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:

1442797 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER
E. Reuther, MEMBER
A. Wong, 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:	**067245001**	**067244905**
LOCATION ADDRESS:	**1400 10 Ave SW**	**1334 10 Ave SW**
HEARING NUMBER:	**63212**	**63213**
ASSESSMENT:	**$6,500,000**	**$4,330,000**

This complaint was heard on 13th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *Jason Luong,*
- *Brock Ryan*

Appeared on behalf of the Respondent:

- *Lawrence Wong*

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

Both parties indicated that their submissions addressed both subject properties, and that the issues were exactly the same for both subject properties. They agreed that the most efficient way to address these two complaints was within one hearing. The Board agreed that the two subject properties would be addressed within one hearing and that one decision would be issued for both subject properties.

Property Description:

The subject properties are titled parcels adjacent to and contiguous with one another, and located at 1400 - 10th Street SE (corner lot) and 1334 - 10th Street SE, on the west side of the Beltline District. They form a total rectangular property of 63,215 square feet, consisting of 37,087 square feet in 1400 - 10 Ave SW and 26,128 square feet in 1334 - 10 Ave SW. The property is bounded by the railway tracks on the north side and 10th Avenue SW on the south end. 1400 - 10 Ave SW is bounded by 14th Street on its west side.

The area is a mix of commercial retail, office and residential uses. The area is slowing being redeveloped, as demand warrants. The subject properties are one contiguous vacant lot that is contracted to a parking lot operator and used as a surface parking lot. The improvements were demolished in 2005. The property is zoned DC 68Z2004, which allows for a number of mixed uses. Development Permit DP2006-1969 was in place until it lapsed in late 2010. This Development Permit allowed for a two tower, 405 unit apartment/condominium project that was marketed as Lausanne and Montreux Towers and occupied both subject properties.

The subject property is assessed using the Sales Comparison Approach at a base unit rate of $195 per square foot ($ft^2$), plus or minus influences. The 1400 - 10 Ave SW property has a +5% corner lot influence and -15% abutting a train track influence applied for a net assessment rate of $175.50/ft^2$. The 1334 - 10 Avenue SW property has a -15% influence applied, for a net assessment rate of $165.75/ft^2$.

Issues:

1. What is the appropriate market value of the subject properties for assessment purposes?
2. Is the Assessment Class of the subject properties correct?
3. Is the subject properties assessment class equitable?

Complainant's Requested Value:

ROLL NUMBER:	**067245001**	**067244905**
REQUESTED ASSESSMENT:	**$4,630,000**	**$3,260,000**

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

1. **What is the appropriate market value of the subject for assessment purposes?**

It was the Complainant's position that the value of the properties was more as one unit, because it allowed for a larger development than what might be built on each of the subjects as individual units. According to the market, there is an active effort being made to consolidate smaller parcels. The Complainant indicated the following list of events related to the subject properties:

- November 2008: listing of both properties as one unit for $14,500,000 ($229/ft^2$) by Cushman & Wakefield LePage Inc.
- March 2009: offer to purchase of $6,316,000 ($100/ft^2$) from Loblaw Properties West Inc. Offer was rejected.
- July 2009: Appraisal of both properties as one unit by Colliers International for the 1334/1400 - 10 Avenue SW property, with an effective date of July 1, 2009. The appraisal report concluded that the value of the total subject properties as one unit was $9,330,000 ($147/ft^2$).
- January 2010: Relisted both properties for $7,900,000 ($125/ft^2$) by Cushman & Wakefield LePage Inc. No offers have been received to date.

The appraisal report was presented as evidence (Appendix 5, Exhibit C1) to support the position that the assessed value was too high. The Complainant stated that the best indication of value was the current listing at $125/ft^2, and that no offers have been received at that value. The requested assessment is based on a rate of $125/ft^2.

The Respondent presented a summary table of four sales and one listing for Beltline Land Sales (page 23, Exhibit R1) along with support data for these sales. The size of these lots ranged from 1,251 to 19,526 ft^2 with C-COR1, CC-X, and CC-COR zoning. The four sales involved improved properties with the value of the improvements deducted based on Marshall & Swift valuation methodology. The bare land value of these sales comparables ranged from $151 to $324/ft^2, with a median of $196/ft^2. This was the basis of the $195/ft^2 base rate applied to the subjects. The support data consisted of "Non-residential Property Sale Assessment Request for Information" which was to show that the condition of the improvements was poor and contributed little or nothing to the value of the property.

The Respondent presented a sale of a property located at 1401 - 9 Ave SW, which occurred on July 2, 2009. This property is located north of the subject, on the north side of the railway track, so falls into the "downtown core" district. It is a 10,418 ft^2 property and sold for $152.19/ft^2. While this property is not directly comparable to the subject, it is likely the best sale of a vacant parcel to reflect the value of the subject. Note that it is also a corner location adjacent to a train track.

The Respondent presented three court ordered/foreclosure sales in the Beltline (page 90, Exhibit R1) and supporting documents. These sold in the twelve month period prior to July 1, 2010, and consisted of one improved property and two properties used for surface parking, ranging in size from 16,261 to 81,378 ft^2. The two vacant properties used for surface parking sold for a price of $221 and $190 per square foot, and when adjusted for appropriate corner and track influences, indicated a base rate for assessment purposes of $210 and $209 per square foot respectively.

In Rebuttal, the Complainant addressed the five sales comparables presented by the Respondent by showing that the improvements were substantial and in some cases, the purchaser did undertake considerable renovations to extend the use of the buildings. Therefore, the sale prices indicated overstate the value of the land only. The Complainant also referenced the sale of the 1401 - 9 Ave SW property as further support that the assessed value is too high.

Board's Decision:

The Board notes that the Complainant's appraisal report also included comparable sales that were improved and adjusted for the contributory value of the improvements to arrive at the bare land value. These five comparable sales ranged in size from 8,649 to 49,397 ft^2. The adjusted range of values of the comparable sales was $107 to $220 per square foot.

The Respondents sale comparables were all smaller than the subject. According to the Complainant's evidence, smaller parcels sell for less than larger parcels in this area, because larger parcels allow for a larger development. The Board also notes that the court ordered sales support the value of the base rate used by the City in this assessment, even though it is generally recognized that court ordered sales occur at a discount to the market.

The 1401 - 9 Ave SW sale adds to the body of data and supports the general rate used by the City for assessment purposes.

Taking all the sales comparison data presented and recognizing that all the data has some limitations regarding direct comparability to the subject properties, the Board is satisfied that this data supports the assessed values of $175.50/ft^2 for 1400 - 10 Ave SW and $165.75/ft^2 for 1334 - 10 Ave SW.

2. Is the Assessment Class of the subject properties correct?

The Complainant stated that for the last number of years, the subject properties were assessed in the "residential" property class, therefore the property tax was based on the mill rate assigned to this class, which is apparently much lower than the mill rate assigned to the "non-residential" class. For the 2011 assessment year, the assessment class was changed to "non-residential", which results in the property taxes increasing by about three times because of the different mill rate applied. The Complainant argued that nothing has changed with regard to the property or its use. The Development Approval in place lapsed in late 2010; not withdrawn by the proponent. The property owners recognized that the market had changed and are in the process of applying for a new Development Permit. According to information provided in the Rebuttal (page 33, Exhibit C2) the owners are in the process of applying for a ten storey mixed use building incorporating retail at grade, second floor office and eight floors of residential apartments (168 units) with underground parking of 116 stalls. Such a project would qualify for "residential" class status.

The Complainant indicated that Section 297(4)(b) and (c) are the relevant portions of the Municipal Government Act and states:

(b) "non-residential", in respect to property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodations;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

assessor as farm land, machinery and equipment or non-residential.

It was the Complainant's position that the intention of the owner is to develop the subject properties for primarily residential use, and that this intention did not change with the lapsing of the Development Permit. The scope of the project changed due to the market changing. A change in project scope is not a change in intent.

The Complainant pointed out that the discussion of highest and best use in the appraisal report (Appendix 5, Exhibit C1) indicated that the current use as a surface parking lot does not achieve an income stream to maximize the value of the property. The highest and best use was concluded to be as a holding property for future redevelopment.

The Respondent stated that the assessor needs something tangible to indicate intent. The assessor first looks at the zoning, then at the Development Permit if one exists, and finally at the actual use of the property. This decision model, and specifically the use of a Development Permit to indicate intended use, was derived from previous Assessment Board Decisions. It has apparently been the practice of this municipality to use Development Permit information as the basis for determining assessment class. In this case, the zoning is quite loose and allows for a variety of mixed uses, including commercial and residential. When the Development Permit was in place, it indicated that the property was intended to be developed for residential use. Once this Development Permit lapsed, the intended use could not be ascertained from the bylaw, as it was too broad. So, the assessor defaulted to the actual use of the property. In this case, the property is being used as a paid surface parking lot, therefore clearly a commercial use (not a residential use). The lapsing of the Development Permit was considered to be the "event" that triggered a change in assessment class.

Board's Decision:

The Board notes that according to Section 297 of the Municipal Government Act, the decision as to whether the subject property is classed as "non-residential" or "residential" rests on whether the use or intended use is for permanent living accommodations. Sub-section 4(b) indicates that the zoning is the determinant as to what the intended use of a property is. Therefore, the Board interprets this to mean that zoning is the over-riding consideration in determining intended use. This is a workable and practical approach in situations where the zoning is specific and allows for distinct residential and non-residential uses.

There are some zoning categories, as in this situation, that allow for a range of uses including both residential and non-residential. Therefore, the zoning is not specific enough to indicate what the intended class of the properties so zoned should be. In such cases, the City uses Development Permits to indicate intended use. It is the Board's opinion that this is a workable and practical basis to determine intended use, where the zoning is not specific.

In the case where the zoning allows for a range of uses, both residential and non-residential, and there is no Development Permit in place, the City then looks at the existing use on the property to determine intent. Again, the Board recognizes that this is a workable and practical basis to determine intended use, where the zoning is not specific regarding assessment class allowed, and no Development Permit is in place. The only other alternative would be to do a highest and best use evaluation of the subject, to indicate intended use based on the principles of a highest and best use analysis.

The Board also notes that this decision model used by the City is policy that has been developed and is not directed, indicated or suggested by the Act or its Regulations. That said, the Board also recognizes that this decision model is workable and practical for the purpose of the municipality in preparing its assessments using mass appraisal techniques. Zoning and Development Permit information is available to the assessors and can be practically integrated into the assessment process.

Assessment is historic, based on actual sales, rates and uses in place as of the assessment date or condition date of the property.

The Board availed itself of the zoning Bylaw No. 68Z2004 discussed by both parties, as the Board was not comfortable with only considering the excerpt of this Bylaw provided in Attachment 5 Exhibit C1. This Bylaw allows for a very wide range of commercial, institutional and residential uses, so, in and of itself does not indicate a specific intended use (residential or non-residential). The Board agrees that in such a situation, a Development Permit would indicate an intended use. As of December 31, 2010, the date of condition of the property, the Development Permit had lapsed. As of December 31, 2010, the use of the property continued to be as a pay surface parking lot contracted to a parking company. The highest and best use analysis provided in the appraisal report (page 108 of 298, Attachment 5, Exhibit C1) concludes that the highest and best use of the property is "As vacant – commercial or residential development site with development potential in the mid-term." The effective date of this appraisal is July 1, 2009.

The Complainant argued that the intended use of the subjects had not changed because the Development Permit lapsed, but only that the scope of the use changed. Due to changing market conditions, the permitted use as a twin tower 405 residential unit project (page 8 of 298, Exhibit C1) lapsed but the Complainant was apparently in the process of applying for a Development Permit for a project that included surface level retail, second floor office and 168 residential units with two partial levels of above grade parking (page 32, Exhibit C2). The Board notes that this proposed new Development Permit has not yet been applied for as of the date of this hearing (October 13, 2011, which is well beyond the December 31, 2010 condition date) and the City has not yet approved said application. Furthermore, the Complainant did not provide any evidence to show that the consultant had been retained as of December 31, 2010, nor what the status of the application was as of that date. Therefore, this intent by the Complainant is speculative for the purpose of the subject assessment and assessment period.

Alternatively, the highest and best use analysis provided by the Complainant in the appraisal report concluded either commercial or residential use for the subject properties. So, this evidence is not helpful in determining an assessment class.

The current (and continuing) use of the property is as a paid parking lot, which is a commercial use (regardless of whether it is the highest and best use).

The onus is on the Complainant to show that the assessment class is not correct. The Board concludes that the evidence presented, while it may demonstrate future intent, was speculative as of December 31, 2010.

Based on the evidence presented and considered by the Board, the Board concludes that the "non-residential" assessment class applied to the subject properties for the 2011 assessment year is correct. The Board also notes that the Complainant has received the benefit of a reduced tax rate because of the "residential" class for the last few years, as a result of the lapsed Development Permit. If and when an application for a new Development Permit is made and approved, that may trigger a change in assessment class in a future assessment year.

3. Is the subject properties assessment equitable?

The Complainant presented fourteen equity comparables (page 10, Exhibit C1) of various types of properties that are assessed as "residential" class. The Complainant pointed out that some of these properties have a majority use that is "non-residential" (i.e. office or commercial retail) but still were classified as "residential" with only a minority residential component. The Complainant also presented information in Rebuttal (Exhibit C2) showing the status of some of the Development Permits as having lapsed, and argued that this was the same situation as the subject. Therefore, this demonstrated an inequitable situation relative to the subject.

Board's Decision

The Board considered these equity comparables. In looking at the data presented for the various equity comparables and especially on the Comparable Sales with data showing the status of the respective Development Permits, it was not clear when the Development Permits lapsed. It was not evident in this data that the Development Permits had lapsed prior to December 31, 2010. Therefore, the Board does not consider that this information demonstrates that the subject properties were treated inequitably compared to the equity comparables.

Board's Decision:

The Board confirms the assessments and the assessment class for the reasons discussed above.

DATED AT THE CITY OF CALGARY THIS 9 **DAY OF** November **2011.**

Ivan Weleschuk
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant 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.