

**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:

Loblaw Properties West Inc.
(as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER
D. Cochrane, MEMBER
K. Farn, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of the amended annual property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	048045801
LOCATION ADDRESS:	3225 12 St NE
HEARING NUMBER:	68680
ASSESSMENT:	\$10,810,000

The complaint was heard on September 5, 2012, in Boardroom 1 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Chabot

Appeared on behalf of the Respondent:

- G. Good; C. Macmillan

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

The subject property is a 138,554 sq.ft. (square foot) parcel of land, improved with an 88,957 sq.ft. three-storey, "B" quality office structure known as Deerfoot Junction 1 & 2. The improvement was constructed in 1981 and is comprised of 84,060 sq.ft. of office area and enclosed parking for 149 vehicles.

Issues:

The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount 4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter # 4, and led evidence and argument only in relation to matter #3, an assessment amount. The Complainant set out nine grounds for the complaint in section 5 of the complaint form with a requested assessment of \$8,560,000; however, at the hearing, only the following issue was before the Board:

- Does the assessment reflect the characteristics and physical condition of the subject property as of December 31, 2011?

Complainant's Requested Value:

At the hearing, the Complainant requested an assessment of \$8,050,000.

Board's Decision in Respect of the Issue:

[1] The Complainant argued that the assessment of the subject property does not reflect the characteristics and physical condition of the property as of December 31, 2011 as required by the legislation. The Complainant submitted that the assessed parameters are reflective of completed office space, with no adjustment to reflect the fact that 48,424 sq.ft. of the subject's total office area is devoid of interior office development (tenant improvements), and has been continuously vacant since 2009.

[2] The Complainant referred the Board to paragraph 29 of *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, wherein Honourable Madam Justice L.D. Acton states:

[29] ...The MGB determined that: "...tenant improvements are an assessable part of the realty...". While this is correct, in my view, tenant improvements that do not exist at the time of the assessment cannot be considered assessable; including them demonstrates an unreasonable analysis of the evidence.

[3] To illustrate the subject's physical characteristics, the Complainant provided several photographs of the interior of the improvement demonstrating the absence of interior office development, as well as email correspondence from Lorrie Frankland, Senior Manager, Municipal Assessments for the Complainant, confirming the extent of vacancy and indicating an estimated cost of \$50.00 per sq.ft. to complete the interior office development. The Complainant also provided a four page CB Richard Ellis brochure in respect of marketing the vacant space, indicating that the Complainant is offering a tenant improvement allowance of \$25.00 per sq.ft.

[4] The Complainant argued that a -\$5.00 per sq.ft. market rent adjustment, equating to the annualized apportionment of the offered tenant improvement allowance over a typical 5 year term, is appropriate to reflect the absence of interior office development in the subject property.

[5] The Complainant submitted that the characteristic was recognized by the Assessor in 2010 with a -50% adjustment to the subject's market rent rate, and argued that there has been no physical change to the property since that time. The Complainant further argued that the Respondent and the Board have made adjustments to reflect the absence of interior office finish in respect of other properties, and provided examples of the Respondent's assessment valuation worksheets demonstrating a -\$5.00 per sq.ft. market rent adjustment. The Complainant further provided an Assessment Review Board decision in which the market rent rate of a property was adjusted by -\$3.50 per sq.ft., with the apparent agreement of the Respondent in that matter. The Complainant argued that various levels of adjustment have been applied to recognize the absence of interior office development in other properties, and some adjustment is clearly warranted, whether it be a \$2.50, \$3.50, or \$5.00 per sq.ft. market rent rate adjustment.

[6] The Respondent argued that the subject's vacancy should not be a factor in the assessment as the property was fully owner-occupied until 2009, at which point the Complainant chose to vacate the area in question; therefore, the subject's vacancy is a direct result of the Complainant's own actions.

[7] The Respondent further argued that the value of a property is not affected by the absence of interior office development, as sales of office properties with significant vacancies trade at equivalent rates to similar fully-occupied properties.

[8] In support of the argument, the Respondent provided a summary of six office property sales and corresponding assessments; however, the Respondent asked that the evidence in respect of three of the sales be disregarded for various reasons. The remaining three properties are set out below:

Property Address	Sale Date	Sale Price	Vacancy Rate	Assessment Valuation Date	Assessment
109 Quarry Park Blvd SE	Jul 2011	\$29,800,000	50%	July 2011	\$27,230,000
4311 12 Street NE	Mar 2011	\$29,800,000	31%	July 2011	\$22,470,000
600 Crowfoot Cr NW	Jul 2008	\$49,675,000	12%	July 2008	\$48,890,000

[9] The Respondent argued that although the properties sold with significant vacancies, the assessments, prepared on the basis of typical vacancy rates demonstrate that there is no loss in value attributable to high vacancy rates.

[10] To further support the position, the Respondent provided four additional sales of properties and corresponding assessments; however, the Respondent again asked that the evidence in respect of one of the sales be disregarded. The remaining three properties are set out below:

Property Address	Sale Date	Sale Price	Vacancy Rate	Assessment Valuation Date	Assessment
1410 1 St SW	Dec 2011	\$1,200,000	100%	July 2011	\$1,250,000
1435 9 Ave SE	Dec 2011	\$1,700,000	50%	July 2011	\$984,000
1607 Centre St NW	Apr 2011	\$663,888	72%	July 2008	\$633,500

[11] The Respondent further argued that similar arguments were made before the Board in respect of the subject's 2011 assessment complaint, in which the Board confirmed the subject's 2011 assessment as set out in CARB 1038-2011-P.

[12] In cross examination, the Respondent conceded that the sale of 109 Quarry Park Blvd. SE was not an arms-length transaction; and notwithstanding the sales evidence and argument put forth at this hearing, the Respondent at the hearing in respect of 109 Quarry Park Blvd. SE agreed to a -\$3.50 per sq.ft. market rent adjustment to reflect the absence of interior office development. The Respondent further conceded that the properties located at 1435 9 Ave SE and 1607 Centre St NW are predominantly retail properties and are assessed as retail properties for which tenant improvement adjustments are never applied due to the nature of the market.

[13] In rebuttal, the Complainant argued that the Respondent's comparable sale of 600 Crowfoot Crescent NW was an atypical transaction which exhibits a value greater than typical market value, and consequently, the assessment to sale relationship does not validate the Respondent's argument. In support, the Complainant provided MGB 109/10 in respect of the 2009 assessment appeal of 600 Crowfoot Crescent NW, wherein the Board found that the sale was atypical due to the purchaser's motivation.

Decision:

[14] The Board finds that the assessment does not reflect the characteristics and physical condition of the subject property as of December 31, 2011.

[15] The Board was persuaded by the Complainant's photographic evidence, together with the marketing brochure and email correspondence, that 48,424 sq.ft. of the subject's total office area is devoid of interior office development (tenant improvements). The Board notes that the Respondent does not dispute that the market rent rate applied to the subject's entire office area is consistent with the rate applied to typical "finished" office space.

[16] The Board allows a -\$3.50 market rent adjustment to the subject's 48,424 sq.ft. of undeveloped office area to reflect the characteristics and physical condition of the subject property as at December 31, 2011. The Board notes that this adjustment was acceptable to both parties in a similar matter (109 Quarry Park Blvd. SE), and is therefore equitable with the adjustment provided to that property. The Board was not persuaded that the requested -\$5.00 per sq.ft. market rent adjustment is appropriate, as the resultant discount amounts to \$56.80 per sq.ft. in contrast to the \$25.00 per sq.ft. tenant improvement allowance offered.

[17] The Board did not find the Respondent's assessment to sales relationships compelling evidence that the market value of an office property is not affected by the absence of interior office development. Although the Respondent's sales may have exhibited various levels of vacancy, there was no evidence provided to demonstrate that those vacant spaces were "unfinished" office spaces, similar to the space at issue within the subject property.

[18] Moreover, the Respondent conceded that one of the sales (109 Quarry Park Blvd. SE) was a non-arms length transaction, and that two other sales (1435 9 Ave SE and 1607 Centre St NW) are predominantly retail properties, and are assessed as retail properties for which tenant improvement adjustments are never applied due to the nature of that market.

[19] The Respondent's sale at 1410 1 St SW is found to be dissimilar to the subject property, as the property is located in the Beltline district, and although the property is assessed as an "office" by the Respondent, the RealNet document indicates the land use designation is CC-COR, (Centre City Commercial Corridor District) with permitted retail oriented uses in existing buildings. For this reason, the Board considers this property similar to 1435 9 Ave SE and 1607 Centre St NW, and dissimilar to the subject property.

[20] The Board placed little weight on the Respondent's assessment to sale relationship of 4311 12 St NE, as there was no evidence to confirm that the vacant space identified on the ARFI (Assessment Request For Information) response dated May 06, 2010, remained vacant at the time of the sale approximately 9½ months later.

[21] The assessment to sale relationship of 600 Crowfoot Crescent NW was also afforded little weight by the Board as the specific impact of the 11.6% vacancy rate on the sale price is debatable; particularly in light of the Municipal Government Board's finding that the sale was an "atypical" transaction for a variety of reasons. (Exhibit C2)

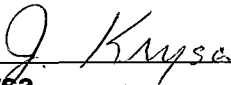
[22] The Board was not persuaded by the Respondent's argument that the subject's vacancy is a direct result of the Complainant's own actions, and therefore should not be reflected in the assessment. In the Board's view, it is irrelevant if space becomes vacant as a result of the changing needs of a tenant, or an owner-occupant. In this instance, the evidence suggests that the space was vacant for a period of at least 24 months, and is being actively marketed in a similar fashion to other, comparable office properties.

The assessment is **REVISED** from: \$10,810,000 to: **\$8,880,000.**

DATED AT THE CITY OF CALGARY THIS

5

DAY OF NOVEMBER, 2012.



J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Rebuttal Submission

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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Market Rent; Tenant Improvements