



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:

Carma Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Myron Chilibeck, PRESIDING OFFICER

T. Livermore. BOARD MEMBER

T. Usselman, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER: 201569944

LOCATION ADDRESS: 14320 – 68 ST SE

FILE NUMBER: 72320

ASSESSMENT:	\$4,579,245.	Non-Residential
	<u>\$4,990,755</u>	Residential
	\$9,570,000	

This complaint was heard on 11th day of June, 2013 at the office of the Assessment Review Board in Boardroom 3 on Floor Number 4 located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *D. Mewha*
- *F. Huynh*

Appeared on behalf of the Respondent:

- I. McDermott
- T. Nguyen

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

- [1] Neither party raised any objections to a member of the Board hearing the subject complaint.
- [2] Neither party raised any procedural or jurisdictional matters.

Preliminary Matter:

- [3] Both parties agreed that the total area for the parcel should be corrected to 24.748 acres.
- [4] The Respondent recalculated the assessment based on the agreed area plus adjustments for diminishing returns (parcel size) as follows:

Revised Assessment	\$4,880,000.	Non-Residential
	<u>\$2,160,000.</u>	Residential
	\$7,040,000	

Property Description:

- [5] The subject is a parcel of land containing 24.75 acres which is the remainder of the S.W. ¼ Sec. 1, Twp. 23, Rge. 29, W.4th M. located at the south east corner of 130 Av. and 68 St. in the southeast quadrant of the City of Calgary.
- [6] This parcel is in the process of being developed for light industrial use. An un-registered survey plan shows the subject parcel to be divided into three portions and an area for roadway and roadway widening.
- [7] Two portions are noted as PUL (Public Utility Lot) lots and one portion is noted for future light industrial development. The PUL lots are subject to land use designation S-CRI (Special Purpose-City and Regional Infrastructure) and the other portion is subject to land use designation I-E (Industrial Edge) according to Calgary's land use bylaw as of the physical condition date, December 31, 2012.

[8] The two PUL lots are developed into wet ponds, the road bed has been constructed and the industrial portion has been stripped of top soil and graded.

Issues:

[9] The Complainant identified several matters that apply to the complaint on the complaint form and attached a schedule listing several reasons (grounds) for the complaint. At the outset of the hearing the complainant advised that only the matter of the assessment amount is under complaint and identified the following issues:

[10] The area of 14.979 acres under land use designation S-CRI, together with the roadway and road widening has no market value.

[12] The area of 9.769 acres under land use designation I-E should be valued at its market value and classed as Non-Residential

Complainant's Requested Value: \$3,290,000.

Board's Decision:

[13] The Board's decision is to change the assessment to \$4,390,000 and the assessment classification to Non-Residential.

Legislative Authority, Requirements and Considerations:

[14] The Composite Assessment Review Board (CARB) derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(2): Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

[15] For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing the assessment, the assessor must, in a fair and equitable, manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations

[16] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1)(b). The CARB consideration will be guided by MRAT Part 1 Standards of Assessment, Mass appraisal section 2:

An assessment of property based on market value

(a) must be prepared using mass appraisal

(b) must be an estimate of the value of the fee simple estate in the property

(c) must reflect typical market conditions for properties similar to that property

Complainant's Position:

[17] The process of developing the subject parcel commenced in approximately 2006. As of the physical condition date of December 31, 2012 considerable development work has been carried out such that the land is under a Development Agreement with the City of Calgary, has been designated various land use designations by by-law of the City of Calgary and a plan of subdivision has been prepared but not registered at the land titles office. The land has been developed with two wet ponds, a road bed and a portion prepared for light industrial uses.

[18] The market value of the subject parcel is the value of the portion designated I-E. A purchaser would not place any value on the other lands which are required to be provided to the City of Calgary without compensation, according to the Municipal government Act and the Development Agreement.

[19] The base rate of \$450,000 per acre was accepted by the Complainant to value the I-E land less an adjustment of 25% for shape and access. This results in a requested value for the 9.769 acres of I-E land at \$3,290,000.

[20] Reference was made to CARB decision 0490/2010-P, 2895/2011-P and Alberta Court of Appeal decision, 2004 ABCA 10, regarding the valuation and assessability of lands under development in support of their position that lands dedicated for public utility purposes do not have any market value.

Respondent's Position:

[21] The Respondent asserted that the portion designated S-CRI has value and used a base rate of \$200,000 per acre to value these lands less an adjustment for diminishing returns (size adjustment) and classified the land as Residential.

[22] The portion designated I-E is valued at a base rate of \$450,000 per acre less an adjustment for diminishing returns (size adjustment) and classified Non-Residential.

[23] The Respondent did not present any market evidence in support of the S-CRI base rate nor any market evidence to support that S-CRI land trades in the market place and has market value.

[24] The Respondent asserted that lands similar to the subject are typically assessed in the same manner and at rates reflective of its land use designation.

[25] Reference was made to a CARB decision, 2502/2011P, supporting their position that the S-CRI portions have value.

Board's Reasons for Decision:

[26] The Board finds the Alberta Court of Appeal decision most persuasive in this case. It dealt with a parcel of land in the process of development that included a ravine that was environmentally sensitive land which would be transferred to the City when it was subdivided by the owner. The Court, in effect, decided that the market value of the parcel was the value of the portion that could be developed and sold in the market place.

[27] The circumstances in the Court decision are similar to the subject in that the portions of land designated S-CRI would be transferred to the City when the parcel is subdivided with no compensation paid to the owner/developer.

[28] The Board is convinced by the land use designation that is in place by way of a land use by law, the Development Agreement between the owner and the City and the physical development that has taken place as of the physical condition date, December 31, 2012 that the value of the subject is the market value of that portion that the owner/developer is allowed to develop for light industrial uses.

[29] The other portions of the subject are designated for infrastructure use (S-CRI) and are developed as wet ponds or roadway and cannot be developed for any other use and therefore are of no value to the developer. The Board accepts the Complainant's argument that no one would pay for land that would be transferred to the City for no compensation as required by the Municipal Government Act and the executed Development Agreement.

[30] The Respondent provided no sales evidence to support their position that infrastructure land has any market value whereas the Complainant provided land transfer evidence showing these lands transferred to the City without any compensation.

[31] The Board is aware that the Municipal Government Act requires property to be assessed at its market value, however this requires market sales evidence and without any evidence of such, concludes that S-CRI land has no market value.

[32] The Board understood that the land assessment rates are for developed land, not raw (undeveloped) land. In this case the land was assessed in two parts, firstly for the S-CRI lands and secondly for the I-E lands at the respective developed land rates. This infers that the rates apply to the net area after reserve land and other dedications, such as roadways, are provided without compensation by the developer according to the Act and the Development Agreement.

[33] The Board did not accept the Respondent's evidence of CARB 2502/2011-P as support for their position. The land under complaint in that decision was almost a full quarter section to be developed for future industrial and commercial uses that was assessed in two parts; one as farmland and the other as Non-Residential. The Non-Residential portion was valued at S-FUD (Special Purpose-Future Urban Development) rates which is notably different than the subject land that was valued at I-E and S-CRI rates.

[34] In CARB 2502/2011-P no evidence was provided to value the storm pond under S-CRI designation. In the subject case the Board is convinced by the Complainant's argument and the Alberta Court of Appeal decision that there is no market value for S-CRI lands.

[35] The Board did not accept the Complainant's argument that the I-E land valuation should be adjusted for limited access and shape.

[36] The Board finds there is access to the subject from 68 St. and in consideration of the minimum evidence of limited access it is premature at this time to make a decision for an access allowance.

[37] Regarding the shape allowance, the Board finds that the I-E portion will most likely be further subdivided into smaller parcels. This portion is large and minimal evidence was provided to show that the current shape of the subject would be a hindrance to any further subdivision. Therefore it would be premature make a decision for its shape.

[38] Based on the foregoing, the Board determined the assessment for the subject parcel to be \$4,390,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF JULY, 2013.

A handwritten signature in black ink, appearing to read "M. Chilibeck", is written over a horizontal line.

M. Chilibeck

Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure (Part 1 of 2)
2. C2	Complainant's Disclosure (Part 2 of 2)
3. R3	Respondent's Disclosure
4. C4	Complainant's Rebuttal

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.*

CARB Identifier Codes

Decision No. 72320P-2013			Roll No. 20156944	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Industrial	Vacant Land	Market Value	Land Value

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