

**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:

***Keung Seto
(as represented by Linnell Taylor Assessment Strategies), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***J. Dawson, PRESIDING OFFICER
R. Roy, MEMBER
B. Bickford, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board [CARB] 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:	201604675
LOCATION ADDRESS:	1109 17 Avenue SW
LEGAL DESCRIPTION:	Plan 179R, Block 40, Lots 3-4
HEARING NUMBER:	65406
ASSESSMENT:	\$ 4,150,000

- [1] This complaint was heard on the 19th day of July, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 3, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 10.
- [2] Appeared on behalf of the Complainant:
- J. D. Sheridan Agent, Linnell Taylor Assessment Strategies
- [3] Appeared on behalf of the Respondent:
- Y. Wang Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

- [4] No procedural or jurisdictional matters were raised.

SECTION B: Issues of Merit

Property Description:

- [5] Constructed in 1979, the subject – 1109 17 Avenue SW, is located in an area commonly referred to as Lower Mount Royal which is stratified as submarket BL 6 of the Beltline Economic Zones. There is one four-storey, 19,529 square foot office building located on the property with 12 underground parking stalls and 10 surface parking stalls. The site has an area of 9,827 square feet.
- [6] The Respondent prepared the assessment with land and improvements using the income approach showing; 15,449 square feet of office space graded as a 'B' quality, 3,688 square feet of fast food restaurant space, 390 square feet of retail space, and 22 office space parking stalls.

Matters and Issues:

- [7] The Complainant identified one matter on the complaint form:
- Matter #3 - an assessment amount*
- [8] Following the hearing, the Board met and discerned that these are the relevant questions which needed to be answered within this decision:
1. *What is the correct office space rental rate?*
 2. *What is chronic vacancy?*
 3. *Does the subject property suffer from chronic vacancy?*

Complainant's Requested Value:

- \$2,780,000 on complaint form
- \$2,960,000 within disclosure

Board's Decision in Respect of Each Matter or Issue:***Matter #3 - an assessment amount*****Question 1 What is the correct office space rental rate?**

- [9] The Complainant contends the subject property achieves a weighted mean market rental rate of \$11.50 with a median rental rate of \$11.25. Forty-one percent (41%) of the net rentable area (NRA) or, represented another way all (100%) of the rented office space, has been signed to new leases between June 2010 and February 2011 establishing the market rent for this property. (C1 pp. 2-6)
- [10] The Respondent argued the subject property must be assessed using typical market rent rather than actual rent from the subject.
- [11] The Respondent provided a 2012 Beltline Office 'B' Class Rent Study (R1 pp. 53-54) and identified the Beltline Economic Zones (R1 p. 49) indicating the subject was in submarket BL 6. The results of the rent study indicate a median of \$13.00 per square foot, and a weighted mean of \$12.59 per square foot for the twelve months preceding the valuation date. The Respondent concluded from the study that 'B' graded office space in the entire Beltline should be assessed at \$13.00 per square foot. Included in the study are two leases from the subject (R1 p. 54).
- [12] The Complainant during rebuttal represented the rental activity provided by the Respondent for the six months preceding the valuation date suggesting the most recent rental activity is most relevant. The Complainant's analysis suggests the weighted mean as the best indicator of value. Their analysis generates a median of \$12.00 and a weighted mean of \$11.26 including all Beltline Economic Zones (C2 pp. 3-5).
- [13] The Board notes there are twelve submarkets or zones on the Beltline Economic Zones map (R1 p. 49), yet the Respondent did not do a breakdown for each submarket. The downtown core is the business hub for the city and businesses gravitate towards the core. Of the 72 leases analyzed by the Respondent 70 are in the three zones closest to the downtown core with 40 in BL 3, 25 in BL 4 and 5 in BL 2. There are no leases reported in BL 1, BL 5, BL 7 and BL 8 or the 4 other zones of TA 1, TA 2, TA 3 and FS 1. The remaining two leases are in the subject building in submarket BL 6.
- [14] It could be argued that BL 5, BL 6, BL7 and BL 8 all share common characteristics being along major travel corridors within the Beltline that are primarily retail destinations versus office destinations. The Board found that BL 6 is a distinct zone and does not exhibit the same office rental activity as BL 2, BL3 and BL 4. The evidence shows that for BL 6 the typical office rent is a mean and median of \$11.75 with a weighted mean of \$11.63.
- [15] **The Board finds the rental rate analysis provided by the Complainant in C2 more**

credible than that of the Respondent in R1. The Board's own review of the evidence results in office rental rates much closer to the Complainant's requested value versus that of the Respondent. The Board finds the 2012 Office Rental Rate for the subject property to be \$11.25.

Question 2 What is chronic vacancy?

- [16] The Complainant contends the subject property suffers from chronic vacancy. The Complainant suggests that vacancy is a property condition therefore the physical condition date of December 31, 2011 should apply to the 2012 assessment (C1 p. 2).
- [17] The Complainant did not offer a definition for chronic vacancy other than to say that the Respondent's typical practice is to recognize high levels of vacancy, of three years or longer, with an adjustment.
- [18] The Respondent, when asked, indicated that they did not have an official definition of chronic vacancy. The Respondent offers somewhat of a definition in their disclosure (R1 p. 3): *"Chronic vacancy is more than just a structure with no occupant. Chronic means constant, habitual. A chronically vacant structure suffers from functional or external obsolescence, thus it is vacant. It is continuous, constant problem marked by long duration."*
- [19] The Board notes that the Respondent grades properties based on a variety of factors; and, in this case, graded the subject as a 'B'. Perhaps this grading in and of itself indicates the subject is out of date and not modern which seems to meet the criteria of obsolete.
- [20] Moreover, the Complainant in their presentation indicated that, the subject has poor locus of office buildings in this primarily retail and entertainment district. These factors can also suggest an obsolete structure based on current market trends in the area.
- [21] The Board finds that vacancy is germane when it comes to valuation and the valuation date is the date of concern. However, the Respondent's evidence suggests functional or external obsolescence which tends to be more of a condition wherein the condition date may apply.
- [22] **The Board finds that there is no clear definition of chronic vacancy from the Respondent. In order to maintain fair and equitable assessments, the Respondent needs to have a clear, written policy on how it deals with vacancy issues such as chronic vacancy. The Respondent needs to be clear whether vacancy is a condition or a valuation parameter. In so doing, the taxpayer will have a better understanding of how this situation is treated.**

Question 3 Does the subject property suffer from chronic vacancy?

- [23] The Complainant contends the subject property suffers from chronic vacancy with 20.51% vacancy in 2009, 38.63% vacancy in 2010, 39.89% vacancy in 2011 (C1 p. 4) and *post facto* evidence of 44.13% in 2012 (R1 p. 10).

- [24] The Respondent suggests that the subjects' 20-44% vacancy for more than three years is normal and is not something that needs to be corrected within an assessment.
- [25] The Complainant has shown that typical vacancy within their property is greater than 20% for more than three years.
- [26] The Respondent through their vacancy analysis (R1 pp. 57-58) suggests that 10.0% is typical in the Beltline. This study unlike the rental rate study looked at all office buildings rather than the similarly graded buildings. Also no analysis was done by submarket zones.
- [27] Reviewing this vacancy analysis, the Board notes that there appears to be sufficient data to narrow the focus by quality grading and perhaps submarket. It seems logical when analyzing data that similar criteria are set for all factors within an assessment. To find typical rent by quality grading and then typical vacancy without giving regard to quality grading can skew the results; lowering the assessment for one quality grade and raising it for another.
- [28] The Board notes that the vacancy reported within the subject is primarily the office space. By including the retail and restaurant space in the office vacancy calculations distorts the actual vacancy within the subject and the vacancy study as a whole.
- [29] The Board finds the vacancy study to be inadequate. It fails to recognize the differences between different quality grades, does not consider different types of uses within an office building, and encompasses a vast area. In finding a typical vacancy of 10.0% the Respondent has lumped buildings from; grade – all, square footage – 13,845 to 300,438, and reported vacancy rates – 0% to 94.59%. The Board finds the report to be of little value in determining a typical vacancy within the subject.
- [30] **The Board finds that the chronic nature of large vacancy within the subject is not typical in comparison to the Respondent's vacancy report but may be typical for the area, size and age of the subject. Without evidence to the contrary, the subject does suffer from chronic vacancy within the office space of greater than 26% for more than three years. Therefore the Board grants 26% vacancy allowance for the office portion of the subject.**

Potential Net Income

#	Sub Component	Area (Square Feet)	Quantity	Rental Rate	Total Market Rent
1	Fast Food Restaurant	3688		\$32.00	\$118,016
2	Office Building Parking Stalls		22	\$2,400.00	\$52,800
3	Office Retail Space	390		\$29.00	\$11,310
4	Office Space South West	15,449		\$11.25	\$173,801
	Total	19,527		Potential Net Income	\$355,927

Values Influencing Income

#	Sub Component	Vacancy Rate	Operating Costs	Non Recoverable	Capitalization Rate
1	Fast Food Restaurant	10.0%	\$12.00	1.0%	7.75%
2	Office Building Parking Stalls	2.0%	\$0.00	1.0%	7.75%
3	Office Retail Space	10.0%	\$12.00	1.0%	7.75%
4	Office Space South West	26.0%	\$12.00	1.0%	7.75%

Effective Net Income

#	Potential Net Income		\$355,927
1	Fast Food Restaurant	10.0%	(\$11,802)
2	Office Building Parking Stalls	2.0%	(\$1,056)
3	Office Retail Space	10.0%	(\$1,131)
4	Office Space South West	26.0%	(\$45,188)
Total Effective Net Rent			<u>\$296,750</u>

Net Operating Income

Vacant Space Shortfall	(\$53,094)
Non Recoverable	<u>(\$2,968)</u>
Net Operating Income	<u>\$240,688</u>

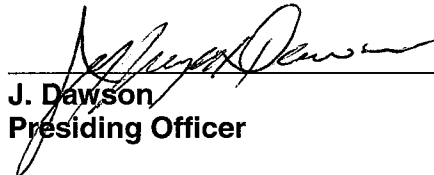
Market Value

Net Operating Income	\$240,688
Capitalization Rate	7.75%
Truncated Assessed Value	<u>\$3,100,000</u>

Board's Decision:

- [31] After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a value of \$3,100,000, which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 16th DAY OF Aug 2012.


 J. Dawson
 Presiding Officer

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

NO.	ITEM
1.	C1 Complainant Disclosure – 81 pages
2.	R1 Respondent Disclosure – 90 pages
3.	C2 Complainant Rebuttal Disclosure – 10 pages

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.*

APPENDIX "B"**RESOURCE MATERIAL:****The Canadian Oxford Dictionary**

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada;

chronic, adj. *1 persisting for a long time. 2 having a chronic complaint. 3 habitual, inveterate. 4 very bad; intense, severe.*

obsolete, adj. *1 disused, discarded, antiquated, outmoded, out of date.*

vacancy, n. *1 the state of being vacant or empty. 2 an available room in a hotel, apartment building, etcetera.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Rental Rate
				Vacancy