

**COMPOSITE
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 (MGA).

between:

***Pasutto's Hotels (1984) Ltd. (as represented by AEC International Inc.),*
COMPLAINANT**

and

**The City Of Calgary,
RESPONDENT**

before:

C. J. Griffin, PRESIDING OFFICER

A. Blake, MEMBER

G. Milne, MEMBER

This is a complaint to the 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: 068229806

LOCATION ADDRESS: 221 – 9th Avenue SE

HEARING NUMBER: 68573

ASSESSMENT: \$10,580,000.

This complaint was heard on 30th day of July, 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:

- B. Ryan

Appeared on behalf of the Respondent:

- E. Borisenko

Property Description:

[1] According to the *Property Assessment Explanation Supplement* (Exhibit C-1 pg. 12), the subject property is categorized as being a CS0110 – Land Only. The property is reportedly 54,706 Sq. Ft. in size. The parcel is currently being utilized as a parking lot. The property has been valued, for assessment purposes, through application of the Direct Comparison (Sales) Approach.

Issues:

[2] There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The site requires an adjustment to account for the extensive site contamination.
2. A fair and equitable adjustment to account for the site's Land Use restrictions has not been made.
3. The base rate applied to the land value of the subject site is too high and should be reduced.

Complainant's Requested Value: \$5,440,000. (Exhibit C1 pg. 5)

Party Positions:**Complainant's Position**

[3] With regard to the first issue, site contamination, the Complainant presented (Exhibit C-1 pgs. 56 – 97) evidence in the form of emails and letters to the property owner from *Golder Associates Ltd.*, *CP Rail* and *AGAT Laboratories* all of which deal with a) remediation costs, b) a groundwater monitoring program and c) groundwater testing results as they relate to the subject site. While much of this information is very detailed and technical, it does leave little doubt about the subject site being contaminated to one degree or another. The Remediation Cost Estimate is covered in an email dated June 4, 2010, the 2010 Monitoring Program is covered in letters to the property owner dated May 10, 2011 and June 1, 2010 and the groundwater testing results are covered in a report dated May 20, 2010. Based upon this evidence the Complainant requests a reduction of 30% which is the greatest allowance given for such cases as is indicated on a City of Calgary Assessment site influences adjustment chart (Exhibit C-1 pg. 13).

[4] Insofar as the second issue, Land Use Restrictions, is concerned, the Complainant maintains that the Direct Control Land Use Bylaw Amendment 86D2008 (Exhibit C-1 pgs. 21 – 28) is more restrictive than the Land Use Designation applied to other downtown located properties. The Complainant compared the Permitted Uses and the Discretionary Uses of the referenced Bylaw to the Centre City Mixed Use District (CC-X) of a property located at 218 – 10th Avenue SE, a site that is, according to the Complainant, a mirror image of the subject and which is located immediately south of the subject site, on the south side of the railway tracks. The Complainant noted that the Permitted Uses for this CC-X designated site are more extensive than those of the subject site's DC Bylaw and that this warrants a 25% reduction to the assessment as is indicated on the aforementioned site influences chart (Exhibit C-1 pg. 13).

[5] In terms of the third issue, the base land rate, the Complainant provided an aerial photograph (Exhibit C-1 pg. 14) which shows a vacant parcel similar to the subject and located approximately one block due east at 407 – 9th Avenue SE which has an assessed value which

equates to \$84/Sq. Ft. compared to the \$193/Sq. Ft. rate applied to the subject. The Property Assessment Summary Report for this comparable property is provided (Exhibit C-1 pg. 44) for the Board's reference. The Complainant explained that the subject site is located within a small twelve (12) block area of the downtown referred to by the Assessor as Muni and which has a unique base land rate of \$215/Sq. Ft. A map showing the location of this Muni zone in comparison to the other downtown assessment zones (Exhibit C-2 pg. 74) shows that this zone abuts the East Village zone which has a base land rate of \$120/Sq. Ft. The Complainant further explained that the applied base land rate for the Muni zone is derived from two sales only (Exhibit C-2 pg. 9) one of which is the *Judicial Sale* of the subject site in June of 2011, the other of which refers to the sale of the former *Catholic Board of Education* building located at 300 – 6th Avenue SE which transferred in July 2010. Insofar as the former is concerned the Complainant notes that the Assessor does not normally consider Judicial Sales in their analyses as they do not believe same provide a clear market value indication. Additionally, the Complainant noted that the sale of the subject is not referenced in the Assessment data base to which all Complainants are referred when they seek information pertaining to the sales analyzed by the Assessor. The Complainant noted that the latter sale involved land and improvements as is indicated on the *Property Assessment Summary Report* (Exhibit C-2 pg. 12) relating to that property and which is dated July 2012. Additionally, the Complainant provided (Exhibit C-2 pg. 14) a sales summary of the property, as prepared by the data network *Commercial Edge*, which states the property is improved with a 37,702 Sq. Ft., 3 storey office building. The Complainant also provided the Board with (Exhibit C-2 pgs. 22 – 35) a press release from the purchaser of the property (Bow Valley College) outlining their intended use for the property and existing building as well as several photographs showing the somewhat substantial building on the site. The point of the foregoing being that, for analysis purposes, the assessor has considered the sale to be one of land only with no value attributed to the building. The Complainant contends that this is an incorrect, misleading analysis of the sale and that it is not indicative of the land value of the subject site. The result of the foregoing is that it leaves the Assessor with only one sale to consider and that sale is a Judicial Sale, not normally given consideration by the Assessor. The Complainant suggested that this is an insufficient data base upon which to derive a base land rate. Based upon the foregoing the Complainant requests that the base land rate to be applied to the subject site should be the same as the adjacent East Village zone at \$120/Sq. Ft.

Respondent's Position

[6] The Assessor explained to the Board that the Assessment Business Unit (ABU) has, prior to this complaint, not been advised of any contamination issues as they relate to the subject property. There is no data in the Assessor's file that would indicate any past knowledge of any contamination issues related to the subject site. The Assessor went on to explain that there is a process to be followed whereby the contamination of any given site can be reported to the Assessor and through which, upon receipt of sufficient information, the Assessor can acknowledge the contamination issue and apply an adjustment to the assessed value to account for same.

[7] With regard to the Land Use Designation issue, the Assessor indicated that such adjustments are not applied to sites located within the downtown area as most of those sites also have a Direct Control (DC) Land Use Designation. Additionally, the Assessor pointed out that the Complainant's City of Calgary Assessment site influences adjustment chart (Exhibit C-1 pg. 13) is not for the downtown area but rather stems from one of the outlying areas of the city. The Assessor also pointed out that comparing the subject site to a site on the south side of the train tracks is not reasonable as the south side of the tracks is a completely different market

zone and it has different dynamics and different Land Use Designations than are found in the downtown area. It is for these reasons that an adjustment for Land Use Designation is not applied.

[8] The Assessor defended their use of the sale of the former Catholic Board of Education property on the basis of being a land only sale as the building improvements are not of particularly good quality given its C classification and the age of the building given its 1967 year of construction. The Assessor went on to suggest that if the building were usable then the purchaser would have simply moved in without having to make any modifications or improvements to same. In terms of using the sale of the subject, the Assessor acknowledged that it was indeed a Judicial Sale but suggested that when there is little or no other information available such a sale can be a useful indicator.

Board's Decision:

[9] The assessment is **confirmed** at \$10,580,000.

Decision Reasons:

[10] In regard to the first issue, site contamination, the CARB is of the judgment that there does exist a process through which the Assessor can be properly notified of same and this process has not been followed. It is unreasonable to suggest the Assessment Complaint Form would equate to such notification. The CARB suggests the Complainant confer with the Assessor as to the exact process so that a formal recognition of the alleged contamination can be dealt with properly.

[11] The CARB agrees with the Assessor that it is unreasonable to compare the subject site to a site located in the Beltline district as this area does have completely different dynamics which affect it. Additionally, the CARB does not see the Land Use Designation of the subject as being restrictive in comparison to other downtown properties. The CARB agrees with the Assessor's assertion that applying any adjustment to the subject site would be inequitable to other downtown sites that do not get such an adjustment.

[13] The CARB agrees with the Complainant that the Assessor has very poor support for their applied base land rate in the Muni zone; however, requesting that the base land rate of the adjacent East Village zone be applied to the subject has, in the judgment of the CARB, no support. While the subject is adjacent to the East Village zone on the east, it is equally adjacent to the much higher valued Downtown 1 zone to the west. In the final analysis the CARB finds that the assessed value of the subject site is readily supported by its most recent sale price, which the CARB acknowledges was a Judicial Sale but which would still result in a price that would not be greater than Market Value, and on this basis the assessment is confirmed.

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


C. J. Griffin, 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's 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 MGB Administrative Use Only

<i>Decision No. 1333 -2012 -P</i>			<i>Roll No. 068229806</i>	
<u><i>Subject</i></u>	<u><i>Type</i></u>	<u><i>Issue</i></u>	<u><i>Detail</i></u>	<u><i>Issue</i></u>
CARB	Vacant Land	Land Rate	Market Data	Contamination