

**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:

3934381 Canada Inc. (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

I. Fraser, MEMBER

J. O'Hearn, 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:	054009204
LOCATION ADDRESS:	3030 – 2 Avenue SE, Calgary AB
HEARING NUMBER:	64499
ASSESSMENT:	\$20,960,000

This complaint was heard on the 9th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *S. Meiklejohn*

Appeared on behalf of the Respondent:

- *Christina Neal*

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

There were no procedural or jurisdictional matters brought before the Board so the hearing moved directly to merit evidence and argument.

Property Description:

The property that is the subject of this complaint is a three storey office building, constructed in 1977, situated on a 7.30 acre site in the suburban Calgary district of Franklin. Fully occupied by one tenant (Telus Mobility), the building contains 112,123 square feet of office space. There are surface parking lots around the building.

For 2011, this property was assessed as a Class "A" suburban office building using an income approach. In that approach, typical office rent was set at \$18.00 per square foot. The other typical inputs were: 12.0% vacancy allowance, \$12.50 per square foot operating cost rate, 2.0% non-recoverable expense allowance and 7.50% capitalization rate. The total assessment of \$20,960,000 represents a unit rate of \$186.94 per square foot of building area.

Issues:

The Assessment Review Board Complaint form, filed on March 4, 2011 had Box 3 (Assessment amount) checked in section 4 and it contained a number of grounds for the complaint. At the hearing, the Complainant pursued the following issues:

1. Market value (\$18.00 rent rate too high; 12.0% vacancy rate too low)
2. Equity (property in the wrong class and not competitive with Class A properties)

Complainant's Requested Value: \$12,877,102 (\$114.85 per square foot of building area)

Party Positions:**Complainant's Position:**

The Complainant filed Complainant Brief marked as Exhibit C1 and a brief containing details of property sales and assessments for properties referred to during the hearing (Exhibit C2).

The market value and equity arguments centred on the contention that the property was wrongly classified as a Class "A2" suburban office. It had been a Class "B" office until the current assessment was made. Now, it should be classed between Class "A2" and Class "B".

This property is located in Franklin and it is one of a few office properties, unlike other northeast communities such as Horizon and South Airways which have higher concentrations of offices. The property is set back behind another office building (Intergraph), thereby negatively impacting its visibility from major roadways such as Memorial Drive. Access is indirect – traffic from Memorial must go a short distance north on 28 Street SE, turn right onto 2 Avenue SE and proceed east to the driveways onto the property. The building was constructed in 1977, is built of an older construction technology (aggregate concrete panels) and is not competitive with Class "A" properties in the northeast. It does not have underground parking, a characteristic of Class "A" properties. By reclassifying the property from Class "B" to Class "A2", the City has raised the assessment to a point where it is not equitable. Changing the class increases the rent rate and decreases the capitalization rate. Other input factors remain the same between these classes.

The Complainant argued that weight should not be given to the rent currently being paid by Telus. The Assessment Request For Information (ARFI) along with the extract from the lease in Exhibit C1 shows that the \$21.00 per square foot rent rate is a step-up built into the lease renewal that took effect in 2008. The first portion of the 5 year renewal term lease term from February 2008 specified a rent of \$19.00 per square foot and the step-up to \$21.00 was to take place in August 2009. The market peaked in 2007-2008 which therefore dictated higher rents for leases struck during that time. Also, a very important condition in the lease was that parking was included at no additional charge. Most other suburban office properties charge extra for parking, even if it is in surface parking lots. The Complainant also argued that the tenant should not be a factor in setting property class.

Tables of lease data were in Exhibit C1. A table of data for 15 Class "A" properties indicated typical rates around \$18.00 per square foot. Class "A+" properties are assessed using a rent rate of \$21.00 per square foot while Class "A2" (also referred to as "A-") properties have an assessed rent rate of \$18.00 per square foot. Data on 21 leases in Class "B" buildings showed averages between \$10.70 and \$11.50 per square foot (Class "B" properties are assessed using a rent rate of \$12.00 per square foot).

With respect to the lease comparables presented by the Respondent, the Complainant argued that the \$21.00 lease rate from the subject's Telus lease renewal should not be included. By including that lease, the averages are skewed to the high side. Another lease relied upon by the Respondent was not an arms-length lease transaction and should also be excluded. The Respondent's comparable data detailed only seven leases so the two inappropriate rent rates caused the average to increase. The averages of the seven leases are \$17.71 (Mean average) and \$20.42 (Weighted mean) but if the two high rates are excluded, the Mean average drops to

\$16.50 and the Weighted mean drops to \$16.34. Based on the reliable rental rate data, the Complainant concluded that the subject property fit somewhere between a Class "A2" property (\$18.00 rent rate) and a Class "B" property (\$12.00 rent rate) and the rent should therefore be set at \$14.00 per square foot.

In support of the Complainant's request for an increase in the vacancy rate from 12.0% to 14.0%, a summary table of vacancy rates from Colliers International quarterly surveys was presented. The summary showed a vacancy rate for northeast Calgary office buildings at 13.36% for the second quarter of 2010. The first quarter rate had been slightly lower at 13.18%. These vacancy rates included consideration of sublease space that was available during the analysis periods.

From the equity perspective, the Complainant provided assessment data on four Class "B" properties in Franklin that were considered to be comparable to the subject. All of these buildings had similar construction dates to the subject (1978 to 1981). These properties were assessed at rates from \$92.76 to \$101.07 per square foot of building area. Five other northeast Class "B" properties, also of similar age to the subject, had assessments from \$71.71 to \$101.07 per square foot. Superior "A2" properties, some with underground parking and some with newer buildings, had assessments of \$155.22 to \$207.34 per square foot. This range bracketed the subject's \$186.94 per square foot assessment rate, proving that the inferior subject property was over-assessed. If the subject, classed between "B" and "A2" classes had its assessment reduced to the requested \$114.78 per square foot, then equity would be achieved.

There was no office property sales data that could provide support for the assessment. The Complainant set out data on 21 Class "A" and "B" suburban properties that had sold between July 2008 and March 2010. By examining sales prices and 2011 assessments, it could be seen that Assessment to Sales ratios (ASR's) were out of line with the desired range which was from 0.95 to 1.05. For the sales, ASR's ranged from 0.40 to 1.06 and showed mean and median averages of 0.70. Based on this analysis, it was argued that the sales evidence could not have been relied upon by the assessor in making 2011 suburban office property assessments.

Respondent's Position:

The building does correctly fit into the "A2" class. It provides quality office accommodation and amenities such as a large interior atrium. Evidence of assessments on other Class "A" properties shows that the subject is correctly classified.

While previous tables of lease data may have included the subject Telus lease, the chart entered into evidence in Exhibit R1 had details on six leases, not including the Telus lease. This data correlated to a mean average of \$17.17 per square foot and a weighted mean of \$18.38 per square foot, both of which support the \$18.00 rent rate applied to the subject.

Another table in the exhibit set out data on four comparable properties that were assessed at the Class "A2" \$18.00 rent rate. For those with underground parking, it was shown that this parking was assessed separately and it did not impact on the office rental rate. Two of the properties were of similar age to the subject while the other two were somewhat newer (1990 and 2000). Nevertheless, it was argued that the subject compared favourably with all four of the comparables.

The Respondent did not rely on any sales of suburban office properties in making the assessment. It was argued, however, that it is inappropriate to base ASR's on an historic sale price and a current (2011) assessment.

In conclusion, the Respondent maintained that if the subject property is properly within the "A2" class, then the \$18.00 per square foot rent rate and the 7.5% capitalization rate are properly applied.

Board's Decision:

The 2011 assessment is confirmed at \$20,960,000.

Reasons for the Decision:

The primary argument of the Complainant was that the subject property was put into the wrong class for assessment purposes. The Board did not accept the argument that its location and access were factors that suggested a lower classification. There was no market evidence submitted which showed that different construction types impacted on classification.

There is no doubt that the rent rate being paid by Telus was \$21.00 per square foot at the date of the assessment. When the lease was renewed in 2008, the rent for the first portion of the term was \$19.00 per square foot. The Complainant stated that market conditions changed since the date of the lease renewal, however, there was no evidence to show the Board that the \$18.00 rent rate was out of line with 2010 rents.

There was no evidence that supported the change in classification. As an "A2" building, both the Complainant's and Respondent's Class "A" rental data supported the \$18.00 per square foot rate upon which the assessment was based. Further, if the property is considered to be appropriately classified, then there are no grounds for changing the capitalization from that of an "A" building to that of a "B".

DATED AT THE CITY OF CALGARY THIS 17 DAY OF August 2011.



W. Kipp
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Supplemental Disclosure
3. 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.*