

**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:

Linnell Taylor and Associates, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

D. Trueman PRESIDING OFFICER

R. Roy MEMBER

B. Jerchel 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 2011 Assessment Roll as follows:

ROLL NUMBER: 201176088

LOCATION ADDRESS: 873 – 85 Street SW

HEARING NUMBER: 63495

ASSESSMENT: \$18,500,000

This complaint was heard on 30th day of June, 2011 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:

- *Joel Mayer*

Appeared on behalf of the Respondent:

- *Robert Ford*

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

Prior to the commencement of the hearing the Respondent requested that the complaint not be heard based upon the absence of the issue of "vacancy rate" on the complaint form. The Complainant replied saying that specific issues only become evident after receiving Respondent disclosure. The panel recessed and considered the appropriate sections of the Municipal Government Act, S460(1) and 460(7)(a), the Complaints Regulation (MRAC) 9(1) and the Complaint form (sec 5) itself. The panel noted that in order to find room to outline his complaints the Complainant had supplied information on the reverse side of the form. This information consisted of, in part, an "array of market coefficients for the strata". The panel agreed that the assessor either knew or ought to have known that "vacancy rate" was likely to be one of the market coefficients. In these circumstances the panel decided that the Complainant had only just satisfied his obligation to detail his complaint and that the hearing would proceed. The panel further decided that leniency had been granted to an agent who, because of his experience, could have been more specific with respect to his complaint. This leniency may not necessarily be granted by other panels considering the same question.

Property Description:

The subject property is a complex of seven retail buildings identified as a Retail Shopping Center, containing 236,210 ft.² of leasable area, on a site of 5.42 acres. The development was constructed in 2007 and 2008 and is located in the West Springs neighbourhood in southwest Calgary. Three of the buildings are identified as CRU space, one is identified as a restaurant, one is identified as Junior big-box, one is identified as offices and one building is a Bank.

Issues:

Issue #1

Building number three is a restaurant building which the assessor has described as having an area of 4774 ft.². The complainant claims the area to be 4420 ft.².

Issue #2

Has the assessor adequately accounted for a condition which the Complainant describes as chronic vacancy.

Complainant's Requested Value: \$17,444,121

Complainant's position:

Issue #1 At hearing the Complainant advised that discussions with the Assessor had resulted in a satisfactory resolution to this issue. Specifically the assessor had agreed with the area of building number three being 4420 ft.² and that the assessment would be lowered accordingly.

Issue #2 The Complainant advises that building number five, which is identified as a CRU building, was originally constructed to be a 'Farmer's Market' with a head tenant who will sublease to numerous sub tenants, operating kiosks selling locally grown food and specialty items. He went on to say that the concept of a Farmer's Market at the subject site has had difficulty from the beginning. He said that there have been two such head tenants thus far, and neither have had success managing sub lease space to Farmer's Market kiosk tenants. The space had been vacated some four months prior to the valuation date, and some 10 months up to the condition date of December 31 which the Complainant says according to the Municipal Government Act section 289(2)(a) the assessor is legislated to consider in the preparation of his assessment. Building number five in question contains an area of 9973 ft.² or 16.7% of the leasable assessed area. The Complainant says that he thinks a vacancy allowance of 100% for this 9,973 square foot area is appropriate given that reconfiguring the space in hopes of leasing to other kinds of tenants is difficult because of the HVAC system in place.

Respondent's position:

Issue #1 The respondent confirmed that he agreed with the Complainant's reduced area of 4420 ft.² in building number three. He said the assessment would be thus reduced to \$18,360,000.

Issue #2 The Respondent pointed out that the vacancy in the subject property had only been present for four months at the time of the valuation date and that he was mandated to use typical input criteria. He presented at page 19 of his exhibit R-1 the sale of the subject property in March of 2009 for a price of \$23,500,000; which he said exceeded his assessed value by some \$5 million. He argued that a vacancy allowance is an economic provision and not a physical characteristic and that he would not be willing to consider it as a physical characteristic until it had prevailed for a period in excess of three years.

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

Issue #1 The Board accepts the evidence of the parties and orders a reduction in the assessment accordingly.

Issue #2 The Board examined the sale of the subject property and determined that because there was a partial income guarantee, little weight could be placed on this sale. The Respondent testified that the City does not apply an allowance for chronic vacancy unless and until the condition has manifested itself for not less than three years (36 months) and the panel decided that if this policy was applied throughout the City then it should be applied in this case. The Board accepts the proposition that management decisions tend to play a role in the leasing of a Commercial Rental Unit. The Board is also aware that the issue of vacancy allowance has been decided in several earlier Board Orders which have generally only decided to increase the vacancy allowance in special circumstances. It is the decision of the panel that such special circumstances are not part of this complaint.

Board's Decision:

The assessment is reduced to \$18,360,000 in accordance with issue #1 above.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July, 2011.


Per D. Freeman
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. 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.*