# 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:**

***Eau Claire Market Inc. (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***K. D. Kelly, PRESIDING OFFICER***
***P. Charuk, BOARD MEMBER***
***K. Farn, 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 2013 Assessment Roll as follows:

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|---|---|
| **ROLL NUMBER:** | **068244607** |
| **LOCATION ADDRESS:** | **111 – 2 ST SW** |
| **FILE NUMBER:** | **71904** |
| **ASSESSMENT:** | **$66,700,000 (Original value)** |
| | **$65,810,000 (Amended value)** |

This complaint was heard on 9th day of October, 2013 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:

- *T. Howell – Colliers International Realty Advisors Inc.*

Appeared on behalf of the Respondent:

- *H. Neumann – Assessor – City of Calgary*

**Regarding Brevity**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] The Board noted that the initial Assessment Notice for the subject was mailed to the owner on January 3, 2013. It identified an assessed value of $66,700,000 for the subject .

[3] Subsequently, an Amended Assessment Notice for a reduced value of $65,810,000 was mailed to the owner on February 14, 2013.

[4] Subsequently, on March 1, 2013, the Board received an Assessment Review Board Complaint form commencing an appeal of the initial Assessment Notice of $66,700,000. The Amended value of $65,810,000 was not appealed.

[5] At the commencement of this hearing the Board canvassed the parties and determined that the parties firmly agreed that the amended value of $65,810,000 was the preferred assessed value before the Board in this hearing. The Respondent also confirmed that the calculations and evidence he had prior shared with the Complainant and which he planned to present to the Board, is based for the most part, on the amended value of $65,810,000. The Complainant confirmed that he accepted the amended value as the correct value to be debated before the Board in this hearing.

[6] The Board accepted that $65,810,000 is the appropriate value to be debated in this hearing.

**Property Description:**

[7] The subject is a 4.94 acre (Ac.) [215,186 square foot (SF)] parcel of land in the Eau Claire district of downtown Calgary. The property was purchased from the City of Calgary in 2009 after being leased from the City for several years prior. It is the site of a former City of Calgary "bus barn" and is deemed to be a contaminated site, although the current state of this affliction is unknown to either of the parties and the Board. It is currently improved with aspects of the Eau Claire Festival Market which was constructed on the subject in 1994 – essentially an indoor multi-unit mall.

[8] As noted, the 4.94 Ac. subject parcel was purchased from the City of Calgary in February 2009 for a value conveyed to the Board by the parties of $9,406,336. Along with five other smaller land parcels, the total consideration paid for the six parcels totalled $13,500,000. The "Leasehold Interests" for the site were also purchased by the owners for $28,000,000 in 2007. The subject is assessed by the Respondent based on a "land value only" methodology at an amended value of $65,810,000 or approximately $306 per SF (originally $66,700,000 at $310 per SF). The assessment class of the subject is deemed – for assessment purposes, to be 54% non-residential, and 44% residential – the latter on the basis that residential development is required to be developed on the site pursuant to current zoning and signed agreements with the City.

**Issues:**

[9] What is the correct per square foot value to be applied to the subject 4.94 Ac. to calculate its assessed and fair market value, given the subject is said to be a contaminated site?

**Complainant's Requested Value:**

[10] The Complainant requests that the assessment be reduced to $9,400,000 or $43.71 per SF which is the original purchase price in 2009.

**Board's Decision:**

[11] The Board confirmed the amended assessment at $65,810,000.

**Legislative Authority, Requirements, and Considerations:**

[12] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[13] MGA 467 (3) states:

> "An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality."

[14] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

## Positions of the Parties

### (a) Complainant's Position:

[15] The Complainant provided his Brief C-1 and argued that the assessment of the subject had been reduced several times in previous assessment appeals, the latest in 2012 when the assessment was reduced by the Board to $36,100,000 from $48,140,000. The Board's 25% reduction in 2012 was based, among other factors, primarily on alleged contamination of the site from previous City bus barns which had been located there in the past. He provided a copy of Calgary Composite Assessment Review Board decision CARB 1687-2012-P to confirm this point.

[16] On page 135 of C-1 the Complainant also provided copies of a City of Edmonton Assessment Review Board decision regarding the 2010 assessment of an allegedly contaminated Edmonton property. The Complainant argued that this decision is one example where an Assessment Review Board confirmed that contaminated properties sell for less than non-contaminated properties in the market place, and this factor must be taken in to consideration when assessing contaminated sites. Therefore, he argued, the subject's assessment should also benefit from a similar reduction of at least 25%.

[17] The Complainant clarified in response to questions that he had no information or evidence (such as Engineering reports and the like) regarding the location; extent; nature or level of remediation undertaken to date; who might be undertaking the remediation work; or the status of the alleged contamination as of the end of 2012. He argued instead that because the City of Calgary signed a joint agreement in 2008 with the owners, and the City agreed to contribute $1.4 million to help rehabilitate the site, this was evidence that some level of contamination existed on the subject, and contaminated properties typically sell for less in the marketplace. Therefore, he argued, while the 25% reduction in assessed value should still apply to the 2013 assessment, it had not been applied by the Respondent.

[18] The Complainant argued that the subject's value is also severely constrained because of the many "time-sensitive" City of Calgary future development restrictions and requirements encumbering the site as "registered" conditions of sale. He noted for example that in 2017 the City has the right to re-purchase the site if certain development requirements and targets are not met. Accordingly, he argued, the subject has considerably less value in the market than

comparable properties because of these factors. He provided an e-mail on page 148 of C-1 from the subject's property manager confirming the re-acquisition point, although the manager was not in attendance to speak to this matter. The Complainant noted that the restrictions are itemized in paragraphs [2] to [4] inclusive of CARB decision 1687-2012-P (see [15] above) in his Brief C-1 page 18.

[19] The Complainant argued that the Respondent has erred in assessing the subject's 4.94 Ac. of land using $310 per SF ($306 per SF amended) since there were no land sales which occurred in the current or any recent assessment cycle in the City's so-called "Eau Claire" "Market Zone" where the subject is located. He argued that while the Respondent suggests Eau Claire market zone land transactions "function" much like the City's "DT2E" market zone, and therefore the $310 per SF ($306 per SF amended) is applicable to both zones, the Respondent's analogy is flawed because there is no evidence that this is true.

[20] The Complainant argued instead that given the location of the subject; the vagaries of the current economy and market; the restrictions in use pursuant to the Land Use Bylaw applicable to the site; and rigid/brief development timelines imposed by the City when the lands were purchased from it, the subject is not similar to other land parcels in DT2E as the Respondent alleges. He also argued that the almost equally-split "Residential/Non Residential" assessment class currently applied to the subject, should continue pursuant to a valid Development Permit (DP 2008–1902) which allows for residential uses to be constructed on the subject, nothwithstanding there is no residential use of the property at present. He expressed concerns that the Respondent appeared to indicate that the predominantly commercial use of the subject should prevail in assessing the site and the residential aspect discarded.

[21] On page 4 of C-1 the Complainant provided five market sales, four of which transacted in 2005, and one in 2006. Two sales were from DT1 and two from DT2 while the fifth was a 2005 sale from the Eau Clarie district like the subject. He argued that the unadjusted (as to time) sale values of these transactions - ranging from $66.88 per SF (Eau Claire), to $334.71 per SF (DT2), demonstrate that a value less than $305 per SF (amended) should be applied to the subject.

[22] The Complainant suggested that the 2005 unadjusted sale of 239,232 SF of land at 222 Riverfront Ave. SW in Eau Claire for $66.88 per SF is indicative of current land values in the district and should be considered for the subject. He also clarified that while his market sales had not been time-adjusted, his requested 25% reduction in assessed value to account for the site's contaminated state, essentially provides, in part, for this adjustment. He also argued that the Respondent had used one *post facto* sale in its determination of value for both the DT2E and Eau Claire market zones, and this was not only inappropriate, but resulted in a flawed valuation for the two market zones.

[23] On page 2 of C-1 the Complainant provided a list of six Eau Claire parcels – the subject included, that the owner purchased simultaneously from the City for a total $13,500,000 in 2009. He clarified that the subject was purchased as part of this "portfolio" for $9,406,336 or $43.71

per SF. He argued that this sale occurred on the "open market" and should be considered a valid market transaction indicative of fair market value for the subject. He argued therefore that the assessment of the subject should be reduced to $9,406,336 or $43.71 per SF, given its alleged contaminated state and because land values in the district had not increased in the district between 2009 and 2012. However he provided no market evidence to support this point.

[24] The Complainant requested that the assessment for the subject be reduced to $9,406,336 or $43.71 per SF.

**(b) Respondent's Position:**

[25] The Respondent provided his Brief R-1 and argued that in assessing the subject, or any property, one must consider the "full bundle of rights" – i.e. all the interests, associated with that property. He argued that the "fee simple" interest of the subject includes a seventy-five year (until 2075) "leasehold interest" in the subject which was purchased by the owner July 2, 2004 for $28,000,000 and remains an important part of the site's characteristics and value.

[26] The Respondent argued that the Complainant seeks a land value for the subject based on its 2009 sale, but has provided no proof that land values in the area in 2012 are the same as they were in 2009. In addition, the Respondent argued that the sale of the subject by the City to the owner in 2009, was not indicative of an "open market" sale since the subject was not "brokered" or "marketed" and therefore its selling price does not fit within the accepted definition of market value. The Respondent provided the RealNet information sheets outlining the relevant characteristics of the site and documenting the circumstances surrounding its sale, all in support of his position on this point.

[27] The Respondent also argued that by formal agreement between the owner and the City (copy provided in R-1), the City controls all forms of development to be carried out on the subject. He noted that the City has the final say on any development proposal, and moreover, the owners cannot sell the land without the City's consent. In addition, since the agreement requires that certain types of development must be completed within 10 years from the owner's acquisition of the lands, he argued that in totality, the subject is more heavily encumbered than other typical fee simple lands.

[28] The Respondent also noted that the formal agreement referenced in paragraph [27] above, can be cancelled by the City at any time, with the City entitled to re-purchase the lands. Therefore, he argued, the sale of the subject by the City to the owner does not represent the typical characteristics of an "open market" sale and cannot be relied upon by the Complainant as being such, since:

> "any reasonable person would pay less for a property if the vendor can take the property back within a certain time frame if conditions are not met".

[29] The Respondent provided the Land Title Certificate for the subject and identified and clarified the nature and purpose of several restrictive covenants registered against the lands. He argued that taken together, all of the forgoing factors, including those in paragraphs [27] and [28] above, demonstrate that the subject was not acquired in a typical open market transaction, and thus its 2009 sale value of $9,406,336 or $43.71 per SF is not indicative of market value as argued by the Complainant. He also argued on page 14 of R-1 that:

> "The definition of market value in the MGA" (Municipal Government Act) "is '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'. This sale was not listed on the open market and thus does not meet the definition of market value in the Act."

[30] The Respondent argued that the Complainant provided no documentary evidence whatsoever as to the nature and extent of the alleged contamination said to be afflicting the subject. He noted that the Complainant provided no evidence as to the scope or areal extent of the contamination; the nature and effectiveness of any remedial efforts undertaken to date; the overall state of the contamination as of December 31, 2012; or any Engineering or other reports documenting any aspect of this issue.

[31] The Respondent noted that the Complainant provided no market or other related evidence to support his intuitive theory that contaminated land sells for less than uncontaminated lands in the marketplace. He also suggested that because new condominium development was currently being developed on adjacent lands to the east, this suggests that there is no effect on value from contamination. He argued that given this point, and the foregoing arguments in paragraph [30] above, the requested 25% reduction in assessed value is not warranted for the subject, and has not been, and should not be applied to the subject's assessment.

[32] The Respondent argued that the Complainant's five unadjusted market sales from 2005 and 2006 – some seven and eight years ago, are significantly outdated and cannot and do not by any measure, represent current market value in the Eau Claire, or indeed any downtown market zone. In addition, he argued that the Complainant has not challenged, with any relevant market sales data, the City's $310 per SF used to assess both the DT2E market zone and the Eau Claire market zone. Therefore, he argued, the $310 per SF should be taken as a current valid market-based typical value for the Eau Clarie District which has been correctly applied to the original assessment of the subject, and the $305 per SF to its Amended assessment.

[33] The Respondent argued that Development Permit DP 2008–1902 allowing for the construction of residential uses on the subject site, and referenced by the Complainant, (paragraph [20] above) has been valid for five years but is about to expire in October 2013 (exact date not defined). He argued that there appears to have been little active marketing or development of the site for residential purposes. Therefore, the Respondent suggested that the split residential/commercial classification currently being applied to the subject is to be examined in light of this situation. He noted however that this issue is not applicable to the current assessment, contrary to the apparent position of the Complainant.

[34] The Respondent requested that the Amended assessment be confirmed at $65,810,000

**Board's Reasons for Decision:**

[35] The Board finds that while the Complainant requests a 2012 assessed value equal to the unadjusted (as to time) 2009 sale price of the subject when purchased from the City of Calgary, he provided no current or relevant market evidence to support this requested value. In addition, the Complainant's unadjusted (as to time) 2005 sale of an Eau Claire property is a "dated" sale and is not indicative of current value in the Eau Clarire market zone in 2012.

[36] The Board finds that the Complainant provided no documentary evidence (maps or professional reports from qualified agencies) to define the historical and/or current (as of December 2012) nature and extent of the alleged contamination of the subject, to either the Respondent or the Board. Therefore the Board was unable to make any determination as to the actual or potential impact on the value of the subject, of any contamination which might exist on the site.

[37] The Board finds that the Complainant provided no valid market evidence to either the Board or Respondent to compare the open market value of "contaminated" versus "non-contaminated" sites – properties which might be similar to the subject. Therefore the Board was unable to determine that the 25% reduction in assessed value, or indeed any percentage value, as requested by the Complainant for the subject as a result of this alleged "value differential", is warranted as argued by the Complainant.

[38] The Board finds that the 2008 "contamination remediation agreement" between the City of Calgary and the Owners, as referenced by the Complainant wherein the City has allegedly agreed to pay some $1,400,000 to remediate the subject, is not, in and of itself, (and especially pursuant to paragraph [36] above), sufficient evidence to demonstrate to the Board that the subject warrants a 25% reduction in assessed value. The Board disagrees with the Complainant that the mere presence of such an agreement "speaks to" the affect of contamination on property value. There is no market evidence before the Board to substantiate any of his argument on this point.

[39] The Board finds further, that with regard to paragraph [38] above, there was no evidence before this Board as to the amount of money already spent (if any) since 2008 (or earlier) annually or in any other time frame, by either the City or the owner to remediate the alleged contamination of the subject.

[40] The Board finds that correspondingly to paragraph [39] above, there was no information before the Board as to how much money (if any) that is still required to be spent to fully remediate the subject and by which the parties might "measure" the remaining possible land value impact of the contamination on the subject. Therefore the Board has no information on which to base any claim by the Complainant for a reduction in assessed value based on alleged contamination.

[41] The Board finds that it concurs with the Respondent that the un-brokered 2009 sale of the subject from the City to the owner consisted of a group of six properties, not just the subject, and the precise individual sale value of the subject versus the other five properties, is, given the evidence before the Board, unclear. In addition, the Board notes that the Complainant relies on the 2009 sale value without any attempt to time-adjust it forward to 2012. Therefore the Complainant's request to established the inferred value of $9,400,000 as the current market value, is unsupported.

[42] The Board finds that it concurs with the Respondent that the sale of the subject from the City to the owner, and referenced by the Complainant as a valid "market sale", does not meet the requirements of the Municipal Government Act (MGA) section 284(1)(r) as noted in paragraph [28] above.

[43] The Board finds that the Complainant provided insufficient argument and valid market evidence to persuade the Board that the $310 per SF ($306 per SF amended) used by the Respondent to assess the subject is incorrect. Moreover, the Board was not persuaded by the Complainant that the single *post facto* sale referenced by the Respondent as indicating a property value "trend", in his Brief R-1 which was prepared for this hearing, materially affected the assessment since it would not have been used by the Respondent to initially assess the subject in any event.

[44] The Board finds that while the parties provided several Board decisions in support of their respective positions, and the Board does not ignore them, it is not bound by those decisions. The Board makes its decision based on the evidence and argument heard at this hearing.

[45] The Board finds that contrary to the assertions of the Complainant, and based on the evidence in this hearing, the assessment of the subject is fair and equitable.

**DATED AT THE CITY OF CALGARY THIS 30 DAY OF October 2013.**

**K. D. Kelly**
**Presiding Officer**

## APPENDIX "A"

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

| NO. | ITEM |
|---|---|
| 1. C-1 | Complainant Disclosure |
| 2. R-1 | 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.*

For Administrative Use Only

| Appeal Type | Property Type | Property Sub-type | Issue | Sub-Issue |
|---|---|---|---|---|
| CARB | Vacant land | Assessed as if Vacant land | market value | Contaminated site |