

**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:**

***1442797 Alberta Ltd. (as represented by AEC International), COMPLAINANT***

**and**

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

**before:**

***B. Horrocks, PRESIDING OFFICER***

***S. Rourke, MEMBER***

***J. Kerrison, 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 2012 Assessment Roll as follows:

<b>Roll Number</b>	<b>Location Address</b>	<b>Hearing Number</b>	<b>Assessment</b>
067244905	1334 10 AV SW	68429	\$3,440,000
067245001	1400 10 AV SW	68428	\$5,170,000

This complaint was heard on the 24th day of September, 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. J. Luong (AEC International)
- Mr. B. Ryan (AEC International)
- Mr. T. Down (Owner) as witness
- Mr. B. Abugov (Architect) as witness

Appeared on behalf of the Respondent:

- Mr. L. Wong (City of Calgary)

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

[1] There were no concerns with the Board as constituted.

[2] It was agreed that Hearing Number 68429 and Hearing Number 68428 would be heard together as they have common evidence and argument and that one decision would be issued for both subject properties. The merit hearing proceeded.

**Property Description:**

[3] The subject properties are vacant land parcels, adjacent to and contiguous with one another, located in the NE quadrant of the intersection of 14 ST SW and 10 AV SW in the Beltline community in SW Calgary. Together, they comprise a site area of 63,215 square feet (SF), consisting of 37,087 SF in 1400 10 AV SW (corner lot) and 26,128 SF in 1334 10 AV SW. The Canadian Pacific Railway line runs along the north side of the site. Both parcels are subject to the same DC Bylaw. The Beltline community is a stable, established, primarily medium to high density residential and commercial district. Commercial developments in the area are primarily located along the 17<sup>th</sup> Avenue SW, 4<sup>th</sup> Street SW and 14<sup>th</sup> Street SW corridors.

[4] The subject properties are assessed utilizing a base land rate of \$155/SF. Both properties receive a -15% adjustment as a result of abutting a train track, while the property located at 1400 10 ST SW also receives a +5% adjustment for the corner lot influence.

**Issues:**

[5] The Assessment Review Board Complaint Form contained 8 Grounds for the Complaint. At the outset of the hearing the Complainant advised there were three outstanding issues, namely:

1. "The current assessment exceeds the subject property's best estimate of its market value as of July 1, 2011."
2. "The current assessment classification of non-residential 100% is incorrect and should be changed to residential 100%."
3. "The current assessment is too high and inequitable when compared to the assessments of similar assessments."

**Complainant's Requested Value:**

Roll Number	Address	Complaint Form	Hearing
067244905	1334 10 AV SW	\$2,950,000	\$3,260,000
067245001	1400 10 AV SW	\$4,450,000	\$4,630,000

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

**Issue:** What is the market value of the subject properties for assessment purposes?

[6] The Complainant's Disclosure is labelled C-1.

[7] For clarity, the "subject site" as described from hereon will reference both properties, even though they must be separately assessed, as if they were consolidated.

[8] The Complainant submitted that the subject properties are assessed at the base land rate of \$155/SF for the 2012 assessment year and that they are over assessed, as there was a listing on January 2010 at \$125/SF with no offers at that listing price. The Complainant submitted that no willing buyer would pay over \$125/SF and that the listing is the strongest indicator of market value.

[9] The Complainant, at page 6, provided a Timeline for the subject as follows:

Nov 2008	Listing for \$14,500,000 representing \$229/SF by Cushman & Wakefield LePage Inc.
Mar 2009	Offer to purchase for \$6,316,200 representing an offer price of \$100/SF from Loblaw Properties West Inc.
July 2009	Appraisal for \$9,330,000 representing \$147/SF by Colliers International.
Jan 2010	Listing for \$7,900,000 representing \$125/SF by Cushman & Wakefield LePage Inc. No offers have been received to date.

[10] The Complainant, at page 125, submitted a copy of the Exclusive Listing Agreement dated January 29, 2010 noting the list price of \$7,900,000 (\$125/SF), in support of its request.

[11] Mr. T. Down, the property owner, testified that the subject properties had been purchased in 2003 with the intent to develop the site for residential condominiums. He advised that a Development Permit had been approved for a two tower, 405 unit condominium complex that occupied both subject properties and was being marketed as Lausanne and Montreux Towers. That Development permit lapsed in late 2010. Since that time, and as a result of the changed market, he has been developing a new project which would provide 8 storeys of residential apartments above 2 storeys of mixed retail and offices. He advised the site had been used for parking up until December 31, 2011. As of December 31, 2011 he is still negotiating with the City over a contentious access to the proposed development. He estimated he has spent in excess of \$4.5 million advancing the development of the subject properties. The objective was to commence construction in early 2012.

[12] Mr. B. Abugov, the owner's architect, testified that the subject site is somewhat challenging, in that there is 300 feet of frontage on 10<sup>th</sup> AV SW, the only access is from 10<sup>th</sup> AV SW, there is a utility easement on the most westerly 60 feet of the site, there is grade separation along 14 ST and the railway tracks on the north side of the site pose noise considerations. He described the process that had been followed to complete the project design in advance of applying for a development permit which had included meetings with city staff to identify issues and concerns. From the outset there has been an issue with respect to the location of ingress and egress points on 10<sup>th</sup> AV SW that has delayed the approval of the Development Permit and negotiations with the City are ongoing.

[13] The Respondent's Disclosure is labelled R-1.

[14] The Respondent, at page 12, provided a map titled 2012 Beltline Non Residential Land Rates noting the subject properties are located in Beltline 4 and as a result the market value is calculated at the base land rate of \$155/SF.

[15] The Respondent, at page 13, provided a chart titled 2012 Beltline Land Influence Chart noting that both properties receive a -15% adjustment to the market value as a result of "Abutting A Train Track", while the property at 1400 10 AV SW receives an additional +5% adjustment as a result of "Corner Lot".

[16] The Respondent, at page 14, provided a table titled Beltline Land Sales which contained information from 5 sales in south Calgary in the period August 2010 to June 2011, noting the median sale price was \$153/SF and the weighted mean sale price was \$160/SF in support of the base land rate being established at \$155/SF. In response to a question, it was determined that the reported sale at 1203 Macleod Trail was in error and that the adjusted sale price should have been \$14,725,000 which would result in revised values for mean to \$170, and weighted mean to \$161/SF.

[17] In review of the Respondent's sales chart the Board finds the sales at 1515 12 St SW, 1512 & 1514 14 ST SW and 1811 4 ST SW are for properties that are considerably smaller than the subject properties. In addition, the sale at 1811 4 ST SW is in the Mission community which is significantly different than the Beltline community. Finally, the two remaining sales at 1512 & 1514 14 ST SW for \$153/SF and 133 & 119 12 AV SE for \$127/SF, are more centrally located in BL2, and considered to be superior to the subject.

[18] In the absence of market evidence of comparative properties to the subjects, the Board finds the Listing of the subjects at \$125/SF (including adjustments) to at least represent the top end of the range of market values. By extension the market value of 1334 10 AV SW is calculated to be \$3,266,000 (\$3,260,000 truncated) and the market value of 1400 10 AV SW is calculated to be \$4,635,875 (\$4,630,000 truncated).

**Issue:** What is the classification of the subject properties for assessment purposes?

[19] The assessment classification of the subject properties for the 2012 assessment year is non-residential.

[20] The definition of "non-residential" and "residential" is contained in section 297(4) of the Municipal Government Act (MGA) as follows:

*(b) "non-residential, in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use by-law passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation.*

*(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential."*

[21] The Complainant, at page 35, provided a My Property Report dated August 31, 2011 for the subject site, noting on page 36 that a Development Permit had been approved in 2006 for an apartment building (405 units) with retail and Restaurant-licensed at grade and further the Development permit had lapsed. The Complainant said this permit, was for the two tower project referred to by the owner in his testimony.

[22] The Complainant, at page 37 and page 38, provided the Property Assessment Notices for 2010 and 2009 noting that in both years the subjects had been classified as residential. In 2011 the assessment classification was changed to non-residential. On appeal, CARB 2621/2011-P confirmed the classification as non-residential because "the current (and continuing) use of the property is as a paid parking lot, which is a commercial use (regardless of whether it is the highest and best use)."

[23] The Complainant's Rebuttal is labelled C-2.

[24] The Complainant, at page 14, provided a copy of the City of Calgary Development & Building Approvals DP, LOC and SB Application Register noting a Development Application had been made on October 13, 2011 for a New Apartment Building (168 units), Offices, Retail Store on the subject property.

[25] The Complainant, at page 16, provided a copy of a letter to Imperial Parking Canada Corporation dated November 17, 2011 notifying them of the termination of the agreement which allowed Imperial to operate a paid parking lot on the subject site, effective December 31, 2011 (the condition date for the 2012 assessment).

[26] The Complainant submitted that as of December 31, 2011 the subject site is no longer being used for commerce and further a Development Application for the construction of permanent living accommodation has been made and as a result the classification should be changed to residential.

[27] The Respondent submitted the subject is classified non-residential due to its land use designation and as per the MGA there is no intent for the subject to be permanent living accommodations. Intent is more than just a thought of doing something. No new permit has been approved to date. In response to a question the Respondent advised if a Development Permit had been issued by December 31, 2011 the subject would have been classified residential.

[28] The Complainant cited the following jurisprudence:

Canada Lands Co. v. Calgary (City) [2008] A.M.G.B.O. No. 210

Oxford Properties Group Inc. v. Calgary (City) [2006] A.M.G.B.O. No. 224

Green Meadows Estates Ltd. v. Director of Assessment and Breton, Municipality of the County of [1984] S.C.A. 01256

North Cowichan (District) v. Ring [1998] B.C.J. No. 1458

to support its argument that the property owner had gone to considerable expense in the areas of design and marketing, although a Development Permit had not yet been approved and that there was a present intent, and substantial act, to carry out the intent of developing the subject properties for permanent living accommodation.

[29] The Board finds the Complainant has provided sufficient evidence and direct testimony to demonstrate the subject site is intended to be used for permanent living accommodations and as a result the subject classification is residential.

**Issue:** Is the subject classification as non-residential, inequitable?

[30] The Complainant, at page 8 of C-1, provided a chart which contained details of 10 properties that are similar to the subject properties and are assessed correctly as residential. All of the properties are in the Beltline and Mission area. Pictures were provided to demonstrate the current state of the purported comparables.

[31] The Board finds this is a moot point in light of the decision made with respect to the classification issue.

**Board's Decision:**

[32] The 2012 assessments are reduced and the classifications are changed as follows:

Roll Number	Address	2012 Assessment	Classification
067244905	1334 10 AV SW	\$3,260,000	Residential
067245001	1400 10 AV SW	\$4,630,000	Residential

DATED AT THE CITY OF CALGARY THIS 10 DAY OF OCTOBER 2012.

  
B. Horrocks  
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. 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.*

For Administrative Use

<b>Subject</b>	<b>Property type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-issue</b>
CARB	Other	Vacant Land	Sales Approach	Market value classification