

**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:

**12-10 CAPITAL CORPORATION, COMPLAINANT
(Represented by Altus Group Ltd.)**

and

The City Of Calgary, RESPONDENT

before:

**Board Chair P. COLGATE
Board Member D. JULIEN
Board Member T. USSELMAN**

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:

ROLL NUMBER: 067233429

LOCATION ADDRESS: 1248 10 AVENUE SW

FILE NUMBER: 67955

ASSESSMENT: \$2,200,000.00

This complaint was heard on 7th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- Michael Cameron, Altus Group Ltd – Representing 12-10 Capital Corporation
- Graham Kerslake, Altus Group Ltd – Representing 12-10 Capital Corporation

Appeared on behalf of the Respondent:

- Erin Currie - Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] There being no preliminary matters the merits of the complaints were heard.

Property Description:

[3] The subject property under complaint is a vacant parcel of land located in the Beltline area of The City of Calgary, with a Land Use Designation of CC-X. The parcel at 1248 10 Avenue SW has a land area of 16,718 square feet or 0.384 acres, with site influences for abutting a train track (-15%). The parcel has been assessed at a base land rate of \$155.00 per square foot established by the Direct Comparison Approach. The property is currently being used as parking lots.

Complainant's Requested Value: Two alternative requests were put forward by the Complainant: \$1,650,000.00 or a nominal value of \$750.00

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

[4] In the interest of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[5] Both the Complainant and the Respondent submitted background material in the form of ground level photographs, site maps and City of Calgary Assessment Summary Reports.

[6] Both parties placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited

weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issues:

[7] The Complainant had identified three issues for consideration by the Board – an application of a -25% influence for land use restriction, the subject site providing parking for an office building located at 1240 10 Avenue SW and secondly, equity with sites with similar linkages of a site with parking to an improved parcel.

[8] The Board, following the presentations by both parties and reviewing the submissions, has found the primary issue to one with respect to the restrictive covenant place on the subject property. It is the opinion of the Board that the three issues put forward by the Complainant are dependent upon the Board's decision with respect to the restrictive covenant and its influence on the assessment.

Is the restrictive covenant of sufficient authority to influence the valuation of the subject property?

Complainant's Evidence:

[9] The Complainant presented the Board with two alternative assessments for the subject property. Either the application of a -25% for land use restriction to reduce the assessment to \$1,650,000.00 or a nominal value of \$750.00 for the linking of the subject parcel to 1240 10 Avenue SW, in equity with similarly assessed parcels.

[10] In support of the request for a -25% adjustment the Complainant submitted a chart which it claimed were the adjustments applied by the City of Calgary. (C1, Pg. 19)

[11] The Complainant introduced into evidence the Land Title Certificates for the subject property and the property at 1240 10 Avenue SW, highlighting the restrictive covenant 101369714. (C1, Pg. 20-26) A copy of the encumbrance, outlining the conditions was submitted, with the Complainant noting the section which stated:

2. The Grantor hereby agrees and covenants, for the benefit of the Symcor Lands, or any part or parts thereof, to provide at least forty-seven (47) parking stalls for the users of the Symcor Lands and the Grantee as owner of the Otis Lands agree with the Grantee as owner of the Symcor Lands to the aforesaid agreement and the covenant such that the Symcor Lands shall have exclusive use of the referenced forty-seven (47) parking stalls. (C1, Pg.27-30)

[12] On the basis of the restrictive covenant, the Complainant requested a revised assessment of \$1,650,000.00, due to the land use restriction. The recalculation is based upon a -25% reduction for land use restriction. (C1, Pg. 31)

[13] The Complainant introduced its position with respect to the use of the site for parking and therefore a lack of potential for development when the subject parcel is linked to another property. (C1, Pg.40-44) The Complainant placed before the Board two scenarios; one based upon the affect of the restrictive covenant linking the parcel to another building and therefore the subject should not be assessed for more than a nominal value of \$750.00 or \$1000.00.

[14] In the second scenario the Complainant presented a case that a Highest and Best Use analysis. It was the Complainant's contention there was "a very low probability of the subject site selling in the near future". (C1, Pg. 44) The Complainant presented a statistical analysis of the vacant land market in the Beltline which indicated a low absorption rate of the currently available parcels. An inventory of the vacant land in the Beltline was submitted. (C1, PG. 83-87)

[15] On the basis of the restricted covenant and "the supply and demand characteristics affecting vacant commercial sites in the Beltline area" the Complainant concluded a value of \$750.00 was reasonable for the subject parcel. (C1, Pg.44)

[16] The Complainant introduced a total of eleven (11) equity comparables which were assessed at rates of \$750.00 or \$1000.00 as they were linked to other parcels to provided parking for the buildings. (C1, Pg. 45-76) The Complainant stated in each case a link between the vacant parcel and an improved parcel had been created through a restrictive covenant. It was the position of the Complainant the subject property was similarly encumbered by the restrictive covenant registered upon the property.

[17] The final request from the Complainant was a correction of the assessment to \$750.00. (C1, Pg. 90)

Respondent's Evidence:

[18] The Respondent stated the property under complaint was a vacant parcel as of December 31, 2011 used for parking. The property has been assessed based upon a basic vacant land rate of \$155.00 per square foot, a manner applied to all similar properties in the Beltline area. The Respondent noted an influence adjustment of -15% had been applied due to the location abutting the train tracks

[19] The Respondent, speaking with regard to the restrictive covenant, brought to the attention of the Board specifics which in the opinion of the City of Calgary makes the covenant non-applicable for a reduction.

[20] The Respondent stated the restrictive covenant must be reviewed in its entirety before determining its application to the assessment process. The Respondent also submitted a copy of the Land Titles Certificate and identified the Restrictive covenant 1001369714 registered on December 22, 2010 (R1, Pg.9-12) and a copy of the restrictive covenant. (R1, Pg.13 – 16)

[21] The Respondent noted in the restrictive covenant both the "Grantor" and the "Grantee" were identified as 12-10 Capital Corporation, meaning the restrictive covenant was being placed on the subject parcel by the owner for the benefit of the owner of 1240 10 Avenue SW and 1216 10 Avenue SW, also 12-10 Capital Corporation. (R1, Pg. 14)

[22] The Respondent noted the restrictive covenant was 'self imposed' by the owner of the properties and was not a requirement of the City of Calgary for development of the sites. The Respondent stated it was the policy of the City of Calgary, not a legal requirement, to apply a reduced assessment on a parcel when the City of Calgary has registered a restrictive covenant on a parcel deemed to be required for parking, usually at the time of a development permit request. In those cases it is the City of Calgary registering the restrictive covenant with the owner.

[23] The Respondent further noted that the right to parking stalls was conveyed to the property at 1240 10 Avenue SW as stated in agreement 2 of the covenant. The Respondent went on to say the restrictive covenant was not permanent as the Grantor had left it open for cancelling in the future, as stated in paragraph 3:

3. The covenants contained in this Restrictive Covenant shall only be binding upon the Grantor during the period in which the Grantor is the registered owner of the Servient Lands." (R1, Pg. 15)

[24] The Respondent went on to say there was no condition in the restrictive covenant which requires the replacement of the parking if the subject property is sold. It was the Respondents opinion this shows the parking is not necessary for the improved property.

[25] The Respondent submitted a "2012 Beltline Land Influence Chart" which listed the influences recognize by the Assessment Business Unit when preparing an assessment. (R1, Pg. 23) The Respondent advised the Board the influence document submitted by the Complainant was not a City of Calgary document and contained inaccurate information as to influences and the percentage change allowances. The Respondent notes that contrary to the Complainant's claim there is no Land Use Restriction influence for -25% in the Beltline.

[26] The Respondent, in response to the equity argument, submitted a table titled "Beltline Land Comparables" which included four Land Only properties along 10 Avenue SW assessed at eh same base land rate of \$155.00. (R1, Pg 24) The Respondent stated the Complainant had entered no market evidence to specifically dispute the land rate applied to the subject property.

[27] In rebuttal to the Complainant's position the subject parcel was required for parking for the adjacent buildings, the Respondent submitted the Property Assessment Detail reports for 1216 10 Avenue SW, 1240 10 Avenue SW and 1248 10 Avenue SW, as well as a map showing locations of the three parcels. (R1, Pg.26-29). The Respondent showed all three parcels were owned by the same party, 12-10 Capital Corporation. The Respondent raised the question that if the buildings were constructed in 1974 and 1973 why was it now necessary to supply parking for the sites through a restrictive covenant. The Respondent went on to state the Complainant had show no evidence of the need for the additional parking by the two buildings.

[28] The Respondent, when addressing the equity argument put forward by the Complainant, select three of the Complainant's comparables – 1513 5 Avenue SW, 1115 10 Avenue SW and 219 18 Avenue SE – to show the restrictive covenants place on the comparables were an agreement between the owners and the City of Calgary when the properties were requesting development permits. The covenants were not a unilateral restriction placed on the property by the owner. The Respondent states similar caveats protecting an agreement or parking easement were registered against each of the comparable sites the Complainant submitted.

[29] The Respondent submitted a 2012 CARB decision 0675/2012-P into evidence which also dealt with the issue of 'linked' parking to an improved parcel. In the cited decision there was no restrictive covenant in place and the assessment was confirmed.

Findings of the Board:

[30] In reaching the Board's decision, the Board looked to the restrictive covenant, for it is upon this single document the questions of an application of a -25% influence for land use restriction, the subject site providing parking for 1240 10 Avenue SW and equity with other sites with similar linkages most relies.

[31] The Board found the restrictive covenant on the subject property was created by the owner, 12-10 Capital Corporation, to grant use of the parking stalls to itself, 12-10 Capital Corporation.

[32] The Board found the restrictive covenant remains in effect only so long as 12-10 Capital

Corporation owns the property.

[33] The Board found the Complainant had provided insufficient evidence to support the need for the parking by the adjacent properties or the necessity of the restrictive covenant as the properties are all owned by 12-10 Capital Corporation.

[34] The Board finds the comparables presented by the Complainant have restricted covenants placed upon them which contain restrictions as to future use of those properties. The agreements for the restrictive covenant are between the owners and the City of Calgary and remain in effect until alternative sources of parking are provided to replace that on the linked parcels, whereas the covenant on the subject property dissolves on sale with no requirement to replace the parking stalls with an alternative source.

[35] It is the decision of the Board the restrictive covenant on the property at 1248 10 Avenue SW is insufficient authority to support the arguments placed before the Board by the Complainant.

[36] The Complainant's request for a -25% influence adjustment for restricted land use is denied. The restrictive covenant for the subject property is not similar to other restrictive covenants between land owners and the City of Calgary, but rather by a landowner placed on its own property. Therefore, the restrictive covenant does not support the Complainant's contention that there is a similar restrictive covenant use on the subject property. Further, the Complainant's request for -25% is not supported by market evidence to show the level of adjustment necessary. The Complainant's claim the source for the influence adjustment percentage was the City of Calgary is not supported through documental evidence. The Respondent had submitted evidence as to the recognized influences for which percentage adjustments are made in the assessment process. The category requested - Land Use Restriction- and the percentage adjustment requested were present on the City of Calgary's list.

[37] The Complainant's claim the parking was necessary for the use by the adjacent building is not supported by any evidence to show the need exists. Lacking this evidence the Board finds the subject property has been correctly assessed as vacant commercial land at a base land rate of \$155.00 per square foot. The Complainant presented no evidence to dispute the land rate as applied.

[38] The Board found the Complainant's statistical analysis of the market for vacant land in the Beltline informative, but lacking in persuasion. Statistically the entire population of vacant land will take time to be absorbed by the market place for development, but the analysis does not extend so far as to say which property will or will not be developed. Each parcel has a statistical probability of being the next site selected to be developed, depending on the market demands at a moment time. To paraphrase Mr. Twain, there are lies, damn lies and statistics. The argument on first examination shows some support for a long term analysis of an entire population, but bears significantly less weight when applied as an argument for an individual property.

[39] With respect to the question of equity the Board found there was insufficient evidence when the owner's restrictive covenant was refused and the Complainant's lack of evidence did not demonstrate the need for the parking from adjacent or nearby parcels. It was shown by the evidence the comparables before the Board required the parking as part of the development of a site and so a very detailed and controlling restrictive covenant was put into place. This situation was not presented to the Board in this case. The Board finds the argument for equity fails in the case presented.

Board Decision

[40] For the reasons outlined, the Board confirms the assessment at \$2,200,000.00

DATED AT THE CITY OF CALGARY THIS 25 DAY OF September 2012.

A handwritten signature in black ink, appearing to read 'Philip Colgate', written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R2	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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Cost/Sales Approach	- Land Value - Restrictive Covenant