

**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:

***G.U.G enterprises Ltd.
As represented by
Cushman & Wakefield Property Tax Services
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Acker, PRESIDING OFFICER
D. Julien, MEMBER
J. Pratt, 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:	067232405
LOCATION ADDRESS:	1111 9 Avenue SW
HEARING NUMBER:	61163
ASSESSMENT:	\$ 22,870,000

This complaint was heard on 23rd day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *Jan Goresht*
- *Liam Brunner*

Appeared on behalf of the Respondent:

- *Dale Grandbois*

Property Description:

The subject is a 136,296 square foot parcel improved with a 21,973 square foot purpose built automotive dealership improvement located in the central Downtown West Business District. The site is zoned DC53Z95 which restricts its use by limiting its improvement height to 12 metres for all building uses except hotels which are allowed 30 metres in height. Further, development is constrained by setback requirements of 1.2 metres from the property line.

Issues:

1. The zoning on the subject parcel restricts its development potential thus reducing its market value.
2. The subject was assessed using the cost approach that values the land separately from the improvement, which was valued using Marshall and Swift valuation techniques.
3. The assessment of the vacant land potential of the subject far exceeds its current use and thus suggests a zero value for the improvement.

Complainant's Requested Value: \$ 11,420,000

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

1. Limitations imposed by land use designation do impact the market value of subject parcels.
2. The cost approach to value of the subject is appropriate given the unique characteristics of the improvement.
3. The improvement on the subject parcel does have value and thus attracts assessment for tax purposes.

Board's Decision:

The board accepted the credentials of Mr. Liam Brunner as an expert witness. He provided a detailed review of the land use restrictions on the subject as imposed by the DC53Z95 Bylaw and the resulting reduction in market value. He further indicated that the subject is in the only area of downtown Calgary that does not have an Area Structure Plan that gives insight into the future development of the area – thus creating greater uncertainty for developers wishing to redevelop current properties.

Mr. Brunner suggested an appropriate approach to value would be the use of the 'Buildable Square Foot' approach which utilizes a calculation of the potential site developability by multiplying the market value per square foot of developed space by the number of square feet per developable storey using the maximum site coverage to produce a market value for the property. Using this result, it is then possible to compare the subject with other developed properties that have transacted in the marketplace.

His analysis of 7 sales adjusted for location and size produced an average value per buildable square foot of \$32.52 per square foot. Eliminating the 3 forced sales that tend to reduce the average value produced a buildable square foot average of \$40 per square foot.

The Complainant produced legal argument and a number of approaches to the analysis of recent sales to support the principle that land use zoning has an impact on market value. Further, he argued that the City of Calgary's approach to value by establishing an average vacant land value for any defined district does not recognize the impact of land use restrictions on any individual parcel within that district.

The Respondent produced corresponding groups of comparable sales in rebuttal to the Complainant's and suggested that his 4 sales of land in the same land use zone (53Z95) as the subject demonstrate that zoning has no impact on value and that all lands sold were able to be rezoned to a higher use subsequent to the sale. He argued that intrinsic land value exists and that the location advantages of any particular property will translate to higher market values despite current zoning restrictions. He asserted that his evidence supports the fact that lands can be developed for more intensive densities through a relatively straightforward process of rezoning.

The Board, after analyzing the evidence and reviewing the testimony of the witnesses; determined that land market value is indeed impacted by the land use restrictions imposed by a local authority. Further, the Board found that the lack of an Area Structure Plan for the subject property's area created greater uncertainty as to future land use potential in the mind of a purchaser. Legislation requires that assessments reflect the characteristics of the property as of December 31 of the year prior to the assessment year. There was no evidence or testimony to suggest that the zoning of the subject was anything but DC 53Z95 which establishes the maximum density of development.

In reaching this determination, the Board focused its attention on the four sales in the subject's land use zone at the time of sale as presented by the Respondent.

- The first sale at 907 9 Avenue SW was not vacant and had a serviceable improvement capable of renovation. It was rezoned to CM2 and renovated subsequent to the sale.
- 1140 10 Avenue included a vendor take back of 52% of its value and thus is less representative of an arms-length market indicator. There was insufficient detail on the sale to determine whether or not it was contingent upon rezoning to CC-X.
- 901 10 Avenue included a vendor take back of 60% of its value and thus is less representative of an arms-length market indicator. It was noted that the purchaser intended to redevelop the site with an undetermined combination of commercial, residential and mixed-use. There was insufficient detail on the sale to determine whether or not it was contingent upon rezoning to CC-X.
- 1401 9 Avenue SW was a purchase by the City of Calgary. The respondent provided testimony that the parcel suffered from site contamination. The Complainant rebutted

this testimony and evidence with an extract from the Alberta Government registry indicating no record of any contamination on that site.

Based on this review, the Board gave lesser weight to these sales as indicators of value.

The Board then turned to the evidence and testimony of the Complainant and his approach to value using the *Buildable Square Foot* approach. The Board found that the \$40 per square foot produced by the analysis of non-forced sales was a good indicator of value when applied to the subject as follows:

$\$40/\text{sq ft} \times 131,090 \text{ sq ft (site coverage limit)} \times 2.89 \text{ (maximum FAR derived from Bylaw)}$

produces a \$15,154,004 value of buildable square feet or 115.60/sq ft (gross area)

for a land only value of $115.60 \times 136,296 = \$15,755,817$

In reviewing the testimony of the parties, the Board noted that the Respondent suggested that the average for the DT2-W district sales used in the vacant land value analysis was a FAR of 7.0. This was supported by the Board's review of the land use bylaws submitted in evidence. Calculation of the maximum permitted FAR of the subject was 2.89. As a check on the derived buildable square foot calculation, the board looked at the value that might be derived from a calculation of the FAR ratios applied to the assessed value (\$22,080,099) at the district vacant land rate of \$180/sq ft.

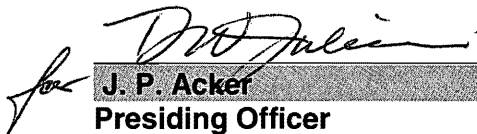
This calculation $2.89/7.0 = X/22,080,099$ produces a value of \$9,115,926

The Board recognizes that this test returns a substantially lower value than the buildable square foot calculation, but is comfortable that it gives further support to the \$15,755,817 value derived. The Board was not comfortable in applying the FAR ratio value as it is unsupported by market evidence and it does not recognize the location, site size and shape or other factors that might limit or expand the potential for economic development of a particular parcel.

The value of the improvement on the subject was not adjusted and is confirmed as there was no evidence or argument that would suggest that the value of \$792,104 derived from a Marshall & Swift cost approach was either incorrect or inappropriate.

Accordingly, the assessment is set at $\$15,755,817 + 792,104 = \$16,547,922$ rounded to **\$16,545,000**

DATED AT THE CITY OF CALGARY THIS 1st DAY OF SEPTEMBER, 2011.


J. P. Acker
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's Rebuttal

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.*