



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 Corp. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

Y. Nesry, BOARD MEMBER

J. Kerrison, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER: 067233429

LOCATION ADDRESS: 1248 10 Avenue SW

FILE NUMBER: 70610

ASSESSMENT: \$3,120,000

This complaint was heard on the 12th of July, 2012 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:

- *W. Van Bruggen*

Appeared on behalf of the Respondent:

- *D. Zhao*

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

At the outset of the hearing, the Complainant informed the Board that the argument from file #71060 would be "carried forward" to the present hearing, and that the land argument from file #70592 would also be carried forward.

Property Description:

The subject property at 1248 10th Avenue SW is a vacant lot situated in the BL4 submarket sector of Calgary's Beltline. The area of the subject property is 16,718 square feet ("sq. ft."). The subject property abuts the railroad right-of-way to the north.

The subject property has changed hands over the years. It was previously owned by Canadian Pacific Limited from 1900 to 1972. Marathon Realty owned the subject property from 1972 to 1985, and the Bank of Montreal owned it from 1985 to 2008. Concrete Equities bought the subject property in 2008, then sold it to the current owner.

Issues:

The Board finds the issues to be as follows:

1. Has the Respondent failed to recognize negative influences that affect the subject property?
2. Is the subject property affected by environmental contamination?
3. Should the subject property be assessed using the Complainant's land approach?

Complainant's Requested Value: Option 1: \$2,570,000
Option 2: \$2,840,000

Summary of the Complainant's Submission

[1] The amount of the assessment is not reflective of the correct application of the assessment range of key factors and variables, such as location, parcel size, improvement size, land use,

and influences. Neither is the assessed amount reflective of the correct application of the comparison approach or the income approach. Proper adjustments of property rights, land use, market change, economic and physical characteristics are not correctly reflected in the assessment.

[2] The assessed value is neither fair nor equitable relative to similar properties in the jurisdiction. Sale comparables on the Respondent's website are not a comprehensive list of properties that sold between July 1 2010 and the valuation date of July 1, 2012. The subject property is currently used for parking required by the adjacent site at 1240 10th Avenue SW. The parking is secured by way of a restrictive covenant (C-1, 6th page).

[3] In particular, the Respondent has failed to recognize negative influences associated with the subject property. The subject property is contaminated with various substances, a result of previous land uses such as a chemical warehouse, chemical and petrochemical operations, smelting, railway operations, dry cleaning facilities, and diesel and fertilizer storage (C-1, page 153).

[4] It appears that remediation efforts need to be ongoing. The Respondent generally adjusts for contamination by applying -25% to the assessed value, but not in the case of the subject property. Negative influences, in this case contamination, a restrictive covenant, and proximity to train tracks, should support a negative adjustment of no less than 40% including 15% for contamination.

[5] The Respondent no longer applies the negative influence adjustment (-15%) for proximity to the railroad track in the Beltline, but continues to do so in the downtown core. The result of this inequity is an assessment that is neither fair nor equitable.

[6] The Complainant prepared a land rate study, and the result is a derived land rate of \$200 per sq. ft. Because all but one of the lots which sold are located on a corner, it was necessary to apply a minus 5% adjustment to arrive as the correct value. Because the property at 614 10th Avenue SW abuts a railroad track, a plus 15% adjustment was applied.

[7] There are two options for the valuation of the subject property. Option 1, based on contaminated land value, is \$2,570,000. Option 2, based on land value only, is \$2,840,000.

Summary of the Respondent's Submission:

[8] The issues before the Board are firstly, the assessed base rate is too high, and secondly, the subject property should receive contamination considerations. As it happens, the Complainant's analysis relies on a court ordered sale, hence is not appropriate. The contamination report does not suggest a requirement of remediation.

[9] The Complainant does not show how contamination affects market value. The Respondent will show by way of a historical sale that the subject property's market value is not affected by the contamination report. If contamination from 2006 has not been resolved by 2013, it speaks to how urgent the problem is.

[10] The Complainant is suggesting the possibility of two different market valuations for the subject property. First, a land valuation, and second, the recognition of a contamination

problem. The Respondent will provide the land sales and other information relied on to arrive at the assessed \$220 per sq. ft. used to arrive at market value for vacant parcels as well as improved properties where the use of typical income parameters does not reach land value.

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

[11] The subject property is vacant, thus there is little chance of an income approach to value. The only approach available in this matter is the sales approach. The Complainant relies on six sales of property in the Beltline, 901 10th Avenue SW, 1031 15th Avenue SW, 1002 14th Street SW, 633 15th Avenue SW, 633 10th Avenue SW, and 614 10th Avenue SW. From these sales, the Complainant has derived a median value of \$205.34, and an average value of \$196.41, in support of a land value of \$200 per sq. ft. (C-1, page 16).

[12] Of the properties mentioned above, the Respondent relies on four of them in its Beltline land sales analysis, 901 10th Avenue SW, 1031 15th Avenue SW, 633 10th Avenue SW, and 614 10th Avenue SW. From the four sales, the Respondent has derived a median value of \$220.45, an average value of \$209.62, and a weighted average of \$248.47 to support the assessed rate of \$220 per sq. ft. (R-1, page 19).

[13] Three of the properties in the Complainant's sales analysis have had "improvement adjustments" subtracted from their sale prices. The improvement adjustments are said to represent the depreciated values of the improvements on the properties. Subtracting the improvement adjustments has been done to arrive at values of properties as vacant land, thus rendering them comparable to the subject property. The three properties are 901 10th Avenue SW, 633 15th Avenue SW, and 614 10th Avenue SW.

[14] The Board notes that a sales related document at page 60 of R-1 describes one of the properties, 614 10th Avenue SW, as "vacant land", which raises doubt as to the reliability of the Complainant's analysis. Nevertheless, the Board has another problem with the improvement adjustments. The Board accepts that the values of the improvements as new may have been prepared according to Marshall and Swift, but by what method the values were depreciated is not known. In its decision, the Board will rely on the Complainant's land sales analysis.

[15] The Board finds that the Respondent failed to recognize a negative influence that affects the property. The negative influence the Respondent failed to recognize is environmental contamination.

[16] Although none of the property addresses in the 2007 Groundwater Remediation Program (C-2, page 301) match that of the subject property, the Board was able to determine by close examination of the air photo and assessment map on page 11 of C-1 in conjunction with the plot plan at page 301 of C-2, that one of the addresses, 1238 10th Avenue SW, is in all likelihood the subject property.

[17] According to the Executive Summary of the Phase II Environmental Site Assessment, the primary contaminant is tetrachloroethylene. Tetrachloroethylene has been detected at a concentration “. . . in excess of the applicable site criteria in groundwater samples collected from boreholes MW2 and MW3.” Other hydrocarbons, i.e., benzene, toluene, ethylbenzene, xylenes, and metals are present, but below applicable regulatory criteria (C-1, page 152).

[18] At page 9 of the 2007 Groundwater Remediation Program (C-2, page 300), the Board found these words:

“It is important to note that no environmental assessment (ESA) can totally eliminate uncertainty regarding recognizable environmental conditions associated with a property (as per American Society for Testing and Materials Standard of Practices). Performance of this ESA is intended to reduce uncertainty, but not eliminate it, considering the budget and the time dedicated to this assessment.”

[19] And further, at pages 6 and 9 of the Additional Environmental Site Assessment of June 26, 2012 (C-3, pages 609 and 612):

“No additional remediation has taken place since the 2008 summer remediation program. The property was sold to Concrete Equity in 2008, which went bankrupted.”

“Kaizen Labs is the CALA certified laboratories chosen to perform the soil and groundwater analyses. The laboratory program is intended to assess the volatile organic compounds (VOCs) which are targeted to evaluate potential impact by the dry cleaner and industrial sites situated at the Parking lot to the West.”

“Viscosity, density and solubility of these compounds vary but most Light non-aqueous petroleum liquids (LNAPLS) would move with great speed, if leakage occurs, into final position before going into long term dispersion and dilution by groundwater.”

[20] Although the Respondent appears to be of the view that there must be a requirement for continuous remediation before environment contamination can be recognized in an assessment, the Board disagrees. All that is required is environmental contamination, and there is clearly such contamination on the subject property. The Board is of the view that the environmental contamination may well blight the subject property, hence preventing development of the subject property or making development much more expensive. The Board relies on the Respondent's own method to indicate how contamination affects market value, and finds that the contamination warrants a negative influence adjustment of 15%.

[21] As for Complainant's sales approach, deducting the improvement adjustments is for the purpose of arriving at land values for each of the three properties. The problem the Board has with the improvement adjustments is that there has been no information, and there is no information now, with respect to the arithmetic method applied to achieve the depreciated values. The Board cannot test the verity of the improvement adjustments without evidence.

[22] The Board notes that the assessment of the subject property (C-1, page 14) lacks an influence adjustment. The Board finds that it is not equitable for the Respondent to apply an influence adjustment for proximity to railroad tracks in the downtown core, but not in the Beltline. It is clear from the air photograph at page 11 of C-1, that the northern boundary of the subject property abuts the railroad right-of-way. In all fairness, the subject property should have an influence adjustment of -15%.

The Board's Decision:

[23] The Board adjusts the assessment based on environmental concerns by a negative 15% influence adjustment, and further adjusts the assessment by another negative 15% for proximity to the railroad right-of-way. The assessment is reduced to 2,200,000, as rounded. It is so ordered.

DATED AT THE CITY OF CALGARY THIS 29th DAY OF November 2013.



Presiding Officer

Exhibits

- C-1, Complainant's Evidence Submission
- C-2, Complainant's Disclosure Package
- C-3, Complainant's Second Disclosure Package
- C-4, Complainant's Rebuttal
- R-1, Respondent's Assessment Brief

For Administrative Purposes

<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Vacant Land		Sales Approach	Land Value

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.*