

**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:

***Westfield Sunridge Spectrum LTD. (as represented by Fairfax Realty and Cobank
Property Tax Consultants), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Tom Golden, PRESIDING OFFICER
J Mathias, MEMBER
D Pollard, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	049014400
LOCATION ADDRESS:	2555-32St. NE
HEARING NUMBER:	66503
ASSESSMENT:	\$38,400,000.00

This complaint was heard on 5 day of July, 2012 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:

- *S Storey*
- *J Cohen*

Appeared on behalf of the Respondent:

- *G Good*
- *S Poon*

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

There were no procedural issues

Property Description:

[1] The subject land is a neighbourhood shopping centre occupying 15.91 Acres of land. An assessment was completed using an income approach. Occupants of the centre include commercial uses both attached as part of the mall and free standing structures on pads with retail uses such as stores, banks, and a movie theatre. The movie theatre is the focus of the complaint before the Board. Only the assessment of the theatre is under complaint as the owners accept the valuation on the remainder of the shopping centre. Of the total shopping centre area of 128,466 square feet (sq ft), 64,830 sq ft is occupied by the theatre.

Issues:

[2] Is the market rental rate of \$22.00 per sq ft an equitable rate for the theatre portion of the shopping centre?

[3] Is the vacancy rate of 1% the appropriate rate to be used in the income calculation?

Complainant's Requested Value: \$15,965,000.00

Board's Decision in Respect of Rental Rate:

[4] The rental rate of \$22.00 per sq ft is not shown to be equitable and evidence points to a more applicable rate of \$20.00 per sq ft.

[5] The Complainant reviewed the state of the movie exhibitor industry and portrayed a business that experiences major change frequently and at least every 20 years as consumer patterns change. Technology has had a particular impact and the total number of theatre sites has been reduced across the Country including Calgary. Leases are commonly signed for a

twenty year period. In adapting to the changing consumer demands the structures of theatres have also had to change making them somewhat specialized buildings.

[6] The Board was presented with the lease for the subject property showing a rent of \$19.55 per sq ft. This information was supported by leases signed across the county at various dates from 2007 to 2012 indicating rates of up to \$19.89 per sq ft. This information was presented to demonstrate that no leases in any Canadian markets are over \$20.00 per sq ft. Given the pressure on the industry the Complainant felt the industry operated in a similar fashion across the country and that the national information was applicable in this case. In addition a new lease signed 2010 in the Cross Iron Mills Mall in the MD of Rocky View but in close proximity to the north boundary of Calgary has a lease rate of \$17.00 per sq ft.

[7] The Complainant discussed two leases used by the City to calculate the \$22.00 per sq ft used in the income calculation. It was suggested the two rates were not applicable. Firstly a lease at 388 Country Hills Blvd. at \$31.40 per sq ft was an assumed lease originally signed in 1999 and at a rate unattainable in today's market. This represents a contract rate rather than a market rate and was signed at the peak of the economy. This lease was assumed by another company in a sale conducted as part of a larger consolidation of theatre companies. A second lease for \$22.60 at 165 Stewart Green referred to as "Westhills" was explained to only net \$17.92 per sq ft to the owner due to an agreement with owner for major improvements.

[8] The Respondent provided the Board with a table of equity comparables of first run major chains. This table of five theatres demonstrates lease rental rates of between \$15.89 and \$31.40 per sq ft with a mean value of \$22.91 per sq ft. This table supports the assessment based on \$22.00 per sq ft.

[9] The Board agreed with the Complainants position that the leases at 165 Stewart Green at \$22.60 sq ft and 388 Country Hills Blvd. at \$31.40 sq ft could not be taken at face value because of the circumstances discussed. The value of \$31.40 per sq ft is between \$7.40 per sq ft and \$15.51 per sq ft higher than any of the other leases used by the respondent. This is an outlying value and in the opinion of the Board does not appear typical in the market. The Complainant provided convincing evidence that the \$22.60 per sq ft lease rate at 165 Stewart Green includes the recovery of significant construction costs to update the theatre space to a modern standard and the net to the owner is nearer to \$18.00 per sq ft.

[10] If these two properties are removed from the Respondent's list of equity comparables the average lease rate of the three remaining comparables is \$20.18 per sq ft. The requested lease rate of \$20.00 per sq ft is supported by this calculation.

[11] The board had two other items of evidence provided by the respondent that were given less weight but supported the requested \$20.00 sq ft rental rate. A great deal of evidence of lease rates from other provinces and jurisdictions was presented by the Complainant that did not act to establish a rate but did support the position that \$22.00 sq ft was excessive. Secondly and more persuasive was the property at Cross Iron Mills. This was considered as it was of a similar size and felt to operate in the same market as the subject land. This newer lease at \$17.00 per sq ft was considered to support the Board's calculation using the comparables shown in the Respondent's evidence.

Board's Decision in Respect of Vacancy Rate:

[12] The vacancy rate of 1% is the appropriate rental rate to use as a factor in the income calculation.

[13] The Complainant suggested that a vacancy allowance used by the Respondent in the income calculation did not reflect the true vacancy rate. Rather a vacancy rate must take into account the vacancy across the life of the structure. Being special structures the space at the end of the lease will be difficult and expensive for an owner to have reoccupied. In the opinion of the Complainant the assessors, by placing a 1% vacancy rate into the income approach, fail to recognize the special nature of the construction of a theatre. Because of the special nature of the structure an owner can expect a considerable vacancy in the future. At the end of the lease given the nature of the industry the space will likely not continue as a theatre. This opinion was supported by a review of closed theatres in the City and Province. A rate of 7% was more indicative of the actual expected vacancy.

[14] To justify the requested vacancy of 7% the Complainant discussed the unique construction of the modern theatre including the seating styles. It was argued that at the end of the current lease for a theatre it was unlikely a new theatre owner would move into the structure for a further lease period. The nature of the industry would suggest this is unlikely. It is much more likely the use of the space would change to some other commercial use. To accomplish that the existing structure would require a significant renovation at a significant cost. This would mean a long period of vacancy at the end of a theatre lease.

[15] In order to demonstrate this period of vacancy the complainant looked at two abandoned theatres in the City of Edmonton and the process taken to reoccupy the sites. In Tab 21 of exhibit C-3 the Complainant argues using the two examples that an actual vacancy is 12.1% at the property at 3633 99th Street NW and 9.03% at 2950 Calgary Trail NW site.

[16] The Complainant presented evidence that the theatre industry is similar in Edmonton to that experienced in Calgary. Therefore evidence developed in the City Edmonton was given to support a 7% vacancy allowance in Calgary.

[17] The Board was also asked to review the vacancy allowance applied to the bank properties in the same mall. The Bank properties were given 6.25% vacancy allowance. This seemed inequitable given these structures are also special purpose and not easily occupied except for the same use. In summary the 6.25 is a starting point to consider a 7% vacancy.

[18] The Respondent explained that the definition of vacancy allowance used by the assessment department is that used by the International Association of Assessing Officers. The way the value of vacancy is developed by the Respondent is to review the Assessment Request for Information (ARFI) returns for the first run theatre category of properties. All the ARFI returns demonstrated no vacancy exist in any of these types of theatres. A 1% vacancy allowance was given as recognition that, even though the data shows no vacancy, there is some risk of a vacancy at some point.

[19] The Board agrees in part with the Complainant that a theatre is a special structure and vacancy is likely in the future. It is reasonable to consider what is likely to occur at the end of the lease. The Board considered the Complainant's main argument, which was the vacancy analysis of the redevelopment of two Edmonton properties. The conversion from theatre use to other commercial use was given to support the 7% allowance requested.

[20] There were a number of weaknesses in this analysis that concerned the Board and lead to giving the argument little weight. Most importantly in rejecting the argument was the lack of information regarding the details of the conversion of the former theatre sites to other uses. Without further information, it was not clear why so much time was taken to redevelop the City of Edmonton sites. The Board could not determine that the Edmonton sites were in anyway similar to the subject property. It was not apparent to the Board that other site features could have contributed to the delay in leasing the former theatre areas. Many business decisions may also affect the signing of a new lease and redevelopment of a property. The Complainant failed to show the sites in Edmonton were directly comparable to the subject site other than in the general terms of the theatre.

[21] The argument by the Complainant was suggested to be a vacancy argument and that 1% vacancy did not reflect the risk to the owner of the lost income. In the opinion of the Board, the presentation was a well constructed statement of the risks associated with purchasing a commercial enterprise with a theatre as a major tenant. A purchaser would consider this information and the risk of an existing lease to a first run theatre. The purchase price would reflect this uncertainty. In the income calculation risk this type of risk is in part accounted for in the cap rate applied.

[22] The Board was concerned that the Complainant's analysis developed vacancy values of 12.01% and 9.03% which were the basis of the request. The Complainant did not sufficiently explain how the analysis values were used to arrive at a 7% requested value.

[23] With respect to the other vacancy rates applied to other uses in the mall the Board was unable to determine if the other uses were similar to the subject in terms of vacancy. When compared to other commercial uses in the same mall the vacancy rates seem when viewed together seem to indicate a higher vacancy rate may be applicable however no information exists to act as a base to adjust the assessment.

[24] The Board finds that the ARFI information regarding vacancy, as discussed by the Respondent, to be the best evidence in this case.

Board's Decision:

[25] The assessment is set at \$36,640,000.00

DATED AT THE CITY OF CALGARY THIS 20th DAY OF Aug 2012.




Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Disclosure
4. 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	retail	Neighbourhood Mall	Income approach	Market rent vacancy