



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. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

<i>K. Thompson,</i>	<i>PRESIDING OFFICER</i>
<i>P. McKenna,</i>	<i>BOARD MEMBER</i>
<i>P. Loh,</i>	<i>BOARD MEMBER</i>

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 2014 Assessment Roll as follows:

ROLL NUMBER: 068136308

LOCATION ADDRESS: 204 13 Av SW

FILE NUMBER: 75239

ASSESSMENT: \$505,000

This complaint was heard on 10 day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- W. Van Bruggen *Agent, MNP LLP*

Appeared on behalf of the Respondent:

- C. Chichak *Assessor, City of Calgary*
- C. Fox *Assessor, City of Calgary*

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

[1] No procedural or jurisdictional issues were brought forward. The Complainant and Respondent requested that all evidence, questions, summation and argument from file 74365 be carried over to this file. The Board had no issue with this request and continued with the merits of the complaint.

Property Description:

[2] The subject property is located at 204 13 Av SW the Beltline area (BL2 sub market area) and consists of 3,604 square feet (sf) of surface parking with no improvements. The subject property has a Residual Parcel small adjustment that impacts its assessed value (-25%).

[3] This property is assessed using the sales comparison method of valuation and the assessment is based on a land only value. The assessed land rate for BL4 is \$165.00 per square foot (psf).

Issues:

[4] The value of the subject property should be that of an associated parking lot at \$1000. If valued as land, the value would better reflect market at a rate of \$142.00 psf.

Complainant's Requested Value: \$1,000 or \$435,000.

Board's Decision: The assessment is confirmed at \$505,000.

Legislative Authority, Requirements and Considerations:

[5] Section 460.1(2) of the Act provides that, subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in

Section 460(5) that is shown on an assessment notice for property, other than property described in subsection (1)(a).

Position of the Parties

Complainant's Position:

[6] The Complainant contends that this parking lot is required for the adjacent property, Radio Block (1215 1 St SW), to be able to meet the City of Calgary's parking requirements for retail and restaurants for CC-COR zoned properties. The bylaw requires one stall for every 1,076.38 sf of space in the building which equates to nine parking spaces. The subject parcel is owned by Radio Block.

[7] The Complainant stated that the Boards and the City, in past years, have required a parcel meet three criteria (a three prong test) to be valued as associated parking (and be assessed at a nominal \$1,000):

- 1) The improved parcel to which the vacant parcel is linked must be deficient in parking, and the parking provided on the vacant parcel 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.

[8] The Complainant included the Bylaw 1P2007 parking requirements and ownership and assessment of the adjacent property, Radio Block.

[9] A Queens Bench decision 908118 Alberta Ltd. v Calgary (City), 2013 ABQB 100 was put into evidence where Justice Kenny concluded that market value of a property may be reduced to nominal value in some circumstances. A number CARB decisions were also presented that show this type of reduction has been granted in the past [C1, pg 167-219].

[10] The Complainant argued that the subject parcel was the sole source of parking for the adjacent building, the Radio Block, and the parking for that building was required by bylaw. The Radio Block would not sell the subject parcel for that reason and because the parcels size and location made it undevelopable.

[11] Failing this nominal value argument, the Complainant asked that the subject parcel's land value be reduced to \$142.00 psf based on the Market evidence and bylaw restrictions which would hinder development of the subject parcel.

[12] The Complainant presented its analysis of land only value for the subject properties, which included two BL2 land sales in the Beltline along with a map of the sale locations and sale documents [C1, pg 24-29]:

Address	LUD	Size	Sale Date	Sale Price	Influences	Influence-adjusted price	Adjusted price per square foot
218 10 Av SW	CC-X	46,370	08/02/2011	\$7,850,000	CL, track	\$8,635,000	\$186.22
120 13 Av SW	CC-X	52,411	11/01/2011	\$5,400,000	CL	\$5,130,000	\$97.88
					Average		\$142.05

[13] The Complainant then added the buildable area for the sale properties based on the Floor Area Ratio allowed under their Land Use Designation [file 74365, C1, pg 59]:

Address	LUD	Parcel size	FAR	Buildable area	Influences	Influence adjusted price	Adjusted price per Buildable square foot
218 10 Av SW	CC-X	46,370	8	370,960	CL, track	\$8,635,000	\$23.28
120 13 Av SW	CC-X	52,411	9	471,699	CL	\$5,130,000	\$10.88
						Average	\$17.08

[14] The Complainant contends that these two sales are the only reliable sales with which to develop an appropriate land rate for the subject properties market value and that both these sale properties have a much higher Floor Area Ratio (FAR) than the subjects. This makes these two sales more valuable than the subject properties. Two other sales, used by the City, were discarded by the Complainant for the following reasons:

- 1) 214 11 Av SE, the sale included more than the land value, namely development plans that were in place for an eleven storey office building. The Complainant stated that the purchaser bought the property with 50% of the leases and building permits in place along with a design team; therefore this is not a land only sale [file 74365, C1, pg 85-108]. This sale breaks down to \$172.58 psf on CC-X zoned land
- 2) 103 17 Av SE, this property had a development permit days after the close of the sale, which the Complainant contends showed the ground work was laid out prior to the purchase of the property. The Complainant went further to state that this property was residential and the subject properties are commercial. Documents, corporate searches and 2013 CARB decision were included [file 74365, C1, pg 109 – 144].

[15] The Complainant argued there is an added value to properties with a higher FAR. There is also an added value to properties in the bonus area of the downtown core (an area that permits better development potential). If the sale properties have either or both of these attributes it would make them far more valuable than the subject properties.

[16] An equity comparable was produced, 218 10 Av SW sold 08/02/2011 for \$7,650,000 indicating a rate of \$169.32 psf. Further equity comparables presented were at 120, 126, 140 and 114 13 Av SE [file 74365, C1, pg 62-84].

[17] The Complainant included the City's analysis [file 74365, C1, pg 149-151], and relevant sections of the Land Use Bylaw, sections of the Act, definitions and some portions of Queens Bench decisions.

Respondent's Position:

[18] The Respondent provided details and calculations on the assessment of the subject property.

[19] The Respondent stated the City is required to put the market value on every property. The market value of this property is not \$1,000; as is the request of the Complainant. The

previous year's CARB decisions were based on different evidence; for example in 2013 a number of parcels valued at \$1,000 were used as equity comparables. In 2014 there are no associated parking parcels valued at \$1,000. Further, the subject parcel wouldn't meet the test, even if there were like type properties. Based on the three prong test:

- 1) *The improved parcel to which the vacant parcel is linked must be deficient in parking, and the parking provided on the vacant parcel necessary to satisfy the deficiency.* The Respondent stated that it was a fact that Radio Block did not have parking and did under the bylaw require parking. However, the Respondent went on to state that the parking requirements for Radio Block did not require the parking to be adjacent to the property; the required parking could be found anywhere. Further Radio Block rents out the parking space so it is not being used for its customers. The City also provided several alternative options that allow businesses to meet parking requirements.
- 2) *A contractual arrangement must exist whereby the property cannot be readily sold for redevelopment separate from the improved parcel.* The Respondent stated that there is no contractual arrangement with the Radio Block parcel and this property could be sold at any time. There is no legal relationship between the subject and 1215 1 St SW (Radio Block). The Respondent also noted that the Queen's Bench decision 908118 Alberta Ltd. v Calgary (City), 2013 ABQB 100 is a Leave to Appeal decision (as such it was the leave that was granted; the merits of the case were not heard nor decided on by the Court). The Respondent went further to say that in another Queens Bench decision, Alberta Ltd v Calgary (City), 2012 ABQB 439, paragraph 32 [R1, pg 44] states:

That, being said, it could not be clearer that here the CARB failed to comply with the legal requirement that is assess each of the parking lots in question on a market value basis. The CARB made a finding not of market value but rather of "nominal" value. It was not entitled to do that.

- 3) *The value of the vacant parcel must be captured in the value of the improved parcel to which it is linked.* The Respondent provided an Assessment Request for Information (ARFI) to show that the subject property is generating income, nine stalls at \$ 175 each. The Respondent also produced the adjacent parcel ARFI, the Radio Block, to show that the value of the parking was not captured in its income [R1, pg 53-57]. The Respondent gave an example of a sale of a building and separate titled parking lot along with documentation whereby if the parking was only assessed at \$1000 the assessment to sale ratio would only be at 0.62 [R1, pg 67-90]. Finally the Respondent included the City parking leases [R1, pg 91-92] and the 2014 assessed values of the 17 equity comparables used in the 2013 hearings (in 2013 were assessed at \$1000) [R1, pg 93-125]. Some CARB decisions were provided along with photos of the parking lots [R1, pg 127-184].

[20] With reference to the Complainants request that the value of the subject property be reduced to \$142.00 psf the Respondent argued that the Complainant left out two valid sales in the Complainant's analysis for vacant land rates in this market area. The Respondent included information to show the Complainant has in several previous cases used sales with applications for development in the Complainant's analysis [file 74365, R1, pg 36-49]. The Respondent also stated that the Complainant had missed an adjustment for a transitional zone influence for the sale at 218 10 Av SW.

[21] Regarding the sales that were excluded by the Complainant, the Respondent stated:

- 1) 214 11 Av SW, is in BL2 at an influence adjusted rate of \$173 psf. The Respondent contends that this is a valid sale to use in the land analysis. There is no indication that development plans had an effect on the purchase price of this property; the affidavit value was not adjusted by any amount. The Respondent provided a Land Titles document to show the value sworn as \$4,500,000. The Respondent also provided revised permits and drawings to show the original development specs (at the time of sale) were altered prior to development. The Respondent contends the value of the development permit was negligible [file 74365, R1, pg 262-263].
- 2) 103 17 Av SW is also a valid land sale for this analysis. The property was improved; however the property's land value best represents its market value (when the value of the land exceeds the capitalized income value). This was accompanied by a number of excerpts from Board Decision [file 74365, R1, pg 51-55]. The Respondent included the new development permits, prospectus plans for multi residential development demolition permits, pictures of the old building and land use guidelines that show that this sale property was under the same land use guidelines as the subject properties [file 74365, R1, pg 264-277]. In response to the Complainants contention that the vendor had done some pre-work on the development permits prior to the sale, the Respondent stated that nothing of that nature was stated on the RealNet sheet. The sale at 103 17 Av SE, in BL8 at an influence adjusted rate of \$158 psf, is the only sale in the market area for five of the subject properties. The affidavit value on this property is signed at \$4,200,000. There is no indication on the transfer that this sale included any other value than that of the land.

[22] The Respondent provided the City's 2014 Beltline Land Rate Study [file 74365, R1, pg 57-62]. All supporting documentation was also included [file 74365, R1, pg 79-140]. The Respondent included a map to show where the sales were located in the Beltline in relation to the subject properties [file 74365, R1, pg 62]. Centre City Districts Land Use Bylaws, bonus rules, FAR explanations, Municipal Development plans, Beltline area redevelopment plan, re-designation rules and application forms were also included [file 74365, R1, 142-241].

[23] The Respondent pointed out that the Complainant was mixing the C-COR and CC-COR land uses. C-COR land (such as the sale at 103 17 Av SW) is not eligible for any bonuses, [file 74365, R1, pg 198]. Bonuses are only given to CC-COR zoned properties on the south side of 17 Av SW; there are no bonuses allowed for the sale property.

[24] With regard to the Complainant's contention that higher FARs equate to higher value the Respondent produced a chart to show that there is no relationship to FAR and sale price [file 74365, R1, pg 61].

[25] Board decisions were also included for the Board's consideration; in particular the Respondent handed out MGB 101/09, CARB 71868P-2013 and 71858P-2013.

[26] The Respondent also included several *post facto* sales to support the assessed value rate [file 74365, R1, pg 64].

Complainant's Rebuttal:

[27] The Complainant included a number of Board decisions for the Boards consideration.

Board's Reasons for Decision:

[28] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

[29] The Board finds that it would be inequitable and unfair to assess the subject property at a nominal value. No similar properties from the 2014 roll were placed into evidence to show the subject property was inequitably assessed.

[30] The Board acknowledges that the value standard for assessing property is market value and agrees with the Respondent that there is more than nominal value in this property. This is evidenced by the subject's rent rolls; it is currently being rented out to the public earning income.

[31] The Board did not find that the subject's market value was being captured in the adjacent property's assessed value and, while linked in ownership to the property adjacent, the Board found no restrictions as to how and when it could be sold.

[32] In addition, the Board was not convinced that the subject property was the sole solution to the Radio Block's parking requirement, other options were presented by the Respondent that would satisfy the bylaw requirements.

[33] The Board finds that the subject property's value should be at market value and that value is in excess of a nominal \$1000.

[34] With regard to the appropriate land rate for the subject property, the Board considered the evidence presented by the Complainant and the Respondent.

[35] Both the Complainant and the Respondent used the sales comparison approach to value these properties; however, only two of the same sales were used by both parties. One of those sales was analysed using different methodologies to arrive at different results. The Board reviewed the two sales the Complainant did not include in its analysis and found the sales to be a reasonable representation of land value in the Beltline. No evidence was provided to prove to the Board that the sale price of those two properties reflected other than the value of the land. The sworn affidavit values were for the value of the property only. *T. Eaton Company Ltd. V Alberta (Assessment Appeal Board)*, 1995 ABCA 361 paragraph 29 states:

Subjective elements of a value associated with the concept of special value to a particular person and speculative factors such as possible changes in permitted use are to be excluded in arriving at the value of land for assessment purposes: RE Bramalea Ltd and Assessor for Area 9 (Vancouver); T. Eaton Co., Intervenor (1990), 76 D.L.R. (4th) 53 (B.C.C.A.).

[36] This exclusion of subjective elements would also speak to the potential value of the different FARs as argued by the Complainant.

[37] The Board was presented with considerable details with regards to land use guidelines, bonus areas and the potential impact on value. The Board found that the Complainant had relied upon the incorrect Land Use guidelines in a number of instances and failed to provide any evidence to substantiate a value adjustment.

[38] The equity comparables presented by the Complainant were all in sub market area BL2


and had the same land rates applied to them as the subject properties.

[39] The Board notes that while it is not bound by previous Board Orders, it did consider those that were submitted (for general principles); this decision is based on the evidence before this Board.

[40] The results from the Respondent's analysis satisfied the Board that market value and equity were attained. The Board finds insufficient evidence to alter the land rate applied to these properties.

[41] In conclusion the Board finds that the subject property's assessed value should be at market value and that value would be in excess of the \$1000 nominal value requested by the Complainant. In addition the Board finds the land rate analysis provided by the Respondent to be reasonable and therefore the assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF August 2014.



K. Thompson

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*

Property Type	Property Sub-Type	Issue	Sub issue
other	land	Rate psf	Nominal value