REGIONAL MUNICIPALITY OF WOOD BUFFALO CARB ORDER CARB 008-2012

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act,* being Chapter M-26 of the Revised Statutes of Alberta 2000.

BETWEEN:

Pacific Investments GP Ltd. - Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) represented by Brownlee LLP - Respondent

BEFORE:

Members:
J. Schmidt, Presiding Officer
E. McRae, Member
S. Odemuyiwa, Member

CARB Counsel:
G. Stewart-Palmer, Barrister & Solicitor

Staff:
N. Chouinard, Assessment Review Board Clerk

A hearing was held on September 14, 2012 in Ft. McMurray to consider a complaint about the assessment of the following property tax roll number:

8302099470 Assessment: $32,339,200

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] In December 2011, Pacific Investments GP Ltd. acquired lands legally described as Plan 1025452, Block 1, Lot 1, containing 431 hectares (1065.02 acres) more or less, excepting thereout: A) Plan 1025453 – Road (34.2 ha (84.51 acres) more or less. These lands had previously been owned by Her Majesty the Queen in Right of Alberta. The lands are located in the Rural Service Area, approximately 5 km south of the Urban Service Area on the east side of Highway 63 in the Regional Municipality of Wood Buffalo.

[2] The lands were assessed at $32,339,200 as of the valuation date of July 1, 2011.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

[3] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act*.

[4] The Respondent raised a preliminary issue regarding Mr. Otto Hedges giving testimony at the hearing. The Respondent indicated that the directions in the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 (MRAC) are mandatory. Section 8(2) of MRAC requires that each witness provide a summary of the evidence, and it must have sufficient detail to permit the Respondent to respond to the evidence. Section 9(2) of MRAC states that the CARB must not hear any evidence not disclosed in accordance with MRAC. The Respondent objects to Mr. Hedges giving evidence on the bases that the written materials do not indicate what Mr. Hedges will give evidence on, and he did not sign the report. Further, the letter dated August 1, 2012 from Mr. Hedges to Mr. Petrick (found at Tab T of the Complainant's materials (Exhibit C1) was not prepared for the purposes of giving evidence. Rather, it is correspondence in the course of business of the Complainant. It does not disclose in sufficient detail what Mr. Hedges' evidence would be in the hearing. The letter is in relation to Saline Creek, not this project.

[5] The Complainant asked for Mr. Hedges to be permitted to give evidence limited to the contents of the letter of August 1, 2012, signed by Mr. Hedges. The Complainant argued that the issue before the CARB was very important to the Complainant and it would be unfair to prevent Mr. Hedges from giving testimony. The scope of Mr. Hedges testimony would be limited to what is within Exhibit C1 and there were limited questions for him. The letter discusses the steps of getting development approval for projects.

Decision on the Preliminary Issue

[6] Mr. Hedges is not permitted to give evidence.

Reasons

[7] The CARB has reviewed the provisions of MRAC and Exhibit C1. It notes that there was no signed witness statement from Mr. Hedges. Looking at the ordinary meaning of section 8 and 9 of MRAC, the CARB concludes that the requirements of the regulation were not met. Mr. Hedges did not sign the report, nor did the exhibit specifically identify what Mr. Hedges was to give evidence on. The letter found at Tab S is a letter made in the course of business between Mr. Hedges and the Complainant, not a witness report. Further, it is not specifically related to this project.

Merit Hearing

Position of the Complainant

[8] The Complainant indicated that it entered a tender process to acquire the lands for the purpose of providing the municipality with an affordable business park as soon as possible. The Complainant was awarded the lands in February 2011, but initial discussions with the

municipality were disappointing because the municipality had wanted lands closer to the airport to be released. Lands closer to the airport would have been easier to service.

[9] The Complainant outlined the difficulty that it had in obtaining approval for an outline plan from the municipality. It indicated that in dealing with its traffic impact assessment, the road had its designation changed from highway to major arterial road, thus requiring 3 intersections. It commented on the difficulties in getting the land ready for sale. As of the date of the hearing, the Complainant does not have outline plan approval nor approval to access the property through Alberta Transportation.

[10] In relation to the Gettel Report, there is no useful comparable sales data. There has never been the release of this kind of lands in the municipality, particularly of commercial/industrial lands. The appraisal should not be relied upon because there are no comparable sales. The valuation does not account for the cost of removal of muskeg from the site which will be very costly. Plus there are other costs to be incurred in the development of the site, including the costs for the intersections and the off-site levies.

[11] The assessment had previously been $729,740. There has been no change to the rights to the land. The change in assessment has penalized the purchaser. There has been no change to the rights to the lands, but the assessment has increased 44 times more than it was.

[12] In cross-examination, the Complainant acknowledged that Province was offering the land for sale at $29 million, however the purchase price was transacted at $35 million. The original offer was conditional, and the Province waived the conditions that were its sole benefit.

[13] The Complainant asked the CARB to reduce the assessment to $729,740.

Position of the Respondent

[14] The hearing is about 2 things: the first is the market value of the property as of the valuation date of July 1, 2011, and the second is whether the property is properly classified as rural non-residential. Although the Complainant argues the land should be valued at approximately $729,000, it paid $35 million, which deal was completed in December of 2011. The assessment must reflect the market value of the property as of July 1, 2011. Market value is the amount that might be expected to be paid by a willing buyer to a willing seller. The assessment must reflect the value as of July 1, 2011. When this land changed from unpatented land to patented land, this was a significant change to the characteristics of the property. Although the Complainant argues that the land should be assessed as if subject to a crown lease, or as unpatented land, this does not reflect the reality of the situation as of the valuation date. The land can be marketed, sold, subdivided and developed as patented land. The Complainant entered an agreement in February 2011 to purchase the land for $35 million. The evidence in relation to the outline plan relate to a time period after the valuation date is post facto evidence and should not be considered.

[15] On the issue of whether the land is rural non-residential, there is no question that the land is not within the urban centre and is non-residential. Neither the assessor nor the CARB has any jurisdiction to change the zoning for the property.

[16] Mr. Towns, of GT Property Property Assessment & Tax gave evidence for the Respondent. He went through the requirements of the legislation in relation to his assessment. He went through the characteristics of the property in question, noting its location on the east side of highway 63, the change from unpatented to patented land and the previous assessment. He indicated that the 2010 assessment may have been made in error and should have been significantly higher. In coming to the assessment value, he noted the sale price as indicated on the certificate of title. The sale price is the strongest indicator of value. He considered the highest and best use for the lands, and the value on a per hectare basis. He examined other sales to come to the assessment for this property, which examples are set out in detail in his written materials.

[17] He indicated that he had 5 comparables. The strongest indicator of value was the price in the subject conditional sales agreement. The listing price by the Province was the next best indicator. This was $29 million. Then there were 3 sales. He put less weight on those sales because they were smaller parcels, thus having a much higher per hectare value.

[18] Mr. Gettel of Gettel Appraisals Ltd. prepared a report (Exhibit R2). He indicated that when there are a limited number of sales, then it is standard to go to other municipalities with the same base factors, like population, and land, etc. to see what land is selling for. However, Ft. McMurray is unique because serviced land has the highest value in the province, exceeding Edmonton and Calgary. The servicing costs are also higher than other municipalities. Due to these factors, it is not possible to use other communities as a comparison. The best comparable here is the subject land sale price. This parcel had almost 1,000 acres in a single title as compared to most other titles where the largest size is a quarter section.

[19] The sales methodology is this best. Only one other methodology can be used, which is not common to mass appraisal. That is the development approach. Using this approach, the question is to determine what price a developer would value the land. In using this analysis, he conducted a fairly high level analysis, making assumptions regarding the time frame for development and costs for servicing. Using this approach, he came to a value of $43 million.

[20] Based on both methodologies, he concluded that an assessment of approximately $32 million was reasonable.

[21] There was no evidence presented by the Complainant in relation to legitimate expectations. In relation to the fairness argument in the written materials, this argument ignores the fact that this land is patent land and is earmarked for industrial/commercial development. It cannot be compared to unpatented Crown lands.

[22] The Respondent asked the CARB to confirm the assessment.

Decision

[23] Our decision is that no assessment change is required in this case.

Reasons

[24] There is only one issue to be determined. That issue is the market value of the property. The question of the classification of the property as rural non-residential land is not a matter over which the CARB has jurisdiction. The municipality has zoned this property as rural non-residential and the CARB has no jurisdiction to change this. It is to be noted, though, that the land is outside the urban service centre and is earmarked for industrial or commercial development.

[25] On the issue of market value, the CARB notes that market value is defined in section 1(1)(n) of the *Municipal Government Act,* R.S.A. 2000, c.M-26 as:

> (n) "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;

[26] The assessor must value the property as of July 1, 2011. The CARB notes that the uncontested evidence is that as of July 1, 2011, the property was patent land. The listing price for the parcel was approximately $29 million. As of February 2011, there was a conditional sales agreement by which the Complainant agreed to buy the land for more than list price, at a price of $35 million. The evidence is that certain of those conditions were for the benefit of the Complainant, and some for the benefit of the Vendor (the Province). The property transferred on December 1, 2011 at the previously agreed purchase price of $35 million.

[27] Although the land had previously been unpatent land, on September 9, 2010, the land became patent land. As of that date, the land included a bundle of rights, which includes all the rights under a fee simple estate subject to various governmental requirements. This is common to all land and is considered in the estimate of value when determining the market value for a parcel of land.

[28] The CARB accepts that the best indicator of market value is the sale price and notes that the property in question sold for $35 million in the assessment year. The CARB also notes that the listing price is an indicator of value and the listing price of this property was approximately $29 million. The CARB notes that the Complainant was prepared to, and did, pay more than the listing price for the property, which again supports the valuation of the property as assessed by the assessor.

[29] The 3 comparable sales were of lesser value in establishing market value because they were for smaller parcels, which were already serviced. The CARB placed little weight on these valuations as the properties in question were dissimilar to the subject property which is approximately 1,000 acres in one title, and the land is currently unserviced.

[30] The CARB accepts the evidence of Mr. Gettel that the only sale of comparable property in the appropriate time frame was that of the subject property. In the absence of other evidence, the CARB places the most weight on this sale as evidence of the market value of the property.

[31] The CARB notes that Mr. Gettel conducted an assessment using the development approach and came to a value of approximately $43 million. However, the CARB notes that a number of things could change the development cost and the CARB does not place much weight on the valuation derived from this analysis.

[32] The CARB accepts the evidence of the Respondent that the previous year's assessment of $729,740 was made in error and did not reflect the value of patent land. The CARB, therefore, places little weight on the previous year's assessment as an indicator of value.

[33] In relation to the Complainant's argument about fairness and equity, the CARB notes that the Complainant lead no evidence in relation to this argument in its oral evidence. In the absence of evidence about unfairness or on the question of equity with other taxpayers, the CARB cannot make any determination on this point.

[34] In relation to the Complainant's argument in relation to a legitimate expectation that the assessment would be comparable to the assessment value of the previous year of $729,740, the CARB cannot accept this argument. The evidence of Mr. Towns was that the 2010 assessment (the previous year's assessment) was too low, having been made in error. It did not accurately reflect the fact that the property became patent land. The CARB does not believe that an assessment which has been acknowledged as too low would form the basis of a legitimate expectation, particularly in light of the fact that property is to be assessed each year and any errors made could be corrected in the next year.

[35] The assessment of $32,339,200 is confirmed.

[36] It is so ordered.

Dated at Edmonton in the Province of Alberta, this 9th day of October, 2012.

J. Schmidt, Presiding Officer

APPENDIX "A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM	
C1	Complainant's Submissions	August 1, 2012
R1	Report of GT Property Assessment and Tax	August, 2012
R2	Report of Gettel Appraisals Ltd.	August, 2012
R3	Written Argument of the Regional Municipality of Wood Buffalo	August 31, 2012
R4	Authorities of the Regional Municipality of Wood Buffalo	August 31, 2012

APPENDIX "B"
REPRESENTATIONS

PERSON APPEARING		CAPACITY
1.	D. Doherty	Representative of the Complainant
2.	J. Petrick	Representative of the Complainant
3.	A. Kosak	Counsel for the Respondent
4.	G. Towns	GT Property Assessment & Tax, Assessor the Regional Municipality of Wood Buffalo
5.	B. Gettel	Gettel Appraisals Ltd., Witness for the Respondent
6.	R. Baron	Regional Municipality of Wood Buffalo, Observer

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Subject	Type	Sub-type	Issue	Sub-issue
CARB				