

**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:

***Calgary City Centre Block Developments Ltd. (as represented by Altus Group),  
COMPLAINANT***

and

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

before:

***W. Kipp, PRESIDING OFFICER  
Y. Nesry, MEMBER  
D. Pollard, 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 NO.	LOCATION ADDRESS	HEARING NO.	ASSESSMENT
068 029 008	222 – 3 Street SW, Calgary AB	63263	\$8,260,000
068 026 202	339 – 2 Avenue SW, Calgary AB	64072	\$1,270,000
068 026 301	208 – 3 Street SW, Calgary AB	64088	\$1,220,000
068 026 400	335 – 2 Avenue SW, Calgary AB	64093	\$1,310,000
068 026 509	333 – 2 Avenue SW, Calgary AB	64096	\$1,310,000
068 026 608	331 – 2 Avenue SW, Calgary AB	64145	\$1,310,000
068 026 707	329 – 2 Avenue SW, Calgary AB	64148	\$1,310,000
068 026 806	327 – 2 Avenue SW, Calgary AB	64150	\$1,310,000
068 026 905	325 – 2 Avenue SW, Calgary AB	64151	\$1,310,000
068 027 002	323 – 2 Avenue SW, Calgary AB	64153	\$1,310,000
068 027 408	309 – 2 Avenue SW, Calgary AB	64155	\$15,180,000
068 028 000	302 – 3 Avenue SW, Calgary AB	64156	\$14,490,000
068 028 794	326 – 3 Avenue SW, Calgary AB	64158	\$4,590,000

This complaint was heard on the 30<sup>th</sup> day of September, 2011 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *S. Sweeney-Cooper & D. Chabot (Altus Group)*

Appeared on behalf of the Respondent:

- *D. Lidgren & D. Satoor (Assessment Business Unit)*

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

- 1) There are 13 roll numbers for the block of land between 2 and 3 Streets and 2 and 3 Avenues SW. It was proposed by the parties that all 13 roll numbers be heard as a single complaint. The Board accepted the proposal.
- 2) The Complainant filed a rebuttal document subsequent to its due date. The document was not in the Board members files and was not admitted at the hearing.

**Property Description:**

The properties that make up these 13 roll numbers comprise all of the lots in a city block bounded on the north by 2 Avenue SW, on the east by 2 Street SW, on the south by 3 Avenue SW and on the west by 3 Street SW (also known as Barclay Mall). There are buildings at the northeast corner (Century Square III), at the southeast corner (Century Square II) and southwest corner (Old Spaghetti Factory restaurant). The remainder of the block is used as surface parking lots. Century Square II is a one storey office building containing 27,135 square feet of rentable area. Built in 1974, the building accommodates a nightclub, a restaurant and some offices. There is underground parking for 97 vehicles. 36,819 square feet of land are associated with this building. Century Square III is a two storey office building containing 49,274 square feet. There is underground parking for 101 vehicles. This building was constructed in 1977. 38,562 square feet of land are associated with this building. The restaurant building, constructed in 1961, contains 15,000 square feet of area. It occupies a 21,000 square foot site.

All 13 properties are assessed as land only. The base land rate of \$375 per square foot (the DT1 market zone rate) is applied. Corner sites are adjusted upwards by 5%.

**Issues:**

Assessment Review Board Complaint forms were filed for each roll number. On the forms, check marks were in boxes 3 (Assessment amount) and 4 (Assessment class) in Section 4 (Complaint Information). For Section 5 (Reason(s) for Complaint), there was an attachment listing 13 grounds for the complaint.

At the hearing, the Complainant focussed on two issues:

- 1) Should the three properties with buildings be valued using the income approach?
- 2) Should the undeveloped land be assessed at \$260 or \$375 per square foot?

**Complainant's Requested Values:**

ROLL NO.	ASSESSMENT	REQUESTED ASSESSMENT
068 029 008	\$8,260,000	\$2,770,000
068 026 202	\$1,270,000	\$760,266
068 026 301	\$1,220,000	\$764,010
068 026 400	\$1,310,000	\$820,638
068 026 509	\$1,310,000	\$820,638
068 026 608	\$1,310,000	\$820,638
068 026 707	\$1,310,000	\$820,638
068 026 806	\$1,310,000	\$820,638
068 026 905	\$1,310,000	\$820,638
068 027 002	\$1,310,000	\$820,404
068 027 408	\$15,180,000	\$4,720,000
068 028 000	\$14,490,000	\$4,090,000
068 028 794	\$4,590,000	\$3,184,740

**Party Positions on the Issues:**

**Complainant's Position:**

Issue 1) Should the three properties with buildings be valued using the income approach?

The Complainant presented CARB decision 1597/2011-P wherein the Board found that assessing a downtown property on the basis of highest and best use (i.e., land value only), was inappropriate unless the four criteria of a highest and best use analysis are met. In that instance, it was found that the Respondent had not taken into account the reality of the marketplace and thus, imminent and foreseeable development of the site was unlikely. The Board concluded that the existing buildings should be assessed using the income approach. Newspaper articles and industry reports in evidence show that there is a lack of demand for redevelopment land in downtown, partly due to rising vacancies in offices and falling rent rates.

The same circumstances exist for the subject property. There is a development permit in place for the property but the latest permit (DP2009-3252) was a renewal of prior permits dating as far back as 1998. Having regard to the costs associated with obtaining a development permit, the property owner has chosen to renew the permit every three years as it comes near an expiration date. There is no building permit in place. While the owner might envision a redevelopment of the land at some future time that time is years away and the proposed redevelopment plans have been put on hold indefinitely. The optimum use of the property is its present use and it therefore should be valued on the basis of present use.

Assessment records put the Century Square office buildings in the "D" class but the Complainant values both buildings as Class "C" offices. Tenant lease summaries show some recent (2009-2010) leases with expiry dates in 2012-2013-2014. While not in evidence, the property manager has stated that some others have recently committed to lease extensions to 2014. Based on the parameters used by the Respondent in assessing other Class "C" office properties in downtown, the Complainant calculates values for each office building using the income approach. The restaurant building is similarly valued using Class "C" valuation parameters.

**Issue 2) Should the undeveloped land be assessed at \$260 or \$375 per square foot?**

In support of the lower base land rate, there is data on four downtown land sales in evidence. The sales occurred between June 2009 and July 2010. Two of the sales were "distress court ordered" sales but they are nevertheless indicative of the actions of market participants. The other two sales are sites sold by The City of Calgary. The median and average of the four prices are \$191.83 and \$177.30 per square foot. For the sales that are not in the prime DT1 market zone, the prices are adjusted upwards by 35%. That adjustment rate is based on the spread between base assessment rates for DT1 and DT2 zones.

There is no market evidence to support the +5% adjustment for corner influence so that adjustment is not made to any of the subject properties. The Respondent does, however, apply a "Transition zone" adjustment to properties that are on either side of a boundary between market zones. For example, a property in DT1 that is against the dividing line between DT1 and DT2 will get a -10% transition adjustment. A property adjoining the same zone line but on the DT2 side will get a +10% adjustment. The subject land on 2 Avenue SW abuts the line between DT1 (\$375 per square foot) and Eau Claire (\$275 per square foot). For the subject sites in that position, the Complainant applied a -10% adjustment.

#### **Respondent's Position:**

**Issue 1) Should the three properties with buildings be valued using the income approach?**

The assessing authority is not required by legislation to apply any specific valuation approach in assessing property. The mandate of the CARB is to determine the correct assessment amount, not the valuation method. The CARB may favour the value determined by one process over that from another process but it cannot determine that one valuation method is to be used for assessing all properties within a particular stratum.

The existence of the development permit is an indication that the property owner does not think that the present use of the lands is the optimum use. It is apparent that the owner sees value in the anticipated development. The property was redesignated in 2008 (DC Bylaw 112D2008) to permit a maximum density of 14 times site area (1,955,688 square feet of building floor area). Existing buildings on the block represent a floor area ratio of less than one half times site area (91,671 square feet of building floor area). If property cannot be assessed on anticipation then how can the income approach be used because it relies on anticipated income? A multi-page document entitled "Calgary City Centre" in the Respondent's evidence set out, in detail, the proposed development of a 37 storey office building, a 200 room/suite hotel and a 46 storey

apartment/condominium building. This promotional material was undated. It is argued that this shows the owner's intent to redevelop the block as soon as possible.

It makes no sense that an improved property would be valued at less than an adjoining identical land parcel that is unimproved. That also creates an inequity which is in contravention of the legislation.

The buildings on the subject lands are old (34 to 50 years) and therefore have short remaining economic lives. This is one more indicator that the block would sell at its land value.

The Respondent refers to numerous CARB and Municipal Government Board (MGB) decisions upholding the process of valuing property by the income approach and compared to a valuation of just the land with the assessment being the higher of the two values. Further, evidence presented by Altus Group at other hearings contradicts the evidence and argument being put forward at this hearing.

Issue 2) Should the undeveloped land be assessed at \$260 or \$375 per square foot?

The sales put forward by the Complainant may be recent but they are not reliable indicators of value of the subject DT1 land. Only one of the sale properties is within DT1. Two of the sales were court ordered sales which did not fit the market value definition of "willing seller to willing buyer." The only DT1 sale was a closed laneway that was sold by The City of Calgary to an adjoining property owner. One sale was a property against the Canadian Pacific Railway line which indicates a reduced price.

Sales evidence of the Respondent shows how the downtown land values relate by zone. Four 2007-2008 in the DT1 zone brought prices of \$518 to \$707 per square foot. With consideration given to changes in market conditions, location and other variances between properties, the \$375 base rate is supported. Sales in DT2 East and DT3 clearly show that prices drop dramatically as one moves away from DT1.

A very recent sale (November 2010) of one of the properties used by the Complainant shows why distress/court ordered sales are not good market evidence. The November 2010 sale was at a price of \$435 per square foot which is 21.5% higher than the Complainant's reported price less than 13 months earlier in . Although there is nothing in the evidence brief, the Respondent is of the opinion that land values dropped only about 21% since 2007-2008.

The Respondent applies Transition Zone adjustments in downtown but only on an east-west axis. While properties (land only) on the east and west sides of a zone dividing line are adjusted, properties on the north or south sides of a zone line are not adjusted. The fact that the north half of the subject block adjoins the line between DT1 and Eau Claire does not qualify it for a transition zone adjustment.

#### **Board's Decision:**

The assessments shown on all 13 roll numbers are confirmed.



**Reasons for the Decision:**

While the Complainant has demonstrated that there is no support for the Respondent's claim that the highest and best use of the subject property is as a redevelopment site with imminent potential, this application of the income approach is unreasonable. Three components of the block have been valued based on income production. There is no consideration given to income generated by the parking lots. There has been no consideration given to the value of the development permit. In the Complainant's testimony, it was stated that obtaining a development permit is costly. The Board heard nothing about the possibility that the permit cost may or may not impact on the value of the land.

Having regard to land value, the Complainant's sale properties clearly are not comparable to the subject and other than applying one 35% adjustment for zone, there were no other adjustments. The Board cannot accept the \$260 base rate without additional supported adjustments. This is not to say that the Respondent's sales are accepted at face value however they were from the same market zone and, while unexplained, they did appear to have been adjusted for changes in market conditions. The Complainant's position is not sufficiently supported so the argument for a reduced land rate fails. The Board does not understand the Respondent's position on transition adjustments but accepts that it is applied consistently where it is considered.

DATED AT THE CITY OF CALGARY THIS 27<sup>th</sup> DAY OF October 2011.

  
W. Kipp  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Colour Map from C1
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 Administrative Use:*

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Other Office	Vacant Land Low Rise	Sales Approach Income Approach	Land Comparables