

**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:

**OREC (CALGARY) HOLDINGS INC. c/o OPGI MANAGEMENT GP INC.
(represented by: ALTUS GROUP LTD.), *Complainant***

and

THE CITY OF CALGARY, *Respondent*

before:

**J. KRYSA, *Presiding Officer*
R. DESCHAIINE, *Member*
B. BICKFORD, *Member***

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

| | |
|--------------------------|---------------------------|
| ROLL NUMBER: | 448000307 |
| LOCATION ADDRESS: | 10524 15 Street NE |
| HEARING NUMBER: | 68144 |
| ASSESSMENT: | \$35,290,000 |

The complaint was heard on October 25, 2012, in Boardroom 6 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- **D. MEWHA; D. HAMILTON** (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- **N. DOMENIE** (The City of Calgary)

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

[1] At the commencement of the hearing, the Complainant requested that the evidence and argument in respect of exhibits C2 to C10 presented at the earlier hearing of File 68142 (Tax Roll 447000126), be carried forward, and considered by the Board in this matter without further mention. The Respondent did not object to the Complainant's request and asked that his evidence and argument in response to exhibits C2 to C10 also be carried forward and considered by the Board in this matter without further mention.

[2] **Decision:** The Board agrees to the parties' request. The evidence and argument presented by both parties at the hearing of File 68142 (Tax Roll 447000126) will be considered by the Board in this matter without further mention.

Property Description:

[3] The subject property is a 97.60 acre parcel of vacant, raw development land located southeast of Deerfoot Trail between 15th and 19th streets NE. As at December 31, 2011, the property was stripped of topsoil and graded in anticipation of subdivision and development into an industrial/commercial business park consistent with the municipality's Revised Stoney Industrial ASP (Area Structure Plan). The approved ASP outline plan closed the gravel access road (15th street) along the subject's northwest boundary and conditionally amended the subject's land use designation from S-FUD (Special Purpose – Future Urban Development) to two distinct land use designation areas; 'I-B' (Industrial Business) – 29.18 acres, and 'I-G' (Industrial General) - 59.00 acres. In addition to the 88.18 acres set out above, 9.42 acres are allotted for interior roadways and carry no land use designation. The assessment has been prepared by means of the land valuation formula as set out below:

| LUD | Formula | Acres | Unit Rate per Acre | Size Adjustment | Component Value | Effective Land Rate |
|------------|--------------------------------|---------------------|-----------------------|--------------------|-----------------------------|---------------------------|
| I-G | 1st 3 Acres | 3.00 | \$800,000 | 0% | \$ 2,400,000 | |
| I-G | Additional Area up to 10 Acres | 7.00 | \$600,000 | 0% | \$ 4,200,000 | |
| I-G | Additional Area up to 20 Acres | 10.00 | \$600,000 | -15% | \$ 5,100,000 | |
| I-G | Additional Area up to 50 Acres | 30.00 | \$600,000 | -25% | \$ 13,500,000 | |
| I-G | Additional Area over 50 Acres | <u>17.60</u> | \$600,000 | -50% | <u>\$ 5,280,000</u> | |
| I-G | Subtotal | 67.60 | | | \$ 30,480,000 | \$450,888 |
| I-B | 1st 3 Acres | 3.00 | \$925,000 | 0% | \$ 2,775,000 | |
| I-B | Additional Area up to 10 Acres | 7.00 | \$600,000 | 0% | \$ 4,200,000 | |
| I-B | Additional Area up to 20 Acres | 10.00 | \$600,000 | -15% | \$ 5,100,000 | |
| I-B | Additional Area up to 50 Acres | <u>10.00</u> | \$600,000 | -25% | <u>\$ 4,500,000</u> | |
| I-B | Subtotal | <u>30.00</u> | | | <u>\$ 16,575,000</u> | \$552,500 |
| | Total | 97.60 | | | \$ 47,055,000 | \$482,121 |
| | Influence Adjustment: | | 'SHAPE' | -25% | \$(11,763,750) | |
| | Estimated Market Value | | | | \$ 35,291,250 | |
| | Assessment | | | | \$ 35,290,000 | \$361,578 |

Issues:

[4] The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount
4. an assessment class
5. an assessment sub-class
9. whether the business or property is assessable
10. whether the business or property is exempt from taxation

[5] At the commencement of the hearing the Complainant withdrew matters 4 through 10, and led evidence and argument only in relation to matter 3, an assessment amount. The Complainant set out sixteen issues and grounds for the complaint in section 5 of the complaint form with a requested assessment of \$2,690,000; however, at the hearing only the following issues were before the Board:

1. Does the assessment of the subject property exceed its market value?
2. Is the assessment of the subject property equitable in relation to the assessments of similar properties?

Complainant's Requested Value:

[6] The Complainant's submission sets out a requested assessment of \$22,130,000, as well as three alternative assessment values ranging from \$12,690,000 to \$25,380,000; reflecting various methodologies to establish the subject's market value. However, during the course of the hearing the Complainant revised the request to \$25,240,000.

Complainant's Position

[7] The Complainant argues the Assessor's methodology is flawed in several respects and establishes an inaccurate and excessive estimate of market value for the subject property as of the valuation date, July 1, 2011. The Complainant further argues that the assessment, equating to a unit rate of \$361,578 per acre, does not reflect the subject's physical characteristics as at December 31, 2011.

[8] The Complainant maintains that the Respondent's industrial base land rate applied to the subject lands is excessive and inappropriate, as the subject's conditional and tentative industrial zoning contributes little to the market value of the property until significant development work has been completed and the required "conditions" are met. Further, the Complainant submits that although the subject property is an individually titled 97.6 acre parcel, the assessment is founded on the combined estimates of value of two hypothetical parcels of land, 67.6 acres and 30.0 acres in size; with the first three acres of each hypothetical parcel valued at a base land rate reflective of small industrial parcels. The Complainant contends that this methodology is improper for the reason that the Respondent's size adjustment factors provide no diminishing returns adjustment to the first 20 acres of the parcel, and an insufficient diminishing returns adjustment to the remainder of the parcel. In contrast, the Complainant suggests that proper application of the methodology would assign only one, 3 acre small parcel land value with diminishing returns adjustments of up to 50% applied to 87.6 acres of the parcel.

[9] The Complainant further contends that although the Respondent relied on the approved ASP outline plan for the subject's conditional and tentative industrial zoning, the Respondent ignored the area allocations in the plan, and has improperly applied industrial base land rates to a 9.42 acre area that is designated for interior roadways, and is zoned neither 'I-B' nor 'I-G'.

[10] In support of the above arguments, the Complainant provided a copy of the Revised Stoney Industrial ASP [C7], and related outline plan and tentative subdivision approval documentation [C1], setting out the particulars of the subject's land use designation as noted in the conditions of approval, and the above property description in this decision.

[11] The Complainant also argues that the assessment does not reflect the physical characteristics of the property as required in section 289 of the Act; as the market for large, unserved, raw development parcels bears almost no relationship to the small end user sites that the Respondent relies on to establish the base land rate. The Complainant submits that the Respondent's base land rate is derived from sales of fully-served, readily accessible, standard shaped industrial land parcels not exceeding 5 acres in size; or the sale prices are "adjusted" by the Respondent to reflect those physical characteristics. The Complainant contends that if the base land rate is to be applied to the subject property, significant adjustments must be made to reflect the subject's large parcel size (economy of scale); the absence of services (water, storm and sanitary sewers) throughout the parcel; the lands required for roads and infrastructure (dedication), and the offsite levies payable; holding, carrying and interest costs; in addition to the appropriate influence adjustments typically provided by the Respondent in respect of limited access, shape, restrictions, encumbrances, etc.

[12] The Complainant submits that the base land rate applied to the subject lands is adjusted only for parcel size and the irregular shape of the parcel; no adjustments have been made to account for the subject's other negative physical characteristics set out above, notwithstanding that the requested adjustments have been applied in the assessment calculations of various other properties exhibiting far less significant negative influences; several examples of which are included in exhibits C4 and C5.

[13] In respect of the subject's parcel size, the Complainant argues that further to the Respondent's improper methodology referred to in paragraph 8, the Respondent's size adjustment factors are insufficient to accurately reflect the diminishing returns evident in the industrial land market. The Complainant further contends that the size adjustment factors in the Respondent's land valuation formula are unchanged from those of prior years, and that the Board has consistently rejected the Respondent's diminishing returns adjustment factors.

[14] In support of the argument, the Complainant submitted a copy of the Respondent's non-residential sales [C1], to illustrate that the largest non-residential parcel in the Respondent's sales analysis is less than 5 acres in size. The Complainant further provided a comparison of "predicted" estimates of market value established by means of the Respondent's land valuation formula, to the sale prices of five southeast industrial parcels greater than 20 acres in size [C3]. The comparison demonstrates that the predicted estimates of market value exceed the corresponding time adjusted sale prices by a range of 16% to 32%, and by an average of 23%, illustrating that the current size adjustment factors employed by the Respondent are insufficient.

[15] In respect of land services, the Complainant submits that because the subject property has services "available" to it at the southeast corner of the parcel, the Respondent has applied the industrial base land rate, equivalent to fully-served industrial land parcels, to the subject's

entire 97.6 acre area. The Complainant maintains that no adjustments to reflect the costs of bringing the entire parcel to a fully-serviced condition (deep and shallow servicing, offsite levies, etc.) have been deducted from the Respondent's base land rate in the assessment calculation; notwithstanding that the property is in the early phases of development and deep servicing has not even commenced. Moreover, the Complainant argues that the criterion for "serviced" land relied on by the Respondent's ABU (Assessment Business Unit) is of no relevance and inconsistent with the criteria of market participants in the land development industry, including associated departments within the City of Calgary. The Complainant maintains that land is not considered serviced in the vernacular of the land development industry, and by the City of Calgary, (with the exception of the ABU), until a C.C.C. (Construction Completion Certificate) has been issued by an engineer, certifying that construction has been completed.

[16] To demonstrate that the Respondent's criterion is not universally applied in the preparation of assessments, the Complainant provided examples of properties with "available" services at the property line, that were provided adjustments of -25% for "partial services" and -50% for "no services" [C4].

[17] To establish a current estimate of market value for the subject property, the Complainant provided an estimate of the collective value of the four proposed development "sites" set out in the subject's ASP outline plan, indicating a market value of \$50,769,586, founded on the Respondent's industrial base land rates and size adjustment factors. From this value, the Complainant applied negative influence adjustments of -75% or -50% to reflect the subject's current physical characteristics, resulting in estimates of value for the subject property of \$12,690,000 and \$25,380,000. The Complainant contends that the adjustments reflect the influence adjustment allowances typically applied by the Respondent in respect of industrial properties; e.g. no services, limited access, irregular shape and land use restrictions due to the proximity of the airport [C1, pp.44-45].

[18] In contrast to the deficiencies set out in respect of the Respondent's land valuation formula, the Complainant argues that there is sufficient market evidence of raw development land parcels from which to establish the market value of the subject property. The Complainant contends that the market evidence exhibits a median unit rate of \$193,000 per acre, which supports a market value conclusion of \$18,836,800 for the subject property.

[19] In support of the above argument, the Complainant provided six sales of raw development land parcels ranging in size from 27.7 acres to 257.57 acres, exhibiting sale prices equating to a range from \$86,643 to \$280,500 per acre. Five of the parcels are located in the northeast quadrant of the municipality in proximity of the subject, one of which is the 2008 combined sale of the subject property and the adjacent 159.66 acre parcel for \$63,595,124; equating to a unit rate of \$246,808 per acre. The average and median sale price of the six sales equates to \$199,191 and \$212,710 per acre, respectively. The Complainant provided brief descriptions of the properties, and the following adjustments to the sales:

- The sale price of 10499 15 Street NE was adjusted by +30% to reflect the topography issues related to the parcel's location along a permanent waterway (Nose Creek).
- The sale price of 6337 57 St SE was adjusted by +20% to reflect the inferior SE quadrant location.
- The 2008 sale prices of the remaining four sales were "time" adjusted by -15% to reflect the July 1, 2011 valuation date for the current assessment.

[20] After the above adjustments, the six sales exhibit sale prices equating to a range of unit rates from \$112,635 to \$238,425 per acre; and average and median sale prices equating to unit rates of \$184,898 and \$192,702 per acre, respectively [C1, p.46].

[21] The Complainant provided a further estimate of value based on the subject's pro-rated time adjusted 2008 sale price, plus the pro-rated development expenditures to date, resulting in a market value conclusion of \$24,608,842. As a result of the Respondent's recommendation in respect of the related, adjacent 159.66 acre parcel, the Complainant adjusted the market value conclusion to \$25,247,000.

[22] The Complainant also submitted two estimates of value for the subject property employing the Respondent's land valuation formula, with adjustments of either -75% or -50% to reflect the influence adjustments applied by the Respondent to other properties with similar physical characteristics to those of the subject property. However, at the hearing, the Complainant withdrew the proposed market value conclusions as a result of the Respondent's concession that the methodology was improper [C1, pp.46-47].

Respondent's Position

[23] In response to the Complainant's issue in respect of the valuation methodology, the Respondent concedes that the combined value of two hypothetical parcels of land is inappropriate; however, the Respondent argues that the error of the methodology is more than offset by an unwarranted -25% "shape" adjustment applied in the assessment calculation.

[24] In support of the argument, the Respondent provided the Board with an alternate assessment calculation in the amount of \$39,925,678, founded on a "blended" base rate of \$616,137 per acre before the application of the Respondent's standard size adjustment factors, and excluding the original -25% adjustment to reflect the shape of the parcel [R1]. The Respondent maintains that this calculation demonstrates that the current assessment of \$35,290,000 is reasonable, notwithstanding the inappropriate methodology employed.

[25] The Respondent argues that until the subject's roadway infrastructure is constructed and the parcel is subdivided, the 9.42 acres designated for roadways are part of the current 97.6 acre parcel and should be assessed at industrial land rates.

[26] The Respondent further argues that any development expenditures, including internal road dedications, municipal reserves, acreage assessment levies, construction of on and off site municipal services will be recaptured in the final sale prices of the subdivided parcels, and therefore should not be deducted from the market value conclusion derived from the industrial base land rate.

[27] In respect of the criterion for "serviced" land, the Respondent submits that properties are assessed as though fully-serviced if a connection to services is "available" to the parcel.

[28] In response to the Complainant's six development land sales, the Respondent contends that the sales are dissimilar to the subject property in that one of the sales is of a DC land use designation, and four of the sales are of an S-FUD land use designation which are not comparable to the subject's I-B and I-G land use designations. Further, although the remaining sale is of an I-G land use designation, it is located in the southeast quadrant of the municipality, and did not have comparable, available servicing at the time of the sale.

[29] In respect of the 2008 sale of the subject property, the Respondent argues that the sale price is no longer relevant due to the subject's land use designation changes as well as the physical changes to the lands. The Respondent argues that the conditional and tentative industrial land use designation results in a marked increase in the subject's market value in relation to the S-FUD land use designation at the time of the sale.

[30] The Respondent also provided a RealNet draft document in respect of a February 28, 2012 sale of 513.775 acres for \$107,462,700, equating to a unit rate of \$209,163 per acre. The Respondent contends that the M-1 and M-H2 (Multi Residential) land use designations are inferior to the subject property, and demonstrate that the Complainant's requested assessment unit rate is unreasonable.

Board's Findings

[31] The Board finds that the physical characteristics of the subject property are not reflected in the assessment as required in s.289 (2)(a) of the Act, as the influence adjustments applied in the assessment calculation do not accurately reflect the subject's physical characteristics.

[32] The Board further finds that the Respondent's influence adjustments are arbitrarily and inconsistently applied amongst properties with similar physical characteristics. The Board is persuaded by the Complainant's evidence that illustrates some properties with "available" services are provided allowances for "limited services" or "no services", while others are not. The Complainant's evidence also demonstrates that some properties with paved public roadway access are provided significant allowances for "limited access"; while other properties with arguably restricted access are not provided with any adjustment. Notwithstanding the Respondent's "Limited Access" definition (which carries no legislative sanction), it is clear from the Complainant's equity evidence in exhibits C1 and C5, that the criteria set out in the definition is not universally or equitably applied by the various representatives of the Respondent.

[33] **Size:** The Board finds that the Respondent's size adjustment factors are insufficient to accurately reflect the diminishing returns evident in the industrial land market. The Board is persuaded by the Complainant's diminishing returns analyses within exhibit C3 that demonstrate the Respondent's land valuation formula inaccurately predicts the market value of large industrial parcels. The Board notes that the Respondent failed to provide any relevant market evidence to refute the Complainant's analysis and conclusions, or to support the size adjustment (diminishing return) factors employed in the assessment of the subject property.

[34] **Shape:** The Board finds that the market value of the subject property is not impacted by the irregular shape of the parcel, and agrees with the Respondent that the current -25% shape adjustment is unwarranted. The Complainant's site plans are compelling evidence that demonstrate the irregular shape of the parcel does not affect its current or intended use as an industrial property. However, the Board notes that this "unwarranted" adjustment further serves to corroborate the Complainant's position in respect of significant and inequitable inconsistencies in the application of influence adjustments.

[35] **Access:** The Board finds that the subject property is not impacted by restricted access. The Respondent's evidence of a paved public road (Freeport Boulevard NE) culminating at the subject's property line is compelling evidence that demonstrates the subject has access to a paved roadway at its property boundary. The Board accepts that the current concrete barriers restrict access to the property; however, there was no evidence before the Board to suggest that the barriers would not be removed upon application to the municipality, or to indicate whether the barriers are even the property of the municipality, or the property of the landowner.

[36] **Services:** The Board finds that the subject property is not fully-serviced land, and an adjustment to the base land rate is warranted. The Board concurs with the Complainant that the subject property is not "serviced" in the vernacular of the land development market. In the Board's view, although services are available to the parcel, the majority of the subject property is, for all intents and purposes un-serviced, raw development land. The Board finds the inconsistent criteria for "serviced" land between the Respondent's ABU, and participants in the raw development land market including the Respondent's planning department and the Calgary Planning Commission, is problematic. The Board is persuaded by the evidence of the Complainant that indicates land is considered to be "serviced", only when a "C.C.C." document has been issued.

[37] In the Board's view, the Respondent's criterion for "serviced" land may be appropriate for small industrial parcels; however, there was no market evidence to demonstrate that merely having access to "available" services increases the market value of large, raw development land parcels to a unit value equivalent to that of small, fully-serviced (end user) industrial parcels.

Board's Decision

[38] The Board finds that the assessment of the subject property exceeds its market value. The Complainant's request of \$25,240,000, equating to a unit rate of \$258,606 per acre, is allowed.

[39] The Complainant's four 2008 sales of development land parcels located in the vicinity of the subject property are compelling market evidence that demonstrate the assessment exceeds the market value of the subject property. The Board notes that the average sale price of the four sales equates to a unit rate of \$238,181 per acre, reflecting an average parcel size of 158.9 acres. Further, none of the four sale prices equate to a unit rate near the subject's assessed unit rate of \$361,578 per acre; notwithstanding that the sales occurred in the height of the market, and the subject's parcel size is less than 2/3 the average parcel size of the four sales. The Board put little weight on the Complainant's sales of 10499 15 St NE and 6335 57 St SE, as they are somewhat dissimilar to the subject property in respect of topography, net developable area, availability of services, and location.

[40] The Board notes that the Respondent failed to present any market evidence to refute the Complainant's development land sales analysis, or in support of the subject's assessed unit rate. Although the Respondent argued that Complainant's sales are dissimilar to the subject property as a result of different land use designations, the Respondent did not provide any market evidence to demonstrate that a property with an S-FUD land use designation in the Stoney Industrial ASP would exhibit a significantly different market value than a physically

similar, industrially-zoned property. The Respondent's February 2012 sale of 513.775 acres along Country Hills Boulevard NE equating to a unit rate of \$209,163 per acre was afforded little weight by the Board as the property is 5.2 times the size of the subject, and there was no market supported adjustment to reflect economy of scale. Moreover, although the Respondent maintains that the property is inferior to the subject in respect of its land use designations, there was no market evidence provided to confirm the assertion.

[41] The Board finds that the time adjusted 2008 sale of the subject property, adjusted by the actual development expenditures to date is the best evidence of the subject's current market value. The Complainant's requested assessment of \$25,240,000 is supported by the (unchallenged) time adjusted sale price of the subject property, which the Board notes would reflect the subject's unique physical characteristics including "availability" of servicing, shape, topography, access, easements, and environmental issues that are all largely unchanged from the date of sale. The request also accounts for the subsequent development expenditures to date, in respect of stripping of topsoil and grading.

[42] The Board rejects the Respondent's argument that the conditional and tentative re-zoning of the subject from S-FUD to I-B and I-G subsequent to the sale is a factor that would significantly increase the subject's market value, for the reason that the Stoney Industrial Area Structure Plan indicates the subject lands are located in an area predominantly designated as "Business / Industrial Area". In the Board's view, the subject's sale price as an S-FUD parcel would largely reflect the predestined I-B and I-G land use designations minus the significant development expenditures required to develop the property and comply with the municipality's development conditions (e.g. deep and shallow servicing, roadway infrastructure, off site levies, etc.). Although the Respondent argued that the market value of industrially-zoned lands is greater than that of S-FUD lands, the Respondent failed to provide any market evidence of properties with similar physical characteristics but differing land use designations to substantiate the theory. Consequently, the Board accepts the Complainant's position that the evident premium of fully-serviced industrially-zoned lands in relation to S-FUD lands, is attributable for the most part to development (servicing and infrastructure) expenditures, and less so to the property's (conditional) industrial land use designation.

The assessment is **REVISED** from: \$35,290,000 to: **\$25,240,000**.

DATED AT THE CITY OF CALGARY THIS

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DAY OF DECEMBER, 2012.


J. Krysa
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|---------|--|
| 1. C1 | Complainant's Submission (120 pages) |
| 2. C2 | Land Sales Addenda (229 pages) |
| 3. C3 | Diminishing Returns SE Large Parcels and Adj. (91 pages) |
| 4. C4 | Servicing Adjustments and Comparables (52 pages) |
| 5. C5 | Limited / Restricted Access (67 pages) |
| 6. C6 | Time Adjustment (60 pages) |
| 7. C7 | Revised Stoney Industrial Area Structure Plan (203 pages) |
| 8. C8 | Roads, Ponds and Other Public Lands (63 pages) |
| 9. C9 | Relevant Board Orders, Case Precedent, <i>et al</i> (41 pages) |
| 10. C10 | 2012 Rebuttal Evidence (303 pages) |
| 11. R1 | Respondent's Recommendation (1 page) |
| 12. R2 | Respondent's Submission (152 pages) |

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

| Subject | Property Type | Property Sub-Type | Issue | Sub-Issue |
|---------|---------------|-------------------|------------------|--------------------|
| CARB | Other | Vacant Land | Development Land | Land Value, Zoning |