

**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:

Royop (Walden) Development Ltd. (as represented by AltusGroup), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J.Zezulka
Board Member 1, R. Deschaine
Board Member 2, A. Wong***

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: 201599586

LOCATION ADDRESS: 151 Walden Gate SE

HEARING NUMBER: 64125

ASSESSMENT: 6,450,000.00

This complaint was heard on the 17 day of October, 2011 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Ten.

Appeared on behalf of the Complainant:

- *D. Mewha*

Appeared on behalf of the Respondent:

- *R. Farkas*

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

None

Property Description:

The subject is an undeveloped 266,245 s.f (6.112 acres) parcel, located in the community of Walden, in South East Calgary. The site is designated Commercial-Corridor 2.

Issues / Appeal Objectives

This is a complaint regarding the assessed land value. It is the Complainant's position that the land should be assessed at a rate of \$950,000 per acre. The current assessment is based on the City's rate of \$64.00 per s.f for the first 20,000 s.f., and \$21.00 per s.f. for the remainder of the site. The subject's assessment calculates to \$24.22 per s.f. overall. Application of the per s.f. rates produces an overall assessment of \$1,055,000 per acre.

Complainant's Requested Value: \$5,325,000 on the complaint form, amended to \$5,800,000 at the hearing.

Evidence

The Complainant submitted four comparables, one of which was common with the Respondent. Three are in the developing community of Walden, and one is in Royal Vista, a developing community in NW Calgary. Three of the four transactions are post facto. The average and median of the four sales is \$1,009,123.00 and \$950,000.00 per acre.

The Respondent's single comparable is the sale of a 9.914 acre parcel containing the subject 6.112 acres in December, 2008. The Respondent applied a time adjustment of 1.5 per cent per month to the effective date of assessment, to arrive at a time adjusted selling price of \$25.53 per s.f. or \$1,112,087 per acre. No basis for the quantum of time adjustment was presented.

The Respondent also pointed out that the Complainant's comparable in Royal Vista is a triangular shaped parcel that has a negative 25 per cent shape adjustment.

Board's Decision

In total, there are four comparable transactions before the Board. The unadjusted selling prices, although not directly comparable to the subject, were helpful to the Board in weighing the evidence.

<u>No.</u>	<u>Property</u>	<u>Selling date</u>	<u>Size</u>	<u>Price per acre</u>
1.	151 Walden Gate	Dec. 2008	9.91 acres	\$1,308,678
2.	267 Walden Gate	Aug. 2010	1.60 acres	\$827,813
3.	155 Walden Gate	Oct., 2010	3.80 acres	\$1,000,000
4.	8650 -112 Ave. NW	Nov. 2010	9.56 acres	\$900,000

The first comparable is common to both the Complainant and the Respondent.

The remaining three comparables are post facto. The typical approach taken by the Courts and quasi-judicial bodies has been to attribute comparatively little weight to post facto evidence of value. Simply stated, the post facto evidence was not available at the time, so it could not possibly have been used in the preparation of the assessment or valuation. So, while this type of evidence is useful in testing the validity of a conclusion, it cannot form the basis for a new conclusion or opinion of value. Following this reasoning, this Board would not typically accept a post facto transaction as the basis for arriving at a conclusion different than the existing assessment. Having said that, this Board is persuaded to consider the post facto sale at 267 Walden Gate SE. This property sold for \$827,813 per acre. The property is adjacent to the subject. The transaction occurred within one month of the effective date. No evidence was introduced to indicate that the transaction was anything except a bona fide transaction between two independent parties. And, given that the sale date was within one month of the July 31 effective date, it seems likely that the price was negotiated nearer, or even prior to, the effective date of assessment. In *Diligenti v. Operation Kelowna et al # 2 (1977) 4 B.C.L.R.*, it states; *"In my view, evidence of a sale after the enactment can, in the absence of special circumstances, be relevant to the value prior to the enactment. The sale must be shown to be as free in all respects from extraneous factors such as prior sales and made within such time as the evidence shows prices not to have changed materially from those before the critical date. In other words, the mere circumstance of a sale being before or after a particular date cannot nullify the relevance of subsequent sales while the general market conditions have remained the same. The rule should allow the court to admit evidence of such sales as it finds in place, time and circumstances to be logically probative of the fact to be found."*

In section 10(3) of Alberta Regulation 220/2004, Matters Relating To Assessment and Taxation, the quality standard which must be met for all properties other than those containing up to three dwelling units, is set out at a Median Assessment Ratio of 0.950 to 1.050. If the City's formula for assessing C-C1,2 land is applied to the Walden Gate comparable, the ASR produced is 1.754, which is well outside the acceptable range set out in the Regulation. If the Complainant's requested rate of \$950,000 per acre is adopted, the ASR calculates to 1.147, which is inside the acceptable range outlined in the Regulation.

Diligenti v. Operation Kelowna et al goes on to state; *"Evidence based on results of 'post facto' periods – can only be used to test the validity of assumptions and forecasts on which opinion as to the value are based, where there is conflicting opinion as to value based on different assumptions or forecasts; it cannot form the basis of a new opinion or level of value for the court*

to accept”.

The Respondent's time adjusted selling price of No. 1 of the data calculates to \$1,111,928 per acre. Although that amount supports the assessment, it finds no corroboration in the other three comparables, all of which point to a substantially lower amount. In other words, the available evidence indicates that the Respondent's time adjustment is faulty, or invalid.

Having considered all of the evidence, the Board is satisfied that, on the balance of probability, the Complainant's estimate of value is more accurate than the Respondent's.

The assessment is reduced to \$950,000 per acre, truncated to the nearest \$10,000.

The assessment is reduced to \$5,800,000.

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



Jerry Zezulka
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
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| 1. | C1 Evidence Submission of the Complainant |
| 2. | R1 Evidence Submission of the Respondent |

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.*

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Decision No. 2596/2011 - P			Roll No. 201599586	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land only	Market value	Direct Comparison	Sales, post facto sales