



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:

Concord Pacific Alberta Properties Inc.
(as represented by Altus Group Ltd.), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
J. Kerrison, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board [CARB] 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:	067234203
LOCATION ADDRESS:	700 1 AV SW
FILE NUMBER:	72738
ASSESSMENT:	\$ 30,060,000

This complaint was heard on the 30th day of September 2013 at the office of the Assessment Review Board [ARB] located at Floor number 4, 1212 – 31st Avenue NE, Calgary, Alberta, Boardroom number 3.

Appeared on behalf of the Complainant:

- J. Weber Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- E. Borisenko Assessor, City of Calgary

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

[1] At the request of the Complainant and acceptance of the Respondent the subject property hearing was conducted simultaneously with four other properties that have identical issues and evidence. The four additional properties are owned by one identity and are addressed in decision CARB 72741P-2013.

[2] There are no preliminary, procedural, or jurisdictional issues.

Property Description:

[3] The subject is a vacant land parcel with a Direct Control [DC] Land Use Designation [LUD] with an intended primary future land use of multi-family residential. The subject is located at the corner of 6th Street and Eau Claire Avenue SW in the Non-Residential Zone [NRZ] submarket area of either DT1 – Downtown Core or EAU – Eau Claire depending on which document is relied upon.

Issues:

[4] The assessment amount is the single issue before the Board. There are five possible new assessment values for the Board to consider based on; market data, equitable treatment, an appraisal report, and previous CARB decisions.

Complainant's Final Requested Value: \$ 14,290,000

Board's Decision:

[5] The Board finds the correct assessment value to be \$ 14,290,000 when analysing the Respondent sales information and adjusting for the minimum Floor Area Ratio [FAR], which is supported by equity comparables provided by the Complainant.

Legislative Authority, Requirements, and Considerations:**The Municipal Government Act [*the Act*]**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation

- 1(1)** *In this Act,*
- (n) *"market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;*

Interpretation provisions for Parts 9 to 12

- 284(1)** *In this Part and Parts 10, 11 and 12,*
- (r) *"property" means*
- (i) *a parcel of land,*
- (ii) *an improvement, or*
- (iii) *a parcel of land and the improvements to it;*

Matters Relating to Assessment and Taxation [*MRAT*]

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009

Mass appraisal

- 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, and*
- (c) *must reflect typical market conditions for properties similar to that property.*

Position of the Parties**Complainant's Position:**

[6] The Complainant reviewed map and 'My Property' report to apprise the Board of the subject (C1, pp. 6 and 7).

[7] The Complainant provided CARB 2025/2010-P to demonstrate how the Board in 2010 decided on four properties with the same *LUD* that are in close proximity to the subject. In that decision the Board found the evidence warranted a reduction to a value represented by the buildable area of *FAR* (C1, pp. 9-12). During questioning the Respondent pointed out that the decision was based on minimum *FAR* versus maximum *FAR* that the Complainant is seeking.

[8] The Complainant explained the *DC LUD* which permits all forms of residential development (p. 219), imposes restrictive *FAR* values of 3.5 to 4.0, and provides for no commercial uses (pp. 219-220). The bylaw clearly indicates City Council's development goal as a multi-family residential property with limited complimentary commercial uses only (C1, pp. 212-223).

[9] The Complainant established the difference of the *DC LUD* versus the Downtown Business District [*CM-2*] *LUD*, which is the *LUD* the assessment is based on. With the *CM-2*

LUD office use is a discretionary use and often permitted (p. 26), which vastly increases the value. In addition the *FAR* is a minimum of 7.0 to a maximum of 20.0 (p. 27) with the bonus density table (p. 42) enabling very tall office towers, something not permitted on the subject property (C1, pp. 25-47).

[10] The Complainant provided excerpts from 'The Appraisal of Real Estate – Second Canadian Edition', wherein adjustments for Floor Space Ratio [*FSR*] (equivalent to *FAR*) are recommended, with examples, if a relationship of value can be established (C1, pp. 48-50).

[11] The Complainant reviewed a letter sent from the Respondent showing the various analyses the Respondent relied upon to arrive at the assessment (C1, pp. 51-64).

[12] The Complainant showed the '2013 Downtown Vacant Land Rates' to establish among other things that the subject property is in *NRZ EAU* – Eau Claire and is assessed in the same manner as *NRZ DT2E* – Downtown Core East at \$310 per square foot. Additionally, one of the *post facto* sales is designated *EAU* when it should be considered *NRZ CHINA* – Chinatown. Another point raised by the Complainant is the *NRZ DT2W* – Downtown Core West has superior Multi-Residential *LUD* with an *FAR* of 7.0 and Commercial *LUD* uses with an *FAR* of 3.0; yet their vacant land rates are much lower at \$120 per square foot (C1, pp. 62-63).

[13] The Complainant explained their 'Market Value Sales Analysis' showing five sales comparables in *DT2W* and *DT2E* with their associated value on an *FAR* basis compared to the subject and four other nearby properties (C1, p. 65). During questioning the Respondent pointed out that this analysis should be based on minimum *FAR* of 7.0 versus the maximum *FAR* of 20.0 that the Complainant is seeking.

[14] The Complainant provided their 'Equity Analysis' with the same five properties in their 'Market Value Sales Analysis' showing assessment comparables in *DT2W* and *DT2E* versus their associated value on an *FAR* basis compared to the subject and four other nearby properties (C1, p. 66).

[15] The Complainant included an appraisal report prepared on four nearby properties (2 separate blocks) with a similar *LUD*, which found a value based on the Direct Comparison Sales Approach (p. 105). The report found its value using vacant residential land sales primarily outside of the downtown core (pp. 106-107) making appropriate adjustments. The value conclusion arrived at is \$215 per square foot (p. 70) (C1, pp. 67-155). During questioning the Respondent pointed out that the purpose and intent of the appraisal is not for assessment purposes (C1, p. 74).

[16] The Complainant presented CARB 2112/2011-P to demonstrate how the Board in 2011 decided on four properties with a similar *LUD* that are in close proximity to the subject. In that decision the Board found the evidence warranted a reduction to recognise the "Land Use Restrictions" in place with the *DC LUD* (C1, pp. 156-164). Details regarding the "Land Use Restrictions" are provided that show the appropriate negative influence in place in 2011 that is not in place for the current assessment (C1, pp. 165-167). Information from the Respondent for that decision also shows an influence for *LUD* (C1, pp. 168-173).

[17] The Complainant provided a dated (May 31, 2007) sales report on the subject property at \$274.06 per square foot with a sold-out condominium project and pending development permit. No adjustment is provided for the inherent value of a sold-out project or to recognise the differences expected with a dated sale (C1, pp. 173-174).

[18] The Complainant followed the lead of the Board from decision CARB 2112/2011-P and found a value on a buildable square foot basis of \$42.12 per square foot on a nearby property at 600 3 Avenue SW (C1, pp. 175-176). The Complainant presented Bylaw 22Z95 establishing the

FAR range of 8.0 to 14.0 for the comparable at 600 3 Avenue SW (C1, pp. 177-185).

[19] The Complainant showed decision ARB 0979/2010-P that established a principle of valuing on a *FAR* basis on a property adjacent to the subject (C1 pp. 187-194).

[20] The Complainant included Municipal Government Board [*MGB*] decision MGB 003/10, which found three findings of fact that are relevant to the subject: "1) The maximum density of a property is an important consideration in its valuation. 2) The density restrictions on subject properties have a negative effect on their value. And 3) the subject properties are not directly comparable to properties zoned *CM-2* as it has a higher allowable density." (C1, pp. 195-202).

[21] The Complainant provided several previous year decision records for nearby properties showing, year after year, the Board or the *MGB* has reduced the assessments (C1, pp. 203-211).

[22] The Complainant concluded their presentation requesting a truncated assessed value of \$14,290,000 (C1, p. 225).

Respondent's Position:

[23] The Respondent introduced the subject parcel indicating the current use is vacant land with a temporary sales office. The subject's assessment was confirmed in 2012; however, that decision is before Court of Queen's Bench (testimony). The Respondent provided the 2013 Assessment Explanation Supplement for the subject showing the characteristics of the property including the predominate use as Multi-Residential (R1, p. 8). The Respondent reviewed a map and aerial photos of the subject (R1, pp. 14, 15 and 17).

[24] The Respondent re-presented the Complainant's chart (C1, p. 65) making corrections for mathematical errors and showing how using the minimum *FAR* of 4.0 versus maximum *FAR* of 6.0 produces more comparable results and is consistent with a *post facto* sale (R1, p. 24). The Board notes that the sale is stated to be one block east of subject; however, it is actually four blocks east and one block south of the subject.

[25] The Respondent reviewed CARB 1572/2012-P decision on the subject property, wherein the Board found the assessments correct and found no compelling reason to reinstate the previous 20% negative influence for the *LUD* (R1, pp. 31-38).

[26] The Respondent noted that the appraisal report prepared is not on the subject property rather on nearby properties. The comparables used in the report are not the same comparables used by the Complainant. The Respondent further noted that the comparables are residential in nature versus the *CM-2 LUD* of the subject, and they are not the same or a nearby downtown *NRZ* (R1, pp. 39-47). The Board notes that the subject carries a residential *LUD* and is not *CM-2* designated.

[27] The Respondent provided an aerial photo and map to show the subject of ARB 0979/2010-P is a narrow lot and not similar to the subject property other than location (R1, p. 52).

[28] The Respondent re-presented the Complainant's charts (C1, pp. 65-66) making corrections for mathematical errors and showing how using the minimum *FAR* versus maximum *FAR* produces more comparable results and is consistent with a *post facto* sale. The Respondent used *CM-2 LUD* land as if built as residential (R1, pp. 53-54). The Respondent suggests that assessing on *FAR* is unreliable because it is a moving target as witnessed with a recent land use amendment bylaw for nearby properties.

[29] The Respondent explained the '2013 Vacant Land Rates' for downtown and how they compared to the 2012 rates. The Respondent provided description of the downtown *NRZs* and possible influences that can change specific property values (R1, pp. 56-61).

[30] The Respondent reviewed their '2013 Downtown DT2 East Land Sales' with supporting documentation to show how their analysis arrived at \$310 per square foot for vacant land (R1, pp. 62-110). The Complainant pointed out through questioning that two sales had improvements constructed on them; however, no adjustment has been made. The Complainant also pointed out the third sale was atypical, with a purchase price of \$4,250,000 and financing of \$14,000,000, suggesting that other factors may have influenced the sale price. The Board notes all three sales are for *CM-2 LUD* that permits other uses than available for the subject property.

[31] The Respondent reviewed their '2013 Downtown DT2 West Land Sales' analysis with supporting documentation to show how their analysis arrived at \$120 per square foot for vacant land (R1, pp. 111-112). The Board notes that one sale is for *DC LUD*, similar to the subject property; however, specific bylaw information is not supplied to analyse the degree of comparability.

[32] The Respondent provided a historical overview of downtown land sales with results segregated into various *NRZs*; however, there is no data identified as DT-EAU or with DC-91D2008 *LUD* (R1, p. 114).

[33] The Respondent enclosed information on a *post facto* sale of four parcels at 215 Riverfront Avenue SW, 217 Riverfront Avenue SW, 216 2 Avenue SW, and 240 2 Avenue SW (R1, pp. 115-131). These parcels are designated *DC LUD* under Bylaw 88D2008, which permits residential and commercial uses including office towers at *FARs* of between 6.0 and 7.0. The purchaser of the properties is the owner of the four nearby properties referenced previously. Information indicates that the site may be developed as 100% commercial.

[34] The Respondent concluded their presentation requesting confirmation of the assessment (R1, p. 133).

Complainant's Rebuttal:

[35] The Complainant disclosed information obtained from the Respondent that indicates the *post facto* sale attributed to the DT-EAU *NRZ* is actually located in the DT-CHINA *NRZ*, which has a significantly lower assessed value on vacant land other than the subject property (C2, pp. 6-7).

[36] The Complainant presented several previous disclosure documents from the Respondent wherein the Respondent argues against the inclusion of *post facto* sales information (C2, pp. 8-20).

[37] The Complainant provided a previous disclosure document from the Respondent wherein the Respondent used the *post facto* sale to defend an assessment in Chinatown (C2, pp. 21-28).

[38] The Complainant reviewed CARB 72095P-2013 decision of the Board that found a property directly across from the *post facto* sale cannot reasonably be considered part of DT-EAU and rather is part of DT-CHINA; therefore reducing the assessment (C2, pp. 29-34).

[39] The Complainant included a Sales Assessment Request for Information [*ARFI*] on the *post facto* sale that indicates that the purchaser (owners of nearby properties) did not purchase the properties in an open market, did not consider their financial situation, and were purchased

to build an office building because of its close proximity to three other office buildings currently held by them (C2, pp. 35-44).

[40] The Complainant disclosed an email exchange, between the agent for this hearing and the property manager for nearby properties, showing the purpose of the appraisal report is to appraise Fair Market Value as required annually for regulatory purposes (C2, p. 45).

[41] The Complainant produced an application to the Court of Queen's Bench of Alberta from the Complainant in regards to the *CARB* decision for the subject from 2012 (C2, p. 51).

[42] The Complainant reminded the Board of; the 'Fundamentals of Market Value Assessment', 'Highest and Best Use versus Actual Use', 'Conditions of Sale', and 'Mass Appraisal and Single-Property Appraisal' as found in the 'Principals of Assessment' manual produced by the Province of Alberta (C2, pp. 52-62).

[43] The Complainant provided two *CARB* decisions from 2013 that support a reduction to vacant land rates for downtown Calgary in 2013; *CARB 71455P-2013* and *CARB 73268P-2013*. In both decisions the Board lowered vacant land rates to \$289 and \$239 per square foot based on the evidence produced in those hearings (C2, pp. 63-70).

Board's Reasons for Decision:

[44] The Board heard many times from the Respondent during summation that assessing on *FAR* is difficult because it involves speculation; the actual *FAR* may be different at the time of construction and that the *LUD* may change. This makes it possible that a building other than residential maybe built on the subject property.

[45] The Board agrees that, to a certain extent, until construction occurs there is speculation on ultimately what is constructed on vacant land. However, the Respondent's practice of assessing at the highest rate possible is speculative as well. The City Council of the municipality has provided strong indication by way of a specific *LUD* for the subject property and the specification calls for development far less intensive than is possible under *CM-2 LUD*, which seems to be the highest possible assessment value.

[46] The Board reminds the Respondent that the assessment of any property is done annually on what is in place, not on what may exist in the future. The subject property is to be valued on what a willing buyer would likely pay and a willing seller would likely sell at. There is no uncertainty on the current *LUD*, that decision is made and the *LUD* does not permit the type and scale of development available in the *CM-2 LUD*.

[47] The Complainant provided evidence, which was reproduced and corrected by the Respondent (R1, p. 53) that shows, from a base *FAR* basis, that vacant land in DT2E has a median value of \$41 per buildable square foot for *CM-2 LUD IF* built at the base *FAR*. If the owner of these properties built to the highest *FAR* allowable then the median value is \$14 per buildable square foot.

ADDRESS	SALE DATE	SALE PRICE	SALE PRICE PER SQUARE FOOT	NRZ	SIZE SQUARE FOOT	LUD	BASE FLOOR AREA RATIO RESIDENTIAL	BUILDABLE SQUARE FOOTAGE RESIDENTIAL	BUILDABLE RATE \$ PER SQUARE FOOT RESIDENTIAL
907 9 AV SW	Sep-08	\$ 8,250,000	\$ 269	DT2E	30,678	CM-2	7.0	214746	\$ 38
919 5 AV SW	Nov-10	\$ 4,250,000	\$ 435	DT2E	9,764	CM-2	7.0	68348	\$ 62
617 8 AV SW	Nov-11	\$ 1,675,000	\$ 271	DT2E	6,172	CM-2	7.0	43204	\$ 39
718 8 AV SW	Jan-12	\$ 2,000,000	\$ 307	DT2E	6,506	CM-2	7.0	45542	\$ 44
								MEDIAN	\$ 41
								MEAN	\$ 46

ADDRESS	SALE DATE	SALE PRICE	SALE PRICE PER SQUARE FOOT	NRZ	SIZE SQUARE FOOT	LUD	BASE FLOOR AREA RATIO COMMERCIAL	BUILDABLE SQUARE FOOTAGE COMMERCIAL	BASE FLOOR AREA RATIO COMMERCIAL
907 9 AV SW	Sep-08	\$ 8,250,000	\$ 269	DT2E	30,678	CM-2	20.0	618560	\$ 13
919 5 AV SW	Nov-10	\$ 4,250,000	\$ 435	DT2E	9,764	CM-2	20.0	195280	\$ 22
617 8 AV SW	Nov-11	\$ 1,675,000	\$ 271	DT2E	6,172	CM-2	20.0	123440	\$ 14
718 8 AV SW	Jan-12	\$ 2,000,000	\$ 307	DT2E	6,506	CM-2	20.0	130120	\$ 15
								MEDIAN	\$ 14
								MEAN	\$ 16

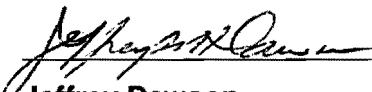
[48] The Board did not use the sale located in DT2W because it was too far removed from the subject and not considered to be comparable.

[49] The *post facto* sale was not considered by the Board because it has a *DC LUD* with a specific bylaw definition substantially different than that of the subject property. The *post facto* parcels permit commercial buildings and the evidence shows that the sale does not meet the definition of willing buyer and willing seller.

[50] The Board finds the median value of \$41 per *FAR* to be a good indication of the value of the subject properties, finding for the Complainant's final requested assessments.

[51] The Board finds the property assessment at 600 3 AV SW (C1, p. 175), which has a value of \$42 per buildable square foot, supports the request by the Complainant and the findings of the Board.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF November 2013.


 Jeffrey Dawson
 Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure – 225 pages
2. R1	Respondent Disclosure – 184 pages
3. C2	Complainant Rebuttal Disclosure – 70 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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Sales Approach	Land Value