

**CALGARY
COMPOSITE 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:

Lansdowne Equity Ventures Ltd. (as represented by Assessment Advisory Group),

COMPLAINANT

And

The City Of Calgary, RESPONDENT

Before:

D. H. Marchand, PRESIDING OFFICER

D. Cochrane, MEMBER

D. Julien, 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:

LOCATION ADDRESS: 1806 – 52 Street SE

LEGAL DESCRIPTION: Plan 8310836; Blk 3; Lot A – Multiple Legal

HEARING NUMBER: 63901

ROLL NUMBER: 074000399

ASSESSMENT: 9,400,000

This complaint was heard on 27th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta; Boardroom 2.

Appeared on behalf of the Complainant:

- *T. Howell*

Appeared on behalf of the Respondent:

- *K. Gartner*

Procedural or Jurisdictional Matters:

No preliminary matters were raised by the Parties. Both Parties swore an oath. No objection was raised as to the composition of the CARB panel.

After a review of the "Section 5 - reasons for the complaint" filed, the Complainant advised that the assessment is incorrect due to chronic vacancy suffered by the subject property..

Property Description and Background :

- The subject is identified with a sub-property use code CMO210 – Retail Store - Strip within the Forest Lawn Industrial Community.
- The land use designation is Commercial – Corridor 3.
- The parcel has a site area consisting of 146,429 square feet (3.36 acres). It is improved with a 1975 built strip retail development with 71,130 square feet of rentable area. The space has been identified as "C+" quality.

Issue:

Is the current actual vacancy an indication that the subject has a chronic vacancy condition?

Legislation:

The Municipal Government Act, R.S.A. 2000, c. M-26

1(1) In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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 a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

Matters Relating To Assessment And Taxation Regulation (AR 220/2004)

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Party Positions:

The Complainant submitted copies of 3 master rent rolls: a rent roll as of December 1, 2009 wherein the actual vacancy as of that date was 21%, a rent roll as of February 1, 2010 showing a vacancy of 21%, and a rent roll as of December 31, 2010 indicating a vacancy of 23%. The Complainant acknowledged that the time span covered by the three rent rolls is actually for only 1 year.

Based on the vacancy conclusions of these three rent rolls the Complainant requested a revised assessment based on a 20% vacancy allowance compared to the City's use of a typical vacancy allowance of 7.75% for the subject.

The revised assessment requested is **\$7,500,000**

The Respondent provided to the CARB a copy of the Assessment Request for Information (ARFI's) received April 14, 2010. From this rent roll the Respondent was able to show how the vast majority of the vacancies took place in 2009 and 2010, and that there is no long term vacancy as the term chronic vacancy would suggest.

Also provided is a summary of the typical 2011 vacancy rates analysed for the various types of shopping/retail facilities namely: free standing, strip, neighbourhood, community, power, and regional. The summary distinguishes the quadrants in which the properties are located. The typical vacancy rate concluded for the subject is 7.75%.

The Respondent contends that no evidence of a "chronic vacancy characteristic" was presented to the CARB. The CARB was advised that at least three years data showing sustained atypical vacancy is the history that the City's is expecting prior to applying an allowance over and above the typical policy. There is no such history for the subject and the Respondent requested confirmation of the assessment.

Board's Decision:

The evidence provided to the CARB is insufficient to show that the subject is experiencing an atypical or a chronic amount of vacancy over a sustained period of time. One year of data is

insufficient. The CARB notes that there were nine new or renewed leases shown on the most current rent roll. The one space greater than 10,000 sq ft. may need to be demised in order to be leased. The assessment must be based on the typical market conditions for properties similar to that property.

The assessment is confirmed at **\$9,400,000.**

DATED AT THE CITY OF CALGARY THIS 28 **DAY OF** OCTOBER **2011.**



D. H. Marchand
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant's Disclosure of Evidence package.
2. R1	Respondent's Assessment Brief.

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.*

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Decision No. 2478/2011-P			Roll No. 074000399 Calgary DHM	
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Stand alone	Income approach	Vacancy rate