

**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:

***Palliser Square Properties Ltd. (as represented by Altus Group), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***Board Chair, Mr. J. Fleming  
Board Member Mr. D. Morice  
Board Member Mr. J. Joseph***

This is a complaint to the Calgary Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

**ROLL NUMBER:** 068230200  
**LOCATION ADDRESS:** 133 9<sup>th</sup> Ave SE.  
**HEARING NUMBER:** 68008  
**ASSESSMENT:** \$2,920,000

This complaint was heard on 11<sup>th</sup> day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Mr. S. Meiklejohn*

Appeared on behalf of the Respondent:

- *Mr. D. Grandbois*

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

There were no objections to the composition of the panel.

The Respondent raised an objection to the Rebuttal at the time of its introduction in the hearing on the basis that the Rebuttal constituted new evidence, and the City had not had proper notice to respond. The Complainant argued that the Rebuttal contained facts surrounding the subject property.

The Respondent advised that the information contained in the Rebuttal was recent (from 2012) and that nothing in the City presentation would logically relate to the information contained in the Rebuttal.

The CARB considered the matter. The CARB noted that the Rebuttal was submitted by the Complainant on August 27<sup>th</sup>, 2012 in anticipation of a date for this complaint which was subsequently postponed and scheduled for October 11<sup>th</sup> 2012. In addition, the CARB is of the opinion that the matter of the potential developability of the site was referenced by the Respondent in their argument.

Accordingly, the CARB finds that the Rebuttal was admissible as it was responding to issues arising from the Respondent's presentation. The CARB noted that due to the postponement, the Respondent had ample time to review and respond in surrebuttal to any issues raised. In spite of that, the CARB indicated that if the Respondent needed more time, the CARB would be willing to recess for an appropriate time to allow the Respondent to prepare. The Respondent declined this offer, and the hearing continued.

**Property Description:**

The subject is a piece of green space land, used as a park, associated with the Palliser Square developments. The site is small at 11,983 square feet (sq. ft.) and has influences for Traffic Main (no value impact assigned), Abutting a Train Track (-15%) and Transition Zone (-10%). The subject is located at the south east corner of the DT1 zone for downtown land (the location adjacent to another lower assessed zone is the reason for the transition zone adjustment). The property has a land use class of direct control (DC) with CM2 guidelines and was assessed using the Direct Sales Comparison approach (DSC) to value.

**Issues:**

The Complaint form included 11 grounds, but at the hearing, only the following issues were argued.

What is the best indicator of value? Is it the value calculated by the City through their downtown land assessment model, or is it the value of similar land located close to the subject?

If the Downtown land assessment model is accepted, what are the appropriate adjustments that should be applied to the subject.

**Complainant's Requested Value:**

\$2,920,000 on the Complaint Form revised at the hearing to \$520,000 (truncated)

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

The Complaint is allowed in part and the assessment is reduced to **\$2,330,000**

**Board's Decision:**

The Complainant argued that the City's assessment policies were arbitrary and did not necessarily reflect market value. In particular the City's downtown land assessment policy were just lines on a map, and so while the subject was placed in the DT1 zone where the base land value was \$325.00 per sq. ft. the best comparable was a sale of land at 221 9<sup>th</sup> Ave. SE, (#4) (Ex. C1, pg 90) located two blocks directly east of the subject which had sold in July 2010 for \$201.07 per sq. ft. and was assessed at a base rate of \$215.00 per sq. ft. The Complainant also highlighted that there were five more sales comparables for downtown land which averaged out to a value of \$173.66 per sq. ft. (Ex. C1, pg. 90)

The Complainant argued that the subject should receive a base rate equal to the median of the Complainants sales evidence, which on a weighted total basis was \$173.56 per sq. ft., which the complainant rounded to \$175.00 (Ex. C1, pg. 90)

The Complainant did not dispute the adjustments for abutting a railway track or for the transition zone, but also requested a Shape/Reduced Functionality Adjustment of -50% to recognise the following factors;

**Limited Access**

The property was on the Sw corner of 9<sup>th</sup> Ave & 1<sup>st</sup> St. SE. where there were two right hand turn lanes. They argued that ingress access was compromised by the two right turn lanes, and certainly egress for all but right hand turns was almost impossible.

**Topography**

The subject lot was sloped from south to north, and even the north frontage had a retaining wall which would limit the access and as such, the use of the subject.

**Size**

The lot was relatively small with a narrow frontage they argued, and with required setbacks combined with all the above issues it rendered the site very difficult to develop. The Complainant also noted that because the subject was on a separate title it had to be assessed on its own merits.

**Density Transfer**

The most important factor according to the Complainant was that a development permit from 2008 had been resurrected, and this permit which was issued in 2012, contained a clause which transferred the development density from the subject to the neighbouring properties (which were owned by the same owner). Thus they argued that the development potential of the site was effectively zero because it had no permitted density.

In their Rebuttal, the Complainant noted that because the density had been "effectively" transferred, the subject was destined to remain a park, and as such should qualify for a \$1,000 nominal value consistent with other similar properties.

The Respondent reviewed the Downtown land assessment model noting that they had supplied supporting sales for the zones in question. They provided four DT1 sales, nine for the East Village and two sales for the Municipal zone.(Ex. R1, pages 38, 44, 64 respectively). All of these sales supported the assessment model they argued.

They also reviewed the downtown assessment rate map to demonstrate the boundaries and values, and they also discussed the 2012 Downtown Land Assessed Rate Adjustments, noting in particular that the Shape Factor and Shape Factor Functionality (Ex. R1, pg 33 & 35) gave no basis for the adjustments requested by the Complainant.

Insofar as the argument of the Complainant concerning the density transfer from the subject property, the Respondent indicated that the development was still conditional and as such was not binding on the Complainant. As well, even had the permit been finalized, there was no obligation on the Complainant to proceed.

The CARB considered all of the evidence and argument. With respect to the matter of the development permit and the density transfer, the CARB was persuaded by the arguments of the Respondent, that the permit was conditional and non-binding. In particular, the CARB took note that one of the conditions of the permit was that the titles be consolidated (Ex. C2 pg 5 of the Development Permit).The CARB noted that by perfecting the permit in subsequent years, it would eliminate a number of the issues arising in this complaint. The CARB also notes that the issue of the nominal value will be addressed when the permit is perfected and the sites are consolidated.

The CARB considered the market value evidence. First it considered the evidence on sales provided by the Complainant (Ex. R1 pg 90). The CARB noted that four of the sales were in the East Village area, and the remaining two were characterized as court ordered. With respect to the location of the sales, the east village sales tended to support the City assessment model. The other two sites (which included the Complainant's best sale) were foreclosures or otherwise Court ordered sales. Consequently, the CARB found it difficult to put much weight on any of these comparables.

The CARB also reviewed the sales presented by the Respondent and found that these sales (from the DT1, East Village and Municipal zones) tended to support the City assessment model, although the CARB noted that the DT1 sales tended to support a much higher rate (Ex. R1, pg. 38) than what the assessment rate was set at (\$325.00 per sq. ft. assessed).

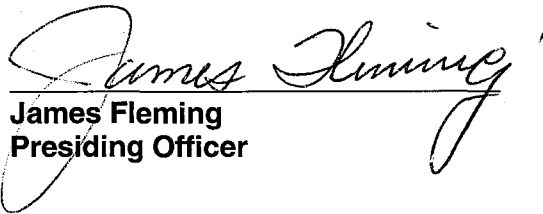
For these reasons, the CARB concluded that the Respondent had the best evidence of base rate values at \$325.00 for the subject.

Turning to the Adjustments, the Abutting a Railway Track and Transition Zone adjustments (totalling -25%) were not in dispute. The CARB was also persuaded by the Complainant's argument that the busy corner location with two right turn lanes and the narrow frontage of the property did limit the developability of the site and warranted the -15% shape factor functionality adjustments.

Consequently applying the \$325.00 per sq. ft. base rate and the three adjustments totalling 40% results in a value of \$195.00 per sq. ft. and an assessment (truncated) of \$2,330,000 .

The Board also notes that the the Complainant's best sale at 221 9<sup>th</sup> Ave. SE (albeit that it was a foreclosure) at \$201 per sq. ft. also supports this reduction.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF October 2012.

  
James Fleming  
Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

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

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*

- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;
- (d) the assessor for a municipality referred to in clause (c).

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and
- (b) any other persons as the judge directs.

*For Official Use Only*

Type	Property	Sub-Property	Issue	Sub Issue
CARB	Other Property Type	Vacant Land	Cost Sales Comparison	Land value