BOARD ORDER: MGB 132/08

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL from a decision of the 2007 Assessment Review Board (ARB) of the City of Calgary.

BETWEEN:

The City of Calgary - Appellant

- a n d -

Carma Developers LP, as represented by Field LLP - Respondent

BEFORE:

Members:

W. Kipp, Presiding Officer
M. Chilibeck, Member
S. Cook, Member

C. Richardson, Assistant Case Manager

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on July 17 and August 14, 2008.

This is an appeal to the Municipal Government Board (MGB) from a decision of the 2007 ARB of the City of Calgary with respect to property assessments entered in the assessment roll of the Respondent municipality as follows:

Roll No. 816003008 19559 – 40 Street SE

Assessment: $15,900,000

OVERVIEW

The main issue in this appeal is whether the assessment on the subject property represents the legislated valuation standard, market value considering the fact that the property has a large area of land that is non-developable. The MGB first must decide which of the comparables, the Appellant's or the Respondent's, should be given the most weight and which are the best indicators of the market value for the subject.

Secondly, the Appellant argues whether a gross area methodology or a net (developable) area methodology results in a better estimate of market value. In preparing the assessment, the Appellant applied a methodology using the gross area of the land, which includes both the developable and the non-developable land. It is the Respondent's position that the gross land area method should not be applied where significant portions of the property are non-developable. Rather, the Respondent argues that where a property largely consists of non-developable land, it must be assessed using a "net methodology", and a nil value should be assigned to the non-developable portions of the property. Notwithstanding this argument, the Respondent also applies a gross area methodology, based on one land sale where there was significant non-developable acreage, to support their estimate of market value based on a net area methodology.

BACKGROUND

The subject property contains 215.2 acres of land consisting of both non-Environmental Reserve (developable) land and Environmental Reserve (undevelopable) land. These lands consist of 117.52 acres of developable land and 97.68 acres of undevelopable land. The subject property is in the south east quadrant of the City of Calgary in an area of the new community of Cranston that is situated on the east bank of the Bow River, south of 194 Avenue and west of the Deerfoot Trial.

This parcel of land is in the early stages of subdivision development pursuant to an approved Area Structure Plan (ASP). As of the condition date of December 31, 2006 significant land clearing, earth grading and movement had commenced. No land servicing, such as water and sewer line installation, had commenced.

The subject land was originally assessed by the City of Calgary at $26,900,000 or $125,000 per gross acre. This rate is called an Urban Reserve Rate by the Appellant. The City applies this rate to all large parcels of undeveloped land, that are designated as Urban Reserve (UR) until that land is developed and subdivided into their land use designations. The Appellant determined this rate from sales of parcels of land that are designated as UR.

Carma Developers LP lodged a complaint to the ARB, arguing that this assessment did not take into account the significant portion of the subject property that is designated as Environmental Reserve.

As a result, the ARB reduced the assessment to $15,900,000 or $73,884 per gross acre. This decision was based on a method of valuation whereby only the value for the net developable area of land was calculated. The undevelopable area of land was given a value of zero. Carma Developers LP provided evidence of a land transaction dated May, 2006, referred to as the Soutzo lands, with a sale price of $30,000,000 or $65,283 per gross acre. The Soutzo property was found by the ARB to be a good comparable to the subject property. This sale price was used to calculate the value of the subject property based on a net area methodology.

The following is a summary of the methodology applied by the ARB to arrive at a lower assessment.

Soutzo sale price = $30,000,000
Soutzo gross acreage = 459.59 acres

$30,000,000 / 459.59 = $65,283 per gross acre

Percentage of developable acres of Soutzo = 60%
Percentage of undevelopable acres of Soutzo = 40%

459.59 acres x 0.6 = 275.72 developable (net) acres (Soutzo)

$30,000,000 / 275.72 = $108,806 per developable (net) acre

Upward adjustment of 25%: $108,806 x 1.25 = $136,008 per net acre
A 25% upward adjustment will be applied to account for the location being within the City limits and completed rough grading, some servicing and subdivision planning in effect on December 31, 2006.

Subject property gross acreage = 215.2 gross acres
Subject property net (developable) acreage = 117.6 net acres (54.6% of gross area)

Subject property valuation:
$136,000 per net acre x 117.6 net (developable) acres = $15,900,000 (rounded)

The above calculation shows that the ARB applied a "net methodology" whereby the net developable acres of the subject property were multiplied by the price per net (developable) acre derived from the Soutzo sale. In contrast, the Appellant wishes to apply a "gross methodology" whereby their Urban Reserve Rate is applied to the total gross acres of the subject property. The Appellant derived their UR rate from nine sales of vacant parcels of land that have a land use designation of Urban Reserve.

Preliminary Issue #1 – Style of Cause

The Appellant notes that while "Carma Developers LP" filed the assessment complaint, "Carma Developers Ltd." is the registered owner of the property. The Appellant argues that "Carma Developers Ltd." should have been identified as the true owner of the subject property. The Appellant points out that in order for one party to act on behalf of another, a letter of authorization of agency is required. Under the circumstances, the Appellant claims that "Carma Developers LP" has no standing to file a complaint. When the Appellant made this realization, it sent title searches to the Respondent to prove its discovery. However, these searches were sent

only three days before the hearing, and therefore are not within the *Assessments Complaints and Appeals Regulation AR 238/2000* (ACAR) timeline requirements.

The Respondent argues that the discrepancy in the names is merely a technicality, and does not affect this appeal. More importantly, however, this issue was not raised at the ARB hearing, and it constitutes a new issue. This issue was raised only three days before the MGB hearing and therefore should not be accommodated. Further, the Respondent pointed out that the complainant need not be the registered owner of the subject property to file an appeal of a decision from an Assessment Review Board. The Respondent explained that "Carma Developers Ltd." and "Carma Developers LP" are closely connected, and that the directors and the signing authorities are the same for both organizations. Finally, the Respondent pointed out that when the lands were transferred, notification was provided to a number of City of Calgary departments.

The Court on several occasions has directed that a dismissal of an appeal cannot be taken lightly. Thus a minor technicality cannot result in the loss of an appeal right. The MGB accepts the argument of the Respondent that the minor difference in the names is a minor technicality which is easily rectified and/or explained. The MGB further accepts the explanation of the Respondent that the names, which are almost identical, represent the same organization, both entities having the same directors and same signing authorities and therefore represent the registered owners as the assessed persons who have authority to file an appeal. If not the registered owners, the MGB is satisfied, they are the authorized agent.

Preliminary Issue #2 – New Evidence

The Appellant requested that it be allowed to include new evidence that had been sent to the Respondent after the 30-day deadline required by ACAR. The evidence consists of a package of 2006 comparables. The Appellant explained that it had included 2007 comparables in its submission package by mistake. It now wishes to correct that mistake by including the 2006 comparables. The Appellant argued that it was simply a mistake about the effective valuation date (July 1, 2006), and that this mistake was caught one week later. Further, including this evidence would cause no prejudice to the Respondent and it is relevant information that will assist the MGB to make its decision.

The Respondent argued that this evidence should not be allowed because it was late.

The MGB decided not to accept the new evidence and the exhibit, which was marked "Exhibit 5A", was returned to the Appellant. The Appellant is a sophisticated party and should not be excused for this kind of mistake. Allowing this package of 2006 sales comparables goes beyond a small technical correction and therefore cannot be allowed. The Appellant is well aware of the legislated timelines for the exchange of evidence as described in the *Assessment Complaint and Appeals Regulation (AR 238/2000).* This regulation requires the Appellant to exchange any new evidence "at least 30 days before the appeal is heard." The Respondent would have been

prejudiced if the exhibit had been allowed because they would not have had enough time to review and respond to it. Further, the Appellant was still able to present its case.

Preliminary Issue #3 – New Evidence

This MGB appeal hearing ran over the course of two days. The first day of the hearing was July 17, 2008 at which time the argument and evidence was received from the Appellant. At the end of that day, the hearing was adjourned to August 14, 2008 to receive the argument and evidence from the Respondent. Two weeks prior to the second day of the hearing, the Respondent sent rebuttal evidence to the Appellant. The Appellant objected to the inclusion of this evidence because the purpose of the adjournment was a continuation of the hearing, and not an opportunity to submit any new evidence.

The Respondent argued that the evidence in question is rebuttal evidence, not new evidence, and it was submitted in advance of the 14-day deadline required under ACAR section 9(2)(a)(ii). Further, the information contained in the evidence was obtained from public sources.

The rebuttal package was not accepted by the MGB. The second day of the hearing was merely a continuation of the first day, due to a lack of time. It is inappropriate to submit rebuttal evidence during a continuation, especially because this was not the intent of the adjournment. The hearing was adjourned due to issues of time management, and not in order to allow the parties to exchange new evidence. The MGB determined that this late exhibit was not of great relevance and would not have affected the outcome of the decision. In fairness to both parties, late evidence was not accepted from either the Appellant or the Respondent.

Preliminary Issue #4 – The Respondent's Witness

The Appellant objected to the presence of the witness for the Respondent, David Allen. The Appellant argued that Mr. Allen did not testify at the ARB and that the Respondent had not provided a willsay statement for Mr. Allen. The witness for the Respondent who testified at the ARB was Marc Delannoy.

The Respondent argued that Mr. Delannoy is no longer with Carma Developers and that an issue would only arise if Mr. Allen's testimony were to vary greatly from Mr. Delannoy's.

The MGB accepted the witness and his testimony. Since the witness who testified for the Respondent at the ARB is no longer with the organization, it is reasonable to allow another representative of the organization to testify instead. The fact that Mr. Allen works for Carma Developers is a sufficient reason to allow him to appear as a witness for the Respondent. The Appellant is of course welcome to make their objection during the testimony of the witness, if it desires to do so.

Merit Hearing

ISSUES

1. Which sales comparables provide the best indication of value for the subject property?

2. Did the ARB err in using the net developable acres methodology in calculating the assessment?

LEGISLATION

In deciding this matter, the MGB reviewed the relevant legislation, including the following provisions.

Municipal Government Act

The Act provides a definition of market value. Market value is the standard the assessment is required to achieve.

1(1) In this Act,

(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; … .

The Act requires that the assessment of a property reflect its characteristics and physical condition.

289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation standard set out in the regulations for that property.

In preparing an assessment, the assessor must reflect typical market conditions for similar property.

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation 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.

Matters Relating to Assessment and Taxation Regulation 289/99

In order to achieve market value, the assessor must comply with various regulations.

1 In this Regulation,

(k) "mass appraisal" means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing … .

10 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

12 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

Assessment Complaints & Appeals Regulation (ACAR)

This Regulation provides deadlines for submitting new evidence on appeal.

9(1) Unless all parties to an appeal consent, the Municipal Government Board shall not, in an appeal, hear any evidence that was not heard by the assessment review board.

(2) Notwithstanding subsection (1), the Municipal Government Board

(a) must, in an appeal, hear new evidence that was not heard by the assessment review board if

(i) the evidence is disclosed by the party raising it to the other party and the Municipal Government Board at least 30 days before the appeal is heard,

(ii) any related evidence is disclosed by the other party to the party that made the disclosure under subclause (i) and to the Municipal Government Board at least 14 days before the appeal is heard, and

(iii) any evidence in rebuttal to the disclosure made under subclause (ii) is disclosed by the party that made the disclosure under subclause (i) to the other party and to the Municipal Government Board at least 7 days before the appeal is heard,

and

(b) may on appeal hear any evidence necessary to decide an issue before it.

ISSUE 1 - COMPARABLE SALES

Summary of the Appellant's Position

The Appellant argues that the ARB decision is incorrect because it is based on only one sale (the Soutzo sale), and because the methodology for valuation used by the ARB is incorrect. The Appellant asks that the original assessment of $26,900,000 be reinstated.

The Soutzo Sale

The ARB based its decision on a single sale (the Soutzo sale) of a 459.59 acre land parcel for $30,000,000. The Appellant argues that the Soutzo property is not comparable to the subject property. The Soutzo property is much further away from commencing development than the subject property. Also, it has not yet had land uses assigned to it under an Area Structure Plan. Further, it consists of 460 acres, and therefore is much larger than the subject property. At the time of purchase in May, 2006, the Soutzo property was used for farming operations. In contrast, in 2006, the subject property was not used for farming operations; however, it was in the early stages of development.

The Appellant also emphasizes that the Respondent did not provide documentation to support the Soutzo sale. The Appellant argues that it is incorrect to base an assessment on only one comparable. One comparable alone does not show market value.

The Appellant's Sale Comparables

The Appellant notes that the property known as the Sheriff King Street property, in the community of Silverado in the southwest quadrant, is not intended to be used as a comparable. It is one of the nine sales used in the calculation of the average Urban Reserve rate.

The Appellant also notes that the assessment of the subject property increased significantly between 2006 and 2007. The subject was assessed at agricultural use value for 2006 and assessed at market value for 2007. As of December 31, 2006 the subject was not used for farming operations.

Summary of the Respondent's Position

The Soutzo Sale

The Respondent presented the May 2006 purchase of a 460 acre parcel of land, known as the Soutzo property for $30,000,000 as a comparable property. The Respondent submits that the sale was an arm's length transaction, and the Soutzo land is located one half of a mile south of the subject. In 2006, the Soutzo property was ranchland and farmland. No clearing, grading,

levelling or other land development had been made to this land and it was six years away from being marketable at the time of the purchase.

Of the 460 acres, only 287 acres (approximately 62%) of the land are developable, and the remaining 173 acres (approximately 38%) are undevelopable due to the Environmental Reserve. The purchase price is $65,217 per gross acre. However, when the undevelopable acreage is removed from the gross amount, the purchase price is $104,530 per net (developable) acre.

The Respondent argues that there is nothing in the Act or Regulations that prohibits the Appellant from relying on a single good comparable sale when performing an assessment. In fact, the Respondent maintains that it is preferable to use one good comparable sale rather than a number of bad comparable sales. The Soutzo property is a good comparable sale because it is large, like the subject property, and is located only a half mile away from the subject property. And like the subject property, a large portion of the Soutzo land is undevelopable because of an Environmental Reserve.

The Appellant's Sale Comparables

The Respondent argues that the nine comparable sales put forward by the Appellant are not good comparables. They are not all in the same quadrant of the City as the subject property. One sale is in the southwest quadrant, four sales in the northwest, two sales in the northeast and two sales in the southeast. And most of the sales are all much smaller in area than the subject property. Eight of the nine sales range in area from 2.01 acres to 54.75 acres and the one sale in the southwest quadrant contains 159.94 acres Not all of them have an Environmental Reserve dedication component, and they are all much closer to subdivision than the subject property. Some of the comparables put forward are fully developed and serviced and construction of buildings has commenced on some of the comparables. The Respondent maintains that only one of the comparables, the Sheriff King Street property in Silverado, at 159.94 acres, is remotely close in size to the subject property. The "time to market" for this comparable is six months, as opposed to the subject property, that is three years away from marketability (time to market). However, the Respondent notes that the Appellant did not provide documents in support of this sale or any of its other comparable sales. Additionally, the Respondent suggests that the Silverado comparable may not have been an arm's length transaction.

Findings

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts related to the best comparables as follows.

1. The Soutzo sale constitutes the best comparable to the subject property in terms of its size, location and physical characteristics.

2. The nine sales provided by the Appellant differ significantly from the subject property in terms of size, location and "time to market".

3. Both parties agree that the subject parcel is in early stages of development and is subject to an Area Structure Plan.

Reasons

The MGB finds that little weight should be placed on the comparable sales submitted by the Appellant. These properties are not sufficiently similar to the subject. They are much smaller in size than the subject property, ranging in area from 2.01 acres to 159.94 acres. They are not located near the subject, two are located in the southeast quadrant, one in the southwest quadrant, four in the northwest quadrant and two in the northeast quadrant. The time adjusted sale prices per gross acre ranged from $124,801 to $147,807 for an average at $138,152 per gross acre. Additionally, there was very little background information on these sales. Out of the nine sales, only the Sheriff King Street property in Silverado was remotely similar to the subject. This comparable contains 159.94 acres and is located in the southwest quadrant. It is located directly east of Spruce Meadows Equestrian Centre, north of 194 Avenue, south of Highway 22X (also known as Spruce Meadows Trail) and west of Sheriff King Street several miles west from the subject. The Appellant did not provide any information regarding characteristics similar to or differing from the subject, such as amount of Environmental Reserve. The Appellant did state that the Sheriff King Street property was not being offered as a comparable but rather, as one of nine sales used to determine an Urban Reserve land assessment rate. That being the case, the Appellant provided no comparable sales and based its appeal on the one argument that the subject land should be assessed at the City's UR rate of $125,000 per acre without regard to any unique characteristics of the subject land such as high ratio of undevelopable land acreage. The MGB believes that at least some of the Appellant's UR sales could have been used as comparables if sufficient data was available to make adjustments for factors such as ratios of developable and undevelopable land, timing until development would take place, the type of development that would eventually occur and parcel size.

The Soutzo property, despite the fact that it is much larger than the subject property, is the most comparable property to the subject. It is located in the same quadrant as the subject and is within one half mile of the subject, has an Environmental Reserve quantified at 40% of its gross area and carries the same land use designation as the subject. The stages of development of the respective properties at the condition date can be adjusted for in the valuation.

In MGB 139/07, the May 2006 Soutzo sale was presented as a comparable, but could not be accepted by the MGB because it was a post facto sale to the 2005 assessment year. However, in the present appeal, the Soutzo sale is not post facto to the 2006 assessment year and can be relied on as a good comparable.

The Appellant argues that the Soutzo sale is an inappropriate comparable because it is much larger than the subject property. However, the sales put forth by the Appellant are all much smaller than the subject property, most are located in different city quadrants than the subject and no information was provided whether any had an Environmental Reserve component. Therefore, the MGB finds that this argument does not hold much weight. The Appellant's argument fails to meet the onus of showing that the ARB erred in relying on the Soutzo comparable in its decision. The MGB agrees with the Respondent that one good comparable is better than any number of poor comparables.

Further support for this decision is found in MGB 139/07 where the MGB states: "… although based on the facts of this appeal, the Soutzo comparable cannot be used in this case, it may be a reasonable comparable to the subject Parcels in the future if appropriate adjustments are made." Now that the Soutzo sale is no longer post facto, it is an acceptable comparable to the subject property. Like the subject, it has clearly measured acreages for developable and undevelopable land, something that was not presented for any of the Appellant's comparables. The MGB also finds that a parcel that is much larger than the subject but destined for the same general uses is superior as a comparable than significantly smaller parcels with only single use potential. The Appellant's derivation of a UR land rate, based on a blending of sales prices of parcels with significantly varying areas and physical and development characteristics, without adjustment for variances that would be recognized in the marketplace does not provide sufficient support for the Appellant's position that the UR rate should be applied directly to the gross acreage of the subject parcel.

ISSUE 2 - METHOD OF VALUATION – URBAN RESERVE RATE

Summary of the Appellant's Position

The Appellant maintains that the "net methodology" applied by the ARB is not an appropriate method of calculation in the present case because this method of valuation consists of assessing property based on its land use. This, the Appellant insists, is incorrect. Valuation based on developable versus non-developable land is an inappropriate method of valuation because there are many unknowns as you go forward in development. The Appellant asserts that only the City of Calgary is qualified to speak to correct methods of valuation. The method of valuation put forward by the Respondent is Carma Developers's own personal methodology, and is not appropriate in this situation.

In conducting mass appraisal, the City of Calgary does not calculate assessments by dividing land between developable and non-developable acreage. Rather, the City of Calgary assesses property such as the subject property using the Urban Reserve Rate. The Urban Reserve Rate is applied to large, undeveloped parcels of land. It is applied until the land is subdivided into land use designations. The Appellant claims that this is a more equitable way of conducting

assessments. In assessing a property such as the subject property, the Appellant maintains that the correct formula to apply is a gross rate multiplied by total (gross) area.

In the present case, the Appellant applied an Urban Reserve Rate of $125,000 per acre. Both the developable and the non-developable portions of the subject property were included in the assessment calculation. The Urban Reserve Rate was derived by calculating the average rate per gross acre among a group of nine other properties that sold and are similar to the subject property. The average rate was found to be $138,152 per acre. The Appellant pointed out that it actually applied a lower rate to the subject, at $125,000.

The calculation applied by the Appellant is as follows.

Urban Reserve Rate applied = $125,000 per acre
Total acreage of subject property = 215.2 acres

$125,000 x 215.2 = $26,900,000

The Appellant also emphasized that when the Respondent purchased the subject property, the property was purchased as a whole, including both developable and non-developable lands. The Respondent was aware that the land contained Environmental Reserve portions at the time of the purchase. Additionally, the Appellant points out that there is value in Environmental Reserve lands, despite the fact that they cannot be developed.

Summary of the Respondent's Position

The Respondent maintains that the decision of the ARB is correct and requests that the assessment be upheld.

The Subject Property

The Respondent explains that the subject property contains a significant portion of undevelopable escarpment land currently designated as Environmental Reserve. The Respondent argues that the City of Calgary's assessment methodology does not account for the fact that a large percentage of the total area of the property is physically undevelopable or cannot be developed because of river setback regulations. The area in question is subject to an Area Structure Plan which identifies these "undevelopable" lands for dedication as Environmental Reserve.

Specifically, the subject property consists of 215.2 acres of which 117.52 acres are developable (approximately 55%), with the remaining 97.68 acres being undevelopable (approximately 45%). A large parcel of environmentally significant land runs through the subject property. These lands qualify as a substantial escarpment and one of the requirements of the Land Use Bylaw is a 60 metre building setback from the Bow River. The escarpment is a natural landform and rises over

50 metres from the river valley floor to the uplands. Both the land within the setback from the Bow River and the escarpment are to be dedicated as Environmental Reserve. The developable portions of the property are identified by bylaw and the Environmental Reserve lands cannot be developed.

The Respondent claims that on December 31, 2006, only rough grading with some servicing and subdivision planning had been completed on the subject property. The subject property is located in a unique area that required significant earth balancing. Approximately 6 million cubic metres of earth were required to be moved. At the end of 2006, it was estimated that the property was approximately 3 years away from completion of development and marketability.

The Respondent notes that the assessment went up 6-fold from 2006 to 2007. In 2006 the assessment was $4.41 million and in 2007 the assessment was originally $26.9 million. The Respondent argues that this is inconsistent with the increase of values in the City of Calgary.

Method of Valuation

The Respondent argues that the methodology used by the City of Calgary in the original assessment is inappropriate because it does not take into account the significant percentage of the subject property that is undevelopable. The Respondent argues that a value of zero should be applied to the undevelopable portions of the property. A net rate derived from the Soutzo sale should then be applied only to the net developable portions of the subject property.

The calculation applied by the Respondent is as follows:

Soutzo sale price = $30,000,000
Soutzo net developable acreage = 287 net acres

$30,000,000 / 287 = $104,530 per developable acre

Subject property developable acreage = 117.52 acres
$104,530 x 117.52 = $12,284,365

This final number differs from the assessment arrived at by the ARB because the ARB applied an upward adjustment of 25%. Notwithstanding that the outcomes are different, the methodology of the ARB and Carma is similar and the Respondent submits that the calculation performed by the ARB is correct and should be upheld.

The Respondent also offered an alternative methodology involving a calculation based on gross acreage.

Soutzo sale price = $30,000,000
Soutzo gross acreage = 460 acres
$30,000,000 / 459.59 = $65,217 per gross acre

Subject property gross acreage = 215.2 acres

$65,217 x 215.2 = $14,034,698

The Respondent points out that both of these methodologies arrive at an assessment that is much lower than the original assessment of $26,900,000, and more in line with the ARB's decision to lower the assessment to $15,900,000.

The Respondent argues that this method of valuation is supported by MGB 085/04 and MGB 139/07. MGB 139/07 states that either the "net methodology" or the "gross methodology" is acceptable. In the present case, the ARB used the "net methodology", and, according to MGB 139/07, this is an acceptable method. As such, the Appellant has not discharged its onus to demonstrate a flaw in the ARB reasoning.

Findings

4. The net methodology of arriving at market value is an acceptable method when the subject property contains significant non-developable land, and the evidence supports the use of such a methodology.

Reasons

The ARB decision uses the "net methodology" to calculate an assessment of the subject property. MGB 139/07 clearly states that this is an appropriate method of valuation:

> The MGB finds that generally, both the net methodology and the gross methodology are acceptable methods of arriving at market value when preparing an assessment. The MGB finds that the key to selecting the appropriate methodology in each case is the evidence that is available.

It is important to note that in MGB 139/07, the MGB applied the "gross methodology". This was due to the fact that it did not have sufficient evidence before it to apply the net methodology. At the time, the Soutzo sale was post facto, and could not be relied upon to determine value. The sale is no longer post facto, and this is no longer an issue. The decision states clearly that both methodologies are acceptable where the property in question contains Environmental Reserve land, based on the evidence presented in the appeal. This panel concurs with the decision in MGB 130/07 and finds the evidence presented in this appeal is sufficient to support the use of the net methodology, based on a net rate derived from the Soutzo comparable.

Market value is the basis of assessment of property such as the subject. The evidence before the MGB shows that the market recognizes undevelopable land when the proportion of that undevelopable land is substantial. Extracting an Urban Reserve rate from a number of sales of land with differing sizes and characteristics, without adjusting for factors that market participants would consider when buying or selling land does not represent a market value indicator for all UR lands. The UR rate could appropriately be applied to UR lands that are highly similar to the comparables from which the rate was extracted but it is not properly applicable to properties where there are significant variances such as a high component of undevelopable land acreage designated to Environmental Reserve. In its evidence, the Appellant stated that Carma purchased the subject land as a whole which included both developable and undevelopable components. The Appellant failed to provide any evidence that the purchase price did not take the developable/undevelopable ratios into account when the purchase was made. The Appellant went on to state that there is value in Environmental Reserve land but provided no evidence to support that claim.

The evidence provided by the Appellant was not sufficient to substantiate the original assessment or overturn the ARB decision. While the Appellant claimed that the methodology proposed by the Respondent is incorrect, it did not provide sufficient evidence to support this claim. The Appellant's claim that the use of a net acreage valuation method is valuing land according to use is not correct. In support of its contention, the Appellant provided sales data pertaining to a number of small, fully serviced land parcels with specific land use designations for such developments as multi-family residential and commercial. To attempt to draw a parallel between these fully serviced, subdivided properties with specific development (land) uses and land with developable and undevelopable acreage is clearly inappropriate.

In making its decision, the ARB extracted a net land rate from the Soutzo sale and then adjusted that rate upwards by 25%. It is unclear where this percentage was derived from, however, the ARB stated in its decision "A 25% upward adjustment will be applied to account for the location being within the City limits and completed rough grading, some servicing and subdivision planning in effect on December 31, 2006". However, based on the evidence before the MGB in this appeal, the MGB finds no compelling reason to amend the current assessment of the subject property. In fact, the MGB agrees that variances (such as location and timing until development will commence) between the subject and the Soutzo lands should have warranted an upward adjustment. There is no evidence to convince the MGB to disturb the ARB's overall adjustment of 25%. Therefore, the MGB has no choice but to uphold the ARB decision.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

The appeal in respect to the assessment is denied. The assessment is confirmed at $15,900,000.

It is so ordered.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 4th day of November 2008.

MUNICIPAL GOVERNMENT BOARD

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(SGD.) W. Kipp, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
A. Paul Frank	City of Calgary
Jason Lepine	City of Calgary
Roy Fegan	City of Calgary
Nichol Hanna	City of Calgary (Observer)
Todd Kathol	Representative for Carma Developers (Field Law)
David Allen	Vice President of Carma Developers

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	City of Calgary 2007 Comparables
2A	MGB 139/07
3R	Submission of Carma Developers LP
4R	Calgary (City) v. Alberta (Municipal Government Board) 2008 ABCA 187
[5A]	[Not Considered by the MGB]
6A	City of Calgary Assessment Brief