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:

BMD Investment Corp. (as represented by Linnell Taylor and Associates), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P Petry, PRESIDING OFFICER
D Julien, MEMBER
J Pratt, 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:	**200507127**
LOCATION ADDRESS:	**201 221 10 Avenue S.E.**
HEARING NUMBER:	**63052**
ASSESSMENT:	**$1,320,000**

This complaint was heard on the 25th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- Mr. J Mayer

Appeared on behalf of the Respondent:

- Mr. R Natyshen

Property Description:

The subject property is a second floor office condominium consisting of 3,496 sq. ft. located in the Beltline. Three parties held a share of the interests in this property until on or about June 4, 2010 when two of the parties sold their respective interests to the third party.

Issue:

1) Does the sale of partial interests in this property in June 2010, provide the best indicator of the property's market value as of the valuation date, July 1, 2010?

Complainant's Requested Value:

Based on the Complainant's recommendation that the assessment be based on a partial interest sale in the subject, the requested value is $1,125,000.

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

1) The CARB decided that the partial interest sale in the subject is not a reliable indicator of the subject's market value as of July 1, 2010.

Summary of the Party's Positions

The Complainant provided a part of an "Agreement of Purchase and Sale and Termination" document which outlines some aspects of an agreement between the three owners of the subject condominium. This document shows that George Marquardt, owner of 36.37% interest

in the subject and Doreen Koroluk, owner of 27.27% interest in the subject, agreed to sell their interests to the third partial owner, BMD Investment Corp. The purchase price agreed upon was a sum of $409,162 for Mr. Marquardt's 36.37% interest and a sum of $306,788 for Ms Koroluk's 27.27% interest. Based on these values totalling $715,950 for 63.64% interest, the Complainant had determined that 100% of the interests in the subject would be $1,125,000. The Complainant also provided a Land Title Certificate to show that this sale had been registered on June 4, 2010. The Complainant argued that these sales were arms length transactions occurring very close to the valuation date and therefore are the best indicators of the property's market value for the 2011 assessment. In further support of the value of $1,125,000 the Complainant referred to an appraisal which apparently had been done by Colliers International. While the appraisal document was not in evidence the Complainant indicated that the value suggested by the appraiser was $1,100,000. The Complainant admitted that the subject property had not been listed for sale on the open market but the appraisal is a reflection of what the market value would be for the subject.

The Respondent submitted a RealNet report respecting the June 4, 2010 partial interest sale of the subject. This report shows only the 36.37% interest sale and states that *"this transaction involved a non-arms length sale between affiliated organizations".* The Respondent also provided a number of documents concerning a transfer of 36.36% interest in the subject property between Brickburn Asset Management Inc. and BMD Investment Corp. July 2007. Based on these documents the Respondent argued that this transaction is not arms length as the parties are obviously linked with common directors and corporate officers. The Respondent argued that the Complainant has not shown that the transfers in June 2010 were arms length transactions and in fact RealNet reports otherwise. Also these transfers were not sales resulting from exposure to the open market and can not be considered to reflect market value.

Findings and Reasons for the Board's Decision:

The Respondent's documents and arguments concerning the 2007 transfer between Brickburn Asset Management Inc. and BMD Investment Corp. were not found to be relevant to the complaint or issue in this case. The Complainant has based its position on a later transaction between different parties which occurred in June 2010.

The primary question before the CARB in this case is whether or not the June transfers of partial interests in the subject property are valid indicators of the subject's market value. Section 1 (1) (n) of the Municipal Government Act (MGA) states that *"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;"* The CARB interprets "open market" to mean that the property would be listed and marketed in such a manner that any interested party could become aware that the property is being offered for sale and could pursue the purchase of the property if so inclined. The Sale of a property that has transferred without exposure to the open market in the opinion of the Board can not be relied upon as a good indicator of market value.

The parties to this particular sale were related parties as joint owners of the subject condominium unit. The CARB had insufficient evidence to determine whether there may have been any special motivation at play in this case. The Board did, however have the evidence of the Respondent showing that based on the knowledge that RealNet had at the time of transfer, they judged the sale to be non-arms length. Based on these questions concerning the validity of

the sale from a market perspective, the CARB has decided that the transfer of partial interests in this case can not be recognized as a legitimate reflection of the property's market value. The appraisal referred to by the Complainant was of little value to the Board in this case as the document was not available for our review.

Summary

The CARB has found the transfer of the partial interests in the subject not to be a valid sale from a market perspective and therefore confirms the assessment at $1,320,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 12th **DAY OF** SEPTEMBER **2011.**

Presiding Officer
Paul G. Petry

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R2	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).

470(3) *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*