

**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:**

***ARTIS BRITANNIA LTD. ( as represented by Fairtax Realty Advocates ), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***R. Glenn, PRESIDING OFFICER***

***D. Steele, MEMBER***

***J. Mathias, 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>067055103</b>
<b>LOCATION ADDRESS:</b>	<b>703 6 AVE SW</b>
<b>HEARING NUMBER:</b>	<b>64264</b>
<b>ASSESSMENT:</b>	<b>\$16,350,000</b>

This complaint was heard on the 27th day of September, 2011 at the offices of the Assessment Review Board which are located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 10.

Appeared on behalf of the Complainant: Syd Storey and Bruno Boccaccio ( Agents )

Appeared on behalf of the Respondent: Harry Neumann ( Assessor )

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

The Respondent initially objected to the Complainant including their evidence regarding deferred maintenance with the original Complaint Form, and not in the Brief proper. They claimed that including it with the Form rather than the Brief was not proper disclosure, and therefore, they were prejudiced by not having proper notice.

After hearing argument, the Board decided the Complainant's evidence regarding deferred maintenance had been properly disclosed, notwithstanding that it was contained with the original Complaint Form, and that the Respondent had not been prejudiced. It was clear from the presentation that the Respondent had not read the original Complaint Form package when it was received.

**Property Description:**

The subject property is a 19,696 SF parcel of land improved with a 9 storey "B" Class office building, known as the Britannia Building, located in the west end of downtown Calgary. The subject was originally built in 1958, with additional storeys being added in 1978, comprising 131,521 SF of space, with 8,787 SF of retail space and the balance office space. There are also 42 underground parking stalls.

**Issues:**

Does the assessment adequately account for the characteristics and condition ( deferred maintenance ) of the subject building ?.

**Complainant's Requested Value:**

\$15,429,000

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

The questions herein are very similar to the matters in issue in CARB 2419-2011-P

The Complainant listed 3 issues in their disclosure brief, but at the outset, confirmed they would only pursue the single issue of deferred maintenance. The Respondent initially objected to the

Complainant including their evidence regarding deferred maintenance being included with the original Complaint Form, and not in the brief proper. They claimed that including it with the form, rather than the brief was not proper disclosure, and therefore they were prejudiced by not having proper notice.

After hearing argument, the Board decided that the Complainant's evidence regarding deferred maintenance had been properly disclosed notwithstanding that it was contained with the original complaint form and the Respondent had not been prejudiced. It was clear that the Respondent had not properly read the Complaint Form package when it was received.

The Complainant provided a Draft Engineering Report which stated that 17 items ( mainly heating and air conditioning equipment ) in the subject building were in need of upgrading or, replacement. The total value attached to these replacements was stated as \$821,000. There was little doubt as to the veracity of the Engineering Report.

The Complainant argued that deferred maintenance must be taken into account when calculating the market value of a property. They further stated that the condition of the needed replacements was causing them to lose tenants, and put forward a relatively high vacancy figure. They seek relief by having the subject assessment lowered. The Complainant did confirm that they had capital reserves in place to deal with the anticipated replacements.

The Respondent argued that the subject building was performing financially as well as other buildings in its class, and so, no reduction was indicated. They elaborate that the economic performance of the subject building exceeds "typical". They go on to argue that the Complainant should not be subsidized by an assessment reduction if they do not do proper maintenance and replacement in a timely fashion.

The Respondents also noted that the subject boilers and related equipment on the premises were working quite well, even though they were obsolete, that is, they were past their normal time for replacement. The Respondent says it was not deferred maintenance, but deferred replacement.

Further, they say the Complainant has not put forward any information to indicate what, if any reduction is indicated by the concerns they raise. The Respondent argues that the Complainant merely deducted the amount of deferred maintenance from the subject assessment to arrive at their requested assessment. The market value of the subject was not determined by the Complainant in their evidence or in argument.

It was apparent that in calculating their vacancy, the landlord had relied on vacancies in sub-leases in the subject building.. This does not present an accurate picture of how vacancy affects the landlord's income because the landlord is still collecting rent on the original lease. With this in mind, the actual vacancy rate was determined to be substantially lower than the Complainant had originally stated.

The Board takes the comprehensive view that in the subject property, economic performance is not affected by deferred maintenance, contrary to the argument of the Complainant.

Based on all of the foregoing, the Complainant has not met the necessary onus to establish that the subject assessment is incorrect, or, unfair. Accordingly, the subject assessment is herewith confirmed in the amount of \$16,350,000

DATED AT THE CITY OF CALGARY THIS 28<sup>th</sup> DAY OF OCTOBER, 2011.



R. Glenn  
Presiding Officer

**APPENDIX "A"**

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

NO.	ITEM
1. C1	Complaint Form & Disclosure
2. R1	Respondent Disclosure
3. C2	Additional Complainant Disclosure
4. C3	Complainant's Spreadsheet
5. R2	Replacement pages

*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.

*For MGB Administrative Use Only*

<i>Decision No.2419-2011-P      Roll No.067055103</i>				
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Office	Deferred Maintenance	Income Approach	Net Market Value