

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000.

between:

***BCIMC Realty Corporation
c/o GWL Realty Advisors Inc.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
J. Mathias, MEMBER
J. Rankin, MEMBER***

[1] These are complaints to the Calgary Assessment Review Board in respect of 4 property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

| | | | | |
|--------------------------------|---------------------------------|---------------------|---------------------------------|---------------------|
| ROLL NUMBERS: | 067234906 | 067235002 | 067234708 | 067234807 |
| LOCATION ADDRESSES: | 501 EAU CLAIRE AV SW | 520 2 AV SW | 601 EAU CLAIRE AV SW | 660 2 AV SW |
| HEARING NUMBERS: | 60898 | 60899 | 60894 | 60896 |
| ASSESSMENTS: | \$17,130,000 | \$14,410,000 | \$22,930,000 | \$18,940,000 |

[2] These complaints were heard by a Composite Assessment Review Board on September 7th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

[3] Appeared on behalf of the Complainant:

- *Mr. J. Weber* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Mr. A. Cornick* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] The subject complaints were scheduled to be heard by this Board the week of September 6th, 2011 along with one other vacant, similar property in the Eau Claire community (see CARB 2119/2011P). At the onset of the hearings the parties informed the Board that the common issue for all complaints was the land valuation and the parties proposed to progress their respective evidence and arguments before the Board once and then, in the interests of conciseness, ask the Board to carry forward said evidence and arguments to all 5 similar properties scheduled for the week. It was accepted that the Board's findings and decision regarding the land valuation issue would therefore be common to all properties. The Board found this to be an appropriate approach to the matters at hand.

PROPERTY DESCRIPTION:

[6] The subject properties are vacant land parcels located bordered by Eau Claire Avenue SW on the north, 4th Street SW on the east, 2nd Avenue SW on the south and 6th Street SW on the west. The record shows the parcels are all zoned Direct Control (DC) under Bylaw 91D2008 ("the Bylaw") and valued through a base rate of \$275/sf with an adjustment of +5% for corner influence. The Bylaw is found under Doc. C-1, pg 20 and Doc. R-1, pg 38.

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|-------------------------------|---------------|---------------|---------------|---------------|
| ROLL NUMBERS: | 067234906 | 067235002 | 067234708 | 067234807 |
| SQUARE FEET(SF): | 59,342 | 49,909 | 79,426 | 65,612 |
| LAND RATE: | \$275/SF + 5% | \$275/SF + 5% | \$275/SF + 5% | \$275/SF + 5% |
| PARCEL # AS PER BYLAW: | B2 | B2 | B1 | B1 |

REGARDING BREVITY:

[7] In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[8] The matter identified by the Complainant as the basis for these complaints is “an assessment amount”. While the Assessment Review Board Complaint forms (complaint forms) also indicate “an assessment class” to be under question, the Complainant clarified at the time of the hearing that there were no objections to the classification of the subject properties.

[9] The Board finds the Complainant has presented the following issues for deliberation:

1. Does the Complainant’s market analysis produce an appropriate market value indicator for assessment purposes for the subject properties as of July 1, 2010?
2. Does the Complainant’s equity evidence produce an appropriate market value indicator for assessment purposes for the subject properties as of July 1, 2010?

COMPLAINANT’S REQUESTED VALUE:

[10] As per Doc. C-1, pg 2, the Complainant’s requested valuations are as follows:

| | | | | |
|----------------------------|-----------------------------|--------------------|-----------------------------|--------------------|
| ROLL NUMBERS: | 067234906 | 067235002 | 067234708 | 067234807 |
| LOCATION ADDRESSES: | 501 EAU CLAIRE AV SW | 520 2 AV SW | 601 EAU CLAIRE AV SW | 660 2 AV SW |
| “MARKET” REQUEST: | \$6,408,936 | \$5,390,172 | \$8,578,008 | \$7,086,096 |
| “EQUITY” REQUEST: | \$5,222,096 | \$4,391,992 | \$6,989,488 | \$5,773,856 |

BOARD’S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act (MGA)** Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004 (MRAT)** Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)** Division 2 and Schedule 1.

[12] Both parties placed previous Assessment Review Board decisions before this Board in support of their position. While the Board has the utmost respect for the decisions rendered by these tribunals, it is also recognized that these decisions were based specific evidence that is not shown to be before this Board. This Board will therefore not give much weight to these decisions and base its deliberations, findings and decisions on the evidence before it.

[13] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessments are incorrect and to provide alternate market values as of

July 1, 2010 (see line [11] above). The Board is to determine if (within the direction of the **MGA** and associated Regulations) it has been swayed to find the assessments are incorrect and if the assessments, being market value determinations as of July 1st 2010, should be revised.

[14] With regard to the issues identified above the Board's findings are as follows:

1. Does the Complainant's market analysis produce an appropriate market value indicator for assessment purposes for the subject properties as of July 1, 2010?

[15] The Complainant submitted under C-1, pg 60 a map indicating the "*2011 Vacant Land Rates*" as developed and utilized by the Assessor for vacant downtown Calgary properties. This evidence was not refuted by the Respondent. The Eau Claire area is shown to be assessed through a base land rate of \$275/sf.

[16] The Complainant submitted under C-1, pgs 61 through 63 the "*Sales of Vacant Land*" as analyzed by the Assessor in setting the relevant vacant land assessment rates. The tables illustrate the analyses for "*DT2 East*" (shown to be north of the railroad tracks, east of 9th Street SW, south of 1st Avenue SW and west of 5th Street SW); "*DT2W*" (shown to be north of the railway tracks, east of 14th Street SW, south of the Bow River and west of 9th Street), and "*DT1*" (shown to be north of 7th Avenue SW, east of 5th Street SW, south of 2nd Avenue SW and west of 1st Street SE excluding the area identified as "*CHNA*"). No analysis or data is included for the Eau Claire ("*Eau*") area where the subject properties are located. The provided tables were not refuted by the Respondent.

[17] The Complainant offered that the Bylaw largely restricts development of the subject lands to residential - with the option for certain non-office commercial uses - as shown under Sec. 5(b) and 28(3); shadow guidelines as per Sec. 10(a); and a maximum floor area ratio (FAR) of 4 as per Sec. 30(2)(a) and (b). In particular, the Complainant points to the exclusion of any office development on the subject lands as a value influencing factor for vacant land in the area.

[18] The record shows the Respondent has not varied the base vacant land rate for the subject properties to reflect on any potential value influence arising from the Bylaw. It is the Respondent's position that application can be made to change zoning (and associated FAR) so the effect of the current Bylaw was not deemed to be value influencing. In support the Respondent in fact points to a bylaw amendment dated April 2011 affecting the subject properties.

[19] The Board accepts the Respondent's suggestion that applications for zoning redesignation are often made but reads some very specific intents within the Bylaw (as briefly summarized under [17] above) that express an undertaking to direct the development of the subject parcels in a site specific manner. The Board therefore finds the properties are uniquely affected as of the valuation date and condition date for the subject properties (under **MRAT** Sec. 3 and **MGA** Sec. 289 (2)(a)) and is not prepared to engage in an anticipatory approach to valuation as suggested by the Respondent.

[20] The Complainant advanced 18 market transactions under Doc. C-1, pg 55 ("*Market Value Sales Analysis*"). Within its analysis the Complainant pointed to the (FAR) as outlined by the appropriate land use zoning designation at the time of the sales and (in an effort to quantify

the effect of the Bylaw) calculated a value/developable square foot for each sale. The calculated median value arising from these 18 indicators is shown to \$26.71/sf and is the basis (rounded to \$27/sf) for the Complainant's "market" based request.

[21] In reply the Respondent did not provide a succinct market analysis in support of the \$275/sf base rate. Rather, the Respondent chose to review and adjust the Complainant's sales analysis starting under R-1, pg 62 ("*Comparable Property Information*"). Through a series of adjustments, removing sales the Respondent finds to be neither market driven nor locationally similar to the subject (e.g. East Village), it concludes the market evidence establishes a range of value that encompasses the subject assessment. The Respondent's calculations are found under R-1, pgs 100 and 101.

[22] The Board notes that neither party has applied a time adjustment to any of the sales within their respective analysis.

[23] In addition the Respondent referenced the sale of the associated property referenced under CARB 2119/2011P (see [5] above) as reported by RealNet (see R-1, pg 125). In response the Complainant provided the report of the subject property issued by Alberta Datasearch (see C-2, pg 20). Both reports indicate the property sold for \$26,571,218 as of May 31, 2007. The Respondent reflected on the reported pending development permit at the time and reportedly sold out associated project intended for the subject property; suggesting an undetermined upward impact on the sale price. Furthermore, it compared the 2008 vacant downtown land assessment rates (as per C-2, pg 10) to the current rates and concluded a -25% time adjustment is warranted to bring the sale in line with the valuation date of July 1, 2010 (the only mention of a potential time adjustment made by either party).

[24] The Board appreciates the parties' endeavour to address all available market data. The Board finds the Respondent's approach - whereby forced and locationally diverse sales are excluded from the analysis - to be reasonable. The Board extends the application of these principles and finds that 7 locations are left as reasonable indicators for the subject property - those shown under R-1, pg 99 excluding the property at 526 4th Avenue SW (as it is within the "DT1" district where C-1, pg 63 suggests a rate of \$566.73/sf and C-1, pg 60 shows an assessment of \$375/sf).

[25] The Board finds the Complainant's premise that FAR is a value influencing consideration to be reasonable. Having said that, the Board finds a comparison along such lines would be particularly applicable between like properties. The subject properties are not like the referenced properties - their uniqueness has been established by the Complainant. There is nothing before the Board to suggest these properties would yield similar returns. Furthermore, in that FAR is the only property characteristic addressed by the Complainant, the Board is left to wonder how the market would consider other influences (e.g. proximity to the Bow River and associated public spaces) in the valuation of these unique properties.

[26] The Board finds the sale of 700 1st Avenue SW reflects the characteristics of the subjects' location and associated influences. There is no evidence before the Board to gauge whether or how the reported pending development affected the sale price. In that the property is still vacant and (as per R-1, pg 126) a different development permit was pursued subsequent to the sale, the Board finds the 2007 sale price to be a reliable value indicator.

[27] The Complainant's argument regarding time adjustment is found to be reasonable given

the variance in vacant land assessment rates between 2008 (the nearest roll year to the subject sale) and current assessment criteria. The current base land rate of \$275/sf is 22% lower than 2008 rate of \$350/sf as shown under C-2, pg 10. In that 700 1st Avenue SW sold for \$276/sf, in May 2007, the ensuing time adjustment of -22% would result in a rate of \$215/sf.

[28] The Complainant made argument regarding the Assessor's policy of adjusting for "*Land Use Restriction*" as per the "*2011 Downtown influence Chart*" shown under C-1, pg 57. The chart indicates the appropriate adjustment is -20% and the Board finds the Respondent's testimony that such adjustments are not applied in downtown areas to be subjective. The Complainant produced a "*2011 Assessment Explanation Supplement*" for a downtown property with such an adjustment under C-1, pg 65.

[29] The Board finds an adjustment of -20% to the subjects' base land rate of \$275/sf results in an rate of \$220/sf and supports the conclusion reached under [27] above.

[30] The Board finds the Complainant's market analysis regarding the sale of 700 1st Avenue SW produces an appropriate market value indicator for assessment purposes for the subject properties as of July 1, 2010. The Board concludes a base land rate of \$215 is appropriate for the subject properties. No evidence is before the Board to dispute the +5% corner influence so that adjustment will be maintained, resulting in a vacant land rate of \$225/sf.

2. Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

[31] The Complainant advanced 18 market transactions under Doc. C-1, pg 55 ("*Equity Analysis*"). Within its analysis the Complainant points to the (FAR) as outlined by the appropriate land use zoning designation at the time of the sales and (in order to quantify the effect of the Bylaw) calculates an assessment/developable square foot for each sale. The calculated median value arising from these 18 indicators is shown to \$21.80/sf and is the basis (rounded to \$22/sf) for the Complainant's "equity" based request.

[32] The Board finds the Complainant has not established comparability between these purported similar properties and the subject properties. The zoning and locational differences have been discussed under [25] above.

[33] The Board finds the Complainant's equity evidence does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

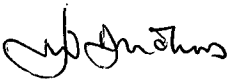
BOARD'S DECISION:

[34] The Board finds the appropriate market based land rate for these unique properties to be \$225/sf (including a +5% adjustment for corner influence).

[35] The assessments before the Board are therefore reduced as follows:

| | | | | |
|-----------------------|--------------|--------------|--------------|--------------|
| ROLL NUMBERS: | 067234906 | 067235002 | 067234708 | 067234807 |
| SQUARE FEET(SF): | 59,342 | 49,909 | 79,426 | 65,612 |
| LAND RATE: | \$225/SF | \$225/SF | \$225/SF | \$225/SF |
| ASSESSMENT (rounded): | \$13,350,000 | \$11,220,000 | \$17,870,000 | \$14,760,000 |

DATED AT THE CITY OF CALGARY THIS 28 DAY OF OCTOBER 2011.

PER


I. Zacharopoulos
Presiding Officer

APPENDIX "A"

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

| NO. | ITEM |
|-------------|------------------------------------|
| 1. Doc. C-1 | Complainant's Submission & Addenda |
| 2. Doc. C-2 | Complainant's Rebuttal |
| 3. Doc. R-1 | Respondent's 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.*