

**Calgary Assessment Review Board****DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the Municipal Government Act, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Metrowest Developments Ltd. (as represented by McCarthy Tetrault LLP), COMPLAINANT***

and

***The City of Calgary, RESPONDENT***

before:

***J. Krysa, PRESIDING OFFICER  
D. Pollard, BOARD MEMBER  
Y. Nesry, BOARD MEMBER***

These are complaints to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>071000202</b>	<b>071104301</b>
<b>LOCATION ADDRESS:</b>	<b>3012 17 Ave SE</b>	<b>3200 17 Ave SE</b>
<b>FILE NUMBER:</b>	<b>70022</b>	<b>70078</b>
<b>ASSESSMENT:</b>	<b>\$20,570,000</b>	<b>\$7,850,000 (Amended)</b>

These complaints were heard on the 3rd day of July, 2013, in Boardroom 10 of the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- R. Hung

Appeared on behalf of the Respondent:

- J. Lepine

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

[1] There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

**Property Description:**

[2] The subject properties are two adjacent parcels of land, improved with a retail development comprised of five individual structures and paved surface parking, with the following attributes:

Location (address):	3012 17 Ave SE	3200 17 Ave SE
Parcel size:	6.15 acres	2.57 acres
Commercial retail units:	32 (in 3 structures)	7 (in 2 structures)
Assessed improvement area:	79,162 sq.ft.	39,646 sq.ft.
Year(s) of construction:	1975, 1976, 1978	1973

[3] A portion of the subject property located at 3200 17 Ave SE is occupied by a tenant eligible for a tax exemption pursuant to current legislation and the Respondent's current total estimate of market value of \$9,669,300 has been adjusted in this regard, resulting in a taxable assessment of \$7,850,000.

**Issues:**

[4] The issues of the complaints were identified as follows:

**Issue 1.** Should the assessments of the subject properties be founded on the typical vacancy rates as determined by the Respondent's analysis, or the 5 year average vacancy rates exhibited by the subject properties?

**Issue 2.** Capitalization Rate (Withdrawn at hearing)

**Complainant's Requested Value(s):**

[5] Roll number:	071000202	071104301
Assessment (under complaint):	\$20,570,000	\$7,850,000
Requested assessment:	\$17,918,000	\$6,675,000 (Truncated)

**Board's Decision:** The assessments are **confirmed** as follows:

[6] Roll number:	071000202	071104301
Assessment:	<b>\$20,570,000</b>	<b>\$7,850,000</b>

**Positions of the Parties:****Complainant's Position:**

[7] The Complainant argues that the subject assessments are inappropriately founded on the "typical" SE (southeast) retail vacancy rate of 7.5% as established by the Respondent, resulting in assessed values that are inequitable and greater than the subjects' actual (market) values. The Complainant submits that the subject properties are experiencing vacancies significantly higher than the typical vacancy rate, and the subject's actual vacancy rates should be taken into account in the determination of the assessment.

[8] In support of the 5 year average vacancy rates employed in the Complainant's requested assessments, the Complainant provided a summary of the subject's vacancy levels for the last 5 years, as follows:

<u>Year</u>	<u>3012 17 Ave SE</u>	<u>3200 17 Ave SE</u>
2012	21.48%	35.56%
2011	19.38%	3.27%
2010	17.34%	0.00%
2009	16.28%	10.77%
2008	17.61%	26.45%
5 Year Average	<b>18.42%</b>	<b>15.21%</b>

[9] The Complainant maintains that the Respondent does at times, reflect actual vacancy rates in the determination of an assessment and submits that the Assessment Review Board in CARB 1472-2012-P, revised the assessment in respect of 3012 17 Ave SE to reflect the actual vacancy levels of the subject property.

[10] The Complainant further argues that although there have been no physical changes to the property in the last year, the current assessed size of the improvements on 3012 17 Ave SE

is greater than that assessed in 2011, without explanation. The Complainant provided the following information:

Source	Leasable area
2011 assessment	79,162 sq.ft.
Current assessment	79,845 sq.ft.
Subject's rent roll	80,543 sq.ft.

[11] In response to questions from the Respondent and the Board, the Complainant indicated that he is not aware of any specific physical characteristics of the subject properties that would result in atypical vacancy levels; however, he could only speculate that the inferior Forest Lawn location, as well as the age, class and condition of the subject properties are a probable cause. Further, in respect of the property located at 3012 17 Ave SE, the Complainant submits that a portion of the property may suffer increased vacancy due to a lack of convenient parking directly in front of some of the commercial retail units.

#### **Respondent's Position:**

[12] The Respondent maintains that the assessment is not in error, and should be confirmed.

[13] The Respondent submits that the legislation requires the Respondent to use mass appraisal in the preparation of assessments, and to employ factors that reflect typical market conditions of similar properties; unless some unique physical characteristic can be identified that would deem a property sufficiently dissimilar to the stratified group of properties.

[14] In support of the typical vacancy rate of 7.5%, the Respondent provided a 2013 Retail Vacancy Analysis Summary to demonstrate that of the total 964,304 sq.ft. of southeast Calgary leasable area identified in 2012 ARFI (assessment request for information) responses, 72,345 sq.ft. was vacant, reflecting a vacancy rate of 7.5%. The Respondent argues that the vacant areas within the subject properties are included in the analysis, and removing them from the analysis would affect the resultant "typical" vacancy rate for the remainder of the group of properties.

[15] The Respondent maintains that in this instance there is no significant support to explain why the subject's vacancies exceed the typical vacancy rate that has been applied equitably in the assessment calculations of similar properties regardless of their actual vacancy rates, and further, there is no valid reason to provide special treatment to the subject properties, or exclude the subject properties from the legislated requirements.

[16] The Respondent further argues that although a property may experience a high level of vacancy, the market value of the property is not necessarily affected. In support of this position, the Respondent provided three sales of shopping centres to demonstrate that the sale prices approximate the assessments of the properties predicated with typical vacancy rates. In further support, the Respondent provided the 2011 ARFI response for the property at 999 36 St NE to illustrate that although the property was experiencing a vacancy rate of 15.89% at the approximate time of sale, the sale price approximates the assessment as predicated with a CRU vacancy rate of 6.25% and a Supermarket / Theatre vacancy rate of 1%.

**Legislative Authority:**

[17] Decisions of assessment review board

**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.

**(2)** An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

**(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.

**Board's Reasons for the Decision:**

[18] The Board finds the assessment is fair and equitable, taking into consideration the valuation and other standards set out in the regulations; specifically the requirements of s.2 of *Matters Relating to Assessment and Taxation Regulation, AR 220/2004*.

[19] The Board finds that there was no evidence the "typical" retail vacancy rate established by the Respondent does not reflect typical market conditions for properties similar to the subject, and accepts that the typical 7.5% vacancy rate has been applied fairly and equitably amongst similar and competing properties, therein valuing the fee simple estate of the properties as required by the regulation.

[20] The Board further finds that there was insufficient evidence to demonstrate that the subject properties are "atypical" or improperly stratified. On the contrary, in respect of the subject property located at 3200 17 Ave SE, the Complainant's vacancy evidence indicates that prior to 2012 the property exhibited a 3 year range of vacancies from 0.0% to 10.7%, with an average vacancy rate of 4.68%; well below the assessed typical vacancy rate. With respect to the 35.56% reported vacancy rate for 2012, the Complainant's rent roll evidence at C1, Tab 3, p.16 indicates that a 5 year lease of unit 2, (4,200 sq.ft.), expired on June 30, 2012; only one day prior to the valuation date for this assessment.

[21] Whereas the two subject properties are located adjacent to each other with similar access from a major traffic route, and are similar in age, quality and condition, the Board agrees with the Respondent that the subject properties are typical retail properties, exhibiting typical leasing activity. In respect of the commercial retail units in an arguably inferior location within 3012 17<sup>th</sup> Ave SE, the Board notes that the current assessment includes 4,908 sq.ft. of retail area stratified as "Poor Retail Location" and assigned a \$10.00 per sq.ft. market rent rate.

[22] The Board also notes that there is no compelling evidence to demonstrate that there is a direct correlation between the actual vacancy rate of a property and the value of the fee simple estate of the property as inferred in the Complainant's income approach valuations. The Board, however, put little weight on the Respondent's assessment and sale of a retail property with higher than typical vacancy. Although the assessment was prepared with typical vacancy rates, there was insufficient evidence to demonstrate that the other assessed parameters (rent rates, operating costs, etc.) reflected the actual parameters of the property at the time of sale, and did not simply offset the vacancy rate differential.

[23] With respect to the 2012 decision of the Board in CARB 1472-2012-P, the Board notes that the decision was in respect of the property located at 3012 17<sup>th</sup> Ave SE, and not both adjacent subject properties that are before this Board. In reviewing the summary of evidence set out in paragraph 6 of that decision, it appears that the compelling evidence relating to the adjacent property located at 3200 17<sup>th</sup> Ave SE in this matter, was not before the Board in CARB 1472-2012-P.

[24] With respect to the Complainant's issue related to the accurate size of improvements located at 3012 17 Ave SE, the Board makes no finding. The Board notes that the rent roll and ARFI evidence is varied and inconclusive; however, for the current assessment the Complainant's rent roll information at p.163, Tab 17, C1 indicates a total leasable area greater than that assessed. Moreover, as the information on those documents is submitted annually by the Complainant, the Complainant's remedy is to submit accurate and consistent information from one year to the next.

DATED AT THE CITY OF CALGARY THIS 9<sup>th</sup> DAY OF AUGUST, 2013.

  
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J. Krysa  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1 (70022)	Complainant's Disclosure
2. R1 (70022)	Respondent's Disclosure
3. C1 (70078)	Complainant's Disclosure
2. R1 (70078)	Respondent's Disclosure

*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 ADMINISTRATIVE USE**

<b>Subject</b>	<b>Property Type</b>	<b>Property Sub -Type</b>	<b>Issue</b>	<b>Sub - Issue</b>
CARB	Retail	Shopping Centre - NBHD	Equity; Vacancy	