

**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:

***Metrowest Developments Ltd.
(as represented by McCarthy Tetrault LLP),
COMPLAINANT***

and

***The City Of Calgary,
RESPONDENT***

before:

***R. Glenn, PRESIDING OFFICER
P. Pask, MEMBER
J. Massey, 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:	071000202
LOCATION ADDRESS:	3012 17 Ave SE
FILE NUMBER:	65545
ASSESSMENT:	\$19,900,000

This complaint was heard on Friday, the 17th day of August, 2012 at the offices of the Assessment Review Board located on Floor Number 4, at: 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 11.

Appeared on behalf of the Complainant:

- S. Loew and R. Hung; Agents for the Complainant

Appeared on behalf of the Respondent:

- C. Yee and T. Squire; Assessors for the Respondent

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

- [1] There were no issues of procedure or jurisdiction raised by the parties.

Property Description:

[2] The subject is a neighbourhood community shopping centre with a parcel size of 6.2 acres and comprising three single storey non-residential commercial retail buildings, built in 1975, 1976, and 1978 respectively, with 32 leasable units, totalling 79,162 SF in assessable area, located at the corner of 17th Avenue and 28th Street SE in the Radisson Heights area of south east Calgary.

Issues:

- (3) Should the subject's assessed vacancy rate be altered based on the actual historical vacancy of the subject property for the last 6 years?
- (4) Should the subject's assessed capitalization rate of 7.25% be adjusted by adding a 1% risk premium to account for the subject's higher than typical vacancy?

Complainant's Requested Value:

\$ 17,400,000

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

The Complainant's Position:

- (5) The Complainant begins their argument by asserting the vacancy rate is something that

must be considered over a period of time. They go on to argue that there is a chronic and substantial vacancy problem in this centre, though they do not suggest an appropriate reason for such a high vacancy rate. They provide a 2011 rent roll for the subject which confirms the high number of vacancies.

(6) The Complainant argues that the actual vacancy rate is the proper figure to be considered. Further, they present a chart (Exhibit C 2) showing the vacancy rate for the subject property for the past 6 years. The chart is based on total vacant area versus the total area. It shows a 2007 low (13.62%) in vacancy to a 2011 high (19.38%) The chart illustrates that the average vacancy rate for the subject since 2006 is 16.60 %. The Complainant is unsure of what the vacancy rate is expected to be for 2012.

(7) The Complainant completes their argument by stating that the subject assessment is inappropriate because it represents a value that is greater than the subject's market value. They also comment that the subject's net operating income as calculated by the City is excessive, as the City's assessment does not account for the subject property's vacancy. Furthermore, they state that the vacancy and capitalization rates applied by the City to the subject property are optimistic and they overstate the net operating income and the actual value of the subject.

The Respondent's Position:

(8) The Respondent initiates their argument by providing a 2012 retail vacancy rate chart which suggests that for the southeast quadrant of the City, the typical vacancy rate should be 6.00%. They go on to provide a comparables chart for vacancy in south east neighbourhood shopping centres. The average vacancy suggested by the comparables chart is 3.37%

(9) They carry on arguing that vacancy is not a diagnosis, it is at most a symptom that there may be some underlying detriment to the property. They say that if there is indeed a tangible cause for the vacancy then an adjustment for the underlying cause of the vacancy can and should be applied. Further, if there is no plausible explanation for the vacancy or any evidence to suggest that the subject property is truly unique, then the subject should not receive any adjustment (assessed in accordance to MRAT part 1 section 2(c)).

(10) The Respondent argues that when the vacancy rate is higher than usual, it would mean a lower income, and therefore, the cap rate should be lowered. The logic behind this admonition was not explained.

(11) They simply go on to say that the typical vacancy rate that should be applied to the subject is 6%, based on their 2012 retail vacancy rate chart. They carry on saying the City may investigate possible tangible causes of the alleged high vacancy rate, and they begin in their argument to query the quality of the buildings, etc., but conclude saying that the City has not done an investigation as to the reason for such a high vacancy rate. The Respondent acknowledges that they do not use actual figures for their vacancy rates, but indeed they rely on

typical rates in keeping with their mass appraisal philosophy.

Board's Decision:

(12) The Board accepts the Complainant's rent roll and the chart (Exhibit C-2) as solid evidence of the suggested high vacancy rate. The Board agrees that the subject assessment simply represents a value higher than the subject's actual market value. In doing so, the Board relies on the Complainant's actual rent figures. In addition, the Complainant's vacancy information was also accepted, as it was questioned, but certainly not refuted by the Respondent.

(13) For the Respondent to simply fall back on their well-used argument involving typical values being used as accurate, is not good enough, and certainly not appropriate here in light of the Complainant's position. When the Complainant's evidence (on a balance of probabilities) shows what the actual vacancy rate is, and it is, in essence, not refuted by the Respondent, then the Board must accept it. The Respondent presented some interesting statistics regarding typical extant vacancy rates in this City, but they were of little assistance to the Board.

(14) The reason for the subject's high vacancy rate was seemingly, not in issue prior to this appeal being dealt with. In fact the Respondent argued that an investigation regarding the reason for the vacancy rate had not been done, but may well be done in the future. Once again this argument was not of assistance to the Board.

(15) It was apparent to the Board that the Respondent relied on typical figures when arriving at the subject assessment. The Complainant's argument and evidence were based on actual figures for the vacancy rate, and net operating income, and were properly supported, in the Board's opinion.

(16) The Board finds that the onus to show that the assessment needs to be modified has been met and accordingly accepts the Complainant's request for a reduction in the subject assessment.

(17) The issue of adding 1% to the cap rate was not actually argued, other than a very brief mention during the Respondent's argument. Accordingly, it will not be dealt with here.

(18) The assessment in issue is herewith reduced to the requested amount of \$17,400,000.

DATED AT THE CITY OF CALGARY THIS 27th DAY OF SEPTEMBER, 2012.

R. Glenn
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant's Chart
2. R2	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.*

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<i>Decision No.1472-2012-P</i>		<i>Roll No.071000202</i>		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Neighbourhood Shopping Centre	Equity	Vacancy rate	Market Value