

**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:

***Westfield Heritage Square Ltd., COMPLAINANT
As Represented by Fairtax Realty Advocates Inc.***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Rankin, MEMBER
J. Joseph, 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:	123189292
LOCATION ADDRESS:	8500 MacLeod Trail S.E.
HEARING NUMBER:	64223
ASSESSMENT:	\$73,380,000

This complaint was heard on 24th 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:

- *Syd Storey*

Appeared on behalf of the Respondent:

- *Tina Neal*

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

The Respondent raised a procedural issue related to the late filing of the Complainant's disclosure. The Complainant agreed that the document was not disclosed in accordance with Section 8 of the Matters Related to Assessment Complaints Regulation. The Complainant provided its initial evidence as an attachment to the Assessment Review Board Complaint form, and this was the basis of the material prepared and submitted by the Respondent. The Respondent was prepared to continue with the hearing provided that the Complainant was limited to discussing the material attached to the Complaint form. The Complainant agreed and the hearing proceeded on that basis.

Property Description:

The subject property is located at 8500 MacLeod Trail SE, and is a class "A" suburban office built in 1981. It is rather unique in that it has a large atrium located between the two, 5-storey office building portions. A restaurant is located in a portion of the atrium. The property has a total of 322,980 square feet (ft²) of office space, with 3,774 of the space below grade and 5,945 below grade "recreational space" used in part as a fitness studio for tenants. There is a parkade on the property adjacent to the office building, as well as some surface parking.

The property was assessed using an income approach.

Issues:

1. What is the appropriate market rent for the subject property, to calculate its assessed value using the income approach?
2. What is the appropriate vacancy rate for the subject property, to calculate its assessed value using the income approach?
3. What is the appropriate capitalization rate for the subject property, to calculate its assessed value using the income approach?
4. What is the correct number of parking spaces and is the parking assessment correct?

Complainant's Requested Value: \$48,401,745 (complaint form)
 \$63,002,778 (revised at hearing)

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

1. **What is the appropriate market rent for the subject property, to calculate its assessed value using the income approach?**

The Complainant disagreed with the \$19 per square foot above grade rental rate applied to the building by the City, and argued that the market indicates a rate of \$18 per square foot for this type of building, which was considered to be of a quality slightly less than an 'A' and slightly better than a 'B'. The building class is based on a number of factors with the primary factor being the rents that are achieved by that building. It was the Complainant's position that the realized rents suffer from higher than normal operating costs, and therefore a market rate of \$18 per square foot was more applicable. The Complainant presented various quarterly reports prepared by various third party real estate market reporting services to support this rate. The Complainant accepted the Respondent's rental rate for below grade space of \$8.00 per square foot.

The Respondent presented the Assessment Request for Information (ARFI) document received from this property (pages 27-36, Exhibit R1). This document indicated that the two major tenants were Alberta Credit Union Central paying rents primarily at a rate of \$15.40 per square foot for above grade space (2001 contract) and AMEC Americas paying \$23.00 per square foot for above grade office space (2008 contract). Tenants occupying smaller spaces were paying rates from \$10.00 to \$28.02 per square foot. The Respondent stated that the rate of \$19.00 per square foot was a result of the rental rate study done by the City, however this data was not presented. To support the rental rate, the Respondent also included a third party report showing that asking prices for this type of office space was \$23.29 per square foot.

The Complainant presented Exhibit C4, which was the rent roll dated August 16, 2011 (indicating the rents as of June 30, 2010). He pointed out that there were some tenants paying well below \$19.00 per square foot rent.

Board's Decision:

The Board puts little weight on the third party data presented, as there was no explanation of how the various agencies do these surveys. Therefore, each agency has a slightly different range of values or average values. The use of third party data is appropriate as a check on data prepared by a party before the hearing, but is not sufficient in and of itself.

The Respondent indicated that the \$19.00 was based on its rental rate survey and applied to all similar buildings, but did not present this survey data. The data presented by the Complainant in Exhibit C4 supported the City's position with regard to the revenues being achieved by the subject property (actual rent of approximately \$7.4 million compared to the assessed potential gross income of \$6,695,013). Given this evidence, the Board has no basis to vary the \$19/ft² rent rate used in the assessment calculation for above grade office space.

2. What is the appropriate vacancy rate for the subject property, to calculate its assessed value using the income approach?

The Complainant indicated that the 10.5% vacancy rate applied by the City to above and below grade office space was not correct and argued that a rate of 13.7% is more reflective of the market for the subject property. The basis of the Complainant's value was various quarterly reports prepared by third party real estate reporting agencies. The 2.00% vacancy rate applied to the parking was not in dispute.

The Respondent indicated that while the subject property's address indicated it was in the S.E. quadrant of the city, it was considered part of the southwest suburban office category, as it was located on MacLeod Trail. The Respondent presented a summary of its southwest suburban office vacancy analysis (page 47, Exhibit R1). There are a total of 36 properties in this class, with vacancy information obtained from 33 of these properties. The subject property is one of the 33 properties in the study and showed a vacancy rate of 1.42%. The mean vacancy rate determined by the study is 10.4%. The assessed vacancy rate applied is 10.5%.

The Complainant argued that the study included a range of building qualities and sizes, and for this reason, the results were not applicable to the subject.

Board's Decision:

The Board puts little weight on the third party data presented, as there was no explanation of how the various agencies do these surveys. Therefore, each agency has a slightly different range of values or average values. The use of third party data is appropriate as a check on data prepared by a party before the hearing, but is not sufficient in and of itself.

The vacancy rate used by the City is supported by the City's vacancy rate study for this category of buildings. The building category was not disputed. The Board also noted that the four largest properties in the study (greater than 267,474 square feet) had vacancies that ranged from 0% to 7.53%. The Board concluded that the appropriate vacancy rate is the 10.5% used by the City and supported by their vacancy rate study.

3. What is the appropriate capitalization rate for the subject property, to calculate its assessed value using the income approach?

The Complainant indicated that the 7.50% capitalization rate applied by the City in the assessment calculation was not correct and argued that a rate of 7.75% is more reflective of the market for the subject property. The basis of the Complainant's value was various quarterly reports prepared by third party real estate reporting agencies.

The Respondent presented no evidence on this issue. The Respondent stated that the 7.50% was a result of its capitalization rate study for this building category. The Respondent stated that the third party studies presented by the Complainant supported the City's rate.

Board's Decision:

The Board puts little weight on the third party data presented, as there was no explanation of how the various agencies do these surveys. Therefore, each agency has a slightly different range of values or average values. The use of third party data is appropriate as a check on data prepared by a party before the hearing, but is not sufficient in and of itself.

No other evidence was presented to the Board on this issue, other than the statement that the 7.50% used by the City is a result of its capitalization rate study for this building category. The Board would have appreciated some evidence to support this statement. Based on what little evidence is before it, the Board has no basis to vary the capitalization rate applied by the City in its assessment calculation.

4. What is the correct number of parking spaces and is the parking assessment correct?

The Complainant stated that there were 568 parking stalls on the subject property. There was additional parking available on the street beside the property, but that was not part of the inventory on the property. The Complainant did not dispute the \$1080 rate applied to the parking stalls.

The Respondent stated that the assessment showed 616 parking stalls, and that this number was likely used in the assessment prepared for the previous year. The City

recognizes only under-ground and covered parking stalls in its assessment. The Respondent indicated that information in an ARFI is not considered correct until validated by a site inspection, therefore the City did not alter the 616 stalls apparently used in the previous year's assessment. The City's citywide suburban office parking study (pages 42-43, Exhibit R1) was presented to support the \$1080 rate applied to parking stalls.

The Complainant pointed out that the data presented in the ARFI (page 28, Exhibit R1) shows 48 underground stalls, 471 regular stalls in the parking structure and 49 reserved stalls in the parking structure for a total of 568 stalls. Furthermore, the number of parking stalls indicated in the City's citywide suburban office parking study (pages 42-43, Exhibit R1) is 576.

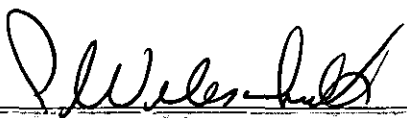
Board's Decision:

It is the Board's opinion that the best evidence with regard to the number of parking stalls on the subject property is the ARFI data. No support data was provided for the 616 stalls used by the City in its assessment calculation. The Board cannot be certain that this was indeed the number of stalls used in the previous year's assessment, as this was not presented. The Board concludes that based on the evidence, the number of stalls that should be used in the assessment calculation is 568.

Board's Decision:

The Board confirms the rates used by the City in its income approach to arrive at the 2011 assessment. The Board changes the number of parking stalls used in the assessment calculation from 616 to 568. By changing the parking stalls, the Board calculates the correct assessment to be \$72,705,320, say \$72,700,000. The Board changes the assessment to \$72,700,000

DATED AT THE CITY OF CALGARY THIS 27 DAY OF SEPTEMBER 2011.


Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Complaint Form Package
2. R1	Respondent Disclosure
3. C2	Complainant Summary of Positions
4. C3	Complainant Rebuttal
5. C4	Complainant Rebuttal (rent roll)

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.*