

**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:**

***Sun Ngai Development Company Limited (as represented by Colliers International),  
COMPLAINANT***

**and**

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

**before:**

***T. Golden, PRESIDING OFFICER  
R. Kodak, MEMBER  
D. Steele, 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 2011 Assessment Roll as follows:

**ROLL NUMBER: 067112300**  
**LOCATION ADDRESS: 1329 11 Av SW**  
**HEARING NUMBER: 61338**  
**ASSESSMENT: \$3,160,000.00**

This complaint was heard on 4 day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *M Uhryn*

Appeared on behalf of the Respondent:

- *D Satoor*

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

There were no preliminary matters.

**Property Description:**

The property is two vacant titles covered by one roll number. It is operated as a public parking lot with several caveats registered on title reserving parking spaces for nearby properties. The assessment was developed using the direct sales approach for vacant land in the beltline.

**Issues:**

- 1) Is the Beltline assessment rate of \$195.00 per square foot (sq. ft.) applicable to the subject property?
- 2) Should the nominal rate of \$750.00 be applied to lots 8,9, and 10 that are subject to the caveat.

**Complainant's Requested Value:** \$908,370.00

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

- 1) The rate of \$195.00 is the applicable rate to base the assessment.

The Complainant presented a table of time adjusted sales found on pg 19 of exhibit C-1 to support a requested rate of \$140.00. Fifteen sales were presented with an unadjusted mean sale price of \$219.57 and an adjusted sale price of \$141.31. Sales in this table occurred between September 2007 and January 2011 and were in the communities of Beltline, Mission, and Cliff Bungalow. These areas were considered by the Complainant to be similar in nature. The time adjusted mean sale price of \$141.00 is the basis of the request.

Time adjustments used on the Complainant's sales were calculated by the Complainant using paired sales of 7 properties that occurred between 2006 and 2010. The calculation resulted in a -2.05% adjustment per month and this was applied to each of the sales.

The Respondent reviewed the Complainant's sales and stated that sales 1 through 7 on the table presented were very old and of limited use. Sale 8 to 11 were valid and the Respondent stated the same sales were used in the City analysis, that resulted in the assessment rate of \$195.00 / sq. ft. Sales 12 to 16 were of less use because two sales were invalid, two sales were post facto, and one sale was not located in the same area as the subject.

In terms of the time adjustments a table on pg 151 of exhibit R-1 details comments regarding the sales used by the Complainant. Sales used in the calculation were all questionable for use in a time adjustment calculation. Problems range from invalid sales, sales not considering changes in the site, older sales and other issues. In conclusion the time adjustments were not conducted properly.

The Board was concerned with both the sales presented by the Complainant and the time adjustment analysis conducted and applied to the sales. In the opinion of the Board most weight should be placed on those sales that appear in both parties analysis and were completed in 2009 and 2010. Since these sales were recent adjusting for time is not required. The following sales are most informative:

Address	Sale date	Sale price	Price per sq. ft.
340 17 Av. SW	01/2009	\$1,550,000	\$213/sq. ft
739 10 Av SW	04/2009	\$4,000,000	\$205/sq. ft.
508 15 Av SW	04/2010	\$1,200,000	\$184/sq. ft.
2207 4St SW	05/2010	\$3,600,000	\$300/sq. ft.

The above sales from the Complainant average \$225.50 /sq. ft. The Respondent using these sales and one other at 1509 8 St SW adjusted the sales for residual land as some parcels have improvements but are valued as land only, and came to a medium market value of \$196.00. Both these values support the \$195.00 used to calculate the assessment.

- 2) The nominal rate of \$750.00 should not be applied to lots 8, 9, and 10; the lots that are subject to the caveat.

The Complainant presented the Board with a copy of the land title for lots 8, 9, and 10 and pointed to a caveat in favour of Canada Housing and Mortgage Corporation. Lots 8, 9, and 10 contain 9765 sq. ft. The original Corporation that was party to the caveat is no longer involved in the property however it was pointed out that the caveat is still binding on the subject property and its successors. The purpose of the caveat is to provide parking spaces for a nearby residential condominium at 1320 12 AV. In the opinion of the Complainant the caveat encumbers the subject property to the point where there is no market value as the highest and best use is as it is a parking lot for the condominium. In the opinion of the complainant all of the value in the subject parcel is included in the condominium parcel. The caveat has an automatic renewal and is unlikely to be removed. The encumbrance is considered permanent. The Complainant pointed out that the City Assessment Department recognizes parcels in similarly encumbered situations by assigning a nominal rate of \$750.00 to the entire parcel. The request is that 9765 sq. ft. be assessed at the nominal rate of \$750.00.

The Respondent indicated that the City has on occasion applied a nominal rate of \$750.00 on

certain parcels. Examples of this were presented to the Board to illustrate how the application of the rate is determined. To further illustrate when the nominal rate is applied Respondent presented information contained in CARB Decision #2242/2010 which is a decision on a previous complaint on the same property requesting the same consideration. In determining the applicability of the rate the Respondent referred to decision #2242/2010 which discussed the conditions that would apply to the property before the nominal rate was given. In summary the conditions are:

1. The improvement to which the vacant parcel is linked must be deficient in parking, and the parking provided on the vacant land must be 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
3. The value of the vacant parcel must be captured in the value of the improved property to which it is linked.

The Respondent was of the opinion that these criteria have not been met and the nominal rate was not applicable.

The Board places weight on the Respondent's position and generally agrees with the criteria the Respondent discussed for the application of the nominal rate. The criteria are a reasonable test to be used in this decision.

With respect to the first criteria no evidence as to the parking requirements for the condominium was presented to Board. It is not clear that the parking caveat is intended to alleviate a deficiency or possibly the parking is an additional feature of purchasing a unit in the condominium.

Reviewing the evidence the Board finds that the caveat is unlikely to be removed and forms what is understood to be a contractual arrangement satisfying criteria two. The Board notes that the sale of the subject property is not restricted in any respect because of the caveat.

The Board finds the evidence does not indicate that the value of the parcel would be entirely captured in the sale of the condominium. The terms of the caveat provide two aspects of the arrangement that indicate the value of the subject parcel would not be captured by the sale of the improved nearby parcel benefitting from the caveat. Firstly there is a process for establishing an annual fee for the parking to be paid by the condominium. The fee is to be annually agreed to and *"to be determined by market rental, having regard to rents and fees charged by other similar apartment blocks for similar parking."* This indicates even though there is some restriction, an income is generated separate from any sales in the condominium. Secondly the caveat is for 28 parking stalls. No evidence was provided on the total number of stalls that occupy the 9765 /sq. ft. of lots 8 to 10. The Board noted other properties also have caveats on the subject title for parking indicating that the entire area is not restricted to use by one property. The value of the unrestricted area would certainly not be captured in the sale of the condominium property.

The Evidence shows two titles exist in the one roll number and each could be sold separately without regard to the caveat.

The Board finds that the evidence does not support the variance of the assessment.

**Board's Decision:**

The Board confirms the assessment at \$3,160,000.00

DATED AT THE CITY OF CALGARY THIS 23<sup>rd</sup> DAY OF November 2011.



**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.

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other property	parking	sales	Land value