

**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:	059153494
LOCATION ADDRESS:	609 14 Street N.W.
HEARING NUMBER:	64274
ASSESSMENT:	\$8,290,000

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.

The Complainant indicated that the issues, evidence and argument he will put forth is the same as presented in Hearing 64271 (Roll Number 059155606, 301 14 Street N.W.) and asked that the evidence and discussion be carried forward into this hearing. The Respondent agreed, as her evidence and argument is the same. The Board will carry over the evidence and argument and apply it to this subject property. The hearing proceeded focussing on the subject property and any matters specific to this subject property. Rather than presenting evidence presented earlier to this Board, the parties just referenced the evidence, questions and concluding comments, as appropriate.

Property Description:

The subject property is located in the Hillhurst Community, at 609 14 Street N.W., and is a class "B" suburban office originally built in 1969. It has a total of 48,080 square feet of office space on five floors and 1,443 square feet of retail space. There are 86 underground parking stalls. 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.

Issues:

1. What is the appropriate market rent for the office space in 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?

The Complainant originally had an issue with the rental rate applied to the retail space, but upon further analysis, no longer disputes the rate applied by the City, of \$18 per square foot.

Complainant's Requested Value: \$5,115,372 (complaint form)

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 by the City, and argued that the market indicates a rate of \$10 per square foot. 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, the owner considers the quality of the building as between a Class 'B' and Class 'C'. Because of the lack of amenities in the building, tenants are leaving. The Complainant presented the rent roll to show the rents that were being achieved (Exhibit C1). Because there were no leases signed within the assessment period (current leases) the Complainant relied on various quarterly reports prepared by various third party real estate market reporting services to support the requested rate of \$10 per square foot.

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. Twelve lease comparables were presented (one was post facto the assessment period) (page 59, Exhibit R1) showing that the current lease rate in the subject area for similar properties was \$14.21 per square foot, and used a rate of \$14 per square foot in their assessment calculation for the subject as well as all the buildings in this assessment category.

The Respondent also presented a summary of the rent roll information presented in Exhibit C1 (page 58, Exhibit R1). Based on this data, the average lease rate being achieved was \$18.18 per square foot. Two leases signed or renewed during the assessment period average a rate of \$12.50 per square foot. The Respondent further indicated that the subject data supported their rate of \$14 per square foot, and not the Complainant's requested rate of \$10 per square foot.

Board's Decision:

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 notes the Complainant's contention that the subject property is no longer a Class 'B' quality building, but was not presented with any evidence as to why the property is more accurately considered between a Class 'B' and Class 'C', nor did the Complainant sufficiently address the issue of whether the property still fell into the City's Class 'B' category for assessment purposes, and why or why not. The Board is not convinced that the subject is incorrectly classified by the City for assessment purposes.

The lease comparables presented by the Respondent support the \$14 per square foot rental rate. The actual rents being achieved by the subject add further support that the \$14 per square foot rate reflects the market and is the appropriate rate. The Board concludes that the appropriate rental rate for the subject office space is \$14 per square foot.

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 is more reflective of the market for the subject property. The Complainant stated that the vacancy in the subject was 10.73%, and that this rate was supported by various quarterly reports prepared by third party real estate reporting agencies.

The Respondent presented a summary of its northwest suburban office vacancy analysis (page 61-63, 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 10.73%. The mean vacancy rate determined by the study was 5.47%. The assessed vacancy rate applied was 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 vacancy rate in the subject property is not sufficient evidence upon which to establish a vacancy rate that reflects the market. 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.

Furthermore, it was not obvious to the Board which, if any, of the categories used by these reporting agencies properly characterized the subject. The use of third party data is appropriate as a check on data prepared by a party and presented 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 Board concluded that the appropriate vacancy rate is the 5.5% used by the City and supported by their vacancy rate study.

Board's Decision:

The Board confirms the rates used by the City in its income approach to arrive at the 2011 assessment. The Board confirms the assessment of \$8,290,000

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.*