

**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:

***RADIO BLOCK CORP., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member E. BRUTON
Board Member B. JERCHEL***

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: 068136308

LOCATION ADDRESS: 204 13 AVENUE SW

FILE NUMBER: 67912

ASSESSMENT: \$474,500.00

This complaint was heard on 23rd day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Genereux, Altus Group Ltd. – Representing Radio Block Corp.
- M. Cameron, Altus Group Ltd. – Representing Radio Block Corp.

Appeared on behalf of the Respondent:

- E. 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] As there were no jurisdictional or procedural matters, the Board proceeded to hear the merits of the complaint.

Property Description:

[3] The subject property, located in the Beltline community at 204 13 Avenue SW, is a vacant parcel of 3,604 square feet.

[4] The subject property is assessed using the Sales Comparison Approach at \$155.00 per square foot, with a 15% reduction for being classified as a residual parcel or:

3,604 sq.ft. X \$155.00 per sq.ft X .85 = \$474,827.00. Value was rounded to \$474,500.00

[5] The Land Use designation is CC-X or City Centre Mixed Use.

Issues:

[6] Is the subject property 'linked' to the adjacent property and therefore should be valued for a lower assessment?

Complainant's Requested Value: \$1,000.00.

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

[7] 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.

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

[9] Prior Assessment Review Board decisions and higher court decisions were placed before the Board in support of requested positions of the parties. 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.

Issue: Is the property over assessed due to the linking with the adjacent property?

Complainant's Evidence:

[10] The Complainant requested a reduction to the assessment due to the existence of a link between the vacant parcel and the St. James Corner Pub (Pub), located to the east of the parcel. The Complainant argued the subject property should be assessed for \$1000.00 as the lot was parking associated with the Pub at 1215 1 Street SE.

[11] The Complainant entered the Land Title Certificates for the subject property and the property identified as the Radio Block, which houses the St. James Corner Pub. (C1, Pg. 13-16) The Complainant made note that both properties are owned by the same party, Radio Block Corp. Further, both properties are linked through an easement, 6856GE, two common mortgages, 061079387 and 061079389, and a common caveat, 061079388.

[12] The Complainant submitted four equity comparables, each of which had parcels with nominal values associated with a developed parcel:

Roll Number – Developed Parcel	Address	Property Name	Assessment	Roll Number – Linked Parcel	Address	Assessment	Parking Stalls
058166992	1432 Kensington Rd NW	Shoppers Drug Mart	\$3,260,000	058166802	1436 Kensington Rd NW	\$1,000	21
045098811	1110 16 Ave NW	Earls Restaurant	\$2,120,000	045098407	1106 16 Ave NW	\$1,000	24
200779627	150 Millrise Bv SW	Millrise Station	\$29,790,000	157187402	140 Millrise Bv SW	\$1,000	67 (est.)
037159902	4122 Brentwood Rd NW	Calgary Co- op	\$12,130,000	037027000	4122R Brentwood Rd NW	\$1,000	26 (est.)

[13] The Complainant argued precedent had been established for the application of a nominal value for a linked parcel and its requested application to the subject property.

[14] Based upon the linking of the parcels, the Complainant requested a revised assessment of \$1,000.00

Respondent's Evidence:

[15] The Respondent submitted the Assessment Business Unit (ABU) for the City of Calgary requires that a property meet three conditions, as set out in CARB 2242/2010-P and CARB

2243/2010-P.

1. The improved parcel to which the vacant parcel is linked must be deficient in parking. And the parking provided on the vacant parcel is necessary to satisfy the deficiency;
2. A contractual arrangement must exist whereby the property cannot be readily sold for redevelopment separate from the improved parcel; and
3. The value of the vacant parcel must be captured in the value of the improved parcel to which it is linked.

[16] The Respondent submitted a table of five comparable properties assessed at the same base rate as the subject property, \$155.00 per square foot.

Roll	Address	Property Type	Land Area (sq.ft.)	2012 Assessment	Assessment Rate (Base Rate)	Influences
068136308	204 13 Av SW	LO	3,604	\$474,500	\$155	Residual Parcel
068167501	115 13 Av SE	LO	6,999	\$1,080,000	\$155	N/A
068167600	113 13 Av SE	LO	5,253	\$814,500	\$155	N/A
068129600	108 12 Av SE	LO	6,993	\$1,080,000	\$155	N/A
068176304	207 14 Av SW	LO	4,002	\$620,000	\$155	N/A

[17] In support of the commercial land rate, the Respondent submitted the Alberta Data Search document for the sale for 1203C Macleod Trail SE which sold on May 27, 2011 for \$15,500,000.00 or \$184.33 per square foot. (R1, Pg. 26) The same property sold in March 2010 for \$14,540,000.00 or \$172.44 per square foot.

[18] The Respondent submitted the Assessment Request for Information (ARFI), dated April 8, 2010, from the property manager, NewWest Enterprise Property Group for the subject property. The information provided identified the subject property as a parking lot containing nine (9) stalls which were leased for \$175.00. (R1, Pg. 39-40) The Respondent noted the parking located on the subject parcel is not accounted for in the assessment attributed to the Radio Block, which is currently assessed on the Income Approach for retail and storage space only. (R1, Pg. 14-15)

[19] In response to the four comparables submitted by the Complainant, the Respondent argued none of the comparables were located in the Beltline community and in each case was providing visitor or customer parking at no charge for retail operations, unlike the leased stalls of the subject property.

[20] In reviewing the Complainant's comparables, the Respondent noted the following factors in the assessment of each parcel:

- For the Shoppers Drug Mart at 1436 Kensington Road NW, no parking has been assessed for the properties. The adjacent lot for parking had been linked through a Restrictive Covenant 031169932 which legally linked the sites for the provision of parking for the retail operation. (R1, Pg. 42-45 and C1, Pg. 40-42) A nominal value was set at \$1,000.00 for the parcel
- For the Earl's Restaurant at 1106 16 Avenue NW, the parking on the vacant parcel was identified on the ARFI for the restaurant as 40 stalls with no additional charge.

The parking was for customers of the restaurant. (R1, Pg. 46-48) A nominal value was set at \$1,000.00 for the parcel

- For Millrise Station at 140 Millrise Boulevard SW, the Respondent noted the property was part of the provided parking area for customers of the retail shopping centre. Further a Restrictive Covenant 021311746 was in place which restricted the specific parcel for traffic control onto and out of the shopping centre. (R1, Pg. 49-50 and C1. Pg. 80-84) A nominal value was set at \$1,000.00 for the parcel
- For the Calgary Co-op property at 4122R Brentwood Road NW, the property was identified as narrow strip of land which could not be developed, but provided free parking for the customers of the supermarket. (R1, Pg. 51-57) A nominal value was set at \$1,000.00 for the parcel

Complainant's Rebuttal:

[21] In rebuttal to the Respondent's submission, the Complainant argued that without the parking provided by the subject property the adjacent property "would not be able to function as a retail building and would most likely function as an office Building".

[22] The Complainant again referenced the Land Title Certificates for the Radio Block and the subject property and reviewed the point with respect to the mortgages being for both parcels.

[23] Three office properties and their assessments, at 239 10 Avenue SE, 1001 1 Street SE and 522 12 Avenue SW, were presented to show the typical office rate of \$13.00 per square foot.

[24] The Complainant argued that if the rate of \$13.00 per square foot were applied to the Radio Block the difference in the assessment between retail and an office assessment was roughly the value of the subject property.

Findings of the Board:

[25] The Complainant in its submission showed an easement on the subject property, however no evidence was submitted to show the purpose of the easement or the area encompassed within the easement. A clear indication of how much the easement influenced the two lots would be of more use to the Board in placing weight on its impact in the deliberations.

[26] The Board found the mortgages were not persuasive for a change. The fact that both parcels were financed under the same mortgages does not provide sufficient evidence as to a linked status existing between the two properties. Mortgages can be altered at any time with the payment of the required funds to either pay out the mortgage or clear the title on one of the parcels.

[27] The Board found, upon the review of the evidence presented by the Complainant and the Respondent, the comparables were not convincing for the requested change to the assessment. In two cases the assessments were a result of both a Restrictive Covenant and the sites providing free parking for customers of the retail operation – Shoppers Drug Mart and Millrise Station. Both the Earl's Restaurant and the Calgary Co-op are providing free parking for their respective customers. This is fundamentally different from the subject property, which is leasing its spaces for \$175.00 per stall.

[28] The Board found the Complainant had failed to show the parking was necessary for the operation of the St. James Pub. The stalls are not for customer parking as they are leased, to unidentified parties, and were clearly identified as Private Parking.

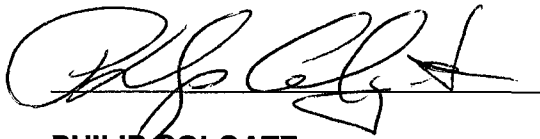
[29] The Board found little weight in the Complainant's argument that without the parking the St. James could not function and would likely be an office building. To say the continued operation of the Pub is dependent on nine parking stalls, not for customers, was again not supported by evidence of need. The Board agrees, if the Radio Block was an office, it would be assessed for a lower value, but the actual use for this assessment is a retail operation. The Board found the assessment is based upon typical rental rates for similar properties in the area.

[30] The Board finds insufficient evidence to support the request of the Complainant to reduce the assessment to \$1,000.00.

Board's Decision:

[31] Based upon the reasons given, the Board confirmed the assessment at \$474,500.00.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF November 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. C2	Complainant Rebuttal
3. R1	Respondent Disclosure
4.	Decisions of other Boards

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 Type	-Parking	Cost/Sales Approach	Land Value