# 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-26.1, Section 460(4).

**between:**

***Colliers International Realty Advisors, COMPLAINANT***

**and**

***The City of Calgary, RESPONDENT***

**before:**

***H. Kim, PRESIDING OFFICER***
***D. Cochrane, MEMBER***
***J. Kerriston, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessments prepared by the Assessor of the City of Calgary and entered in the 2010 Assessment Roll as follows:

| | | |
|---|---|---|
| **ROLL NUMBERS:** | **067112300** | **067111906** |
| **LOCATION ADDRESSES:** | **1329 11 Ave SW** | **1102 13 St SW** |
| **HEARING NUMBERS:** | **60412** | **60413** |
| **ASSESSMENTS:** | **$3,490,000** | **$3,660,000** |

This complaint was heard on the 2nd of December, 2010 at the office of the Assessment Review Board located on the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

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

A preliminary matter was brought up by the Respondent during the hearing, relating to admissibility of some of the rebuttal evidence of the Complainant.

Respondent's position:

Portions of the rebuttal submission were not rebuttal but additional evidence submitted in the guise of rebuttal. The disputed items were details of registered documents related to the condominium property. This was not evidence submitted in rebuttal to the Respondent's disclosure but additional evidence that should have been submitted with the original disclosure. Therefore in accordance with the legislation it should not be heard.

Complainant's position:

The evidence under dispute is proper rebuttal evidence because the Respondent's submission disputed the necessity of the parcels for parking. The rebuttal submissions were further details to support the original position that these parcels were required for parking. This information does not constitute new evidence.

Decision and Reasons:

The applicable legislation is *Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation* (MRAC) which specifies rules for disclosure (emphasis added):

> **8(2)** If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
>
> ...
>
> (b) the respondent must, at least 14 days before the hearing date,
>
> (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing ***in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing***, and
>
> ...
>
> (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing ***in rebuttal to the disclosure made under clause (b)*** in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.
>
> **9(2)** A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

The Board finds that the original submission sets out the basis for the Complainant's position that the parcels provide parking required for another parcel. The Board finds the rebuttal evidence is intended to bolster that position in the face of the Respondent's submission disputing this premise. While the supporting details could have been provided in the original submission, and possibly should have, the initial statement that the parcel provided for the condominium property was clearly in the original disclosure. The supporting information was provided 7 days prior to the hearing in accordance with MRAC. The Board is of the opinion that

given the nature of the information, this was sufficient time to respond or rebut at the hearing and the failure to disclose the supporting details in the initial submission did not prejudice the Respondent. Accordingly, the rebuttal evidence was accepted in its entirety.

**Property Description:**

The subject properties are two vacant parcels adjacent to each other, used as parking lots located in the Beltline area. Together, they comprise Lots 1 to 10, Block 78, Plan A1.

Property 1 is 16,248 SF at 1329 11 Ave SW (Lots 6 and 7) and 1331 11 Ave SW (Lots 8-10), assessed on one roll number because parking spaces straddle the property line. Property 2 is 16,246 SF on the corner of 11 Ave and 13 St SW at 1102 13 ST SW (Lots 1-5). The parcels are assessed as vacant land at market value of $215/SF with Property 2 having an additional 5% corner influence applied. Sun Ngai Development Company Limited owns the two subject parcels as well as a 35,353 SF parcel located at 1400 12 Ave SW across 13 St SW to the west (Block 79, Plan 2876 JK), which is improved with a 49,158 SF retail building.

**Issues:**

The Complainant identified a number on the Complaint form, however at the hearing the only issue argued was whether the parcels were required to provided parking for the property at 1400 12 Ave SW and for a condominium property at 1120 12 Ave SW. There is no dispute that the nominal parking rate for vacant parcels used to fulfil a parking requirement on another parcel is $750. The matter under dispute is whether this rate should apply to the subject parcels to satisfy equity with comparable parcels.

The market value of vacant land issue listed on the Complaint form was included in the documentary evidence, but the Complainant abandoned this issue at the hearing due to the previous orders confirming the Beltline land rate.

**Complainant's Requested Value:**

Roll number 067112300: $500 revised to $750 at the hearing
Roll number 067111906: $500 revised to $750 at the hearing

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

Complainant's position:

The subject parcels had initially been assessed for 2010 at the nominal parking rate of $750 per parcel and an amended assessment was sent in June raising the assessments to the market vacant land rate. The parcels have historically been assessed at the nominal parking rate upon appeal. In the 2008 assessment year the MGB reduced the subject parcels from market value to the nominal parking rate of $550 per parcel. In 2009 the ARB reduced the assessments from market value to the nominal parking rate of $1,000 per parcel. The reduction was appealed by the City and the MGB confirmed the 2009 assessments.

Parcels that are required for parking are assessed at a nominal rate by the Respondent. Four commercial parcels were presented that have the nominal rate applied:

1. O'Connor's Menswear is a 10,652 SF retail store located in the Beltline at 1415 1 St SW assessed at $4,740,000. The company that owns the property also owns three adjacent vacant lots which are used for parking: 1411 and 1401 1 St SW, and 207 14 Ave SW. All three lots are assessed at $750 per parcel, the nominal parking rate.
2. Hillier Square is a storefront retail development located in the Beltline at 1002 and 1012 17 Ave SW, assessed at $3,810,000 and $1,850,000 respectively. Hillier Square Development Corporation also owns two adjacent vacant lots at 1014 and 1018 17 Ave SW. The two lots are used for parking and are assessed at $750 per parcel, the nominal parking rate.
3. Hakim Optical is located in Manchester at 5828 Macleod Trail SW, a 7,450 SF retail building assessed at $1,270,000 Two vacant lots located across the lane, at 5823 and 5827 3 St SW are owned by the same company as the retail building and used for parking. The two parcels are each assessed at the nominal parking rate of $750 per parcel.
4. Westhills Theatre, located at 165 Stewart Green SW in the Westhills Towne Centre is assessed at $13,300,000. The adjacent lot at 251 Stewart Green SW is a 2.11 ac vacant parcel used for parking and is assessed at $750 per parcel.

The subject parcels are required for parking for the retail building located at 1400 12 Ave SW, across 13 St SW from the subject parcels. The Complainant presented the three certificates of title which all had Document #011079111 Caveat Re: Lease registered by Super Drug Mart 14th St. Ltd. which stated:

> ... the Landlord ... covenanted and agreed with the Tenant to provide at all times during the term [of the lease] and any renewals thereof seventy-two (72) parking spaces as communal parking for the Shopping Centre, such spaces to be provided on the 14th Street lot or the adjacent 13th Street lot comprising a portion of the Lands.

Super Drug Mart is no longer a tenant and the large space in the retail building is vacant. Currently, the parcels are operated by Impark for public parking with nominal revenue (about $2,000 per month) to the landowner. The lease for the occupied dental space was presented, indicating included tenant parking, and describing the "Shopping Centre Lands" as the retail site (Block 79, Plan 2876 JK) and a portion of the subject lands (Lots 1 to 7, Plan A1). The Complainant also presented a short-term license agreement for the large retail space that included the subject parcels for free parking throughout the term. Three offers to lease in 2009 and 2010 were presented, all of which showed the parking on the subject parcels included in the leased area. Advertising materials offering the space for lease also indicate approximately 100 stalls available, when the retail building site has only 37. Clearly, the operation of the retail building requires the parking on the subject parcels.

The Complainant presented a calculation of parking requirements under the current Land Use Bylaw 1P2007 to show that based on net lease floor areas the amount of parking required was 39 stalls. This area is less than the "gross usable floor area" so the actual parking required is more. The retail site only has 37 stalls so the subject parcels are required to fulfil the parking requirement of the retail building.

1329 11 Ave SW (Lots 8-10) also has Document #881136599 Caveat Re: Lease registered by Canada Mortgage and Housing Corporation (CHMC). It provides notice of an interest claimed under and by virtue of the attached lease between the owner of Lots 8-10 ("the Parking Lot lands") and CMHC, the owner of Condominium Plan 8110117 Units 1 to 40 inclusive ("the Condominium Lands"). The lease states that the lots:

> ... are subject to an agreement between Super S Properties Ltd. and the City of Calgary under which the said

> Parking Lot Lands may not be used for any other purpose other than as a parking lot for automobiles owned by tenants of an apartment block located on the Condominium Lands.

The lease is for a period commencing June 16, 1987 and expiring June 30, 1988 and

> ... shall automatically renew for consecutive yearly periods (July 1-June 30) on the same terms and conditions save and except as to the amount of rental which will be agreed to between the parties. Failing agreement, the amount of rental shall be determined by arbitration in accordance with the Arbitration Act of Alberta, and the decision of the arbitrator or arbitrators shall be final and binding upon the parties.

The documents submitted support the Complainant's position that the parcels are required for parking, Lots 1 to 7 being required for the retail store and Lots 8 to 10 for the Condominium. The Complainant noted that the parking for the Hakim Optical site (comparable #3) was across a lane from the retail building. This is comparable to the subject configuration in which the parking parcels are across a street.

The retail building is assessed on the income approach. The leases in place and the offers to lease clearly show that the parking on the building site is insufficient. The current parking requirements under Bylaw 1P2007 show the parking is deficient. The assessment of the main building includes the value of the parking, and equity with the comparable parcels dictates that the two subject parcels should be assessed at the nominal parking value of $750.

Respondent's position:

A vacant parcel used for parking is assessed at the nominal parking rate if it fulfils the parking requirement for an improved parcel that is deficient, and the value of the parking parcel is captured in the assessment of the improved parcel for which it provides parking. The Respondent submitted an analysis of parking required for the most recent development permit application for Comparable #4, which noted 1846 stalls required and 1775 provided, i.e. 71 stalls deficient for the Westhills shopping centre site. The vacant lot provides the deficient parking stalls, and since the shopping centre is assessed on the income approach, the value of the lot is captured in the assessment of the shopping centre. While details were not provided, the Complainant's other comparables fall under the same situation.

The retail building at 1400 12 Ave SW is not deficient in parking. The Respondent presented the most recent Development Permit application, in 1999 for a change of use to a Drinking Establishment, which does not require any parking the downtown zone. The Bylaw Check indicated 17 stalls required and 37 stalls provided for 20 stalls surplus. It notes that the parking located on the east side of site (Lots 6-10) was not included in calculating the number of stalls provided. The Land Use Bylaw in place at the time, Bylaw 2P80, had a lesser parking requirement than the current bylaw, however the Respondent stated that when a valid development permit is in place and the bylaw is changed, the new requirements do not apply to the existing development and it is permitted to remain as originally approved. Even if the new bylaw 1P2007 did apply, Section 116 states:

> **116** All ***motor vehicle parking stalls***, ***visitor parking stalls***, ***bicycle parking stalls*** and ***loading stalls*** required by this Bylaw for a ***development*** must be located on the same ***parcel*** as the ***development***.

This is different from the previous Bylaw 2P80 which had provision for the required parking to be provided on a different site within a certain distance. Therefore, if the number of stalls on the retail building site were determined to be insufficient, the stalls on the subject lots could not be used to fulfil the parking requirement.

With respect to the Lots 8-10, the Condominium units are assessed individually on the sales comparable approach. The value of the subject lot would not be captured in their assessments. The evidence submitted does not support a nominal rate: the rent paid provides revenue, and the caveat dates from 1987 and was signed by different parties from the current owners. There was no evidence that it could not be removed from the title.

In previous years the Respondent had not provided any evidence at the hearing to support the assessment, and the decisions of the ARB and MGB were based on the Complainant's evidence. In the subject appeal, there is ample evidence that the vacant lots are not required to fulfil a parking deficiency. Since 2005 they have been unjustifiably assessed at virtually nothing. The Respondent presented a map of land rates in the Beltline and a list of 98 properties in the BL4 zone of the Beltline that all had base land rates of $215/SF. It would be inequitable with all of these other properties to allow this to continue.

Decision and Reasons:

The *Municipal Government Act* sets out the requirements for property assessment:

> **293(1)** In preparing an assessment, the assessor must, in a fair and equitable manner,
> (a) apply the valuation and other standards set out in the regulations, ...

The standard for vacant land is market value. Board finds that applying the nominal parking rate creates an inequity, and should only be applied to a vacant parcel when its application is clearly justified. In order to maintain equity in a situation where an assessment is far below market value, the Board finds three conditions must exist:

1. The improved parcel 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, and
3. The value of the vacant parcel must be captured in the value of the improved property to which it is linked, i.e the total value of vacant parcel and linked improved parcel must reflect market value.

With respect to Lots 8 to 10, the Complainant submitted that the parcel provides parking for a neighbouring condominium building. The title lists a 1978 Caveat re: Restrictive Covenant by the City of Calgary, and a 1988 Caveat re: Lease by CMHC. Evidence was submitted indicating that this parcel was encumbered by restrictions on use and a lease in perpetuity. However, there was no evidence provided as to whether the condominium building was deficient, nor evidence to suggest that the value of the subject land is captured in the assessment of the condominium units. The evidence showed that the rent paid for the parking in 1987 was $6,720/year. No evidence was entered as to current rent; however the Board was satisfied that the parcel did not meet the conditions to receive the nominal parking rate.

With respect to Lots 1 to 7, the Board accepts the Complainant's submission that Impark operates a public parking lot on the parcel because the retail building is vacant. The parties disagreed whether the current or previous Land Use Bylaw applies to the space in the retail building and whether the parking provided on the retail site is deficient.

The *Municipal Government Act* contains provisions for non-conforming buildings and uses:

**643(1)** If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

**(2)** A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

The Board had evidence that the main retail space was vacant but could not determine whether it had been vacant for more than 6 months prior to the valuation date. It is possible that a new tenant would be required to conform to the new parking requirement; however relaxations of the Bylaw, both for a two-stall deficiency and varying the provisions of Section 116 are within the discretion of a development officer pursuant to Bylaw 1P2007:

**31** The ***Development Authority*** may approve a ***development permit*** application for a ***permitted use*** where the proposed ***development*** does not comply with all of the applicable requirements and rules of this Bylaw if, in the opinion of the ***Development Authority***:
(a) the proposed ***development*** would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties;
and
(b) the proposed ***development*** conforms with a ***use*** prescribed by this Bylaw for that land or ***building***.

The Board found that the provisions of the previous and current bylaws show that the retail building site is either not deficient or very marginally deficient in parking.

Regardless of the bylaw requirement, the Complainant's evidence showed that the additional parking is a factor in the marketability of the retail space. The subject is at the very edge of the Downtown parking zone in which many uses do not have a bylaw parking requirement but in practice do require parking in order for a business to survive in that location. All of the leases and offers to lease included the parking on Lots 1 to 7 in addition to the stalls on the retail building site. It is reasonable to suggest that the amount of parking available would influence the lease rate a tenant would be willing to pay. The lease rate applied in the assessment of the retail building could assist in determining whether the value of the parking spaces on the subject lots is captured in the assessment of the retail building. However, the retail building was not under appeal and the Board could not determine from the assessment summary report provided whether the rental rates applied were typical of spaces with more than the minimum bylaw parking stalls. In the absence of typical rental rate information, the Board looked to the total assessment of the retail building. It is located in BL5 which has a land rate of $170/SF. Applying the 5% corner influence, the land value of the retail site would be $6,310,000. On balance, the Board found the $7,440,000 assessment of the retail site did not capture the value of the subject sites, and accordingly did not find that application of the nominal parking rate was supported for Lots 1 to 7.

The Complainant had argued that other similar properties received the nominal parking rate and that the subject should also receive it, in order to preserve equity. The Board considered the four equity comparables submitted by the Complainant. The Westhills property is a very large comprehensive shopping centre, and in the opinion of the Board not comparable to the subject. The remaining three properties are in reasonable proximity to the subject and were reviewed to evaluate whether they were assessed inequitably compared to the subject:

| Address | Land area | Assessment | Assmt/SF land |
|---|---|---|---|
| 1415 1 St SW | 21,022 | 4,740,000 | 225 |
| 1411 1 St SW | 4,007 | 750 | |
| 1401 1 St SW | 6,005 | 750 | |
| 207 14 Ave SW | 4,002 | 750 | |
| **TOTAL** | **35,036** | **4,742,250** | **135** |
| | | | |
| 1002 14 Av SW | 8,213 | 3,810,000 | 464 |
| 1012 14 Av SW | 4,278 | 1,850,000 | 432 |
| 1014 14 Av SW | 4,393 | 750 | |
| 1018 14 Av SW | 4,507 | 750 | |
| **TOTAL** | **21,391** | **5,661,500** | **265** |
| | | | |
| 5828 Macleod Trail SW | 6,133 | 1,270,000 | 207 |
| 5827 3 St SW | 3,192 | 750 | |
| 5823 3 St SW | 5,306 | 750 | |
| **TOTAL** | **14,631** | **1,271,500** | **87** |

The first two are in BL2 and BL6 zones of the Beltline, both of which have a vacant land rate of $215/SF. There was no evidence presented as to vacant land values in Manchester. On the surface it appears that Comparable 1 may be inequitably assessed compared to the subject parcels, however on balance and in the absence of further details the comparables submitted do not prove inequity that would support a reduction to the subject parcels.

## Board's Decision:

The complaint is denied and the assessments confirmed at:

Roll number 067112300: $3,490,000
Roll number 067111906: $3,660,000

**DATED AT THE CITY OF CALGARY THIS 10 DAY OF December 2010.**

**H. Kim**
**Presiding Officer**

**APPENDIX "A"**
DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|---|---|
| C1 | Complainant Form Hearing #60412 |
| C2 | Complainant Form Hearing #60413 |
| C3 | Complainant's submission |
| C4 | Complainant's rebuttal |
| C5 | Complainant's additional rebuttal |
| R1 | Respondent's submission |

**APPENDIX 'B"**
ORAL REPRESENTATIONS

| PERSON APPEARING | CAPACITY |
|---|---|
| David Porteous | Colliers International Realty Advisors, Complainant |
| Daniel Lidgren | Assessor, City of Calgary, Respondent |

*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.*