

**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:

**REMINGTON DEVELOPMENT CORPORATION (as represented by Altus Group Limited),
COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**Ivan Weleschuk, PRESIDING OFFICER
Arlene Blake, MEMBER
James Pratt, 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 2012 Assessment Roll as follows:

Table 1: Summary of Subject Properties.

Parcel No.	Roll Number	Property Location	Hearing Number	2012 Assessment
1	201728961	2488 – 91 Ave. SE	68632	\$6,560,000
2	200945871	2455 – 96 Ave SE	67183	\$3,780,000
3	200945889	2487 – 91 Ave SE	67139	\$ 588,500
4	200945897	9358 – 23 St SE	66747	\$1,200,000
5	200945905	9372 – 23 St SE	66742	\$1,190,000
6	200945913	9468 – 23 St SE	66690	\$1,190,000
7	200945921	2456 – 96 Ave SE	66689	\$ 599,000
8	201728979	9223 – 23 St SE	68630	\$2,280,000
9	200945954	9355 – 23 St. SE	66684	\$2,400,000
10	200945962	9461 – 23 St. SE	66681	\$2,400,000
11	200945970	9577 – 23 St SE	66680	\$1,190,000
12	200945988	2429 – 91 Ave SE	66678	\$ 588,500
13	200945996	9580 – 23 St SE	66677	\$ 599,000
14	200946002	2403 – 96 Ave SE	66675	\$4,920,000

This complaint was heard on June 11, 2012 at the office of the Assessment Review Board located at Floor Number Four 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *Mr. David Mewha*
- *Mr. Matthew Robinson*

Appeared on behalf of the Respondent:

- *Mr. Jason Lepine*
- *Mr. Ian McDermott*

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

Both parties stated that their evidence was identical for each of the fourteen subject files, and that the most efficient manner to address the fourteen files was in one hearing. The fourteen properties are all owned by the same taxpayer and are located as a contiguous block of land. All are bare land, serviced parcels, except for Parcel No. 1 (2488 – 91 Ave SE) which includes the value of a building permit. The additional value associated with the building permit on Parcel No. 1 is not being contested, so the complaint or issue under review is the same as the other thirteen parcels. The Board agreed to hear all fourteen files in one hearing. The parties agreed that the Board issue one decision for all fourteen properties. The hearing then moved to address the merits of the complaint.

Property Description:

The fourteen subject properties are located in one contiguous block in the city's south east community of Riverbend, east of the residential Riverbend community. The subject block of properties is located west of 24 Street SE and north of Quarry Park. On the east side of 24th Street SE is the Shepard Industrial area, a portion of which was a former land fill site. Access to the subject properties is via 24th Street, with a road through the middle of the subject block of lots consisting of 91 Avenue and 96 Avenue joined by 23 Street.

The subject properties have been subdivided for some time. As indicated on the 2012 Assessment Explanation Supplement Sheets included as evidence (Exhibit C1), the subject properties range in size from 0.981 acres (Parcel Nos. 3 and 12) to 8.204 acres (Parcel No. 14), with a total area of 44.866 acres. They are zoned as either DC32Z91 or DC43Z92, both with very similar permitted and discretionary uses and restrictions that predate the City's new zoning designations. There is no access from the Riverbend residential community into the subject block of land, and such access is not permitted under either DC zoning. This zoning also imposes a height restriction of 10 m for buildings located on lots adjacent to the Riverbend residential community. Because of the former land fill located east of 24th Street, both DC zonings exclude any and all food related uses on the subject properties (i.e. restaurants, food processing, food storage, food packaging, etc.).

Note that the Board assigned Parcel Numbers to the subject properties, for easier reference in this decision report. The parcels were not addressed at the hearing using these Parcel Numbers.

Table 2: Summary of Subject Property Characteristics.

Parcel No.	Roll Number	Property Location	Size (acres)	Height Limitation
1	201728961	2488 – 91 Ave. SE	6.700	Partial
2	200945871	2455 – 96 Ave SE	6.005	No
3	200945889	2487 – 91 Ave SE	0.981	No
4	200945897	9358 – 23 St SE	1.997	No
5	200945905	9372 – 23 St SE	1.997	No
6	200945913	9468 – 23 St SE	1.997	No
7	200945921	2456 – 96 Ave SE	0.998	No
8	201728979	9223 – 23 St SE	4.003	Yes
9	200945954	9355 – 23 St. SE	4.003	Yes
10	200945962	9461 – 23 St. SE	4.003	Yes
11	200945970	9577 – 23 St SE	1.999	Yes
12	200945988	2429 – 91 Ave SE	0.981	No
13	200945996	9580 – 23 St SE	0.998	No
14	200946002	2403 – 96 Ave SE	8.204	Yes

Issues:

The Complainant raised the following two issues, as the basis for the complaint:

1. Are the subject properties correctly assessed using the direct sales comparison approach?
2. Are the subject properties equitably assessed compared to similar and competing properties?

Complainant's Requested Value:

Parcel No. 1 (2488 – 91 Ave SE) is assessed as land with a partial development. The land value component assigned in the 2012 Assessment Notice is \$4,020,000. The Partial Development value consists of 30% of the Building Permit value, a value of \$2,541,060, bringing the total assessed value of the parcel to \$6,560,000. The \$2,541,060 (rounded in the assessment and requested assessment) component flowing from the Partial Development factor was not disputed by the Complainant. All other parcels are bare, serviced land.

Table 3: Summary of 2012 Assessments and Requested Assessments.

Parcel No.	Roll Number	Property Location	Size (acres)	2012 Assessment	2012 Requested Assessment
1	201728961	2488 – 91 Ave. SE	6.700	\$4,020,000 <u>\$2,541,060</u> \$6,560,000	\$3,517,500 \$2,541,060 \$6,058,500
2	200945871	2455 – 96 Ave SE	6.005	\$3,780,000	\$3,152,625
3	200945889	2487 – 91 Ave SE	0.981	\$ 588,500	\$ 515,025
4	200945897	9358 – 23 St SE	1.997	\$1,200,000	\$1,048,425
5	200945905	9372 – 23 St SE	1.997	\$1,190,000	\$1,048,425
6	200945913	9468 – 23 St SE	1.997	\$1,190,000	\$1,048,425
7	200945921	2456 – 96 Ave SE	0.998	\$ 599,000	\$ 523,950
8	201728979	9223 – 23 St SE	4.003	\$2,280,000	\$1,995,000
9	200945954	9355 – 23 St. SE	4.003	\$2,400,000	\$2,101,575
10	200945962	9461 – 23 St. SE	4.003	\$2,400,000	\$2,101,575
11	200945970	9577 – 23 St SE	1.999	\$1,190,000	\$1,049,475
12	200945988	2429 – 91 Ave SE	0.981	\$ 588,500	\$ 515,025
13	200945996	9580 – 23 St SE	0.998	\$ 599,000	\$ 523,950
14	200946002	2403 – 96 Ave SE	8.204	\$4,920,000	\$4,307,100

Board's Decision in Respect of Each Matter or Issue:**A. Complainant's Evidence**

The Complainant's position was that because of the unique zoning applied to the subject properties, there were no comparable sales that could be used to indicate value, other than the sale of the subject property which occurred in September 2010. The sales transaction summaries indicated that the sale consisted of 15 titled properties in one block of 45.70 acres, and sold for \$24,000,000 (\$525,164/acre). The Complainant stated that the one parcel from the group of 15 that sold in September 2010 (113 River Rock Place SE) was a 1.030 acre parcel located south of the road along the south side of the block, was not graded (steep slopes) and is still in its natural state, is zoned Special District – Future Urban Development (S-FUD), and currently a "park". He stated that this one parcel is not part of the group of properties under complaint.

The Complainant presented documents to demonstrate that the vendor and purchaser involved in the subject sale were unrelated parties. Excerpts from an appraisal of 39.19 acres of the total subject block done prior to the sale and apparently relied upon by the vendor in the sale negotiation process indicated that the value of this area averaged \$457,000/acre after factoring in holding costs and holding time (present value calculated using an annual of 10% discount rate for three years).

To support the assertion that the market value of the subject was the best indication of value, the Complainant presented CARB Decision 1427/2011-P, which addressed the same properties in this complaint plus the 113 River Rock Place SE parcel. In that Decision, the Board found that the subject sale was the best evidence, and assigned a market value of \$525,000/acre to the subject properties (save for 113 River Rock Place SE which was assigned a lower value).

The Complainant opined that the market had really not changed since 2010, with prices holding relatively stable between the date of sale (September 2010) and the assessment date (July 1, 2011).

The Complainant presented a table of thirteen recent sales of small parcels (1.08 to 4.95 acres) of Industrial-General (I-G) zoned land in the southeast quadrant of the City (Exhibit C1, page 202). The Complainant stated that these were properties that competed in the same market as the subject property. The sale prices ranged from \$510,000 to \$603,659 per acre and averaged \$542,243 per acre.

The Complainant discussed the DC zoning on the subject properties and how it was more restrictive than Industrial-Business (I-B) zoning, and likely more restrictive, though more similar to Industrial-General (I-G) zoning. The Complainant presented the City's 2012 Industrial Land Rates (Exhibit C1, page 203) which indicated that I-G land in the southeast quadrant was assessed at \$525,000/acre, while I-B land in the southeast quadrant was assessed at \$600,000/acre. The Complainant argued that the sale value indicated that the comparable zoning would be I-G, and that the properties in the southeast competing in the same market were also properties zoned I-G.

This zoning discussion flowed into the equity issue. Specifically that the DC zoning on the subject properties was most similar to uses allowed under I-G zoning, and that the price paid for the subject land in the September 2010 sale indicated that it was in the I-G market. Because of the unique zoning on the subject properties, there were no sales comparables, and by extension no equity comparables. Because of zoning, the subject property is most comparable and competes with I-G land, therefore its assessment is equitable if it is similar to that of other I-G properties in the southeast quadrant.

The Complainant asked that the assessment be reduced to a total approximating \$25,989,000 (consisting of land totalling \$23,448,015 plus the \$2,541,060 improvement value on Parcel No. 1).

In response to Board questions, the Complainant stated that the September 2010 sale including the fourteen subject properties at \$24,000,000 likely did not assign any value to the 113 River Rock Place SE property, as it is likely not developable. This parcel was certainly not in the same state of maturity at the time of sale as the fourteen subject properties. The Complainant agreed that the \$24,000,000 paid was likely for the 44.866 acres (calculated at \$534,926/acre) represented by the subject fourteen properties that were the subject of this hearing.

B. Respondent's Position

The Respondent agreed that the subject sale was compelling evidence, however disagreed with the characterization of the sale. The Respondent stated that the sale was a package of property totalling 45.69 acres (slight size differences used during the hearing appear related to number of decimal places used and rounding) that transferred from one vendor to one purchaser in one transaction. The transfer documents were presented as evidence that this was a sale of a bulk parcel of land, notwithstanding that it was composed of fifteen individually titled parcels. Therefore, it was necessary to adjust for the size of the parcel to obtain the market value of the subject parcels (parcels of less than 10 acres).

The Respondent referred to the economic principle of diminishing returns, whereby a large parcel typically sells for less on a per acre basis than a smaller parcel, all things being equal. The City typically applies a size adjustment that converts the sale prices of larger parcels to a small parcel size equivalent. The Respondent presented a calculation of the assessment applying their size adjustments and assessment methodology (Exhibit R1 page 11) using a base rate or market value of the properties of both \$525,000 and \$600,000 per acre. Based on these calculations, they concluded that a base rate of \$600,000 per acre was most appropriate, because the resulting assessed value was closer to the \$24,000,000 sale price than when using a base rate of \$525,000 per acre in the calculation. For this reason, the Respondent concluded that the market value of the subject properties was \$600,000 per acre.

The Respondent stated that the \$600,000 per acre rate is what is applied for I-B properties in the southeast quadrant. The subject zoning documents, as well as descriptions of the I-B and I-G zonings were presented and discussed. The Respondent concluded that the subject zoning, though not allowing food related uses, did allow for office uses, as in the I-B zoning. There was discussion as to the potential impact the height restriction might have on value and the Respondent showed that under the Industrial zonings, there was considerable variation in the maximum height, and that even within a zoning category (i.e. I-G) there was considerable variation in the maximum height. Therefore, it was their position that a height restriction in and of itself was not a factor that measurably influenced sale price or market value. The Respondent argued that the subject zoning was much more accommodating than I-G zoning and much closer to I-B zoning, which was also supported by the value of the land as they calculated. The \$600,000 per acre rate applied to the subject properties in the 2012 assessment is supported by this evidence and the rate applied is that used for I-B zoned properties in this quadrant of the City, therefore the assessment is equitable.

The Respondent asked that the assessed value, totalling some \$29,486,000 (\$26,945,000 for the land component and \$2,541,000 for the improvement value on Parcel No. 1) be confirmed.

In response to Board questions, the Respondent stated that the size adjustment is derived from a number of property types and typically applied to industrial and residential properties. The Respondent did not know if the size adjustments are derived on an annual basis, but did state that they are not specific for industrial properties.

C. Board's Conclusions on Each Issue

1. Are the subject properties correctly assessed using the direct sales comparison approach?

In considering the issue before the Board, the "test" is defined in the Municipal Government Act, and specifically Matters Relating to Assessment and Taxation Regulation (MRAT).

*4(1) The valuation standard for a parcel of land is
(a) market value,*

The Board was presented with considerable evidence. The evidence discussed below was considered most relevant and used in coming to our conclusions.

The Board agrees that the subject properties have unique zoning restrictions, and that the best indication of the market value of the property is the subject sale. The September 2010 sale occurred within ten months of the assessment date, therefore is considered a valid sale. Sales of thirteen I-G parcels presented by the Complainant over this period confirmed that little or no change in the market occurred over this time period. The Respondent did not dispute the position of the Complainant that the subject sale was current and therefore did not need any time adjustment.

The Respondent based its assessment calculations on a value of \$24,000,000 for the subject package, then adjusted for size, resulting in the assessment totalling some \$26,945,000 for the land. While the Board agrees that larger parcels sell for less on a per acre basis than smaller parcels, all things being equal, the Board cannot ignore the fact the subject sale was of fifteen smaller parcels. Therefore, this situation is not a "large parcel" sale per se, thereby it does not fit the context of the size adjustment used by the City. The sale may be a bulk sale of land (a sale consisting of a number of smaller parcels), but the size adjustment used by City is not developed for bulk sales, it is developed and applied for different sized, single parcels. Therefore, the Board does not find the size adjustment as applied appropriate in this case.

The Board is of the opinion that developers purchase land based on developable area. While the 1.03 acres of land in 113 River Rock Place SE was part of the September 2010 sale, its development prospects were very uncertain. Therefore, the Board is of the opinion that the \$24,000,000 was paid for the subject fourteen properties, representing a total area of 44.866 acres, or a value of about \$537,000 per acre (rounded). Using this rate per acre results in the value for the land component only for assessment purposes of the fourteen subject properties to total \$24,093,500 (Table 4) similar to the \$24,000,000 sale price.

With regard to the thirteen comparable southeast land sales presented by the Complainant, the Board also considered this evidence as support for the contention made by both parties that smaller parcels less than ten acres in size trade at similar prices per acre. This data demonstrated that at least between 1.08 and 4.95 acres in size, there was no size adjustment required.

For these reasons, the Board concludes that the market value of the subject properties as of the July 1, 2011 assessment date is \$537,000 per acre (rounded), based on the September 2010 sale value of the package of fifteen parcels, excluding any consideration for the 113 River Rock Place SE parcel.

2. Are the subject properties equitably assessed compared to similar and competing properties?

The Board found that the equity argument of the Complainant was integrated into the discussion of zoning, which was used to support the market value as well as argue equity. The Complainant did not present a distinct equity argument.

The Board understands that the Complainant finds the assessment equitable if the subject assessments are similar to other I-G zoned properties in the southeast quadrant, at or about a rate of \$525,000 per acre. The Respondent argued that equity is achieved because the subject properties are assessed at \$600,000, the rate applied to all I-B zoned land in the southeast quadrant.

The evidence, discussion and argument related to how the subject zoning translated into specific zoning categories was not persuasive by either party. Both parties asked the Board to come to different conclusion using a qualitative consideration of the same evidence. It is the Board's conclusion that the subject zoning falls somewhere within the overlapping range of uses (permitted and discretionary) of the I-B and I-G zoning. Therefore, the Board concludes that equity is achieved if the assessed value falls within the range of assessed values applied to I-G and I-B properties. In this case, if the assessed value falls within or near a range of \$525,000 to \$600,000 per acre, equity exists. The Board's conclusion of value above, of \$537,000 falls within this range, therefore the Board concludes that this value is equitable.

Board's Decision:

As discussed above, the Board concludes that the correct market value of the subject properties for assessment purposes is \$537,000 per acre, and reduces the assessed value accordingly. This translates into a parcel value as presented in the table below. Note that there was no dispute as to the value assigned for partial development on Parcel No. 1 (2488-91 Ave SE) and this value is adopted by the Board.

Table 4: Board's Conclusion of Assessed Value as Revised.

Parcel No.	Roll Number	Property Location	Size (acres)	2012 Assessment	2012 Revised Assessment (rounded)
1	201728961	2488 – 91 Ave. SE	6.700	\$4,020,000 <u>\$2,541,060</u> \$6,560,000	\$3,598,000 <u>\$2,541,060</u> \$6,139,000
2	200945871	2455 – 96 Ave SE	6.005	\$3,780,000	\$3,225,000
3	200945889	2487 – 91 Ave SE	0.981	\$ 588,500	\$ 527,000
4	200945897	9358 – 23 St SE	1.997	\$1,200,000	\$1,072,000
5	200945905	9372 – 23 St SE	1.997	\$1,190,000	\$1,072,000
6	200945913	9468 – 23 St SE	1.997	\$1,190,000	\$1,072,000
7	200945921	2456 – 96 Ave SE	0.998	\$ 599,000	\$ 536,000
8	201728979	9223 – 23 St SE	4.003	\$2,280,000	\$2,150,000
9	200945954	9355 – 23 St. SE	4.003	\$2,400,000	\$2,150,000
10	200945962	9461 – 23 St. SE	4.003	\$2,400,000	\$2,150,000
11	200945970	9577 – 23 St SE	1.999	\$1,190,000	\$1,073,000
12	200945988	2429 – 91 Ave SE	0.981	\$ 588,500	\$ 527,000
13	200945996	9580 – 23 St SE	0.998	\$ 599,000	\$ 536,000
14	200946002	2403 – 96 Ave SE	8.204	\$4,920,000	\$4,405,500

DATED AT THE CITY OF CALGARY THIS 17 DAY OF July 2012.


 Ivan Weleschuk
 Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*