

**THE CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the Calgary Assessment Review Board, pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000.

between:

Wernick Omura Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER

R. Dechaine, MEMBER

P. Pask, MEMBER

A hearing was held on the 21st day of June, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant: **Bruno Boccaccio**

Appeared on behalf of the Respondent: **Barbara Duban**

In respect of the Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 071000202

LOCATION ADDRESS: 3012 17 Avenue SE

ASSESSMENT: \$20,320,000

HEARING NUMBER: 56246

Property Description:

The subject property is a neighbourhood retail shopping centre, approximately 79,000 square feet in area, constructed in 1973. The configuration of the three improvements form a U-shape around a central parking area with primary access from 17 Ave SE, and secondary access off 28 St SE.

Board's Decision in Respect of Jurisdictional Matters:

The CARB derives its authority to make decisions under Part 11 of the Act. During the course of the hearing, the Respondent raised a jurisdictional matter with respect to new issues (functional obsolescence and age) contained in exhibit "A", that were disclosed with the Complainant's rebuttal evidence.

The Board referred to Alberta Regulation 310/2009, *Matters Relating to Assessment Complaints Regulation*, s.9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

In this instance, as the issues of functional obsolescence and age were not specifically identified on the complaint form, the board disallowed these specific issues, however the Board noted that these attributes may be indirectly reflected in the vacancy and rental rate issues that were identified on the complaint form, and form the subject of the complaint.

Issues:

The issues identified on the complaint form were as follows:

- Subject property is receiving lower than market rents, the capitalization rate should be lower.
- This property has undergone capital expenditures that affect its value.
- Vacancy issues are relevant.

Complainant's Requested Value: \$14,000,000 (complaint form); \$16,530,000 in exhibit A.

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

- Subject property is receiving lower than market rents, the capitalization rate should be lower.

At the hearing, and in the Complainant's submissions, the Complainant agreed with the Respondent with respect to the 8% capitalization rate relied upon in the assessment valuation. As a result, the Board makes no finding in this regard.

With respect to the issue of rental rates, the Board finds that there was insufficient evidence of market rents to establish the Complainant's assertion. Although the Board was provided with the subject's contract rents from the rent roll summary (Exh. A Pg 13), there was no evidence provided of current "market" rents that would be typical for properties similar to the subject, as required in section 2(c) of AR 220/2004, *Matters Relating to Assessment and Taxation Regulation*. The Board further finds that some of the contract rents reflect leases that were signed in 2003 (Shoppers Drug Mart), 2004 (Mac's), and several in 2007. As a result, this evidence could not be relied upon to establish an estimate of typical market rents as of the legislated valuation date of July 01, 2009.

- This property has undergone capital expenditures that affect its value.

There was no evidence or submissions made in respect of this issue; as a result the Board makes no finding in this regard.

- Vacancy issues are relevant.

The Board finds that the subject property exhibits a multiyear vacancy rate in excess of that which reflects typical market conditions for properties deemed similar by the assessor. As a result, it is the decision of the Board to revise the vacancy rate, and the vacancy shortfall of the "non anchor" CRU's from 5% to 7% to reflect the property attributes set out above.

The Board accepts that the portion of the improvement referred to as CRU 21, is poorly located due to being obscured by the improvement occupied by the TD Canada Trust tenant, and due to the absence of storefront parking. The evidence of 3 year vacancy of CRU #4A (21C & 6) , 21A-B, 21C-3, totalling 5213 square feet make this property incomparable to typical shopping centres, and as a result it cannot be grouped with typical shopping centres for mass appraisal purposes without accounting for this physical characteristic. (Exh A Pg 9).

The Board considered the vacancy of CRU # 1A and 1B typical due to the shorter term of vacancy, and CRU 21-F, although indicated to be vacant, remained under lease through August 2008.

Decision:

The assessment is revised from \$20,320,000 to \$19,888,000.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF JULY, 2010.



Presiding Officer

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.*