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:

Condominium Corporation No. 0312994 (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
D. Pollard, BOARD MEMBER
E. Bruton, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of 6 property assessments prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

Roll Number	Location Address	File Number	Assessment
200383370	8501 – 11 ST SE	72962	$130,000
200383396	8177 – 11 ST SE	72963	$1,050,000
200383453	50 Heritage Meadows WY SE	72965	$279,500
200383461	50R Heritage Meadows WY SE	72967	$74,500
200383503	15 Heritage Meadows Rd SE	72968	$2,890,000
200383511	45 Heritage Meadows Rd SE	72970	$559,500

This complaint was heard on 26th and 27th day of August, 2013 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *D. Mewha – Altus Group Ltd.*
- *D. Hamilton – Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *D. Kozak – Assessor – City of Calgary*
- *M. Jankovic – 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] None

Property Description:

[3] The subjects consist of six separate Condominium "units" used primarily for public and utility purposes in a Bareland Condominium property development (Number 0312994) known as "Deerfoot Meadows" shopping centre. The six subject Condo units in this appeal are numbers 8; 9; 10; 12; 14; and 15. Other "units" in the condo property are developed with commercial businesses (e.g. Ikea; Superstore; Wal-Mart), and still others are used for roads and access. While the main shopping complex is entirely west of Deerfoot Trail and south of Heritage Drive SE, the six subject parcels are located both east and west of Deerfoot Trail.

[4] The overall site is the former Cominco industrial complex totalling 360 +/- acres – only 167 of which were deemed developable, generally for commercial purposes and supporting infrastructure. Some 126 acres lying west of Deerfoot are used for Commercial development; another 27.43 acres are situated on top of the site's Blackfoot Trail escarpment; and 13.53 acres east of Deerfoot Trail are used for several "high-end" car dealerships. The Complainant clarified on page 137 of C-1 that both the car dealership and Blackfoot Trail escarpment lands were excluded from the Bareland Condominium plan of subdivision because those lands had been successfuly reclaimed from apparent Cominco contamination.

[5] The six condo units which are the subject of this appeal, consist of three parcels used for environmental reserve purposes; one used for municipal reserve purposes; and two are used as public

utility lots – each of the latter two containing an operational sewage lift station. The lift stations are an integral part of the City's sewage system serving the area and are operated by the City of Calgary. One of the lift stations is located adjacent to the east side of Deerfoot Trail and south of the "Infiniti" auto dealership. The second abuts the undeveloped Blackfoot Trail escarpment south-west of the Ikea store.

[6] The six parcels are identified and classified for use as follows:

File #	Address	Roll # Condo unit	2013 Assmt.	Size (ac)	Identified use	Location re Deerfoot
72968	15 Heritage Meadows RD SE	200383503 Unit # 14	$2,890,000	83.83	ER – abuts Bow R. - Bow River flood fringe	east
72970	45 Heritage Meadows RD SE	200383511 Unit # 12	$559,500	12.87	MR – pathway and Bow River flood fringe	east
72965	50 Heritage Meadows WY SE	200383453 Unit # 10	$279,500	4.0	PUL – storm pond and sewage lift station	east
72967	50R Heritage Meadows WY SE	200383461 Unit # 9	$74,500	3.0	Environmental Reserve (ER) – pond/drainage	east
72963	8177 – 11 ST SE	200383396 Unit # 15	$1,050,000	23.52	ER – steep slope on west boundary of site	west
72962	8501 – 11 ST SE	200383370 Unit # 8	$130,000	5.22	PUL – storm pond and sewage lift station	west

Issues:

[7] What is the correct market value to be applied to the site for assessment purposes?

[8] Should the parcels be considered to be exempt for taxation purposes?

Complainant's Requested Value:

[9] The Complainant requests that the market value of the six subject parcels be set at one dollar ($1.00) each per parcel, and, that the six subject parcels be exempt from taxation.

Board's Decision:

[10] The Board hereby Orders:

(a) Firstly - that the market value of each of the six subjects is set at $1.00, and;

(b) Secondly – that each of the six subjects is hereby exempt from taxation.

Legislative Authority, Requirements, and Considerations:

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

[12] 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."

[13] 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:

[14] The Complainant clarified that since the subjects were created by virtue of a Bareland Condominium plan of subdivision in 2002, the City has assessed the subjects using a nominal value since 2004. However, in the current assessment cycle, the City decided to assess the subjects using a calculated value of $100,000 per acre, based on different and changed interpretations of what they considered to be relevant sections of the Municipal Government Act and the attendant regulation "Matters Relating to Assessment and Taxation Regulation" (MRAT). It is essentially as a result of these changes in approach and Policy by the City, that the appeal of the six subjects is now before the Board.

[15] The Complainant clarified that in the development of the parent parcel (former Cominco site), the City of Calgary required that the lands be subdivided by a Bareland Condominium plan rather that a conventional plan of subdivision which would create "fee simple" lots. In the latter process, typically there would be the potential for dedications of land outright to the City from the parent parcel, to be used for Environmental Reserve (ER); Municipal Reserve (MR); and Public Utility (PUL) purposes pursuant to the Municipal Government Act (MGA). These land dedications, he noted, typically provide sites for essential "hard" services necessary to serve the planned development (e.g. storm ponds; drainage channels; dry ponds; sewage lift stations; etc.). Typically land for parks/educational purposes [Municipal Reserve (MR); Municipal and School Reserve (MSR)] are also required to be dedicated to the host municipality when residential development is planned.

[16] However, the Complainant clarified that the City was concerned about potential contamination issues on the site from Cominco's former operations, and did not want to inherit the potential for liability issues related to the contamination. Thus, while it was ready to allow development on the site, the City declined to take Title to any land parcels which might be created as a result of subdivision of the Cominco property, notwithstanding that there were requirements for city services such as stormwater management; sewage lift stations, and land to be provided from the development to accommodate each of them. Therefore he explained, the City required the developer to create a Condominium Corporation which, upon subdivision approval, would be responsible in perpetuity – or at least for a period of time up to 99 years with regard to the six subjects, for any litigation or similar matters related to the contamination.

[17] Correspondingly, the Complainant clarified, the City required as a condition of subdivision approval for the condominium plan, that the Condo Corporation enter into a "Special Development Agreement" which clearly identified and controlled the specific uses allowed on each Condominium unit to be created by the Bareland Condominium plan. He distinguished this from the City's "Standard Development Agreement" which typically is used for urban development. In particular, he noted that the subject condo units were individually identified in the Special Agreement for very specific uses - only as PUL; MR; and ER parcels to service the development. Other condo units in the development were allowed to be freely sold on the open market, and which now contain various forms of commercial development. An executed copy of the "Special Development Agreement" was included in the Complainant's document C-1.

[18] The Complainant explained that the City of Calgary required that the "Special Agreement" specify, among other things, that the six condominium land parcels (units) subject of this appeal, be available for purchase at any time by the City of Calgary under an Irrevocable Option to Purchase, for a period of 99 years (from 2004) at a nominal rate of one dollar – in effect, a 99 year "Call Option". He provided the Land Title Certificates for each of the subjects and noted that this provision was registered by Caveat on title to each of the subjects. He also provided copies of the Registered Caveats, noting specifically on page 20 of C-1, the terms and conditions of the 99 year "Option" agreement between the City and the owners. He argued that taken together, the restrictions on the subjects are tantamount to effective ownership, and certainly control of them.

[19] The Complainant also clarified that with respect to the six subjects, sections 5 and 6 of Schedule "G" of the Special Development Agreement (page 66 – C-2) stipulate that:

> "The Condominium Corporation covenants and agrees with the City as follows"
>
> (a) not to enter into any agreements, leases, undertakings, commitments or licenses, whether written or oral, with respect to the Lands, without the prior written consent of the City; and
>
> (b) not to permit any registrations or amendments to registrations to occur against the Title to the Lands in addition to those noted on Schedule "A" hereto;
>
> (c) to pass all resolutions and take all required corporate actions required or desirable to give full force and effect to

this Option Agreement and the entitlement of the City to acquire title to the Lands in accordance with the terms hereof;

(d) to grant the City full, free and unfettered public access easements over the Lands throughout the term of this Option Agreement.

(e) not to construct any improvements or structures on the Lands without the prior written consent of The City.

6. In consideration of the grant of the Option herein, the City covenants and agrees, at its sole cost and expense, to repair, maintain and replace all roadworks, pavement, curbs, gutters, structures, improvements, utilities and installations (herein collectively called the 'Improvements') on, in or under the Lands in accordance with and subject to the same standards and requirements for similar Improvements in the City of Calgary"

[20] The Complainant argued that in consideration of the foregoing, the City has therefore, for all intents and purposes, taken absolute control of the Lands without securing the formal transfer of Legal Title. He argued therefore that these condominium units cannot trade on the open market for the values established by the Assessor because "no one would pay the assessed values when the City can buy them first for one dollar". He reiterated that the six subjects are used entirely for public utility purposes – serving as "wet" and "dry" ponds; drainage courses; Bow River flood plain; public walkway; and municipally-operated sewage lift station sites.

[21] The Complainant clarified that the City has zoned each of the subjects "Special Purpose – Urban Nature" (S-UN). On page 123 of C-1 he provided an excerpt of "Part 9 – Division 2: S-UN" of the City's "Land Use Bylaw – 1P2007". He clarified that the "key" permitted and discretionary uses are "natural areas" and "utilities", and noted that the Bylaw stipulates the following:

"Purpose

1021 (1) The Special Purpose – Urban Nature District is intended to:

(a) be applied to lands that have either been set aside for the purpose of preserving existing characteristics of a natural plant or animal community or which are undergoing naturalization;

(b) provide for natural landforms, vegetation, and wetlands; and

(c) limit ***development*** (sic) to improvements that facilitate passive recreational use.

(2) The Special Purpose – Urban Nature District should be applied to land dedicated as environmental reserve pursuant to the *Municipal Government Act* or its predecessors."

[22] The Complainant argued that having zoned the lands "Special Purpose – Urban Nature" (S-UN) district, the City has acknowledged the long term use of the lands as "reserve" lands. He noted that notwithstanding that the City has not taken title to them, the City has caused City-operated utility infrastructure to be constructed on them. Therefore he argued, they are *de facto* "Reserve" parcels which are being treated differently than similar "Reserve" parcels in the assessment process, and this is not only erroneous, but unfair and inequitable.

[23] The Complainant noted that in the Respondent's brief R-1, the Respondent provided a seven-page matrix listing of all 495 "Environmental Reserve" parcels in the City, including the subjects. All 495 parcels have been zoned S-UN, and all are referred to as "Environmental Reserve" (ER) parcels. He noted that the six subjects are highlighted and also identified by the City as ER parcels in the list. He clarified that all of the 495 parcels – except for the subjects – are "exempt" from taxation. Under questioning from the Complainant, the Respondent clarified that the exemptions for the other 489 ER parcels on the list, were based on their use for environmental purposes.

[24] The Complainant also noted that all of the publicly available materials from the City regarding the subjects – much of which is in Briefs R-1 and C-1 to C-5 inclusive from the two parties, refers to the six

subjects as "Environmental Reserve" parcels. He argued therefore that the City is, and has been treating and referring to the six subjects in every respect as Environmental Reserve lands – but none of which they exempt from taxation.

[25] The Complainant addressed the Respondent's argument that because the individual Condominium Land Title Certificates for each of the six subjects does not contain a "suffix" of "ER" or "PUL", then they cannot be considered as "Reserve" parcels and must therefore be assessed and taxed at current market value. The Complainant argued however that firstly, the presence or absence of a "PUL" or "ER" or "MR" suffix on title is irrelevant to their obvious and contracted and City-zoned use, and secondly, that because the Respondent readily acknowledges that these types of parcels do not readily, or rarely trade on the open market, the value placed on them for assessment purposes is unsupported by any relevant market data and is therefore invalid.

[26] The Complainant argued that in order to value the six subjects the Respondent used market values from "Future Urban Development" parcels in a Fee Simple subdivision – parcels which can freely trade between "willing buyers and willing sellers" in the marketplace. He argued that these parcels are completely dissimilar to the subjects in form and context, and the Respondent has used them to justify the $100,000 per acre (adjusted for influences) value used to assess the subjects. He noted that the Respondent clearly stated that while the City "had no sales comparables of properties similar to the subjects", the City used "subjective reasoning" and certain undefined "adjustments for influences" to arrive at the $100,000 per acre value. He argued that this is merely "guesswork" by the City and the value used to assess the subjects has no basis in fact.

[27] The Complainant provided several examples from similar "freehold" (Fee Simple) subdivisions in SE Calgary where various reserve lands containing such things as drainage ponds and utilities were transferred by the developer to the City without compensation. He argued that in effect, this was essentially identical in nature to the subjects, given their legal constaints pursuant to the Special Development Agreement. He argued that the only value that can be attributed to the subjects is the one dollar per parcel "Call Option" that may be exercised by the City under the Special Development Agreement.

[28] The Complainant re-affirmed that the subjects are Units in a Condominium Plan of subdivision and by virtue of a legally-binding Special Development Agreement imposed by the City, are restricted from being sold to any buyer, without the City first having the right to purchase them for one dollar. He argued that the City therefore is the only "willing (perhaps unwilling he noted) buyer" for the lands and the owners could be categorized as "unwilling sellers" in any such transaction. He argued that this process does not fit the accepted definition of an "open market transaction". He also argued that the assessments of the subjects are therefore incorrect, invalid, and unfair.

[29] The Complainant argued that the City's now-changed interpretation of selected legislation applicable to assessments, is entirely invalid when one considers the *de facto* and rigidly-controlled (by the City) uses of the subjects. He argued that while the Respondent maintains that the City is obliged to use Mass Appraisal techniques and methodologies, and this has led them to now assert that the subjects must, in some poorly-defined manner, be assessed for value, the Respondent seems to have forgetten that a definition of "Market Value" for the subjects is at the heart of the matter in this appeal.

[30] The Complainant reiterated that the only reasonable and/or possible Market Value which can be ascribed to the subject, is the one dollar value for which the City is entitled to buy each of the six subjects over the next 90 years. He asserted that common sense alone "cries out" that the subject properties can

have no greater value than the exercise price of the Respondent's irrevocable option to purchase – one dollar.

[31] The Complainant argued that section 361 of the Municipal Government Act (MGA) supports his argument that based on their "use", the subjects are, or should be exempted from taxation. The section states as follows:

> **"Exemptions based on use of property**
>
> **361** The following are exempt from taxation under this Division:
>
> (a) repealed 1996 c30 s27;
>
> (b) residences and farm buildings to the extent prescribed in the regulations;
>
> (c) environmental reserves, municipal reserves, school reserves, municipal and school reserves and other undeveloped property reserved for public utilities.
>
> 1994 cM-26.1 s361;1996 c30 s27"

[32] The Complainant provided in C-4 and C-5, an extensive number of legal decisions in the form of Court Orders and Composite Assessment Review Board (CARB) decisions from Calgary and Edmonton to support his position. Of particular note, he referenced selected portions of the following:

a) CARB 72320P-2013;Court Decision [2004] A.J. No. 5; 2004 ABCA 10; 339 A.R. 393; 2 M.P.L.R. (4th) 289; 128
b) A.C.W.S (3d) 641; Docket No.: 0201-0318-AC - at 13
c) CARB 2895/2011-P
d) ARB 0490/2010-P
e) MGB Board Order – MGB 039/03
f) Alberta Court of Queen's Bench – 908118 Alberta Ltd. v Calgary (City), 2013 ABQB 100
g) CARB 2308/2010-P
h) MGB Order – [2003] A.M.G.B.O No. 205 160/03
i) MGB Order - [2007] A.M.G.B.O No. 53 028/07
j) CARB 70276/P-2013

(c) Respondent's Position:

[33] The Respondent concurred with the Complainant that in the current circumstances surrounding the subjects, and as outlined in the Special Development Agreement, there is effectively no "willing buyer or seller" to establish their market value. Moreover, he noted, as the Complainant has suggested, there are no sales of comparable properties to which the subjects might be compared. Nevertheless, he argued, the City must – in accordance with relevant sections in the MGA and MRAT, assess all properties in the municipality. In particular the Respondent referred to the duties of the Assessor in s. 293(2) of the MGA:

> **"Duties of assessors**
>
> **293(1)** In preparing an assessment, the assessor must, in a fair and equitable manner,
>
> (a) apply the valuation and other standards set out in the regulations, and
>
> (b) follow the procedures set out in the regulations.
>
> **(2)** If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located."

[34] The Respondent argued that while the six subjects were not specifically assessed using comparable market data, nevertheless he used the same assessment principles to establish an "inferred value" for them. This inferred value was based on the sale of two other "Reserve" parcels in a fee simple subdivision site which he considered similar to the subjects, by virtue of their Land Use designation S-UN, and obvious use as "Reserve" lands. He clarified on several occasions that the City had used "subjective reasoning" and several (undefined) "adjustments" based on this comparison, to "arrive at and justify" the inferred value of $100,000 per acre. This value was then applied to the subjects to value them for assessment purposes. The Respondent clarified that the value applied to the subjects is a "rate we have used for a couple of years" but he was unsure of its source. He argued that in this case, the Assessor must consider what is a "possible" value for the subjects since they are not a "regulated" property pursuant to legislation.

[35] The Respondent argued that the provincial legislation relating to assessments does not allow the Assessor to place a nominal value on the lands. This interpretation is reflected in the position the City has now asserted, pursuant to a re-reading of the MGA, to value the lands at an "inferred market value" instead of the previous "nominal value". Moreover, he asserted that in preparing the assessment using Mass Appraisal, the Assessor does not consider any of the encumbrances on any land parcel being assessed since it would be entirely cumbersome to investigate every encumbrance on properties and determine the respective value impact of that encumbrance. In this regard, he differed with the Complainant and several Board and Court decisions which maintained and confirmed that in the assessment process, the value impact of such encumbrances should, and must be considered.

[36] The Respondent argued and questioned how one defines an Environmental Reserve (ER); Municipal Reserve (MR); and/or Public Utility Lot (PUL)? He argued that s. 361(c) of the MGA (see paragraph [31] above) is not as specific as the Complainant suggests. He argued that while the "heading" of s. 361 of the MGA refers to "Use" of property, one must ignore the heading and look to the inner substance of that section. He argued that nowhere in s. 361 of the MGA is there a mention of "use" of lands, and if the Legislators had intended it to be there, they would have included it". Therefore, he argued, the Complainant's interpretation and reliance on this section of the MGA is flawed.

[37] Moreover, the Respondent argued, s. 664 and s. 665 of the MGA clarify how all "Reserve" parcels are identified:

"Environmental reserve

664(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

(a) a swamp, gully, ravine, coulee or natural drainage course,

(b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or

(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any lake, river, stream or other body of water for the purpose of

(i) preventing pollution, or

(ii) providing public access to and beside the bed and shore.

Designation of municipal land

665(1) A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as municipal reserve, school reserve, municipal and school reserve, environmental reserve or public utility lot.

(2) Subject to subsection (3), on receipt of a copy of a bylaw under this section and the applicable fees, the Registrar must do all things necessary to give effect to the order, including cancelling the existing certificate of title and issuing a new certificate of title for each newly created parcel of land with the designation of

(a) municipal reserve, which must be identified by a number suffixed by the letters "MR",

(b) public utility lot, which must be identified by a number suffixed by the letters "PUL",

(c) environmental reserve, which must be identified by a number suffixed by the letters "ER",

(d) school reserve, which must be identified by a number suffixed by the letters "SR",

(e) municipal and school reserve, which must be identified by a number suffixed by the letters "MSR", or

(f) a lot, which must be identified by a number.

(3) The certificate of title for a municipal reserve, school reserve, municipal and school reserve, environmental reserve or public utility lot under this section must be free of all encumbrances, as defined in the *Land Titles Act*."

[38] The Respondent argued that because none of the six subjects have any ER; MR; PUL "Suffix" on their Certificates of Land Title, therefore, they cannot be considered as "Reserve" properties. He argued that despite their actual uses, or their legally-permissible uses as defined in the conditions of subdivision approval as specified in the Special Development Agreement, they are simply Condominium units assessed as vacant land, and nothing more. He argued that s. 290.1(1) of the MGA requires that they be assessed as a "parcel of land". Section 290.1(1) of the MGA states:

"**Assessment of condominium unit**

290.1(1) Each unit and the share in the common property that is assigned to the unit must be assessed

(a) in the case of a bare land condominium, as if it is a parcel of land, or

(b) in any other case, as if it is a parcel of land and the improvements to it.

(2) In this section, "unit" and "share in the common property" have the meanings given to them in the *Condominium Property Act*."

1995 c24 s38

[39] The Respondent argued that when the City examines potential **exemptions** from assessment and taxation, it must apply a "legal test". Therefore, they look at a site and its specific characteristics and pose certain questions such as "what are the specific characteristics of these parcels", and how does one characterize them for assessment/valuation purposes against the backdrop of relevant legislation?

[40] The Respondent argued that s. 362(1)(g.1) of the MGA is relevant in the current circumstances. The section reads as follows:

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that receives financial assistance from the Crown under any Act;

[41] The Respondent argued that while sections of the MGA that deal with assessments do not reference "uses" of land with regard to exemptions, s. 362(1)(g) does. However, it does not apply to lands like the subjects because they are not held by government. Therefore, he argued, the Complainant cannot rely on his "use-based" arguments when referring to property tax exemptions for the subjects. In addition, he argued that the Special Development Agreement specifies that the subjects are "future" or "possible" ER; MR; or PUL parcels which "might" be acquired by the City in the future, or not. He argued that since the City has not exercised its option to purchase the subjects, they cannot qualify for exemption from taxation.

[42] The Respondent referenced s. 665(2) of the MGA (above) and argued that in order for the sites to be eligible for exemption, the City must pass a bylaw identifying the six subjects as MR; ER; or PUL parcels, and then affixing the relevant suffix to their Land Titles confirming the same. He argued the City has not passed such a bylaw for the six subjects, and this demonstrates that they are not PUL; ER; or MR parcels, and hence are ineligible for exemption.

Board's Reasons for Decision:

[43] The Board finds that the $100,000 per acre value used by the Respondent to assess the six subjects is little more than a "best guesstimate" of value and is substantially unsupported – factors confirmed by the Respondent who confirmed that, because there were no comparable sales, described the valuation process as "subjective reasoning".

[44] The Board finds that the adjustment factors used by the Respondent to define and refine the $100,000 per acre market value as applied to the subjects, are substantially unknown to both the Board and Complainant. This fact alone renders it impossible for either the Board or the Complainant to identify with any certainty, precisely what adjustment factors were used; what value was placed on each of them; and whether or not they were properly integrated into the calculations which produced the ultimate value comparable of $100,000 per acre.

[45] The Board therefore finds that on these two factors alone, the assessed value of the six subjects based on $100,000 per acre fails.

[46] The Board finds that it is indisputable that the six subjects are, for every intent and purpose, as described by both parties, being used solely for municipal service purposes, at the very specific and written direction of the Respondent City in a jointly-signed Special Development Agreement. There can therefore, be no other use made of the six subjects.

[47] The Board finds that it is also not disputed that two of the six subject parcels have municipal sewage lift stations constructed thereon, both of which are operated by the City of Calgary. From the Board's perspective, these two lots are clearly Public Utility Lots whether or not they have a "PUL" suffix affixed to their Certificates of Land Titles, as argued by the Respondent.

[48] The Board finds that it is not disputed between the parties that the remaining four subject parcels are being used for various forms of stormwater management purposes that favour the development and the municipality. Therefore for the Respondent to argue that the six subjects are merely "future or

possible" MR/ER/PUL lands and therefore must be assessed at a dubious market value, is to erroneously deny their specific actual uses as mandated by the City in the Special Development Agreement.

[49] The Board finds that the City has required, as a condition of Subdivision Approval for the Condominium Plan of Subdivision, of which the six subjects are an integral part, that it be granted a 99 year irrevocable "Option to Purchase" (a Call Option) on each of the six subjects at a value of one dollar ($1.00) each. In the Board's view, it concurs with the Complainant that this provision is tantamount to ownership of the subjects without actually taking title to the lands.

[50] The Board finds that given the firm, irrevocable, and binding conditions in the Special Development Agreement covering the six subjects regarding the City's 99 year option to purchase the lands for one dollar each, it concurs with the Complainant that the market value of each of the six subjects is in fact one dollar.

[51] The Board finds that the Respondent is taking an unwarranted and extremely narrow position regarding its recent and revised interpretation of several sections of the MGA which it cited in support of its position. To argue for example, that s. 361 of the MGA is not based on the principle of "Use" as stated in the section's heading, simply because headings are argued to be somehow irrelevant to the contents of the section, represents to the Board a self-serving and poorly-conceived viewpoint and argument.

[52] The Board also disagrees with the Respondent's overall position that regardless of use – mandated by Agreement or otherwise - the subjects are not Environmental Reserve; Public Utility; Municipal Reserve parcels simply because they do not have an ER; PUL; or MR suffix affixed to their respective Certificates of Land Titles and therefore must be assessed in some other manner which flies in the face of its actual use. This reasoning is specious. Section 665(1) of the MGA clearly states that a Council "may", but is not obliged to, designate parcels by bylaw as ER/MR/PUL parcels. In any event, there is no denying the current public utility use of the six subjects.

[53] The Board finds that in every communication – public or otherwise, regarding the subjects, including certain contained in the Respondent's Brief R-1, whether it be in the City's Assessment Explanation Supplement, or its listing of 495 ER parcels throughout the City, the Respondent refers at all times to the subjects as Environmental Reserve (ER) parcels. It appears disingenuous therefore, to argue before the Board that they are not ER parcels and hence must be assessed at an unreliable, largely hypothetical value, purported to represent market value.

[54] The Board finds that while the City has exempted all of its 495 ER parcels from taxation, it has not done so with the six subjects solely because they do not have a suffix of either ER; MR; or PUL affixed to their Certificates of Land Titles. The Respondent has taken this action nothwithstanding that all 495 parcels, including the subjects, are identically-zoned S-UN and their uses and physical characteristics are similar if not identical in many respects to the six subjects. The Board finds this approach to be inconsistent and unsupportable.

[55] The Board also finds it disingenuous, perhaps reprehensible, for the Respondent to specify the uses of the subjects by Agreement, while at the same time denying the same use of the subjects, all the while demanding the right to acquire them for $1.00 over 99 years and proposing to assess and tax them at some dubious market value. The Board finds the position of the Respondent on this issue to be contrived, illogical, and irreconcilable.

[56] The Board finds that while the Respondent argues that it would be unfair/inequitable not to assess the subjects at fair market value, the Board considers that, for the reasons identified in the Decision, the subjects have been unfairly and inequitably assessed compared to fee simple lands which can trade in the marketplace. The Board finds therefore that the assessments of the subjects are inequitable, unfair, and incorrect.

[57] Accordingly the Board reduces the assessed value of each of the six subject properties to one dollar, and further, exempts all six subjects from taxation.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF September 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. C-2	Complainant Disclosure
3. C-3	Complainant Disclosure
4. C-4	Complainant Disclosure
5. C-5	Complainant Disclosure
6. 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	Industrial	Six Condominium units	market value	Exemption from taxation