



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Western Steel Limited, COMPLAINANT
(as represented by Cushman & Wakefield)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
B. Jerchel, BOARD MEMBER
D. Steele, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	075103150
LOCATION ADDRESS:	2601 52 Street SE
FILE NUMBER:	74007
ASSESSMENT:	\$17,260,000

This complaint was heard on 3rd day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *D. Boyd, Agent – Cushman & Wakefield*
- *J. Maslen, Appraiser – Altus Group Limited*
- *D. Miles, Listing Agent – Cresa Calgary*

Appeared on behalf of the Respondent:

- *T. Nguyen, Assessor – City of Calgary*

Procedural or Jurisdictional Matters:

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

[2] At the hearing, the Complainant had a number of bound, colour copies of a document that included the Complainant's disclosure, the Respondent's disclosure and the Complainant's Rebuttal, which were all properly disclosed in accordance with Section 8 of Matters Related to Assessment Complaints Regulation (MRAC). The Complainant proposed to provide these to the Board, as the documents the Board had in its file were not in colour. This document included a cover letter, dated July 3, 2014 which was not properly disclosed. With the removal of this letter of July 3, 2014, the Respondent did not object to the Board having the bound, colour document. This document was not marked as an exhibit, but was referred to during the course of the hearing as it contained colour maps and photographs, making it more useful in understanding the evidence presented by both parties. Neither the original Complainant disclosure package nor the colour package had the pages numbered consecutively.

Property Description:

[3] The subject property is located at 2601 52 Street SE, in the Forest Lawn Industrial Area. The property is 41.43 acres with a 4,700 square foot (SF) office but is not assessed. The property was the site of a rebar manufacturing facility, but has been undergoing cleanup and reclamation for many years. It is currently vacant land, with essentially no environmental issues other than some ongoing groundwater monitoring. The majority of the parcel is zoned Industrial General (I-G) with the strip of land adjacent to the Dover and Erin Woods residential communities zoned as Industrial Edge (I-E). The I-E zoning restricts some of the more "industrial" uses allowed under the I-G zoning.

[4] The 2014 property assessment is done using the sales comparison – land only approach. 82.9% of the site is zoned I-G, with an assigned rate per acre of \$635,000 for the first ten acres. The remainder of the property is zoned I-E and is assigned a per acre rate of \$500,000 for the first ten acres. The calculation recognized diminishing returns and discounts the base rate per acre by 25% for the 10.01 to 20 acres and 50% for the 20.01 to 50 acre portion. The resulting assessment is 17,260,000 (rounded).

Issues:

[5] The Complainant raised a number of factors related to the 2014 Assessment, but the primary issue is that the 2014 Property Assessment does not reflect the market value of the subject parcel and its unique characteristics.

Complainant's Requested Value:**\$7,000,000****Board's Decision:**

[6] The 2014 Property Assessment is reduced to \$13,200,000 based on the appraisal and off-site cost evidence presented by the Complainant.

Legislative Authority, Requirements and Considerations:

[7] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[8] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: What is the correct market value of the subject property?**Complainant's Position:**

[9] The Complainant stated that the 2014 Assessment does not reflect the market value of the subject property. Based on an appraisal and offers to purchase, the indicated value of the subject property is \$7,000,000. The Complainant took issue with the City characterizing the subject property as "serviced", stating that services (water, septic sewer and storm sewer) are located adjacent to the property, but are not of sufficient size to meet the needs of the subject parcel if developed. Furthermore, services adjacent to a large parcel like the subject does not make the parcel "serviced" in the eyes of industry.

[10] The subject property had been listed for sale by Cresa Calgary since January 2013. Mr. Miles is the listing agent for the property and presented testimony regarding a number of offers received on the property, ranging from \$5 million to \$7,038,000. Because of confidentiality requirements, copies of the offers were not provided. An email from Mr. Miles dated April 10, 2014, indicating that the offer of \$7,038,000 was accepted by the vendor, is presented in Tab 5, Exhibit C1. According to Mr. Miles, the offer was received and accepted in late 2013. The conditions have apparently not been met, therefore the property is "no longer under contract" but both parties continue to negotiate. Mr. Miles stated that in marketing the property, he discloses the outstanding off-site levies owed the City of Calgary, as well as that the property is essentially remediated.

[11] Mr. Miles also spoke to the status of the remediation on the property. He referred to a letter from Alberta Environment and Sustainable Resource Development dated March 12, 2013 (Tab 6, Exhibit C1) that states that "the site meets the criteria for a commercial land use" and that three ground water monitoring wells need to be drilled and sampled to address one small issue related to a concern with shallow groundwater contamination. Mr. Miles stated that this was a very small monitoring undertaking and that the owner is awaiting further clarification from the regulator regarding the scope of this program. The site is considered essentially remediated and reclaimed by the potential purchasers, so is not an issue affecting value or the marketability of the property.

[12] The Complainant engaged Mr. Maslen to prepare an appraisal of the subject property, with an effective date of July 1, 2013. The full appraisal report is presented in evidence (Tab 4, Exhibit C1) and Mr. Maslen, its author, was present to speak to the assumptions used, the comparable sales relied on and the analysis of value. To summarize the presentation, Mr. Maslen made the following comments:

- This is an appraisal of market value of the subject property as it existed on July 1, 2013.
- The appraisal recognized that services are located at the property line.
- "Development of the property will require on-site services and payments of various acreage assessment charges, off-site levies and boundary charges. The costs are now estimated at approximately \$270,000 per gross acres." (page 5, Tab 4, Exhibit C1). The property is appraised recognizing this cost.

- The site is appraised as if fully reclaimed. No adjustment was made for environmental liabilities or site reclamation costs.
- Five comparable sales were used in the analysis, with adjustments made for a number of characteristics explained in the appraisal. The average value of the adjusted five comparable sales is \$165,558 per acre.
- The value conclusion is \$6,600,000 (rounded) based on a per acre value of \$160,000.

[13] Mr. Maslen discussed the issue of servicing and stated that he disagrees with the definition used by the City. The rates used by the City reflect the value of serviced parcels that are ready for final development. The subject property is not in such a circumstance. The capacity of the services adjacent to the subject property is not adequate to support a developed 41.45 acre site, so upgrades will be required. Therefore, he does not consider the site "serviced". The Comparable Sales used in the appraisal are properties in a similar size range and with a similar servicing requirement.

[14] Both Mr. Miles and Mr. Maslen referred to off-site levies owed the City of Calgary, and referenced a letter from the City of Calgary dated December 12, 2011 (Tab 3, Exhibit C1). This letter states that the total amount outstanding and owed the City is \$6,341,480.03 for items such as inspection fees, acreage assessments, repayments to the City and GST. This amount must be paid before the City will consider any Development Permit or Subdivision Plan.

[15] During questions put to the Respondent and in the closing statement, the Complainant argued that mass appraisal had a number of weaknesses, and if the input data was incorrect, the resulting value would not reflect market value. The Complainant stated that during a meeting with the Assessment Group in the spring of 2013, he noted an error in the Multiple LUD Calculator sheet (page 10, Exhibit R1). This further raises the issue of the inaccuracy of the City's assessment calculations..

Respondent's Position:

[16] The Respondent's position is that the 2014 Assessment represents the market value of the subject property as of the valuation date (July 1, 2013). Because services are located adjacent to the property boundary, the City considers the subject serviced. The cost of extending services from the property boundary into the property is a typical development cost, is considered by the market and is reflected in the prices paid for vacant land. Regarding this property's 2013 Assessment (CARB 70281 P-2013), the Respondent stated that it disagrees with the Board applying a -25% reduction based on the parcel being partially serviced. The purpose of the evidence presented in Exhibit R1 is largely to demonstrate to the Board that the subject is serviced and should be valued as such.

[17] In Exhibit R1, the Respondent presented maps (used internally by the City) to show where services are located for the subject property, as well as the five comparable sales used in the appraisal report presented by the Complainant.

[18] On page 58, Exhibit R1, the Respondent presented the 2014 Industrial Land Values which showed the base rates for vacant serviced industrial land and how the rates are applied to various sized parcels.

[19] The Respondent acknowledged that in a meeting with the Complainant this spring regarding the subject assessment, there is an error in the Multiple LUD Calculator calculation (page 10, Exhibit R1). This is not a modelling error, but rather an error in inputting rates into this calculator. Rather than inputting a base rate of \$645,000 per acre (SE I-G land rate), a base rate of \$635,000 per acre was used. This error favours the Complainant. Because the error results in a very small change to the 2014 Assessment, it was not corrected and an Amended Assessment was not issued.

[20] The Respondent argued that the Act requires that the assessment be prepared using mass appraisal. The City is not able to do individual appraisals for each property in the municipality. Furthermore, the appraisal presented by the Complainant has a number of weaknesses, including comparable sales located in other quadrants of the City (different market influences), comparable sales with land use designations other than I-G and I-E, and a mix of servicing. For these reasons, the Respondent argued that the appraisal cannot be relied on as a good indicator of the value of the subject property.

Findings of the Board

[21] The Board heard considerable discussion regarding when a parcel is considered serviced. The Board understands the City's definition of "serviced" and the definition used by the Complainant and notes that the two definitions are quite different. Therein lies the essence of the disagreement. The Board was not provided with details regarding the capacity of the services and whether they need upgrading, nor any other details related to the services other than both parties agreed that services were available at the property boundary.

[22] The Complainant presented a letter from the City indicating that the City is owed 6,341,480.03, and no development can proceed without this payment. In his testimony, Mr. Miles stated that the potential purchasers were made aware of this financial obligation. The offer of \$7,038,000 that was received and accepted by the vendor in late 2013, while not a transacted sale, provides some indication of what the parties consider fair market value; a value that both parties were (subject to conditions) prepared to act upon.

[23] The Board also finds the appraisal useful, in that it concludes that the market value of the subject property as of the valuation date of July 1, 2013 and considering the off-site levies owed the City, is \$6,600,000 (rounded). This supports the offer to purchase of \$7,038,000 that was accepted by the vendor.

[24] The Board notes that the 2014 Assessment is prepared using mass appraisal, as is required by the Act and Regulations. However, the Board is presented with values that are specific to the subject property and its value. Therefore, the Board considers the letter indicating the value of the off-site levies, the evidence regarding the offer to purchase and its acceptance, and the appraisal as better evidence.

[25] Since the offer to purchase has apparently lapsed, the Board finds the appraisal to be the better evidence. The average time adjusted sale price of the five comparable sales is \$165,558 per acre, which results in the value for the 41.45 parcel of \$6,862,379. This value is supported by the lapsed offer to purchase. The offer to purchase is made recognizing that there is a financial obligation associated with owning the property of \$6,341,480. Therefore, the fee simple value of the subject property is the \$6,862,379 that would accrue to the vendor, plus the \$6,341,480 financial obligation to the City, resulting in a market value of \$13,200,000 (rounded). The Board finds that the value of the subject property as of the valuation date of July 1, 2013 is \$13,200,000.

Board's Reasons for Decision:

[26] The 2014 Property Assessment is reduced to \$13,200,000. The Board was presented with evidence related to the specific market value of the subject property, which it prefers over the analysis done by the City.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF July 2014.



I. Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Vacant Land	SE Industrial	Market value	