

**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 (the Act).

between:

***Eau Claire Market Inc. c/o Harvard Developments Inc.  
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

and

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

before:

***J. Krysa, PRESIDING OFFICER  
J. Kerrison, MEMBER  
T. Usselman, MEMBER***

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

FILE	ROLL NUMBER	ADDRESS	ASSESSMENT
63161	068244508	101 Barclay Parade SW	\$ 1,510,000
63162	068244607	111 2 Street SW	\$ 50,030,000
63163	068244706	342 2 Avenue SW	\$ 15,950,000
63164	068244805	382 2 Avenue SW	\$ 3,570,000
63165	068245000	201 Barclay Parade SW	\$ 2,320,000
63166	068245109	208 Barclay Parade SW	\$ 4,220,000

The complaints were heard on September 27, 2011, in Boardroom 8 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Hartley; M. Uhryn

Appeared on behalf of the Respondent:

- D. Lidgren; H. Neumann

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

**Property Description:**

The subject property is comprised of six, individually titled parcels of land that collectively form the site of the Eau Claire Festival Market in downtown Calgary. The parcels exhibit the following attributes:

Roll Number	Address (SW)	Parcel Size (Sq.Ft.)	Improvement Area (Sq.Ft)	Improvement Description
68244508	101 Barclay Parade	7,860	10,584	Formerly "Brewsters" Restaurant
68244607	111 2 Street	215,189	167,050	"Eau Claire Festival Market"
68244706	342 2 Avenue	55,244	-	Vacant Parking Lot
68244805	382 2 Avenue	13,013	-	Vacant Parking Lot
68245000	201 Barclay Parade	7,292	4,500	"Barley Mill" Restaurant
68245109	208 Barclay Parade	<u>18,079</u>	<u>6,200</u>	"Joey Tomatoes" Restaurant
	Total	<b>316,677</b>	<b>188,334</b>	

Although four of the parcels are improved as set out above, all of the properties have been assessed at the estimated market value of the underlying lands, as though vacant, as detailed below:

Roll Number	Address (SW)	Parcel Size (Sq.Ft.)	Base Land Rate per Sq.Ft.	Adjustment	Influences
68244508	101 Barclay Parade	7,860	\$ 275	-30%	- Access,- Shape
68244607	111 2 Street	215,189	\$ 275	-15%	- Shape
68244706	342 2 Avenue	55,244	\$ 275	+5%	+ Corner
68244805	382 2 Avenue	13,013	\$ 275	-	
68245000	201 Barclay Parade	7,292	\$ 375	-15%	- Access
68245109	208 Barclay Parade	18,079	\$ 275	-15%	- Access

**Issues:**

The Complainant raised the following matter in section 4 of the complaint form:

3. an assessment

The Complainant set out six grounds for the complaint in section 5 of the complaint form, however, at the hearing only the following issues were before the Board:

Issue 1. The 2009 sale of the lands illustrates the aggregate market value of the subject parcels is \$13,500,000.

Issue 2. The lands are contaminated and a 30% reduction in market value is warranted.

Issue 3. The density adjusted market value of Eau Claire land is \$40.23 per (buildable) sq.ft. illustrating the aggregate market value of the subject parcels is \$44,357,425.

Issue 4. The income approach to value illustrates the aggregate market value of the subject parcels is \$38,000,000.

Issue 5. The 60% 'non-residential' / 40% 'residential' assigned assessment class percentages are inaccurate, and should be revised to 44% 'non-residential' / 56% 'residential'.

[C1, pp.1,16]

**Complainant's Requested Value:**

As evident in the Complainant's issues set out above, the Complainant put forth several significantly differing assessment values, however, the title page of exhibit C1 sets out the following requested assessment values and portion of the assessment attributable to each assessment class:

ROLL NUMBER	ADDRESS (SW)	ASSESSMENT	ASSESSMENT CLASS <i>Non Residential / Residential</i>	REQUESTED ASSESSMENT	*REQUESTED ASSESSMENT CLASS <i>Non Residential / Residential</i>
68244508	101 Barclay Parade	\$ 1,510,000	60% / 40%	\$ 1,000	44% / 56%
68244607	111 2 Street	\$ 50,030,000	60% / 40%	\$ 9,140,000	44% / 56%
68244706	342 2 Avenue	\$ 15,950,000	60% / 40%	\$ 2,410,000	44% / 56%
68244805	382 2 Avenue	\$ 3,570,000	60% / 40%	\$ 568,000	44% / 56%
68245000	201 Barclay Parade	\$ 2,320,000	60% / 40%	\$ 318,000	44% / 56%
68245109	208 Barclay Parade	\$ 4,220,000	60% / 40%	\$ 790,000	44% / 56%
				\$ 13,227,000	* C1, pp. 1, 16

With respect to the requested assessment class allocation, the Complainant also set out a request of 46% 'non-residential' / 54% 'residential' at pages 4 and 6 of rebuttal exhibit C6.

**Board's Decision in Respect of the Issues:**

**Issue 1.** The 2009 sale of the lands illustrates that the aggregate market value of the subject parcels is \$13,500,000.

The Complainant argued that the February 2009 sale of the subject lands was conditional on rezoning and redevelopment of the site into a mixed use property which would involve the demolition of the current improvements on the site. Accordingly, the improvements have no value and the sale price of \$13,500,000 represents the aggregate market value of the property.

The Complainant prepared an apportionment of the total sale price amongst five of the six parcels (excluding 101 Barclay Parade SW), applying the rate of \$43.71 per sq.ft. to the areas of the parcels to arrive at the requested assessments as follows:

ROLL NUMBER	ADDRESS	Parcel Size Sq.Ft.	Sale Price per Sq.Ft.	Requested Assessment
68244508	101 Barclay Parade SW	7,860	\$ 0.13	\$ 1,000
68244607	111 2 Street SW	215,189	\$ 43.71	\$ 9,406,336
68244706	342 2 Avenue SW	55,244	\$ 43.71	\$ 2,414,824
68244805	382 2 Avenue SW	13,013	\$ 43.71	\$ 568,824
68245000	201 Barclay Parade SW	7,292	\$ 43.71	\$ 318,748
68245109	208 Barclay Parade SW	18,079	\$ 43.71	\$ 790,269
				<b>\$13,500,000</b>

The Complainant submitted that the parcel located at 101 Barclay Parade SW was not available for development as it is required for accessing the site, and pursuant to Bylaw 20Z2008 and Amendment LOC2006-0153, the parcel will be a public park; therefore, it should be valued at a nominal value of \$1,000.

In support of the argument, the Complainant provided a copy of the land titles certificates, transfer document and affidavit re: value of land document for the subject properties, as well as the related "RealNet" sale transaction summary document, and the copy of the above noted Bylaw. [C2, pp.124 -196]

The Respondent argued that the \$13,500,000 sale does not represent market value, as the sale was not listed on the open market, thus does not meet the definition of market value as set out in the Act. Further, it was argued that the sale was subject to specific (redevelopment) conditions stipulated by the vendor municipality who maintains a purchaser's interest in the properties; therefore the sale price would not represent typical market value.

The Respondent also argued that the sale price does not represent the market value of the fee simple estate of the parcels, as the purchaser of the lands already possessed a significant portion of the fee simple estate as a result of the 2004 purchase of a 70 year leasehold interest in the subject properties for \$28,000,000. The Respondent argued that at a minimum, the indicated market value of the property may be the sum of the two transactions, \$41,500,000; however, that value would exclude a fivefold increase in land values between 2004 and 2010, which would indicate a market value of \$153,500,000.  $((\$28,000,000 \times 5) + 13,500,000)$ .

In support of the argument, the Respondent provided a summary of vacant land sales and a graph demonstrating a linear increase in the sale price per acre between October 2004 and October 2008.

With respect to the current assessments of the parcels, the Respondent failed to provide market evidence in support of the \$275 per sq.ft. "base" land rate applied to the areas of the parcels; however, the Respondent submitted that there were several errors in the current assessment calculations, and requested that the Board revise the assessment values as follows:

ROLL NUMBER	ADDRESS (SW)	CURRENT ASSESSMENT	REQUESTED ASSESSMENT	REASON FOR CHANGE
68244508	101 Barclay Parade	\$ 1,510,000	\$ 1,830,000	Delete -15% Adjustment (Shape)
68244607	111 2 Street	\$ 50,030,000	\$ 59,170,000	Delete -15% Adjustment (Shape)
68244706	342 2 Avenue	\$ 15,950,000	\$ 15,950,000	No Revision Requested
68244805	382 2 Avenue	\$ 3,570,000	\$ 3,750,000	Add +5% Corner Lot Adjustment
68245000	201 Barclay Parade	\$ 2,320,000	\$ 1,700,000	Amend Base Rate to \$275 per sq.ft.
68245109	208 Barclay Parade	\$ 4,220,000	\$ 4,970,000	Delete -15% Adjustment (Access)
		\$ 77,600,000	\$ 87,370,000	

### Decision: Issue 1

The Board finds that the February 2009 sale, at \$13,500,000, does not represent the aggregate market value of the fee simple estate of the subject parcels.

The Board was not persuaded that the sale price represents the market value of the subject properties in this instance; as the Complainant's own alternate valuations proposed in issue 3; (\$44,357,000; corrected to \$53,047,751) and issue 4; (\$38,000,000), significantly contradict the Complainant's argument in respect the recent sale of the property, without reconciliation.

The Board was persuaded by the Respondent's (uncontested) evidence that the purchaser of the land already possessed a significant portion of the fee simple estate in the property as a result of the 2004 purchase of a 70 year leasehold interest in the subject properties for \$28,000,000. Although the Complainant argued that the leasehold interest was specifically related to the improvements and not the land, there was no compelling evidence provided to confirm that position. Moreover, the Board accepts that the 65 year (remaining) leasehold interest, purchased in an earlier transaction is a significant component of the subject's fee simple estate whether related to the improvements only, or to the improvements and land. Consequently, the Board finds that the February 2009 sale of the residual interest in the properties does not represent the market value of the fee simple estate of the subject parcels.

With respect to the Respondent's requested influence adjustment changes, the Board is not persuaded by the Respondent's arguments. The Board notes that the specific influence adjustments are not an issue that was raised by the Complainant; and as evident from the email documents in exhibit C6 were apparently not at issue during the municipality's advanced consultation and customer review periods with the assessor who prepared the assessment, and obviously considered the current adjustments appropriate. That the Respondent attending the hearing has an alternate opinion of what those adjustments should be is immaterial to the matter before the Board.

The Board does, however, find that the \$375 per sq.ft. base land rate applied to 201 Barclay Parade SW, is unsupported and inequitable, and accepts that a base land rate of \$275 per sq.ft. should apply.

**Issue 2.** The lands are contaminated and a 30% reduction in market value is warranted.

The Complainant submitted that the parcels are contaminated with petroleum hydrocarbon deposits resulting from the subject's prior use as the site of the municipality's transit bus garages. The Complainant argued that the municipality's assessment policy is to apply a -25% adjustment to the applicable base land rate to account for the loss in value attributable to environmental concerns (site contamination), however, that adjustment has not been applied in the assessment of the subject properties.

In support of the position in respect of site contamination, the Complainant provided a copy of the Remedial Action Agreement between the vendor municipality and the purchaser of the lands, referencing the Remedial Action Plan (RAP) and Risk Management Plan (RMP) in respect of site contamination, as well as several environmental reports related to the subject properties. The Complainant submitted that the agreement sets out the vendor municipality's obligation to contribute \$1,400,000 to the RAP/RMP costs during the 2 stages of the proposed development. The Complainant argued that the Remedial Action Agreement demonstrates that the municipality has conceded that the site is contaminated, and therefore the assessment should be adjusted by -25% in accordance with the assessment policy of the municipality. [C4]

In support of an adjustment, the Complainant further provided a City of Calgary document, "2010 Downtown Influence Chart", and several City of Calgary 2011 assessment documents to demonstrate that a -25% environmental concern adjustment policy is in place, and the adjustment was applied in the assessment valuation of the sample properties. [C2, pp.100-107]

The Complainant further argued that the Municipal Government Board has applied a -30% adjustment in the case of the "Glenmore Inn" without direct market evidence to quantify the loss in value, on the basis that the assessor had applied a similar adjustment to other properties under similar circumstances. Further, the Complainant submitted that the Municipal Government Board, in the case of the "Domtar" site in Edmonton, accepted an atypical sale price as the best indicator of the market value of a contaminated site; methodology that supports the Complainant's request based on the \$13,500,000 sale price addressed in issue 1.

[C2, pp.109-123]

The Respondent submitted that a search of Alberta Environment's, Environmental Site Assessment Repository for recent documents returned only documents that suggest a lack of contamination of the parcels and surrounding lands. The Respondent further argued that excavation of soil is not usually permitted if lands are contaminated, and as the current improvements on the site were constructed subsequent to the transit garage use, there is no contamination on the site. The Respondent provided several related documents in support of the position that the parcels are not contaminated.

[R1, pp.173-220]

In rebuttal, the Complainant provided correspondence from Alberta Environment and an excerpt of a 2008 UMA Engineering Ltd. report setting out further details on the remediation approach for the subject property. The report stated, "Overall the results of the soil and groundwater investigations have identified localized areas of contamination that can be managed by conventional technologies as part of site development". Further, the report identifies three significant areas of potential environmental concern within the subject parcels. [C6, p.24-33]

**Decision: Issue 2**

The Board finds that some level of contamination exists on the subject parcels; however, there is insufficient evidence to justify a -30% market value adjustment.

The Board was not persuaded by the Respondent's evidence and finds the Respondent's arguments with respect to this issue may be perceived as an attempt to misrepresent the facts before the Board. The Respondent's testimony that "the only recent documents available from the Environmental Site Assessment Repository clearly speak to a lack of contamination in the subject and surrounding lands", and "the fact that the subject improvements were constructed at all shows that back when they were built, there was no contamination." [R1, p.24]

The multitude of environmental assessments commissioned by the owner municipality, with the evidence of recommendations for remediation exhibited in documents dating back to at least 1988 and referenced in exhibit C4, unquestionably substantiate that there is some degree of contamination on the subject parcels and, or the surrounding lands. For the Respondent to argue otherwise without compelling evidence in support of that argument appears incongruous, and may be perceived as attempting to mislead the Board.

The references to site contamination in the Remedial Action Agreement (C4), and the 2008 UMA Engineering Ltd. report excerpt clearly indicate that some of the parcels are affected by some level of hydrocarbon contamination; a condition to which the vendor municipality has agreed to contribute \$1,400,000 to site remediation costs.

In addition to the Complainant's rebuttal evidence, the Board notes that several documents in the Respondent's own submission include references to groundwater contamination by petroleum hydrocarbons on former Eau Claire bus garage sites:

"The report identifies groundwater impacted by petroleum hydrocarbons exceeding Level 1 criteria..." March 1994 [R1, p.180];

"Pumping groundwater and skimming of petroleum product was initiated in early May..." "About 175 gallons of petroleum has been recovered, most of it in the last few days." May 1988 [R1, p.191].

Although the Board accepts that some level of contamination exists on the subject properties, there is little conclusive evidence to enable the Board to quantify the extent of the areas affected, which specific parcels are affected, the severity of the contamination, and the impact of the contamination on the market value of the subject properties. There is no evidence before the Board that demonstrates the entire site is affected by contamination.

The Board further notes that the property has been purchased with the intent of constructing a multi phase, mixed use development, which has been approved by the municipality prior to the transfer of the lands. The Board can only surmise that if the degree of the site contamination is not significant enough to prohibit residential development, the market value of the parcels comprising that site would not be diminished to the significant extent requested by the Complainant. This conclusion is supported by 2008 UMA Engineering Ltd. report which states, "Overall the results of the soil and groundwater investigations have identified localized areas of contamination that can be managed by conventional technologies as part of site development".

**Issue 3.** The density adjusted market value of Eau Claire land is \$40.23 per (buildable) sq.ft. illustrating the aggregate market value of the subject parcels is \$44,357,425.

The Complainant argued that a series of Board decisions in respect of Eau Claire land have been rendered over the last few years concluding that land is most reasonably assessed at a rate that reflects the allowable development density, being \$40.33 per (buildable) sq.ft.

In support of that argument, the Complainant submitted the most recent decision, CARB 2025/2010-P [C5]; and a calculation applying a \$40.23 rate to the areas of the subject properties, to arrive at an aggregate estimate of market value of the lands of \$44,357,425 after applying a 30% discount in respect of contamination and a further 15% discount to those parcels with limited access as detailed below: [C1, p.5]

ADDRESS (SW)	PARCEL SIZE	FAR	DENSITY SQ.FT.	RATE	INDICATED MARKET VALUE	*CONT	ACCESS	ASSESSMENT REQUEST
101 Barclay Parade	7,860		7,860	\$ 0.13	\$ 1,000	-30%	-15%	\$ 550
111 2 Street**	215,189	5.09	1,096,163	\$40.23	\$ 44,098,626	-30%		<b>\$ 22,178,712</b>
342 2 Avenue	55,244	8.93	493,329	\$40.23	\$ 19,846,622	-30%		\$ 13,892,636
382 2 Avenue	13,013	8.93	116,206	\$40.23	\$ 4,674,971	-30%		\$ 3,272,480
201 Barclay Parade	7,292	8.93	65,118	\$40.23	\$ 2,619,679	-30%	-15%	\$ 1,440,824
208 Barclay Parade	18,079	8.93	161,445	\$40.23	<u>\$ 6,494,951</u>	-30%	-15%	<u>\$ 3,572,223</u>
					<b>\$ 77,735,850</b>			<b>\$ 44,357,425</b>

\*\*111 2 Street SW (5.09: Blended rate)

\* Contamination

The Respondent argued that the decision of the Board in CARB 2025/2010-P was based on evidence that is not before the Board in these proceedings, therefore the findings of the Board in CARB 2025/2010-P are immaterial to the subject properties.

The Board notes a mathematical error in the Complainant's calculation of the parcel located at 111 2 St SW, whereby the requested assessment for this parcel should be \$30,869,038 (\$44,098,626 less 30%), rather than \$22,178,712. This correction would revise the aggregate requested assessment value to \$53,047,751, rather than \$44,357,425.

### Decision: Issue 3

The Board finds that there is no evidence of density adjusted land values before the Board from which to conclude appropriate land rates for the subject properties.

Notwithstanding the above finding, the Board notes that the Complainant's indicated market value of \$77,735,850, based on the \$40.23 per sq.ft. density adjusted rate, supports the current aggregate assessment of the subject properties, before the Complainant's further adjustments for contamination and limited access.

With respect to the Complainant's adjustments for limited access and contamination, there is no evidence to support an adjustment to the density adjusted land rate for limited access in this instance. Further, in light of the Board's earlier finding with respect to contamination in issue 3 above, the -30% contamination adjustment applied by the Complainant is also without support.



**Issue 4.** The income approach to value illustrates the aggregate market value of the subject parcels is \$38,000,000.

The Complainant argued that as the improvements were in place on December 31 of the assessment year, an income approach valuation would provide a reasonable estimate of market value for the subject properties. The Complainant conceded that the income approach was not the correct approach for a redevelopment site, however argued that it was more reasonable than the current assessment, and submitted that it was also the Respondent's selected approach to value for the previous year.

The Complainant submitted gross and net rental analyses of the different space types located in the properties to establish net rent rate coefficients ranging from \$12.00 per sq.ft. (upper floor office) to \$50.00 per sq.ft. (food court). Operating costs are estimated at \$24.00 per sq.ft., and vacancy allowances ranging from 15% (food court and retail) to 25% (remainder space types) are applied. The estimated net operating income was capitalized at a rate of 8% to establish an estimate of market value as follows:

Roll Number	Address (SW)	Improvement Description	Improvement Area (Sq.Ft.)	Estimated Market Value	Current Assessment
68244508	101 Barclay Parade	Formerly "Brewsters"	10584	\$ 2,804,000	\$ 1,510,000
68244607	111 2 Street	Eau Claire Market	167050	\$33,213,504	\$ 50,030,000
68244706	342 2 Avenue	Parking Lot			\$ 15,950,000
68244805	382 2 Avenue	Parking Lot			\$ 3,570,000
68245000	201 Barclay Parade	"Barley Mill"	4500	\$ 1,193,000	\$ 2,320,000
68245109	208 Barclay Parade	"Joey Tomatoes"	6200	<u>\$ 1,643,000</u>	<u>\$ 4,220,000</u>
				\$38,853,504	\$ 77,600,000

The Respondent argued that the Complainant's income valuation was inappropriate, however, failed to provide any market evidence to refute the Complainant's estimate of market value.

#### **Decision: Issue 4**

The Board finds that the Complainant's income approach to value fails to appropriately establish the market value of the subject parcels.

Although the Complainant's approach established estimates of market value for the improved properties, there was no estimate of value provided for the two vacant parcels of land.

The Board did not find the Complainant's income approach evidence and argument to be compelling evidence of market value, as the Complainant conceded that the income approach is not the correct approach to employ in this instance. Current occupancies (and income) of the subject property are temporary due to the impending redevelopment; consequently, revenues have been decreasing as a result of increased vacancy levels and a greater number of tenants on gross month to month leases that can be terminated by the landlord as required for redevelopment of the site. The Board agrees that the income approach to value is not appropriate for properties impacted by these circumstances.

Further, the Board finds that the Complainant's estimate of market value based on the current use is immaterial as the current use of the properties is not the highest and best use of the parcels. As the subject properties form a redevelopment site with an approved development permit in place, the highest and best use of the site is the impending redevelopment and the market value of the properties is the value of the land. The Board is not persuaded that the market value of the improved properties is lower than the uncontested land value established by the assessor, and supported by the density adjusted land rate put forward by the Complainant in issue 3, before adjustments.

**Issue 5.** The 60% 'non-residential' / 40% 'residential' assigned assessment class percentages are inaccurate, and should be revised to 44% 'non-residential' / 56% 'residential'. [C1, pp.1,16]

The Complainant argued that the intended use of the property, as evident by the approved development permit allows for 46% of the property to be used for permanent living accommodation; therefore, pursuant to s.297(3) of the Act, the assessment class assigned to this portion of the assessment should be 'Residential'.

In support of the request, the Complainant provided a copy of the Eau Claire Redevelopment land use re-designation document submitted to the municipality, setting out the following development density summary:

Uses*	Sq.M.	Sq.Ft.	%
Retail	31,850	342,843	18%
Office	27,884	300,150	16%
<b>Residential</b>	<b>79,533</b>	<b>856,115</b>	<b>46%</b>
Hotel	<u>33,104</u>	<u>356,339</u>	19%
Total	172,371	1,855,447	

\* Including circulation areas

The Respondent requested that the assessment class allocation be revised from the current 60% 'non-residential' / 40% 'residential', to 100% 'non-residential'. The Respondent argued that the properties are currently used exclusively for commercial purposes and there is no demonstrated intent to change the properties from their current use to a residential use. The Respondent argued that the redevelopment plans have been in place for three years and the owner continues to actively market retail and commercial space to tenants in the current improvements.

The Respondent further argued that the circumstances in this matter differ from that in Municipal Government Board Order 088/06, in that the residential units in question in MGB 088/06 were actively being pre-sold, demonstrating the intent to use the property for permanent living accommodations, in contrast to the subject property that continues to be marketed for its existing commercial space. [R1, 231-243]

In rebuttal, the Complainant argued that the circumstances of Municipal Government Board Order 088/06 are similar to the subject properties, in that the Board concluded that the intent to use a property is demonstrated by some substantial act in support of the intention on the part of the property owner. The Complainant argued that in the present matters, as in Cuncliffe v. Goodman, the property owner has gone to considerable expense in the areas of design, application for land use amendment, and application for a development permit reflecting the development which is to include a significant portion of permanent living accommodation; and in these matters, in contrast to Cuncliffe v. Goodman, municipal permits have been approved and released by the municipality. The Complainant further submitted that the February 2009 transfer of land at \$13,500,000 was contingent on the approval of the development permit and land use amendment, which set out a residential component.

The Complainant submitted that the Assessment Review Board in 2009 agreed that the subject's circumstances are similar to those in MGB 008/06. The Complainant provided the Assessment Review Board decision, 0059/2009P in respect of one of the subject properties (111 2 St SW), wherein the Board amended the assessment classification allocations from 100% 'non-residential' to 54% 'non-residential' / 46% 'residential', and stated at paragraph 26:

*"The ARB concludes the same as the MGB. And whereas a substantial expression of 'intent' has occurred through the conceptual design and approval process leading up to the City approval of Development Permit DP2008-1902 the ARB concludes that the subject property should be, in part, classified as 'residential'."* [C6, pp. 35-43]

The Complainant further submitted the 2010 Assessment Review Board decision, CARB 1540/2010-P, in respect of the subject properties, wherein the Board accepted the parties' agreement to amend the assessment classification allocations from 100% 'non-residential' to 60% 'non-residential' / 40% 'residential'. [C6, pp. 44-46]

The Complainant argued that the Respondent's request to revert the assessment class to 100% 'non-residential' is egregious in that the current assessment classification apportionment prepared by the assessor is consistent with the parties' agreement referenced in the 2010 ARB decision, and approximates the Board's conclusions as set out in the 2009 ARB decision. Further, during the advanced consultation and customer review periods the assessor made no indication that the 60% / 40% apportionment evident on the 2011 Advance Assessment Explanation Supplement sheets was at issue; rather, the Complainant submitted that the assessor, Dorian L. Thistle, suggested that if there was documentation to demonstrate that the residential proportion should be higher (than the 40% allotted), the Complainant should contact the assessor. In support of the arguments, the Complainant provided copies of the 2011 Advance Assessment Explanation Supplement sheets indicating the current 60% 'non-residential' / 40% 'residential' assigned assessment class percentages, and an email from Dorian L. Thistle (assessor). [C6, pp.11-18]

### **Decision: Issue 5**

The Board finds that the 60% 'non-residential' / 40% 'residential' assigned assessment class percentages are inaccurate, and are revised to 54% 'non-residential' / 46% 'residential'.

The Complainant's evidence clearly demonstrates the landowner's intent, and the substantial acts in support of the intent carried out on the part of the property owner to develop a comprehensive mixed-use development on the subject parcels. The planned development

includes 856,115 sq.ft. of permanent living accommodations, equating to 46% of the total floor area of the development. The Board also finds that the continued commercial activity on the subject properties does not contradict the landowner's intent, or negate the substantial acts in support of the intent, as the unchallenged evidence suggests that leasing is tailored (month to month) to allow for lease termination as required for redevelopment to proceed.

As the circumstances in this matter are essentially identical to those before the Board in 2009, this Board agrees with the finding of the Board in ARB 0059/2009-P, set out in paragraph 26:

*"The ARB concludes the same as the MGB. And whereas a substantial expression of 'intent' has occurred through the conceptual design and approval process leading up to the City approval of Development Permit DP2008-1902 the ARB concludes that the subject property should be, in part, classified as 'residential'."*

In this matter, however, the Board finds the issue is more apparent as the Respondent has determined the assessment of the property as a redevelopment site at vacant land rates; however, wishes to assign assessment classes on the basis of the existing (temporary) use.

With respect to the Respondent's request for a 100% 'non-residential' assessment classification, the Board is perplexed at why this request would be made of the Board, considering:

- In 2009, the Assessment Review Board rejected the subject's 100% 'non-residential' classification under essentially identical circumstances.
- In 2010, the assessor, D. Thistle, conceded an amendment to the subject's 100% 'non-residential' classification, to 60% 'non-residential' / 40% 'residential' under essentially identical circumstances.
- In 2011, the assessor, D. Thistle, assigned the current assessment classification, 60% 'non-residential' / 40% 'residential', consistent with the 2010 agreement; and further suggested that the Complainant provide documentation in support of a greater residential proportion, if such was deemed warranted.
- The 100% 'non-residential' classification was not an issue during the municipality's advanced consultation and customer review periods, with the assessor who prepared the assessment and obviously considered the current apportionments appropriate.

The Complainant argued that the Respondent's requests to increase the assessments and revise the assessment classification to 100% 'non-residential', are appalling and egregious.

The Board agrees with the Complainant. The Respondent's positions before this Board with respect to increasing the assessment values and amending the assessment classifications (with the result of an increased tax rate), appear to be vindictive and punitive to the Complainant. The Board notes that the Respondent's positions before this Board are inconsistent with the Board's earlier rulings on the same matter, and contrary to the opinions of his colleague who prepared the 2011 assessments, and agreed to the 40% 'residential' apportionment in 2010.

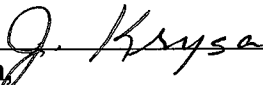
When considered along with the Respondent's testimony in respect of site contamination, the Board finds that the Respondent in these proceedings may be perceived as acting in bad faith by abusing the hearing process and the authority provided to him by the legislation. The Board would caution the Respondent that costs may be imposed in the future should this type of conduct recur. It is expected that all parties before the Board act in good faith.

**Decision:**

The decision of the Board is set out below:

ROLL NUMBER	ADDRESS (SW)	CURRENT ASSESSMENT	CURRENT ASSESSMENT CLASS <i>Non Residential / Residential</i>	<u>DECISION</u> ASSESSMENT VALUE	<u>DECISION</u> ASSESSMENT CLASS <i>Non Residential / Residential</i>
68244508	101 Barclay Parade	\$ 1,510,000	60% / 40%	Confirmed	54% / 46%
68244607	111 2 Street	\$ 50,030,000	60% / 40%	Confirmed	54% / 46%
68244706	342 2 Avenue	\$ 15,950,000	60% / 40%	Confirmed	54% / 46%
68244805	382 2 Avenue	\$ 3,570,000	60% / 40%	Confirmed	54% / 46%
68245000	201 Barclay Parade	\$ 2,320,000	60% / 40%	\$ 1,700,000	54% / 46%
68245109	208 Barclay Parade	\$ 4,220,000	60% / 40%	Confirmed	54% / 46%

DATED AT THE CITY OF CALGARY THIS 15 DAY OF DECEMBER, 2011.

  
J. Krysa  
Presiding Officer

## APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant's Submission
2. C2	Complainant's Submission – Tab 1
3. C3	Eau Claire Area Redevelopment Plan
4. C4	Remedial Action Agreement
5. C5	CARB 2025/2010P
6. C6	Complainant's Rebuttal Evidence
7. R1	Respondent's Submission

*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	Specialty Property	Development Land Income Approach	Assessment Class Land Value Contamination