

**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:

J.D. Hill Investments Ltd.(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

H. Ang, MEMBER

D. Morice, 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:	201358744
LOCATION ADDRESS:	1011 9 Ave. S.E.
HEARING NUMBER:	68126
ASSESSMENT:	\$44,830,000

- [1] This complaint was heard on 19th day of September, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Chabot

Appeared on behalf of the Respondent:

- M. Ryan
- C. MacMillan

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

- [2] There were no procedural or jurisdictional matters raised by either party. Neither party objected to the panel before them. The merit hearing proceeded.

Property Description:

- [3] The subject 1.51 acre property is located at 1011 9 Ave. S.E., in the Inglewood District, just southeast of the downtown core, and is also referred to as the Atlantic Avenue Art Block. It is a four-story, multi-tenanted office building with two levels of underground parking. The building was constructed in 2011 (occupancy permit issued in July 2011). The property is zoned "Commercial-Corridor I". It has 181,959 square feet (SF) of assessed rentable area on the four floors, and a total of 322 assessed parking stalls on two levels below the building (note the number of stalls is in dispute at this hearing).
- [4] The property is assessed as 181,959 SF of "office space" and 322 parking stalls using an income approach. The rental rate applied to the office space is \$18/SF, vacancy rate of 8%, \$12.50/SF operating costs, 1% non-recoverable rate and 7.00% capitalization rate. The rental rate applied to the parking stalls is \$1,080 per stall, with a vacancy rate of 2%, operating costs of \$0 and non-recoverable rate of 1%. The total 2012 assessment is \$44,830,000 as indicated in the 2012 Property Assessment Notice and Non-Residential Properties-Income Approach Valuation sheet.

Complainant's Requested Value: \$36,860,000

Issues:

The issues relate to determining the correct 2012 assessment for the subject property, and specifically:

1. What rental rate should be applied to the vacant space as of the December 31, 2011 condition date?
2. What is the correct number of parking stalls to use in the assessment calculation?

Issue 1: Rental Rate for Vacant Space**Complainant's Evidence**

- [5] The Complainant did not dispute any of the factors used by the City in calculating its 2012 assessment. Rather, the Complainant's position is that the rental rate applied to 132,316 SF of vacant space as of the date of condition (December 31, 2011) be adjusted by the value of tenant improvements being allowed by the owner in the subject building.
- [6] To demonstrate the amount of vacant space in the building, the Complainant provided a copy of the leasing information as of January 29, 2012 which showed four tenants in the building, occupying a total of 49,643 SF. Subtracting this occupied area from the total of 181,959 SF results in the vacant space being 132,316 SF (about 73% unoccupied). The Complainant also presented a set of photographs taken in May 2012 of the vacant space (pages 30-37, Exhibit C1) showing that the space consisted of concrete floors, no ceiling finish, no partition walls and only electrical and plumbing rough-in.
- [7] The Complainant presented copies of assessment explanation reports for 2010 and 2011 to indicate that in previous years, it was the City's policy to reduce the rental rate applied to vacant "shell" space (shell space being space that is unfinished and therefore not capable of achieving the typical market rent) by \$5/SF. The Complainant also presented previous Composite Assessment Review Board decisions where the decision was to reduce the typical rental rate by the value of tenant improvements to arrive at a rental rate applied to vacant "shell" space. This approach to assessment is also consistent with court decision "697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512", which was presented in rebuttal evidence (Exhibit C2).
- [8] The rental information presented by the Complainant (page 26-28, Exhibit C1) contained information on tenant improvement allowances. Using this data, a summary table showing the value of actual tenant improvements for the subject building is presented on page 29, Exhibit C1. This table shows a median of \$4.33/SF for tenant improvements. This is the evidence presented to support a requested adjustment of -\$4.50/SF from the typical rental rate of \$18/SF used in the 2012 Assessment, to a rate of \$13.50/SF for the vacant area.

Respondent's Evidence

- [9] The Respondent did not dispute the Complainant's vacant space calculation of 132,316 SF, nor the value of tenant improvements, estimated by the Complainant to be \$4.50/SF.
- [10] The Respondent stated that the City has changed its policy regarding providing an adjustment to the rental rate for vacant or unfinished space for the 2012 assessment year. The reason for the change in policy is that market information indicates that there is little discount in market value for a building that is either new or undergoing substantial renovations and substantially vacant, compared to a fully or near fully leased similar building. A summary of this sales data is presented on page 27, Exhibit R1, followed by sale details for each of the five sales. Based on this evidence, the Respondent stated that to properly capture the market value of the subject, no discount for vacant space is warranted.

Rebuttal Evidence

- [11] Through questions of the Respondent and in the Complainant's rebuttal package, the Complainant demonstrated that the five sales used by the Respondent to demonstrate that there was no difference between the price paid for vacant and leased buildings were flawed (page 17, Exhibit C2). One of the five sales was not arms-length, one was atypical of the market, one property was 100% leased at time of sale, one property was 97% leased at time of sale and one sale did not have any information on the leasing status at time of sale. The Complainant argued that the Respondent did not present any evidence to support their position that vacant buildings with "shell space" sell at a similar price to leased buildings.

Conclusions of the Board in this Matter

- [12] There was no dispute as to the amount of vacant space in the subject as of December 31, 2011. The Respondent did not dispute that the actual tenant improvements allowed in the subject building reflect a value of \$4.50/SF.
- [13] The Board does not accept the argument made by the Respondent that no allowance is warranted for vacant "shell" space based on a closer review of the sales data presented by the City to support this position. The five sales presented in the analysis do not show that the sale price of a building with vacant "shell" space sells for a similar value as a fully leased building or a building totally finished and capable of being fully leased.

- [14] The Board accepts that 132,316 SF in the subject building is vacant shell space as of December 31, 2011 and therefore could not achieve typical rents for office buildings. This space was not usable as office space, therefore some adjustment from typical rental rates is appropriate. The standard for valuation is market value, including both tenant and landlord interests. The tenant improvements have not yet been made to the vacant space, therefore it is reasonable to reduce the typical rental rates achieved for finished office space by the cost of constructing the tenant improvements. The evidence presented by the Complainant supports an adjustment of -\$4.50/SF for tenant improvements, resulting in a rental rate of \$13.50/SF for the vacant space.
- [15] Based on the evidence presented, the Board agrees that an adjustment for vacant space is appropriate and that the adjustment is -\$4.50/SF, for a rental rate of \$13.50/SF applied to the 132,316 SF of vacant space.

Issue 2: Number of Parking Spaces

Complainant's Evidence

- [16] The Complainant presented an email from the Assistant Property Manager of the subject property and a sketch of the floor plan of the underground parkade (page 68-71, Exhibit C1) showing 149 parking spaces on Level P1 and 158 parking spaces on Level P2, for a total of 307 parking spaces. The Complainant did not personally inspect or count the parking stalls.

Respondent's Evidence

- [17] The Respondent presented an excerpt of engineering drawings filed with the City in support of a Development Permit for the subject building showing the total number of parking stalls at 334 (page 57, Exhibit R1). No one from the Assessment Department inspected or counted the parking stalls.

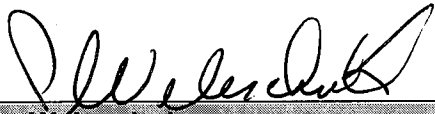
Conclusions of the Board in this Matter

- [18] Both parties presented evidence that was not verified, as neither party inspected the parking area. Therefore, the Board cannot rely on any of the evidence presented. Since the Complainant did not convince the Board that there are 307 parking stalls, the Board concludes that the assessment is correct (322 parking spaces). Issues such as the number of parking spaces are a matter of fact and not an issue that need be brought before this Board. The matter is easily resolved by both parties holding a joint inspection of the property and verifying the actual number of parking stalls. The Board expects that such a joint inspection will occur prior to the next assessment and that this will not be an issue in subsequent years.

Board's Decision

- [19] For the reasons discussed above, the Board concludes that the appropriate rental rate to be applied to the 132,316 SF of vacant space is \$13.50/SF. The number of parking stalls for the purpose of calculating the 2012 Assessment is 322 underground stalls. Using these values, the resulting 2012 assessment is calculated at \$37,080,000 (truncated). The Board reduces the 2012 assessment to \$37,080,000.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF October 2012.



Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
C1	Complainant's Disclosure
R1	Respondent's Disclosure
C2	Complainant's Rebuttal

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.*