch sheets for the sales. He noted that in 2007 and 2008 the value of the four transactions ranged from \$543.54 per SF to \$813.10 per SF and displayed an average value of \$650.75 per SF and a median value of \$623.18 per SF. He noted that while the City had used \$375 per SF for all DT-1 vacant land parcels in 2011 assessments, it had used \$325 per SF in 2012 in recognition of changed market conditions.

[20] The Respondent clarified that the four sales had not been time adjusted, nor had they been adjusted for any variance in FAR as the Complainant had suggested. The four sales had however been adjusted differing amounts for influences such as proximity to the LRT; or being a corner lot; or for being located in a market area transition zone – much like the subject. He clarified that these four sales were all in assessment/market zone DT-1 but were not in close proximity to the subject. He argued that the four sales create a range of values that is useful for assessment purposes in accordance with recognized assessment methodologies.

[21] The Respondent clarified that while the four market sales are somewhat dated as suggested by the Complainant, they are nevertheless the only market evidence before the Board. He noted that the Complainant acknowledges not providing any market evidence. He argued that the Complainant is therefore, relying primarily on an equity argument to advance his case, but he is comparing the subject which is in highly-valued DT-1, to lower valued properties in Chinatown.

[22] The Respondent provided a chart outlining the various "site influence" values applicable to DT-1 properties for assessment purposes. He noted that the City does not provide, and consistently has not provided, a reduction in value as proposed by the Complainant for differentials in allowable FAR either under the Land Use Bylaw generally, or specifically under Direct Control (DC) Bylaw guidelines such as those applicable to the subject.

[23] The Respondent clarified that a 20 FAR as referenced by the Complainant is not an "automatic" right under the Land Use Bylaw. He clarified that the base FAR for CM-2 zoned lands is 7 and can only increase to 20 under an extensive bonus system based on amenities and design. He noted that the subject's base FAR is 6.5 but can be increased to a maximum 7.5 FAR. He argued that while the Complainant has argued that there is an inequitable value difference created by and perpetuated in the two different sections of the Land Use Bylaw, he has provided no market evidence to substantiate this point.

[24] The Respondent argued that the "Influence" chart of various deductions to assessed value that the Complainant provided in Brief C-1 (see [14] above) is not for Downtown properties and the contents are not applicable to the subject, or any other downtown property. Therefore, he argued, the Board should not be persuaded by its contents or grant the additional 25% assessment reduction the Complainant seeks pursuant to this chart. He clarified that the subject receives a 15% reduction in assessed value because it is on the border of, and in a recognized transition zone between the DT-1 market/assessment zones.

[25] The Respondent argued that because the Complainant has not provided any market sales for either the DT-1 or Chinatown areas, he has not demonstrated a "range of values" as contemplated by the "Bramalea" or "Bentall" Court Decisions the Complainant referenced in his presentation. (see [17] above) He argued that pursuant to these decisions, one must establish a "range of values" before equity can be invoked, and the Complainant has not done so. The Respondent provided copies of CARB Decision 0747/2012-P and LARB Decision 0548/2012-B which address this issue, in support of his position in this matter.

[26] The Respondent argued that by not providing any market evidence, the Complainant has failed to demonstrate that other vacant land parcels in the DT-1 zone sell or have been assessed for values which are different than those applied to the subject. He argued that the Complainant's own evidence demonstrates that vacant land parcels in Chinatown sell for different and lower values than those in DT-1 where the subject is located, and hence those values are not applicable to it. He argued that in 2012 the City has consistently assessed all DT-1 properties using the same \$325 per SF value and therefore they have been assessed equitably.

[27] The Respondent argued that while the Complainant has referenced CARB 2876/2011-P wherein the assessment was reduced, in that 2011 appeal the Complainant had in fact provided market evidence that was challenged by the Respondent. He argued that no evidence of this, or an equivalent nature, was provided to the City or the Board in this appeal, therefore the Board should not rely on this CARB decision as being applicable to this appeal.

[28] The Respondent requested that the Board confirm the assessment.

### **Board Findings**

[29] The Board finds that the Complainant provided no comparative market or assessment equity evidence to develop a "range of values" to support his argument that the market value of the subject is constrained by the zoning on the property when compared to other DT-1 sites. In this regard, the Board concurs with the conclusions reached by the Boards in CARB Decision 0747/2012-P and LARB Decision 0548/2012-B which address this issue.

[30] The Board finds that the Complainant provided no market evidence to demonstrate that the subject has been inequitably assessed when compared to other similar DT-1 vacant land parcels.

[31] The Board finds that the subject, while noted in various civic plans and documents to be generally part of Chinatown for planning purposes, is, and has consistently been for assessment

purposes, located in DT-1, and therefore has appropriately been compared to other DT-1 vacant land parcels by the Assessor. The Board received no evidence that the Chinatown boundaries for planning purposes, superseded or took precedence over the boundaries established by the assessor for assessment purposes.

[32] The Board finds that while it notes and concurs with the Complainant that the market zone boundary between Chinatown and DT-1 as determined by the Assessor appears somewhat confusing with respect to the one-building Chinese Cultural Centre, the Board has no evidentiary or authoritative basis to amend those boundaries, particularly as regards the subject.

[33] The Board finds that the assessment equity comparables provided by the Complainant from the Chinatown market zone are not comparable to the subject because the Board is persuaded that they are in a different market zone than the subject and the evidence suggests that they display market values dissimilar to market sales from DT-1 as provided by the Respondent.

[34] The Board finds that while the subject is in DT-1 for assessment purposes and is located along a transition zone between DT-1 and Chinatown, it receives a 15% reduction in assessed value to recognize the potential for differing land values which may occur along such zones.

[35] The Board finds that while the Respondent's four market sales from 2007 and 2008 appear somewhat "dated", it is the only market evidence before the Board to establish a range of values used to assess the subject and all similar DT-1 vacant land parcels. The Board also notes that in 2011 and 2012 the City has adjusted downwards, its conclusions of "typical" value derived from these four sales pursuant to changing market conditions, and consistently and equitably applied these typical values to all DT-1 vacant land parcels, including the subject.

[36] The Board finds that the Respondent has consistently and equitably applied the \$325 per SF vacant land rate to all DT-1 properties, including the subject.

[37] The Board concurs with the Respondent that the Complainant has incorrectly relied on the City of Calgary Assessment Business Unit chart titled "2012 Non-Residential Non-Core Land Influence Table" which identified a 25% negative adjustment for properties experiencing "Land Use Restrictions". The Board concurs that this document is not applicable to the subject which is located in the downtown core.

[38] The Board finds that CARB decision 2876/2011-P does not support the Complainant's position in this appeal because the evidence and facts of that decision are materially different from this matter before the Board.

[39] The Board finds that while it may have regard to previous CARB decisions, it is not bound by them and must decide the merits of this appeal on the basis of the evidence and argument provided at this hearing.

#### **Board's Decision:**

[40] The assessment is confirmed at \$5,980,000.

DATED AT THE CITY OF CALGARY THIS 4 DAY OF October 2012.

  
K. D. Kelly  
Presiding Officer

**APPENDIX "A"**

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
2. C-3	Complainant Disclosure – Rebuttal
3. R-1	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 Administrative Use Only**

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Downtown Core	Vacant land parcel	Market Value	Market Zone