

**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:

Pattemore Properties Ltd. (as represented by Cushman & Wakefield Ltd), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

E. Reuther, MEMBER

A. Wong, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	067232306
LOCATION ADDRESS:	1009D 9 Avenue SW
HEARING NUMBER:	61161
ASSESSMENT:	\$6,100,000

This complaint was heard on 11th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9 and on 24th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *Jan Goresht,*
- *Liam Brunner*

Appeared on behalf of the Respondent:

- *Dale Grandbois*

Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the complaint.

Procedural Matters

The Complainant indicated that they would like to bring forth a matter of an application for costs. The basis for this request is that the Complainant applied to have this complaint heard along with that of the adjacent property (Hearing 61163), as the issues and evidence were the same for both properties. The City apparently did not agree and so it is the Complainant's contention that the subject hearing and its costs are unnecessary. Furthermore, a decision was rendered by the MGB (CARB 1921/2011-P) prior to this hearing and efforts to contact the assessor and negotiate a resolution apparently did not result in a reply from the assessor.

As the Respondent was not prepared to address this issue, the Board directed the Complainant to apply for costs as discussed in Section 52 of Matters Related to Assessment Complaints Regulation.

The Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject is a vacant property of 35,684 square feet (ft²) located at 1009D – 9 Avenue SW, in the west end of downtown Calgary. It is currently used as part of the Metro Ford automobile sales lot in conjunction with the adjacent property (1111 – 9 Avenue SW) which has the showroom and service centre. The subject is used for surface parking with no improvements.

The subject is located in the downtown west (DT2W) assessment zone. It is assessed using a Sales Comparison Approach, based on a land rate of \$180 per square foot, with site influences of minus 15% for abutting a railway track and plus 10% for being in a transition zone (between two assessment zones), for a net influence adjustment of minus 5%, resulting in an effective land rate of \$171 per square foot. The resulting assessed value is rounded to \$6,100,000 (a land rate of \$170.94 per square foot).

Issues:

1. What is the appropriate market value of the subject property for assessment purposes?
2. Is the subject assessment equitable?

<u>Complainant's Requested Value:</u>	Complaint Form	\$3,720,000
	Appraisal Report (Exhibit C1)	\$3,820,000
	Confirmed At Hearing	\$4,129,120

Board's Decision in Respect of Each Matter or Issue:**1. What is the appropriate market value of the subject for assessment purposes?**

With regard to the appropriate market value of the subject, the Complainant presented an appraisal report prepared by Cushman & Wakefield (Tab 4, Exhibit C1), and the author, Mr. Liam Brunner B.Comm., AACI, P.App., MRICS, to speak to his report. Mr. Brunner stated that the zoning of the subject property and Comparable Sales is critical in influencing the value of the subject and understanding the price paid for the Comparable Sales.

The subject property is located in the CPR Special Study Area, and is without an Area Structure Plan. The subject is zoned DC53Z95, which allows for a mix of uses compatible with other uses in the downtown core. Under this zoning, the building height is restricted to 12 meters for all buildings with the exception of a hotel use which is allowed a maximum height of 30 meters. Based on this zoning and its restrictions and setbacks, a maximum floor area ratio (FAR) of 2.89 was calculated (based on the height restriction of 12 meters).

Eleven Comparable Sales were presented (pages 42-43, Tab 4, Exhibit C1) with a sale price per square foot and sale price per buildable foot indicated (support data followed in Tabs 5 to 16 inclusive). The buildable square feet for each Comparable Sale was calculated based on the zoning in place at the time of sale for each property (which was used to determine the floor area ratio (FAR) and footprint of the buildable area to calculate buildable floor area). These sales range from September 2006 to February 2009. All the properties were located in the downtown area, except for Comparable Sale 10 which was located in the Beltline District (just south of downtown).

Page 46, Tab 4, Exhibit C1 discusses the zoning for the eleven Comparable Sales and presents the minimum, maximum and actual FAR's for each. This analysis concludes:

"This appears to be consistent with how land is bought in that it is priced assuming that the lower density sites at 7.0 FAR (and lower) will achieve max density. Land uses that allow for higher density above 7.0 FAR tend to be developed around a 12.0 FAR. Land uses that allow a 3.0 to 7.0 FAR, with a 7.00 FAR incorporating mixed use, would be developed to a 7.0 FAR since the developer need only include a residential development which they can price higher. Index No. 8 is an excellent example of this. The fact is that density of 3.0 FAR does not make economic sense when it is priced and sold at the maximum of the mixed-use range. Indeed it would appear that downtown land prices in general dictate an FAR at a minimum of 7.0 to be economically viable.

To summarize, we have evaluated properties that have an FAR of 3.0 to 7.0. Properties that allow 8.0 to 12.0 FAR have been evaluated on a 8.00 FAR and those that allow up to 20.0 FAR have been analyzed on the basis of 12.0 FAR. In our professional opinion these are fair indications of market sentiment on financially feasible and maximally productive development densities. We have taken into consideration the variances in allowable densities and have analyzed the comparables accordingly."

The appraisal then presents the eleven comparable sales in a table that also indicates the adjustments applied (page 47, Tab 4, Exhibit C1). From this table, the appraisal analysis shows that the average value of the subject property is \$38.71 per buildable square foot (range of \$22.01 to \$64.04 per buildable square foot) or \$38.04 per adjusted buildable square foot (range of \$23.59 to \$53.28 per adjusted buildable square foot). From this analysis, the appraiser used \$37 per buildable square foot to arrive at a market value of \$3,820,000, as stated in the appraisal report. During questioning, the appraiser agreed that a rate of \$38 per buildable square foot was more indicative of the analysis. The Complainant then stated that the rate should be rounded to \$40 per buildable square foot and used that rate to request an assessment of \$4,129,000 (rounded).

The Complainant indicated that the subject site and the adjacent property (1111 – 9 Avenue SW) were listed for sale for a portion of time between early 2007 and early 2010 at a total price of \$15,000,000 (\$110.09 per square foot of lot or \$38.49 per square foot of buildable area) and apparently did not receive any offers.

The Respondent argued that the zoning on the subject was rather vague, especially in light of there being no Area Structure Plan in place, and that without a Development Permit, the actual buildable area was not known. Furthermore, the Complainant's evidence showed that the FAR was always more than the minimum allowed by the zoning.

The Respondent presented his downtown west (DT2W) vacant Sales Comparables (page 61, Exhibit R1 with support data following). The sales occurred between September 2006 and July 2009 for properties that ranged in size from 3,250 ft² to 94,090 ft². The sale price per square foot was not adjusted for time or any other factors. The mean average of this data was \$241.79 and the median average was \$243.51 per square foot with a range of sale prices of \$152.19 to \$448.27 per square foot. The Respondent did not explain how this data translated into a base rate of \$180 per square foot.

The Respondent also presented the sales comparable data for downtown east (DT2E) assessment zone, with support data. This was presented to show that the rate for assessment purposes on vacant land in this assessment zone is \$275 per square foot of lot. The subject is adjacent to the DT2E assessment zone, so a transition rate of plus 10% is applied to "smoothen" the transition or "soften" the break between zones.

Based on a base rate of \$180 per square foot of lot applied to vacant land in the DT2W assessment zone (the subject zone) and a minus 15% adjustment for being adjacent to the railway track and a plus 10% adjustment for being adjacent to DT2E assessment zone, the net result is an assessment based on a rate of \$171 (rounded) per square foot of lot.

On page 81, Exhibit R1, the Respondent provided a summary of four sales of properties that were zoned 53Z95 at the time of sale (with support data following) to demonstrate that in three of the four sales, the zoning was changed after the property sold. This was presented to demonstrate that the zoning at time of sale is not necessarily the primary factor in determining the sale price. Purchasers consider the probability of zoning changes in the price offered. These four sales occurred between June 2006 and July 2009 at prices between \$152 to \$269 per square foot of lot. The most recent of these sales was a vacant lot located at 1401 – 9 Avenue SW (about two blocks west of the subject) that sold in July 2009 for \$152 per square foot of lot. There were apparently contamination and access issues which apparently affected the price. The Complainant in rebuttal indicated that all these sales included improvements, which the City considered to not add value. The Complainant presented rebuttal evidence to suggest that the improvements should be adjusted for to derive the value of the vacant land.

The Respondent presented the Board with copies of MGB Board Order 095/04 (1111 – 9 Avenue SW, the adjacent parcel), MGB Board Order 025/10 (1111 – 9 Avenue SW, the adjacent parcel), CARB 1651/2010-P (1009D – 9 Avenue SW, the subject) and CARB 0856/2010-P (1111 – 9 Avenue SW, the adjacent parcel). All these decisions refer to the subject or adjacent parcel, with the same argument related to the use of buildable square foot or market value as the basis for calculating the assessed value. In all these cases, the Board confirmed the assessment, preferring the City's approach. The Complainant in rebuttal presented CARB Decision 1921/2011-P, a decision on the adjacent property (1111 – 9 Avenue SW) where the Board decided that the per buildable square foot rate was preferred and reduced the assessment accordingly.

Board's Decision:

The Board was presented with considerable details regarding zoning and how zoning might impact the sale price of a property. The Board accepts that zoning, and the restrictions or limitations placed on a property through zoning can and will affect its value. Generally, such factors should either be addressed via adjustments or properties that are dissimilar should not be used as "comparable" sales in an analysis. Furthermore, there are provisions that allow maximum densities in a zoning to be increased. Therefore, the Board notes that zoning is not always specific, and without a building permit in place, arriving at the buildable square footage (FAR) of a property is open to interpretation and is somewhat speculative.

Both parties acknowledged that there is a paucity of good sales that can be used to analyze the value of the subject. Therefore, there is some degree of uncertainty in the analysis provided by each party. The Board acknowledges that this is a practical and real limitation and that both parties need to do the "best they can" with the data available. Again, the selection of data in an analysis has to be based on some degree of similarity to the subject, with adjustments made to the "comparable" properties to better reflect the characteristics of the subject.

The analysis presented by the Complainant in the appraisal report is based on a buildable square foot evaluation. This calculation is dependent upon an interpretation of the zoning to indicate the floor area ratio (FAR) that is then applied to the respective subject and comparable sales properties to derive the rate per buildable square foot. The Board notes that the appraiser applied a very strict interpretation of the bylaw in determining the FAR for the subject. The analysis of FAR's for the comparable sales (page 46, Tab 4, Exhibit C1) appears to employ a less strict interpretation. Furthermore, the "actual FAR" is typically between the "minimum FAR" and "maximum FAR", but can exceed the "maximum FAR" or be less than the "minimum FAR". The Board understands that in this analysis (page 46, Tab 4, Exhibit C1) the "actual FAR" presented comes from the Development Permit while the "minimum FAR" and "maximum FAR" are derived from the land use bylaw. The Board concludes that this analysis demonstrates the "subjectivity" of using a land use bylaw to derive an FAR.

The appraisal includes a table on page 47, Tab 4, Exhibit C1 showing the comparable sales on a buildable square foot basis as derived from the analysis on page 46, Tab 4, Exhibit C1, with the adjustments. The Board notes that the "market conditions" adjustment, or the adjustment for the change in the market over time, is based on a discussion of this factor as appears on page 44, Tab 4, Exhibit C1, which states:

"Prices rose rapidly through 2006 and early 2007, then stabilized over the first half of 2008. Considering the fall of real estate prices for development land began shortly after the effective date of this appraisal we have included a 10% compounded annual change in market conditions to all comparables included in our analysis."

In looking at the “market conditions” adjustments applied in the table on page 47 (Tab 4, Exhibit C1), it is clear that a time adjustment factor other than “10% compounded annually” was applied. It is not clear that the text above and adjustments in the table refer to the July 1, 2010 effective date of the appraisal. During questioning, the appraiser was not able to explain the time adjustment applied.

This same adjustment table shows adjustments applied for “location” and “size” without any explanation of how the adjustment factors were derived. The Board notes that the “location” adjustments applied range from minus 30% to plus 10%. The “size” adjustments range from minus 10% to plus 10%.

In looking at the comparable sales presented in the appraisal report (page 42-43, Tab 4, Exhibit C1), the Board notes that the sale prices ranged from \$60.06 to \$635.39 on a per square foot of lot basis, with all but one sale occurring at less than \$154.08 per square foot of lot. The Board acknowledges that these sales may not all be “comparable” for reasons raised by the Respondent, and that they have different development potential based on the zoning in place at time of sale. The sale that occurred at \$60.06 per square foot of lot is located outside the downtown core and sold at this price in June 2007. The Respondent provided evidence to indicate that it may have contamination issues and that it was resold in June 2010 as part of a larger parcel at a price of \$95 per square foot of lot. The Board also considered the sales data that was presented by the Respondent, especially for the downtown west (DT2W) assessment area, and acknowledges the weaknesses in this data as discussed by the Complainant. That said, the sales prices presented by the Respondent were in a similar range to that of the sales presented in the Complainant's evidence (Exhibit C1).

This Board recognizes that it is not bound by any previous Decision of the Board. Each decision of the Board is specific to a complaint and the circumstances and evidence presented at that Hearing. In accordance with the MGA, Section 467(3):

“An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) The valuation and other standards set out in the regulations,
- (b) The procedures set out in the regulations, and
- (c) The assessments of similar property or businesses in the same municipality.”

The standards in the regulations are set out in Matters Relating to Assessment and Taxation Regulation Section 2, which reads:

“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 estates in the property, and
- (c) Must reflect the typical market conditions for properties similar to that property.”

While the Complainant's appraisal concludes that the market value per square foot is \$107 (rounded), the preponderance of sales data suggests that the market is paying considerably more for these properties. The Board noted a number of weaknesses in the appraisal, including the subjectivity in determining floor area ratios (FAR's). In spite of the weaknesses or lack of comparability of some of the sales, the Board is at a loss to reconcile the appraised value of \$107 per square foot with the market evidence which suggests that sales are occurring at rates substantially higher and more in the range of the \$180+ per square foot. The assessment is based on a rate base rate of \$180 per square foot.

The Board is not convinced that the approach used in the appraisal report (value based on buildable area) reflects typical market conditions for similar properties. For that reason, the Board is not prepared to change the assessment.

2. Is the subject properties assessment equitable?

The Complainant presenting equity comparables (Tab 21, Exhibit C1, with support data in Tab 22). The purpose of the tables in Tab 21 was to demonstrate that the sales to assessment ratios (SAR's) were outside the 5% tolerance. This ratio was derived without adjusting for time. The sale price was compared to the 2011 assessments with the resulting SAR's generally substantially below 1.00, and averaging 0.70 for the Downtown 2 West vacant land sales used by the City. In rebuttal (Exhibit C2), the Complainant presented a more detailed review of the City sales in DT2E and DT2W demonstrating the same relationship in more detail, and with supporting data. The Complainant argued that this evidence showed that the use of the Comparable Sales Approach to derive assessments is flawed and should not be used.

The Respondent indicated that the assessment comparables and the data presented by the Complainant demonstrated that the rates of \$200 per square foot for DT2W and \$275 per square foot for DT2E, with adjustments, were used consistently by the City in its assessments.

The Complainant in rebuttal (Exhibit C2) presented Composite Assessment Review Board Decision 1921/2001-P, which was a 2010 assessment year decision on the adjacent property (1111 – 9 Avenue SW) which concluded that market value based on a rate of \$40 per buildable square foot was the appropriate approach and reduced the assessment on that property on that basis. The Complainant argued that in light of this Decision, it would be inequitable to conclude any differently in the subject case. The Respondent argued that a Board decision on a specific property does not extend and automatically infer that all other properties in that assessment class are inequitably assessed.

Board's Decision

The Board notes that the equity comparables presented by the Complainant in Tab 21 demonstrates that all the properties presented from the DT2W assessment zone were assessed at a base rate of \$180 per square foot of lot, with appropriate adjustments. The SAR's were generally well below 1.00 indicating that if anything, the City was under-assessing these properties based on sales data.

Equity is a concept that flows from the application of a consistent approach to all properties in an assessment class grouped by a similarity of characteristics as decided by the market, and is to reflect market value using a mass appraisal methodology. Equity infers that no property in a given assessment class is assessed differently than the others in that class. The municipality is subject to annual audits by Alberta Municipal Affairs to ensure that all of its assessment models are appropriately reflecting market value. That said, it is possible that a property may be unique from the other properties in an assessment class so that the assessment for that class is not appropriate for that specific property. That is the purpose of the complaint process; to provide an opportunity for errors or mis-applications to be corrected.

The equity argument presented by the Complainant did not address how or why the subject is unique from the other properties in the subject assessment class, other than to attempt to show that the market value of the subject is less than the assessed value. The evidence presented by both parties indicates that the properties in the subject assessment class are all assessed on a similar bases using a similar base rate and adjustments.

The Decision by the Composite Assessment Review Board on the adjacent property does not automatically apply to the subject simply because it is adjacent, nor by extension to any other property in this assessment class. It must be demonstrated that the subject property is unique or materially different than the majority of the properties in the assessment class and therefore is inequitably assessed.

In this situation, the equity argument is simply, "the adjacent property had its assessment reduced and on that basis the subject property should have the same, reduced assessment." This is a very weak argument as it rests on one "comparable" and that is based on a specific decision by the CARB based on the evidence that was presented at that specific Hearing. The equity argument, in essence, falls back to the issue of demonstrating that the assessment for the subject is incorrect, based on the market value of the subject. This Board concluded above that it was not convinced that the assessed value is incorrect, therefore this equity argument falls.

Board's Decision:

The Board confirms the assessment of \$6,100,000 for the reasons discussed above.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF November 2011.



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.*