

**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:**

***Springborough Plaza Joint Venture 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:

<b>ROLL NUMBER:</b>	<b>201458338</b>
<b>LOCATION ADDRESS:</b>	<b>30 Springborough Boulevard S.W.</b>
<b>HEARING NUMBER:</b>	<b>60946</b>
<b>ASSESSMENT:</b>	<b>\$16,540,000</b>

This complaint was heard on the 11th 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 A Jerome

**Property Description:**

The subject property is a three storey office building located in the Springbank Hill community in southwest Calgary. The Third floor of this building was still under construction during the first half of the assessment year with completion occurring in June 2010. The total building area when construction was completed is 80,831 sq. ft. and the building is situated on 2.78 acres of land. The property has been assessed using the capitalized net income approach wherein the allowance for vacancy is at 11%. The Complainant argues that the property suffered a loss of income for the period January 1, 2010 through early June, 2010 and therefore the vacancy allowance should be increased to 50% for the area still under construction in 2010.

**Issues:**

- 1) Should the vacancy allowance for subject property be increased to offset the loss of income during the assessment year?

**Complainant's Requested Value:**

Based on the Complainant's requested change to the vacancy allowance, the requested assessment for the subject property is \$12,985,417.

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

- 1) The CARB decision is that an adjustment to the assessed value for the subject property is not justified.

**Summary of the Party's Positions**

The Complainant position is that because 22,350 sq. ft. of the subject building, referred to as Phase 2, was under construction and therefore not available for rent until early June 2010,

some relief due to a loss of income should be granted by the CARB. The Complainant argued that the landlord does not collect rent until an occupancy permit is granted and the tenant has moved in and opened their business. In this case the space in question was only available to earn income for six months of the year. The Complainant indicated that following the completion date in early June 2010, the space began to be occupied and by year end approximately 90% of the 22,350 sq. ft. had been leased. The Respondent, however, has based their income on the presumption that the building was capable of earning income for the entire year and has only recognized vacancy of 10.5%. To offset the loss of income the Complainant applied a 50% vacancy rate for the 22,350 sq. ft. of Phase 2 and following the Respondent's income pro-forma in all other respects, developed a proposed value for the subject assessment of \$12,882,863. The Complainant indicated that another approach would have been to reduce the income to only six months for Phase 2, in which case the new value would be \$14,784,000.

The Respondent argued that it had followed the direction of the Municipal Government Act (MGA) section 289 (2) which requires that each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is to be imposed. While the valuation date is July 1 of the assessment year the Assessor must consider the physical condition and characteristics of the property on December 31. In this case the subject property as acknowledged by the Complainant was 100% complete and almost fully leased out by December 31, 2010. The vacancy at December 31, 2010 for the third floor or Phase 2 was only 9.84%. The assessment of the subject actually has recognized a vacancy allowance of 11% and this is more than adequate for the subject property.

The Respondent argued that a Supplementary Assessment provided some relief respecting the state of construction for the 2010 assessment; however the 2011 assessment must be based on the status of the improvement December 31, 2010.

### **Findings and Reasons for the Board's Decision:**

In this case the CARB must be guided by the provisions of 289 (2) of the MGA which reads as follows:

289 (2)           *"Each assessment must reflect*

*(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is to be imposed under Part 10 in respect of the property"*

The subject improvement was 100% complete as at December 31, 2010 and fully capable of earning typical income for its class. The CARB was told that as of that date Phase 2 was also approximately 90% leased up. For the 2011 assessment there is no requirement for the Assessor to consider, in a retrospective manner, the income actually earned or the condition of the property at some point earlier in the assessment year. The important date for such considerations is December 31, 2010.

The Matters Relating to Assessment and Taxation Regulations (MRAT) section 3 requires that *"any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year"*. While market value is to be that value reflecting the

market as of July 1 of the assessment year, the physical condition of a property relative to the July 1 valuation date is December 31 of that same assessment year. The evidence shows that even as of July 1, 2010, Phase 2 was complete and ready for occupancy.

### Summary

The subject property's 80,831 sq. ft. was fully developed as at December 31, 2010 and therefore the market value for the 2011 assessment must reflect that fact. The Assessor has followed the provisions of MGA section 289 (2) (a) in arriving at the 2011 assessment for the subject and therefore the assessment is confirmed at \$16,540,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF August 2011.

  
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Presiding Officer  
Paul G. Petry

### APPENDIX "A"

#### **DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
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*