

**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:

***Genesis Land Development Corp. (as represented by Cushman & Wakefield Ltd),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
E. Reuther, MEMBER
A. Wong, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	201438074
LOCATION ADDRESS:	35 Sage Hill Gate NW
HEARING NUMBER:	63711
ASSESSMENT:	\$16,860,000

This complaint was heard on 4th day of November, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *Jan Goresht,*
- *Sherie Ubana*

Appeared on behalf of the Respondent:

- *Scott Powell*

Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter.

Procedural Matters

1. Initial Objection by Respondent Related to Equity Evidence Being Presented

The Respondent raised a preliminary issue regarding the absence of a Summary of Testimonial Evidence, however agreed that in and of itself, this did not invalidate the Complainant's documentary evidence or right to be heard. The Complainant indicated that the reference to an "attached" Summary of Testimonial Evidence, as stated on the first page of Exhibit C1, was an error and that the Summary of Testimonial Evidence followed on that same page (page 1 of Exhibit C1).

The Respondent then stated that the Summary of Testimonial Evidence did not include any reference to an equity concern, therefore would object to the Complainant raising or providing any equity evidence, as this was not disclosed in the Summary of Testimonial Evidence. The Complainant noted that included in the Assessment Review Board Complaint Form was an attached page of issues (page 4 of 4), and it stated "The assessment is inequitable in comparison with similar properties". The Respondent replied that that statement was not specific in linking the documentary evidence to the testimony that would be provided, therefore put the Respondent at a disadvantage in addressing issues that may be raised. Therefore, the Respondent stated that he would be objecting to any evidence presented with regard to equity.

Board's Decision with Respect to the Procedural Issue 1.

The Board notes that Section 8(2)(a)(i) of the Matters Relating to Assessment Complaints Regulation (MRAC) states:

"disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and"

No other direction is provided in either the Act or any Regulations defining the detail expected or required. The Board notes that the Assessment Review Board Complaint Form is often filed early in the process before the specifics of a complaint are identified, so often the completed form includes a wide scope for the complaint. With the subsequent preparation of the documentary evidence to meet the disclosure required, the Complainant often focuses the complaint to one or a specific number of issues.

The Board believes that the intention of the Summary of Testimonial Evidence that is to be included in the initial documentary disclosure package is to provide the Respondent with notice of any other issues that may be raised via testimonial evidence, that may or may not be addressed in the documentary package. Section 9 of MRAC defines specific evidence that the Board is not to hear, and includes among other items: "any matter in support of an issue not identified on the complaint form" and "any evidence that has not been disclosed in accordance with Section 8".

The Complainant stated that the Complaint Form included reference to equity, and the Board concurs. The Complainant stated that equity is addressed in the documentary evidence exchanged. The Respondent disputed this statement. The Board, not having seen the documentary evidence, was not in a position to rule on this matter. The Board decided to proceed with the hearing, with the understanding that the Respondent would raise an objection if and when he thought that evidence was being presented that was not identified in the summary of testimonial evidence. At that point, the Board would make a specific ruling on the matter. The merit hearing commenced.

2. Is the Respondent Required to Discuss Evidence Disclosed and If the Respondent Chooses Not to Present the Disclosed Material, Is it then Evidence Before the Board?

During the course of the Complainants testimonial evidence related to the merit of the complaint, the issue of equity was raised (last page (unnumbered) of Exhibit C1) when the Complainant presented some evidence on a larger parcel (3655 Sage Hill Drive) adjacent to the subject and owned by the same taxpayer as the subject. The Complainant stated in response to questions from the Board, that the assessed value of \$50,440,000 on the adjacent parcel was based on the same rates as applied to the subject, but unlike the subject, the adjacent parcel had a minus 50% adjustment for "lack of servicing".

The Respondent had their documentary evidence entered as an Exhibit R1, but chose not to provide any testimonial evidence, other than to state that the Complainant had not met onus. The Respondent also stated that since he did not introduce any of Exhibit R1 as testimonial evidence, that the Complainant could not rebut that evidence. The Complainant stated that the Respondents documentary evidence was entered as evidence (Exhibit R1), therefore was part of the record and should be available for rebuttal.

Board's Decision with Respect to the Procedural Issue 2.

While the Board is not bound by the rules of court regarding evidence, it is bound by the rules of natural justice, which require that both parties are aware of the issues in question, and all parties have a reasonable opportunity to prepare for and address such issues. The Board is not in a position to require or compel any party to provide testimonial evidence if they choose not to do so. The question becomes, does the documentary evidence exchanged automatically become part of the evidence, or does it have to be entered via testimonial evidence? The more important question is whether the Complainant's right to a fair hearing is in any way adversely affected by not hearing the Respondent's testimonial evidence?

The Board is also sensitive to "tactical strategies" that might give one party an unfair advantage over the other. The Board will base its decision regarding what evidence or testimony it will hear on what is fair to all parties within the context of the Act and Regulations, and within the context of the matter at hand.

The Board's position is that the initial documentary package exchanged by the Complainant should be complete and present the Complainant's entire case. This allows the Respondent to reply to that documentary package in their Response documentary package and address all the issues raised or to be raised. The documentary evidence exchanged by the Complainant in rebuttal to the Respondent's documentary package must limit itself to addressing only matters specifically raised by the Respondent in that documentary package. If the Respondent does not address any issues in any substantive way, then the rebuttal must reflect the same scope. Rebuttal is not an opportunity to present new evidence, or evidence that should have been available and included in the original documentary package. Furthermore, documentary rebuttal evidence is meant to rebut specific issues or evidence raised by the Respondent in its documentary package. Documentary rebuttal must be focused on specific points made in the Respondent's documentary package, and does not allow the Complainant the latitude to interpret statements made by the Respondent in their documentary package as an opportunity to present new evidence or more detailed evidence. Testimonial evidence is intended to explain or expand on issues raised in the respective documentary packages. Again, testimonial evidence is not an opportunity to raise new issues, or an avenue to present documentary evidence that was not properly disclosed.

In this case, the Complainant had the full opportunity to present and speak to the evidence disclosed in the initial documentary package, which presumably addressed all the issues that were thought to be germane. The documentary package follows the submission of the Assessment Review Board Complaint Form, so should focus the matters raised in that Form. As the documentary evidence package is prepared, some of the issues raised in the Complaint Form may not be included in the documentary package and therefore are not supported by documentary evidence. That does not mean that they cannot be addressed in testimony, however, the documentary evidence is limited to what is disclosed.

The Respondent concluded that onus was not met and did not choose to address any matters raised by the Complainant or any of the evidence presented other than in a general way, essentially via argument. Therefore, there was nothing for the Complainant to rebut, other than in argument (i.e. was onus met). It was the Board's decision to not allow the Complainant to present their rebuttal evidence. Not presenting the Rebuttal evidence did not adversely affect the Complainant's rights under natural justice, because there was no evidence to rebut. The Complainant had the full opportunity to present their complaint and documentary evidence in support of that complaint. By choosing not to present their documentary evidence, the Respondent did not provide any context for their evidence relative to the issues at hand, which the Board considers in the weight it gives to that evidence. Therefore, the matter now turns on the merit of the complaint.

The Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is a 17.50 acre parcel located in the Sage Hill district in northwest Calgary, with a street address at 35 Sage Hill Gate N.W.. The district is located north of Symons Valley Parkway, east of Shaganappi Trail and west of Symons Valley Road. This is a new district that is in the process of being developed into a mix of residential and commercial uses. The subject is part of a large holding by the same taxpayer, who is in the process of developing this larger 152.15 acre holding. Various portions of this larger holding have different zonings. The subject property is vacant land located in the southeast corner of the larger holding, with its southeastern corner located at 37 Street NW and 128 Avenue NW.

The assessment is based on the Sales Comparison Approach, with no adjustments applied, for a total assessment of \$16,860,000.

Issues:

1. What is the appropriate market value of the subject properties for assessment purposes?

Complainant's Requested Value:

ROLL NUMBER:	067244905
REQUESTED ASSESSMENT:	\$9,707,000

Board's Decision in Respect of Each Matter or Issue:**1. What is the appropriate market value of the subject for assessment purposes?**

The Complainant's position was that the assessed value reflected the value of the subject in a condition that was fully serviced and ready for development, referred to by the Complainant as the "full retail value". The Complainant contended that a considerable amount of money still had to be invested in the property to bring it to that condition, therefore, the cost of bringing the subject to this "full retail value" status (cost to complete) should be subtracted from the "retail" market value. This calculation was presented on the last page of Exhibit C1 (pages not numbered).

To support this calculation, the Complainant included portions of an appraisal report prepared for the taxpayer by Cushman & Wakefield Ltd., with an effective date of December 31, 2010. All parties acknowledged that the appraisal report was post-facto the assessment date of July 31, 2010. The Complainant stated that most of the comparable sales used in the appraisal report were valid and within the assessment period, so the appraisal report did provide a good basis to value the subject.

The appraisal report included a number of properties owned by the taxpayer in Calgary and other locations in Alberta. Exhibit C1 included excerpts from this larger appraisal report related to the 106.14 acres of developable land in the Sage Hill development (part of the 152.15 acre holding less municipal and environmental reserve and road dedications). The subject property was appraised as part of a larger 27.50 acre parcel that was zoned DC91Z2005 and referred to as Site 1 in this portion of the appraisal report. This zoning is to accommodate mixed-use retail, residential and office uses, "predominantly smaller-scale commercial uses, and limited medium-scale commercial uses, with residential and office development located above-grade." (page 286 of appraisal report excerpts in Exhibit C1).

On page 280 of Exhibit C1, which summarizes the four sites on the larger property that have a retail component, Site 1 is indicated as being 27.50 acres. With regard to the heading "Municipal Services", the statement is made that "Full municipal services are available to the subject property." The Complainant then noted that on page 281 of Exhibit C1 which is titled "Site Description – Site 1", the statement is made that "the water will be provided to the site by the extension of the line along 37th Street NW...." and "the sanitary sewer connection for Site 1 will be provided by the extension of the line along 37th Street NW..." The Board notes that this page refers to a "Site 1" that is 15.75 acres in size.

Six comparable sales were presented on pages 289 and 290 of Exhibit C1 to support the value of these four "sites" with a retail component. The sales occurred between October 2010 and September 2008, and ranged in size from 3.59 to 12.95 acres. From the remarks provided for each comparable sale, it was not clear what the development status of each property was at the time of sale. The analysis that followed on pages 291 and 292 of Exhibit C1 did not provide any quantitative adjustments, but discussed a number of factors in general terms. Based on the data, the appraisal concluded a value range of \$1,000,000 to \$1,100,000 per acre for these "sites", except for Site 1 (which includes the subject). This value range of \$1,000,000 to \$1,100,000 per acre apparently represents the "full retail value" of the property, after it is serviced and ready for final development.

The subject property, which is part of "Site 1" is given a value of \$930,000 per acre. Page 292 states:

"Genesis Land Development Inc. has reportedly negotiated a sale arrangement for the 27.5 acres which includes all of Site 1 and a portion of Site 2 at \$930,000 per acre for a total purchase price of \$25,575,000. Based on discussions with Genesis, this deal was arranged with the expectation that Rio-Can will deliver an anchor tenant to the shopping centre and they have reflected this in the sale price. While a final agreement has not been signed, discussions with Genesis indicate that the business terms have been agreed upon and they are in the process of finalizing the agreement. We have, therefore, included the 27.5 acres at \$930,000 per acre based on this potential sale agreement which appears likely to proceed. In our opinion, this is a slightly below market transaction due to the consideration of an anchor tenant being provided by Rio-Can."

The appraisal report (page 293, Exhibit C1) presents a "Construction Cost Summary" for the Sage Hill development; the entire 106.14 acres. No explanation of the source or background of this document is provided. The appraiser then takes the value estimates for the various "sites" on this property which apparently reflect their "full retail value", and subtracts the cost to complete to arrive at a total value for the 106.14 acres of \$76,260,000 when recoveries are included (Page 294, Exhibit C1).

The Complainant then presents the last page in Exhibit C1, which allocated value and costs between the subject 17.50 acre property and the remaining 88.64 acres (totalling 106.14 acres). The result is a market value for the subject of \$9,706,888 for the 17.50 acre subject (\$554,679 per acre).

With regard to this page, the Complainant indicated that some of the total area was assessed in a "residential" class and some as "non-residential". The Complainant also indicated that the balance of the larger property apparently had a minus 50% adjustment because the property was not serviced.

The Respondent did not present any testimonial evidence, other than to state that the Complainant did not meet onus and therefore there was no need to address any of the material presented.

Board's Decision:

The Board notes that the appraisal report presented was prepared post-facto and for "financing" purposes. The appraiser was not presented as a witness to address whether the conclusions were valid for the purpose of indicating market value for the purpose of an assessment. It was not clear from the documentary evidence presented as to how the appraiser made adjustments for different condition, size, location, time, etc.

The key issue in this case is "what was the status of the subject property as of the condition date, December 31, 2010? Was this property serviced and if so, to what extent? Was the condition or status similar to "full retail value"? What specifically did "full retail value" mean? The Board received no specific evidence on the subject property, with regard to a description of its status. Date imprinted photographs may have been helpful to understand the condition of the property as of December 31, 2010.

The evidence presented indicates that some money has been spent on preparing the larger 106.14 acre site, but it was not stated what was done nor where this development had occurred. The Complainant implied that the costs incurred should be applied evenly across the entire 106.14 acre site, as should the remaining costs to complete, and used that approach in the calculation presented. No basis for such an assumption was provided.

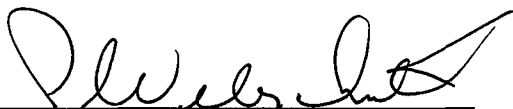
Page 292 of Exhibit C1 discussed the sale of a 27.5 acre site which apparently included the subject 17.50 acres. Given the effective date of the appraisal report of December 31, 2010, the implication is that the sale had not yet transacted as of this date, but that the terms of the sale had been agreed to at some point prior to this date. While this sale is post-facto, the agreement is contemporary to the assessment date of July 1, 2010. The sale at \$930,000 per acre and the reference that this is slightly below market value compares the subject site to "full retail value". This strongly suggests that the status of this portion of the larger property including the subject were at a condition that was at or very near "full retail value".

The assessed value of \$16,860,000 for the subject 17.50 acre property translates into a per acre value of \$963,429, which appears supported by the appraisal report presented in Exhibit C1. Based on the evidence presented, the Board does not accept the mathematical treatment of the subject as part of a larger property, because the status of the subject was not clearly described compared to the larger parcel. The development status of the subject as of the condition date was not established. Based on the evidence presented, the issue of whether the subject should receive a minus 50% adjustment for "not serviced" status in calculating the assessed value becomes moot. The Board concludes that the Complainant did not meet the onus of demonstrating that the assessed value is incorrect.

Board's Decision:

The Board confirms the assessment of \$16,860,000 for the reasons discussed above.

DATED AT THE CITY OF CALGARY THIS 18th DAY OF November 2011.



Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent 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.*