

**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(4).

between:

Rickard Realty Advisors Inc., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

J. Rankin, MEMBER

E. Reuther, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of Property assessments prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	ASSESSMENTS
068047604	414 Centre St SE	57812	\$14,700,000
068047703	113 4 Ave SE	57814	\$2,800,000
068047802	117 4 Ave SE	58184	\$2,800,000

This complaint was heard on the 1st day of September, 2010 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

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

There were four preliminary matters brought up before and during the hearing.

1. Request for postponement

This matter was originally set for August 23, 2010 in Boardroom 8, at which time the Complainant, along with legal counsel, was prepared to proceed. The Respondent had been advised that "in addition to representatives from Rickard Realty Advisors, a Lawyer may also be present", however did not have legal representation at the hearing. The Respondent was unwilling to proceed without legal representation and requested a postponement. The Board granted it and set the new date without consulting the parties to ensure it was acceptable. The Complainant's lawyer had another commitment which he attempted unsuccessfully to reschedule. The Complainant sent a letter to the Board on August 31, setting out the desire of the property owner to have legal counsel in attendance at the hearing, and notifying the Board that in keeping with the principles of natural justice they would be requesting a postponement to a date in accordance with counsel's availability.

The postponement request was brought up as a preliminary matter at the start of the hearing. The Respondent objected to the postponement on the grounds that there were no legal issues and submitted an email exchange between the Complainant's and Respondent's legal counsels in support of his position. He also made a request for costs.

Decision

Alberta Regulation 310/2009 Matters Relating to Assessment Complaints has provision for postponements:

15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

The Board agrees that the principles of natural justice would support a postponement to allow legal representation, and notes that the first postponement was requested by the Respondent and that there was no consultation on the rescheduled date. However, the email correspondence showed that both parties' legal counsels agreed that there were no legal issues. Further, the request for postponement was submitted late afternoon of the day prior to the rescheduled hearing. The lack of availability should have been brought up immediately at the original hearing when the date was set. Under this scenario, the Board did not consider the situation to be exceptional circumstances and did not grant the postponement. Having declined to grant it, the Board did not consider costs.

2. Objection to rebuttal evidence

The Respondent objected to some of the rebuttal evidence that had been submitted prior to the first hearing, specifically the inclusion of the Land Residual Valuation/Feasibility analysis. The Complainant countered that this was the reason the owner had desired legal representation. The postponement request had not been granted because the Respondent had stated that

there were no legal issues. Upon being advised that the Board considered this to be a legal issue and that in accordance with the principles of natural justice a postponement would be appropriate, the Respondent withdrew the objection and the hearing proceeded.

3. Objection to second rebuttal submission

At the time the August 23 hearing was postponed, the Board did not address whether the evidentiary disclosure had been completed. In accordance with administrative procedures, the Complainant received a "Rescheduled Notice of Hearing" which specified "Complainant Disclosure Due Date: 20-July-2010". This date had passed, but the timelines in the Regulation meant that the Complainant's Rebuttal Due Date was now August 24, 2010. Accordingly, the Complainant submitted a second rebuttal on August 24, to which the Respondent objected, stating that the postponement was granted so that the Respondent could have legal representation, not so that the Complainant could enter more rebuttal evidence.

Decision

In the absence of a direction from the Board that no further evidence could be entered, the disclosure timelines of the Regulation are clear, and given sufficient time, further evidence can be submitted by both parties. The Board agrees that some of the rebuttal evidence was printed on August 24 and may not have been in hand if the hearing had proceeded on August 23. Regardless, it was the Respondent that requested the postponement, and the Complainant's second rebuttal, while opportunistic, was not contrary to the legislation.

The Board notes that the purpose of the complaint process is to determine whether the assessment is proper, and to that end the more complete the evidence the better for the Board to make its decision. The Board is of the opinion that the purpose of the timelines in the Regulation is to ensure that each party is fairly apprised of the case it must meet. The second rebuttal was submitted in sufficient time for the Respondent to review it prior to the rescheduled hearing, therefore there was no prejudice to the Respondent.

Therefore the Board allowed the second rebuttal into evidence.

4. Objection to Exhibit C-8

The Complainant's second rebuttal contained two sales purported to be the basis of the Respondent's time adjustments. The Complainant stated that this had been mentioned by an assessor but could not recall who had provided the information. The sales were of vacant parcels in the vicinity of 9th Ave and 14th St SW purchased by the City in July and August 2009 for the west leg of the LRT. The Respondent objected on the grounds that it was hearsay, not relevant and post-facto. The Complainant agreed to strike this exhibit and it was not considered by the Board.

Property Description:

The subject complaints are of three separately titled but contiguous vacant parcels in the DT1 area of downtown Calgary which has a land rate of \$400/SF. The land use designation is CM-2. Parcel 1 consists of 35,011 SF and occupies the west end of the block, bounded by 4th and 5th Avenues and Centre St. SE. Parcels 2 and 3 are each 7,002 SF and front onto 4 Ave SE. They

are all assessed at \$400/SF with parcel 1 having an additional 5% corner influence applied.

Issues:

The Complainant listed two issues on the Complaint forms:

1. The assessment is not market value.
2. The assessment is not equitable.

Complainant's Requested Values:

ROLL NO	ADDRESSES	REQUESTED ASSESSMENTS	
		ORIGINAL	REVISED AT HEARING
068047604	414 Centre St SE	\$8,752,750	\$7,000,000
068047703	113 4 Ave SE	\$1,752,000	\$1,400,000
068047802	117 4 Ave SE	\$1,750,500	\$1,400,000

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

Issue 1: Market Value

Complainant's Position

The subject parcels total 49,021 SF. The Telus building is to the east on the same city block, and the Bow (Encana) is under construction on the block to the south. The site is soon to be surrounded by tall buildings which will block sunlight making them unattractive for development. Given the economic downturn, office development for this parcel is extremely unlikely.

There have been no recent private sector sales of vacant land in this area. The sales that did occur all had the City of Calgary as purchaser (East Village, sales 1 to 8) or vendor (Downtown, sale 9):

#	Address	Sale Date	Sale Price	Lot size	\$/SF	2010 Asmt	Asmt/SF
C1	529 5 Ave SE	12/03/2008	\$1,200,000	6,867	\$174.75	\$995,500	\$144.97
C2	509 8 Ave SE	10/10/2008	\$5,150,000	23,283	\$221.19	N/A	
C3	520 6 Ave SE	07/08/2008	\$1,135,000	6,872	\$165.16	\$966,000	\$140.57
C4	524 6 Ave SE	10/07/2008	\$1,200,000	6,938	\$172.96	\$1,000,000	\$144.13
C5	408 6 Ave SE	14/05/2008	\$2,340,000	13,000	\$180.00	N/A	
C6	633 6 Ave SE	24/07/2008	\$570,000	3,253	\$175.22	\$471,500	\$144.94
C7	424 7 Ave SE	17/01/2007	\$6,000,000	30,234	\$198.45	N/A	
C8	630 7 Ave SE	17/07/2009	\$5,500,000	37,800	\$145.50	\$5,480,000	\$144.97
C9	525 4 St SW	24/06/2009	\$925,676	4,628	\$200.02	\$925,500	\$199.98

East Village sales range from \$145/SF (for the most recent) to \$221.19/SF. The Complainant agrees that this area is inferior to the subject. Sale 9 is the best comparable, it is within the DT1 Zone and sold within one week of the valuation date. It sold for \$200/SF for a relatively small parcel, a lane between two large parcels both owned by Imperial Oil. The City of Calgary as vendor is normally required to dispose of land at market value. Therefore the current assessments at \$400/SF have no explanation in the face of current market evidence. The sale price of this parcel at \$200/SF is the best indicator of market value and the subject parcels

should be assessed at this rate.

Respondent's Position

A lane is not comparable to a developable parcel. The sale did occur close to the valuation date but cannot be considered a market sale. The sale price was determined by Corporate Properties and did not involve the Assessment department. The City sold setback land to Encana at \$8,000/SF and land in Eau Claire at \$40/SF. These rates cannot be considered to be an indication of market value. The Respondent did not know the basis on which the sale price of the lane was determined.

All of the other sales presented by the Complainant are in East Village, which is a redeveloping area with different zoning. The land rate in East Village is \$145/SF for 2010. This area is not at all comparable to the subject which has CM-2 zoning.

Four sales of improved parcels were presented. They were reported as vacant land sales by Alberta Data Search, and the Respondent included development permit information to support the premise that the parcels were purchased for land value. The sale prices per square foot and time adjusted at -1% per month are:

#	Address	Sale Date	Sale Price	Lot size	\$/SF	TASP/SF
R1	526 4 Ave SW	17/05/2007	\$14,500,000	27,950	\$518.78	\$383.90
R2	149 5 Ave SE	18/05/2007	\$4,190,000	7,364	\$568.98	\$421.05
R3	115 7 Ave SW	31/03/2008	\$2,300,000	3,253	\$707.04	\$608.05
R4	123 7 Ave SW	18/10/2008	\$11,000,000	19,487	\$564.48	\$513.66
	Mean				\$589.82	\$481.67
	Median				\$566.73	\$467.36

These sales support the \$400/SF rates applied. The base rates for vacant land in DT1 declined from \$500/SF in 2008 and \$450/SF in 2009.

Complainant's Rebuttal

There is no clear explanation of the basis for the land rates applied. The sales provided by the Respondent were different than the ones provided in March when the Complainant requested sales in support of the assessment. At that time unadjusted, dated Encana land purchases were provided, which were skewed with undue value given to the later small lot purchases made to complete the assembly. Only one of these sales was presented in the Respondent's submission.

The Respondent's sales evidence is not comparable, too dated and not properly adjusted for size, motivation and time. The Complainant presented quotes from "The Appraisal of Real Estate", Canadian Edition 1992:

Land value is substantially affected by the interplay of supply and demand, but it is the economic use of a site that determines its land value in a particular market. (p. 290)

Elements of comparison include property rights, legal encumbrances, financing terms, conditions of sale (motivation), market conditions (sale date), location, physical

characteristics, available utilities, zoning, and highest and best use. (p. 292)

Size: Sale R3 is only 3,253 SF and achieved a rate 20% higher than the nearest larger parcels. It appears to be an attempt at an assembly. Using the mean and median in such a small sample with a single high value per square foot skews the results. The subject is 49,027 SF and not comparable: *"Because sales of different sizes may have different unit prices, appraisers ordinarily give more weight to comparables that are approximately the same size as the subject property."* (p. 293)

Time: The decline in the market was not as gradual as indicated by the Respondent. The overnight collapse in financing for office projects coupled with an at least 9 year oversupply of downtown office space precipitated a free fall in value difficult to measure due to the lack of any sales. Two of the Respondent's sales occurred over two years prior to the valuation date and at the height of the market: *"If an appraiser must choose between transactions involving properties close to the subject property that occurred several years ago and recent transactions in more distant locations, a balance must be struck. The more recent sales will probably be most indicative"* (p. 293).

Motivation: Sale 2 at \$568.98/SF is not comparable because of its small size, its date of sale over two years prior to the valuation date and the motivation of the buyer. Encana already owned the entire block and this was the last piece in the assembly, purchased at over double the rate of \$243.34/SF paid for the first piece.

The Complainant also presented a Land Residual Valuation/Feasibility analysis based on \$400/SF construction costs, \$32/SF lease rate, 1% structural and 7% vacancy. At a floor area ratio (FAR) of 7 (the base amount without bonusing), the land value is \$144/SF at 7% cap rate, \$42/SF at 7.25% cap rate. Even at an FAR of 15 (maximum bonusing) the land value could only reach \$308/SF. There is no economically viable use of the site at \$400/SF land value.

In the absence of sales, the Respondent's 1% per month time adjustment is arbitrary and unsupported. The Complainant presented four other derivations of time adjustment:

1. The two best sales of \$519/SF in May 2007 to \$200/SF in June 2009: -61% or -29%/year
2. Avison Young office property sale price at \$376/SF in 2008 and \$254/SF in 2009: -32%/year
3. Toronto Stock Exchange composite index dropped from 15,073 in June 2008 to 10,000 in June 2009: -33%/year
4. Cushman Wakefield 4Q09 Calgary office report, change in overall rental rates from \$47/SF in 2008 to \$36/SF in 2009: -22%/year.

These time adjustments are as supportable as the Respondent's, and applied to the sales results in values of \$294 to \$330/SF.

Decision and Reasons:

The sales provided by the Complainant were of little assistance. The Board agrees that East Village land is not comparable to the subject. The lane cannot be considered a market sale. The Act defines market value:

- 1.(1)(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;

There is only one possible buyer for a lane - the landowner of the parcels on both sides. A lane cannot be sold on the open market therefore its sale price is not market value by definition. While some indication of value might be derived from the sale price, the configuration of the lane is not comparable to the subject and the Board could not draw any conclusions regarding the value of the subject from the sale price of the lane.

The Respondent's sales were likewise not of assistance. The Board does not agree that in a declining market improved sales can be an indicator of market value of vacant land. The improvements clearly provide income to the landowner, and regardless of the intention at time of purchase, the improvements have not been demolished. They are not comparable to vacant land which would only be desirable for imminent development due to carrying costs for holding over the long term. The Board agrees that the demand for vacant land at the valuation date would have been significantly lower than when the sales occurred.

The Board agrees that in the absence of sales the Respondent's time adjustment is arbitrary and unsupported; however the Complainant's analysis of office rental rates and the change in the TSE to arrive at an appropriate time adjustment was not compelling. The lack of sales show there is a significant gap between what a willing seller will accept and what a willing buyer is prepared to pay, but until sales do occur the actual change in the market cannot be determined.

Accordingly, based on the evidence presented, the Board could not arrive at a conclusion with respect to the correct market value of the subject properties.

Issue 2: Equity

Complainant's Position

The Complainant presented 3 equity comparables of vacant sites of 15,267 SF to 24,463 SF assessed at \$151 to \$236/SF, significantly less than the subject. The lane, at 525 4 St SW sold for \$200/SF and is assessed at \$200/SF. The subject is inequitably assessed.

The Respondent did not include the assessments for the sales he presented. The Complainant submitted them to show that notwithstanding their characterization as vacant land sales they are all being assessed as land and improvement at a significantly lower rate than their sale prices:

#	Address	Sale Date	Sale Price	Lot size	\$/SF	Assessment	Asmt/SF
R1	526 4 Ave SW	17/05/2007	\$14,500,000	27,950	\$519	\$10,062,000	\$360
R2	149 5 Ave SE	18/05/2007	\$4,190,000	7,364	\$569	\$3,092,880	\$420
R3	115 7 Ave SW	31/03/2008	\$2,300,000	3,253	\$707	\$1,171,080	\$360
R4	123 7 Ave SW	18/10/2008	\$11,000,000	19,487	\$564	\$5,456,360	\$280

The weighted average of the Respondent's sales is \$551, and the weighted average of their assessments is \$341/SF.

The Complainant suggested that the parcel was miscategorised. It is adjacent to Chinatown at \$225/SF and MUNI at \$290/SF. It could equally have been included in those areas. Failing that, a blended rate (+ or - 10%) is applied for districts abutting others but was not applied to the subject parcels.

Respondent's Position

The Complainant's equity comparables are not valid because they are in East Village and Chinatown, which have different zoning and are not comparable. A blended rate is not applied for Chinatown because the zoning differences are such that land in Chinatown is not at all comparable to DT1. The \$290 MUNI rate transitions from East Village at \$145 to DT1 at \$400, but the Telus building is adjacent to MUNI, the subject is not. The Respondent presented 66 equity comparables of vacant land in DT1 and DT 8 to show that the base rate is \$400 with influences applied for train/LRT tracks (TRA/LRT -15%), shape-reduced functionality (SPR -15%), residual parcel (RPS -15%).

Upon questioning, the Respondent produced the assessment for 525 4 St SW. It has a base rate of \$400 and influences applied for shape (-15%) and residual parcel (-15%). -20% for DC land use was applied because it had no zoning when the road closure was set up in May 2009, but it should not have been applied for 2010 because it now has CM-2 zoning. The Respondent stated that this parcel had not been appealed therefore an amended notice was being issued.

The Respondent did not address the assessments of his sales comparables other than the objection to their inclusion as noted in the preliminary matters.

Decision and Reasons:

The Board finds that the subject parcels are assessed inequitably with other properties. The assessment to sales ratios of the Respondent's sales comparables range from 0.50 to 0.74 and suggest an average time adjustment well in excess of -12%/year. The Respondent indicated the assessment of the lane was in error and an amended notice would be sent out to increase its assessment. However, the Board notes that this parcel sold very close to the valuation date and it could equally be argued that the \$200/SF assessment is reasonable and that if the appropriate influences are SPR (-15%) and RPS (-15%) the base rate should be \$285/SF.

On balance, the best argument was the delineation of the MUNI district. The Board agrees that there should be a transition between the lower values of East Village and the higher values of DT1. While Chinatown is not comparable due to the different zoning there was no such argument advanced with respect to the MUNI district. The block on which subject is located is adjacent to MUNI and there is no compelling reason why its boundaries do not include the subject. In view of the other evidence with respect to inequity, the Board finds that extending the boundaries of this district to include the subject is reasonable and will restore equity.

Board's Decision:

The complaints are allowed, in part, and the assessments reduced as follows based on \$290/SF, with a corner influence adjustment to 414 Centre St SE:

Roll No.	Address	Area (SF)	Value @ \$290/SF	% Adj.	Assessment
068047604	414 Centre St SE	35,011	\$10,153,190	+5%	\$10,660,000
068047703	113 4 Ave SE	7,002	\$2,030,580		\$2,030,000
068047802	117 4 Ave SE	7,002	\$2,030,580		\$2,030,000

DATED AT THE CITY OF CALGARY THIS 13th DAY OF SEPTEMBER 2010.



H. Kim
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1	Complainant Form
C2	Complainant's Submission and rebuttal
C3	Copy of Rescheduled Notice of Hearing
C4	Spreadsheet of Downtown Land Values with various time adjustments applied
C5	Spreadsheet comparing Respondent's sales to their assessments with weighted average
C6	Supporting documents for C5: Sale and assessment sheets
C7	Certificates of title re. sale at 525 4 St SW
C8	Vacant land sales July and August 2009
R1	Email correspondence between Complainant's and Respondent's legal counsel
R2	Respondent's Submission
R3	Assessment details re. 525 4 St SW

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
Brenda MacFarlane	Rickard Realty Advisors Inc, Complainant
Steven Rickard	Rickard Realty Advisors Inc, Complainant
Dorian Thistle	Assessor, City of Calgary, Respondent

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.*