

**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:

Ivanhoe Cambridge I Inc. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L. Wood, PRESIDING OFFICER

D. Julien, MEMBER

J. Pratt, MEMBER

These are complaints to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBERS:	024016008 024015802 024015901
LOCATION ADDRESSES:	1020 57 AV NE 868 57 AV NE 950 57 AV NE
HEARING NUMBERS:	63232 63234 63233
ASSESSMENTS:	\$2,640,000 \$2,170,000 \$2,280,000

These complaints were heard on 27 day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Ms. S. Sweeney-Cooper* *Agent, Altus Group Ltd.*
- *Mr. A. Izard* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Mr. R. Powell* *Assessor, City of Calgary's Assessment Branch*

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

The parties' requested that the file numbers #63232, #63233 and #63234 be heard together as the evidence and argument would be similar for the three complaints. The Board agreed with the parties' request and designated file #63232 as the master file.

At the commencement of the hearing, the Respondent indicated that the Complainant identified 13 grounds on the complaint form, but was only pursuing two of those grounds in her disclosure; specifically, an equity analysis between C-R3 lands and a regional Mall, and the use of the subject property's estimated sales price not reflecting its market value. Based on those two grounds, the Respondent argued the Complainant had abandoned ground 13, which states, "inadequate allowance was made for land- use restrictions and caveats, along with market physical and environmental impediments" yet the Complainant's evidence package (C1 pages 54- 111) referred to Limited Access/Use Development Restrictions. He asked that the Board exclude that evidence. The Complainant argued that she had not abandoned ground #13. She submitted that the land use restrictions and caveats are directly affiliated with the subject lands and would have been taken into consideration in the sale of those lands.

The Board ruled that it would hear the evidence first before it could determine whether or not the Complainant had, in fact, abandoned ground 13, and ruled that it would deal with the objection later in the hearing.

The Respondent then requested that his disclosure not be marked as evidence until the Complainant concluded her evidence. The Board agreed with the Respondent's request and only marked the Complainant's submission as evidence at the commencement of the hearing (Exhibit C1 and C2).

At the conclusion of the Complainant's evidence, the Respondent requested that the Board dismiss the Complainant's case as there was no evidence to warrant a reduction. The Complainant argued that the case should not be dismissed as she presented sufficient evidence to bring the assessment into question. The Board ruled that it was not prepared to dismiss the complaint at that time, but would proceed with the case.

The Respondent indicated that he would not present any evidence in this case, and asked that the Board either dismiss the complaint or confirm the assessment. The Board indicated that it was the Respondent's decision not to put forward any evidence and advised him of the risk that the only evidence before the Board would be the Complainant's evidence. The Board advised

the Respondent that he could provide a summation, which he did provide to the Board.

The Respondent submitted he had a cost application in regards to these complaints. The Complainant indicated that although she was aware that the City would be bringing forward a cost application, she requested a postponement to allow her colleague to address that matter. The Respondent agreed to the postponement indicating that he did not intend to ambush the Complainant at the hearing. The Board agreed to hear the cost application and scheduled the matter for Tuesday July 19, 2011 in room 8 at 9:00 am. The Board also indicated that it was seized with the matter. That cost application will be addressed in a separate Order.

Property Descriptions:

The subject properties are vacant parcels of land located adjacent to the Deerfoot Mall. The parcels range in size between 1.44- 2.67 acres. The land use designation is C-R3, Commercial Regional 3. The lands are located in the Deerfoot Business Centre.

Issues:

1. The base rate should be corrected to reflect equity within the C-R3 lands;
2. The estimated sales price does not reflect the assessed land value.

Complainant's Requested Values:

\$2,679,431 (1020 57 AV NE)
\$1,443,273 (868 57 AV NE)
\$1,443,020 (950 57 AV NE)

Board's Decision in Respect of Each Matter or Issue:

1. The base rate should be corrected to reflect equity within the C-R3 lands

The Complainant submitted the base rate should be \$23 psf which would reflect equity within the C-R3 lands. The Complainant submitted the rate of \$23 psf was based on the sales evidence of the Deerfoot Mall which included 21.1 acres of excess land and farmland (Exhibit C1 page 25). The Complainant provided the Board with the Proposed Purchase of Deerfoot Mall dated February 15, 2011 for \$80,000,000 between Shape Developments Ltd. and Ivanhoe Cambridge I Inc. (Exhibit C1 pages 35- 38). She was advised a week prior to the hearing that the property had sold for \$78,000,000.

The Complainant set out a chart comprised of the 3 subject properties, the Deerfoot Mall and adjacent farmland for the Board's consideration (Exhibit C1 page 27). She derived the \$23 psf base rate by taking the estimated sales price (\$80,000,000) divided by the total square footage for the 5 properties (3,458,109 sq. ft.). For ease of reference, the Board has reproduced the Complainant's chart, in part, as follows:

Roll #	House	St Name	St Type	Quad	HR#	2011 Original Assessment	Assessed Land Area sq. ft.	Land Area Acres	Assessed Rate psf	Notes
024016008	1020	57	AV	NE	63232	\$2,640,000	116,497	2.67	\$23	Corner, utility corridor shape factor
024015802	868	57	AV	NE	63234	\$2,170,000	62,751	1.44	\$35	Commercial land only
024015901	950	57	AV	NE	63233	\$2,280,000	62,740	1.44	\$36	Commercial land only
024014706	901	64	AV	NE	64741	\$92,250,000	2,958,214	67.91	\$31	Land & improvement-Deerfoot Mall
024015703	836	57	AV	NE	63235	\$3,600,000	257,907	5.92	\$14	Farmland/Ind-freeway/shape factor

Total 2011 Assessment: \$102,940,000 3,458,109
 Estimated Sales price: \$80,000,000
 Rate Per Sq Ft per Sales Price \$23

Upon questioning, the Complainant indicated that, based on her analysis, an upward adjustment would be required for the property located at 1020 57 Av NE (file #63232) from \$2,640,000 to \$2,679,431.

The Respondent argued that the Complainant failed to present properties that are similar to the subject properties, and he referred to the 67 acres that is improved with the Deerfoot Mall (which is 25 times the size of the subject properties), as well as 5.92 acres of farmland which is valued using a different methodology. The Respondent argued that it is not likely or prudent that a potential purchaser of a 2 acre vacant land site would be interested in purchasing a Mall. He referred to sections 289(2)(a) and (b) of the *Municipal Government Act* which states the following:

s. 289(2) *Each assessment must reflect*

- (a) *the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) *the valuation and other standards set out in the regulations for that property.*

The Respondent argued that there were no adjustments made to the subject properties to account for superior or inferior characteristics (e.g. one property has a road; another property is situated on a corner lot).

The Respondent submitted that the proposal for purchase was unsigned and a lot of the information was redacted. Moreover, the sale took place in 2011, not in the valuation year.

Based on the Respondent's decision not to present any evidence in this matter, the Board does not know what land rate was applied by the City or how the assessments were derived. The only evidence before the Board was the Complainant's evidence.

The Board finds the Complainant's equity analysis of taking the estimated sales price and dividing it by the total square footage of vacant land, a Mall and farmland, is flawed. The estimated sales price provides little assistance because it is an estimate, not a transaction of a property which would indicate market value. The Board placed little weight on the sale of the Deerfoot Mall and surrounding properties as the details of that sale were not before the Board and it was a post facto sale. The Board finds the equity comparables of the Deerfoot Mall, which is situated on 67.91 acres, or the farmland which has a different valuation methodology, not

similar to the subject properties, therefore, the Board placed little weight on the Complainant's equity analysis.

2. The estimated sales price does not reflect the assessed land value.

The Complainant submitted these are C-R3 lands and therefore have limited access and use. Moreover, there are caveats on title which require Wal-Mart's permission before these lands could be developed. She submitted that this is relevant to land use as it was part of the marketing of the sale of Deerfoot Mall. The Complainant submitted the proposed purchase of Deerfoot Mall, the Letter of Intent, is not a frivolous agreement. The sale itself was marketed to a willing buyer and seller and was available on the open market.

The Respondent argued the subject properties are approved for development. The restrictive use has no affect on the quantum or value of the properties. The Respondent drew the Board's attention to the Complainant's ground #13 and his objection which was raised at the commencement of the hearing.

The Complainant's ground #13 states "inadequate allowance was made for land- use restrictions and caveats, along with market physical and environmental impediments".

The Board notes that the Complainant withdrew the reference to the environmental impediments at the hearing.

The Complainant referred to land use restrictions and caveats in her presentation, and attempted to relate these restrictions and caveats to the sale of the Deerfoot Mall and surrounding properties. However, the Board finds the presentation was lacking. For example, in regards to the land use restrictions that apply to C-R3 lands, the Complainant did not provide the guidelines as to the permitted and discretionary uses allowed for these lands. The Complainant provided two pages addressing the location of the subject lands; however, the Board notes that the maps form part of the Calgary Land Use Bylaw IP2007 but the bylaw itself was not in evidence.

In regards to the caveats, the Board was advised that the subject lands cannot be developed prior to Wal-Mart's approval; however, the Complainant did not provide the full lease details. The Board notes the Memorandum, dated October 3, 2003, which states the subject lands can be developed with restrictions by Wal-Mart (Exhibit C1 page 63). Those restrictions appear to be set out in section (e) of the Wal-Mart lease, subsections (i) (A)-(D); (i)-(xii) (Exhibit C1 page 65).

In regards to the market physical evidence, the Complainant did not present any evidence.

Based on the above, the Board finds the Complainant presented insufficient evidence which would warrant a change in the assessments in this instance.

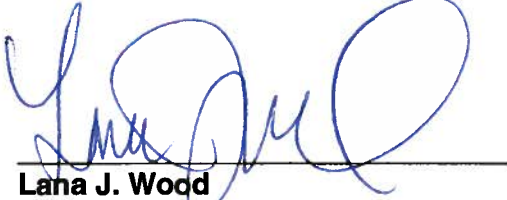
Board's Decision:

The decision of the Board is to confirm the 2011 assessments for the subject properties as follows:

The assessment for the property located at 1020 57 AV NE is confirmed at \$2,640,000;

The assessment for the property located at 868 57 AV NE is confirmed at \$2,170,000;
The assessment for the property located at 950 57 AV NE is confirmed at \$2,280,000.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF August 2011.



**Lana J. Wood
Presiding Officer**

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

EXHIBIT NO.	ITEM
1. C1	Complainant's Brief
2. C2	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.*