

**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:

Zadi Investments Ltd. (as represented by Linnell Taylor and Associates), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P Petry, PRESIDING OFFICER
S Rourke, MEMBER
J Pratt, 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:	044033108
LOCATION ADDRESS:	2003 14 Street N.W.
HEARING NUMBER:	62591
ASSESSMENT:	\$1,600,000

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

Appeared on behalf of the Complainant:

- Mr. J Mayer

Appeared on behalf of the Respondent:

- Ms M Lau

Property Description:

The subject property is a two storey “C” class office building located in the Capital Hill community at 2003 14 Street N.W. This building was constructed in 1982 and consists of 11,200 sq. ft. of rentable area. The property has been assessed using the capitalized net income approach wherein the allowance for vacancy is at 5.5%. The Complainant argues that the property suffers from chronic vacancy issues and therefore the vacancy allowance should be increased to 20%.

Issues:

- 1) Does the subject property suffer from a chronic vacancy issue and if, so what vacancy allowance should be used in developing the assessment for the subject?

Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 7, 2011. The only issue however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on August 8, 2011 is that referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised by the Complainant.

Complainant's Requested Value:

Based on the Complainant's requested change to the vacancy allowance the requested assessment for the subject property is \$1,156,000.

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

- 1) The CARB decision is that the vacancy allowance should be adjusted to 20% in order to reflect the chronic nature of vacancy occurring within the subject property.

Summary of the Party's Positions

The Complainant introduced evidence showing that vacancy in the subject property has not been less than 23% since mid 2008 and much of that time has been at 32%. This is primarily due to vacancies in units 103 and 202. The Complainant testified that vacant space in the property has been on the market throughout this period and has been represented by three different real estate firms. The Complainant offered several factors which it believes contribute to the higher than typical vacancy within the subject. First, there is only access from south-bound traffic on 14th Street N.W. Secondly access to the underground parking from 14th Street is very awkward due to the narrow ramp, visibility and the busy street. Thirdly traffic is blocked from accessing 14th Street from 19th Avenue, which runs along the side of the subject. Both parties appeared to agree that the condition of the subject and location in general would not be impediments. The Complainant did indicate that customer parking is limited to that available on the streets and because this area is very busy, this could also be a factor. Based on the past experience which has carried forward through April 8, 2011 (the date of the 2011 Assessment Request for Information (ARFI)), when again the vacancy stood at 32%, the Complainant requests that the CARB adopt the proposed vacancy allowance of 20%. When this change, along with the impact it has on vacancy shortfall is made to the Respondent's income pro-forma, the resulting value is \$1,156,867.

The Respondent provided some clarification of the vacancy data specifics but the information did not alter in any significant way the evidence of the Complainant in this regard. The Respondent argued, however that the Assessor only makes an adjustment when vacancy in a property becomes chronic. The Assessor has determined that chronic vacancy is only to be considered when the vacancy level is at 30% or greater and when that level of vacancy is protracted over at least 3 years. The Respondent introduced evidence showing that its analysis of northwest suburban office properties produces a mean vacancy rate of 5.47%. The Respondent has used 5.5% as the allowance for the subject property and other similar properties. It was also shown that the high vacancy level in the subject at 23%, at the date of the review, was included in the analysis. The Respondent also provided the CARB with a decision of the Municipal Government Board, MGB 109/10 wherein the Board had concluded that in that case a 12% vacancy should not be viewed as chronic and did not therefore make the adjustment requested by the Appellant. The Respondent argued that the vacancy level in the subject could be a temporary issue as both units have shown that they are leasable. Also this vacancy level may be a result of the marketing approach applied or management issues. In the end, unless the vacancy level persists at a level and over the period of time set out as chronic vacancy, then an adjustment should not be made.

Findings and Reasons for the Board's Decision:

The CARB has carefully considered the evidence and pleadings of the parties and has concluded that the relief requested by the Complainant is reasonable and therefore adjusts the vacancy allowance for the subject to 20%.

The evidence respecting the extent of vacancy in the subject property since mid 2008 was clear to the CARB. The level of vacancy has not consistently been at the 30% threshold but for some

considerable time has exceeded this level. The period of time over which the subject vacancy has continued and at a significantly high level (not less than 23%) is lengthy. While the CARB understands that the 2011 ARFI data is post-facto, this information is important from a trending perspective and the vacancy stood at 32% at that time. MGB 109/10 offers little guidance in this case as the facts are very different. In that case the Board was dealing with a new building and there was no evidence of a protracted vacancy problem.

Based on the evidence before us we conclude that the subject property does have an ongoing vacancy problem and that some adjustment from the typical level of 5.5% is warranted. The CARB has therefore adopted the Complainant's proposed vacancy level as being reasonable in this case.

Summary

The CARB decided to increase the vacancy allowance in this case to 20% and based on this adjustment, the revised value for the subject property truncates to \$1,150,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF AUGUST 2011.


Presiding Officer
Paul G. Petry

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 in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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*