

**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 Kensington 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:	059155606
LOCATION ADDRESS:	301 14 Street N.W.
HEARING NUMBER:	64271
ASSESSMENT:	\$10,070,000 (Amended Property Assessment Notice)

This complaint was heard on 22nd 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:

- *Magan Lau*

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 in the Hillhurst Community, at 301 14 Street N.W., and is a class "B" suburban office originally built in 1966. It has a total of 61,580 square feet of office space on four floors and 3,001 of retail space. There are 89 enclosed parking stalls also on the property. The area along 14th Street North is a mix of various commercial uses, with residential uses on either side of these mixed commercial uses. There is some exempt space in the building.

The property was assessed using an income approach. The original assessment was \$9,400,000, but was amended to \$10,070,000 via an amended Property Assessment Notice dated February 3, 2011. The amended notice did not specify the basis for this change.

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 correct number of parking spaces and is the parking assessment correct?

<u>Complainant's Requested Value:</u>	\$5,115,365	(complaint form)
	\$6,504,971	(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 \$14 per square foot rental rate applied to the office space and \$18 per square foot applied to retail space by the City, and argued that the market indicates a rate of \$10 and \$14 per square foot for office and retail respectively. The basis for this argument was that the subject is no longer a Class 'B' building. Given its lack of amenities and especially the rents it is attracting, it is a Class 'C' building. The retail properties lack parking and share a washroom, which is not typical in a Class 'B' retail space. Because of the weaknesses of the building, tenants are leaving. The Complainant presented the rent roll to show the rents that were being achieved. Various quarterly reports prepared by various third party real estate market reporting services were presented to support the requested rate.

The Respondent stated that the lease rates used in the City's assessment calculation were based on the city's rental rate study for suburban offices, but did not present any of this data. The Respondent referred to the rent roll in the Complainant's package (Exhibit C1) and provide a summary of the rental information (page 56, Exhibit R1). The Respondent showed that the four retail spaces were averaging an actual rental rate of \$15 per square foot, and that the two leases signed or renewed during the assessment period were both at a rate of \$18 per square foot. The Respondent also showed that the average lease rate being achieved by the property was \$17.42 per square foot, with the average office lease rate of \$13.42 for the six leases signed or renewed during the assessment period. According to the Respondent, the actual lease information supported the lease rates used by the City of \$18 per square foot for the retail and \$14 per square foot for the office.

The Complainant pointed out that of the four leases signed or renewed in the first six months of 2010 (the second half of the assessment period) indicated that the average lease rate was \$11.87 per square foot. This supported his position that lease rates were declining in this market.

Board's Decision:

The Board was not presented with much actual evidence as to what the market rental rate is for suburban offices. The actual rental rates provide some support to the rates used by the City, but the Board does not have any evidence before it to support that the subject leases reflect the market. The Board assigns little weight to third party studies, as no details related to the data used or methodology applied was provided. Third party studies are useful only to support work presented by a party at a hearing. The Board would have appreciated receiving more evidence from the Respondent related to the rental rate study they conducted.

Given the evidence before it, the Board does not have any basis to change the rate used by the City.

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 5.5% vacancy rate applied by the City to retail and office space was not correct and argued that a rate of 11.9% for office space and 6.5% for retail space 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 a summary of its northwest suburban office vacancy analysis (page 58-59, Exhibit R1). There are a total of 87 properties in this study. The subject property is one of the 87 properties in the study and showed a vacancy rate of 26.09%. The mean vacancy rate determined by the study is 5.47%. The assessed vacancy rate applied is 5.5%.

The Complainant argued that the study included a range of building qualities, sizes, and uses (i.e. medical/dental, own use, etc.). As a result, the study underestimates the actual vacancy rate appropriate for the subject building.

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. While the Complainant pointed out weaknesses perceived in the City's study, no alternative analysis was presented. Furthermore, no appropriate size or

other factors were suggested by the Complainant as better reflecting the subject building and its vacancy rate. The study includes eight buildings within the 50,000 to 100,000 square foot size range (size range arbitrarily selected by the Board) with vacancy ranging from 0% to 38.20%, and the mean average of 8.26%. The Board concluded that the appropriate vacancy rate is the 5.5% used by the City and supported by their vacancy rate study.

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

The Complainant stated that there were 61 parking stalls on the subject property. The Respondent stated that according to the assessment records, there were 89 parking stalls. No other evidence was presented with regard to the number of parking stalls.

The Complainant disputed the \$2160 rent rate per stall used by the City, and indicated that a rate of \$1,560 was more appropriate for the subject. The Complainant indicated that this rate was derived from the actual rates being achieved, but did not provide any analysis. The Respondent indicated that the rate for parking stalls was taken from a study they had done, but did not present any details.

Board's Decision:

Neither party presented any evidence to show what the actual number of parking stalls was. The City's number of 89 parking stalls apparently comes off the Assessment Request for Information (ARFI) data, but this was not presented as evidence before the Board. Based on the evidence before it, the Board concludes that the City's number is correct.

With regard to the lease rate per parking stall, neither party provided any evidence as to what the market rate for parking stalls was in the subject market. Since the Complainant did not convince the Board that his rate is correct, the Board will not change the rate used in the assessment calculation.

Board's Decision:

The Board confirms the rates used by the City in its income approach to arrive at the amended 2011 assessment. The Board confirms the assessment of \$10,070,000

DATED AT THE CITY OF CALGARY THIS 26 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

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.*