

**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:**

***DEVENISH HERITAGE LIMITED, COMPLAINANT  
(Represented by Colliers International Realty Advisors)***

**and**

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

**before:**

***Board Chair P. COLGATE  
Board Member S. ROURKE  
Board Member R. DESCHAIINE***

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: 067209403**

**LOCATION ADDRESS: 908 17 AVENUE SW**

**HEARING NUMBER: 61354**

**ASSESSMENT: \$10,390,000**

This complaint was heard on 23 day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *David Porteous, Colliers International Realty Advisors - Representing Devenish Heritage Limited*

Appeared on behalf of the Respondent:

- *Jim Toogood – Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

**Property Description:**

The property is improved with a 1911 structure known as the Devenish Building. The subject building is 42,983 square feet of office and retail development.

**Issue:**

Does the lack of onsite parking affect the market value?

**Complainant's Requested Value:** \$7,060,000.00

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

Complainant's Evidence:

The Complainant stated the hearing was not with regards to the assessment of the property as determined using the income approach, but would focus on the restrictions on the property and the lack of onsite parking.

The Complainant is requesting the assessment be reduced by an amount equal to the assessment for the offsite parking located at 936 16 Avenue SW – a separate parcel identified by Roll Number 067190504. The current 2011 assessment for the offsite parking is \$3,330,000.00. The Complainant informed the Board the assessment was under complaint, but the hearing had not occurred as yet.

The Complainant provided photographs of the subject property to show it is an improved parcel and maps to show the location in the Beltline community.

The Complainant took the Board on a history tour of the Devenish Building – from its time as an apartment building to its current use as an office/retail complex. The structure has been classified as an historical site (C1, Pg. 57) so has a number of restrictions place upon it as to renovations and development. The current owners are undertaking a rehabilitation of the building, following the guidelines of the Historical Resources Act.

The concern of the Complainant is not with the current assessment on the building but rather the lack of onsite parking which cannot be rectified due to the historical site designation and the restrictions of the site area and shape.

The Complainant submitted photographs, a location map, 2011 Assessment Summary Report and the 2011 Assessment Explanation Supplement for the property at 936 16 Avenue SW. (C1, Pg 24-30) This property was acquired by the management of the Devenish Building to provide parking for the tenants of 908 17 Avenue SW.

The Complainant submitted two leases between Devenish Heritage Ltd. and tenants which shows under the heading 'Special Provisions' the inclusion of parking in the leases. (C1, Pg. 33 & 36)

The Complainant brought forward three buildings in the immediate vicinity which provide parking onsite or adjacent for use of tenants and customers. To the south is the Hanson Square building at 909 17 Avenue SW, which is currently under construction, but photographs show the parking levels. (C1, Pg. 37-38). The second is the Mount Royal Block at 815 17 Avenue SW and the third is Mount Royal Village at 880 16 Avenue SW. It was the Complainant's position the Devenish Building was at a disadvantage as it does not have the ability to provide onsite parking, but tenants and customers must compete for public parking.

The Complainant submitted Municipal Government Board Order 177/02 for the Board's information which dealt with an issue of parking being assessed to the Mount Royal Shopping Centre.

The Complainant requested a value of \$7,060,000.00.

#### Respondent's Evidence:

The subject property is assessed using the income approach to valuation. There is no parking being assessed to the subject as none exists on the site.

The Respondent provided maps and photographs to identify the location and condition of the subject property. Copies of the 2011 Property Assessment Notice, the Non-Residential Properties – Income Approach Valuation were submitted as evidence on 908 17 Avenue SW. (R1 Pg. 12-20)

The Respondent submitted a copy of the Assessment Request for Information (ARFI), an annual survey conducted by the City of Calgary, which had been returned by the property manager in April of 2010. Handwritten entries on the survey form noted annual rental rates, new start dates and tenant names, terms of leases and lease types – gross or net. Also noted is the information on 60 parking stalls, provided by the manager. (R1, Pg.21-32)

The Respondent entered copies of the Alberta Land Title Certificates for the subject building and the parking lot. The Respondent noted that there is no caveat registered against either title with respect to parking or any link shown between the two titles. Based upon the title, it was the contention of the Respondent the owner was free to utilize the property in any manner – leasing it to tenants in the subject or even selling the parcel. (R1, Pg. 33-38)

The last submission by the Respondent was a 2010 decision of the Assessment Review Board - CARB 166/2010-P – which dealt with the subject property. The Respondent noted for the Board, an issue raised by the Complainant, Colliers International Realty Advisors, was the inferior position of the subject due to a lack of parking. The assessment was confirmed by the Board, which noted the argument was unsupported. (R1, Pg. 42-51)

The Respondent request the assessment be confirmed at \$10,390,000.00.

### **Findings of the Board**

#### **Complainant's Submission:**

The Complainant is not contesting the income approach to the valuation of the property at 908 17 Avenue SW, but seeks only a reduction based upon the assessment of the offsite parking provided for the tenants.

The Devenish Building is an older structure constructed in 1911, prior to the creation of City of Calgary regulation with respect to the providing of parking, which apply to any new development within the City of Calgary. The Board finds the comparison of the subject to new structures is not a valid argument due to the changing requirements place upon construction to supply parking.

The Board finds the claim the owner is placed at a disadvantage to attract tenants, due to the lack of onsite parking, is not supported by the evidence. The Assessment Request for Information (ARFI) provided by the Respondent indicated the Devenish is not experiencing abnormal vacancy – in fact according to the manager, vacancy rate is half of the typical rate applied by the City of Calgary. As the Complainant has chosen not to file a complaint against the rates applied by the City of Calgary and after the Board's review of the ARFI, the Board's decision is the Devenish Building is not operating in an inferior position in comparison to properties assessed in a similar manner.

The owner of the Devenish Building is providing offsite parking for only the tenants of the building, as shown in the photograph in the Complainant's submission on page C1, Pg 26. The parking is written into the leases signed between the tenants and Devenish Heritage Ltd.

#### **Respondent's Submission:**

The Board notes on page 22 of the Respondent's submission, specifically the Assessment Request for Information, the manager has broken down the 60 parking stalls into three groups –

Tenant parking stalls with additional charge to lease – 43

Tenant parking stalls with additional charge to person leasing - 3

Tenant parking with no additional charge to leased -	<u>14</u>
Total number of stalls -	<u>60</u>

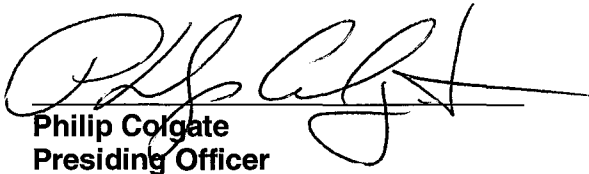
The Board notes the Complainant has made no adjustment for the revenue generated from the leases for which a charge is required and no evidence was entered as to the rates in place for leasing the stalls.

**Board's Decision:**

The provision of parking to the tenants is a management decision. It is not a unique situation along 17<sup>th</sup> Avenue for older buildings to not have onsite parking. It is a reality of the site coverage, that many office/retail buildings in the Beltline have insufficient space to provide parking – either above or below ground for tenants and/or customers.

The decision of the Board is to confirm the 2011 assessment at \$10,390,000.00.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF September 2011.



Philip Colgate  
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

*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.*