

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:

Copperfield Corner Inc. (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

A. Maciag, BOARD MEMBER

J. Massey, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	200431666
LOCATION ADDRESS:	15566 McIvor Boulevard SE, Calgary AB
FILE NUMBER:	70340
ASSESSMENT:	\$13,060,000

This complaint was heard on the 10th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *C. Hartley; B. Peacock*

Appeared on behalf of the Respondent:

- *J. Lepine*

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

- [1] There were no preliminary procedural or jurisdictional matters before the CARB.

Property Description:

[2] The property that is the subject of this assessment complaint is a retail shopping centre known as "Copperfield Corner" which is located at 15566 McIvor Boulevard SE in the residential community of Copperfield.

[3] This centre comprises four buildings, each occupied by one or more tenants. There is also a gas-bar/convenience store and carwash operated by the Calgary Co-operative Association. The buildings, which were constructed in 2005, contain a total rentable floor area of 26,731 square feet. The centre occupies a 157,912 square foot (3.63 acre) site.

[4] The 2013 roll year assessment, completed by using an income approach, has typical retail rental rates from \$32.00 to \$35.00 per square foot with a lump sum rent amount of \$105,000 for the gas bar/convenience store/carwash. All tenancies were given an 8.0 percent rental vacancy loss allowance, a 1.0 percent non-recoverable operating expense allowance and an \$8.00 per square foot operating cost factor. A calculated net operating income amount of \$881,873 was capitalized at a rate of 6.75 percent to arrive at the \$13,060,000 assessment.

Issues:

[5] In the Assessment Review Board Complaint form, filed February 27, 2013, Section 4 – Complaint Information had a check mark in box #3 "Assessment amount".

[6] In Section 5 – Reason(s) for Complaint, the Complainant stated "The assessment amount is incorrect." Numerous references were made to the Municipal Government Act (MGA) and its related regulations. A number of grounds for the complaint were set out.

[7] At the hearing, the Complainant pursued the following issues:

- 1) The rental rate applied to tenant spaces from 1,001 to 2,500 square feet should be \$29.00 per square foot rather than \$33.00 per square foot.
- 2) An area of 2,232 square feet that is occupied by a medical clinic should be removed from the 1,001-2,500 square foot category and the rental rate for

that space should be \$22.00 per square foot rather than \$33.00 per square foot.

Complainant's Requested Value: \$11,690,000

Board's Decision:

[8] The complaint is partially successful and the CARB reduces the assessment from \$13,060,000 to \$12,590,000.

Position of the Parties

Complainant's Position:

[9] The buildings are set out in a sort of irregular shape which leaves one tenant area, occupied by Circle Medical clinic, with poor visibility and exposure to the adjoining roadways. This tenant space is on the end of building "A" of the centre. There are four other tenants in building "A".

[10] This medical space should be assessed using a different rental rate than the retail premises in the centre. During 2010, 2011 and 2012, there were five new or renewal leases completed for space within the centre. Three of the leases were for spaces in building "A". A comparison to lease rates set in 2007 when some space was leased for the first time, showed that rental rates were more or less consistent over those years. In 2007, the medical space was leased for a 10 year term at \$22.00 per square foot whereas two other spaces were rented at \$32.00 and \$28.00 per square foot. This shows that the reduced visibility and exposure were factors that negatively impacted on the achievable rent. Since other rents are more or less similar regardless of whether the leases were completed in 2007 or 2010-2012, then this medical centre space should remain at its 2007 lease rate of \$22.00 per square foot for assessment purposes. That rate was from \$6.00 to \$10.00 per square foot lower than the other rents that were also in 2007 leases.

[11] All five of the 2010-2012 new leases were for tenant spaces in the 1,001-2,500 square foot category. The rent rates ranged from \$28.00 to \$35.00 per square foot with the median and mean averages being \$29.00 and \$30.20 per square foot, respectively. These new leases are strong indicators that the rental rates for space in that category should be \$29.00 per square foot rather than the \$33.00 per square foot used in making the assessment.

[12] With respect to three spaces that were listed for rent according to materials in the Respondent's evidence, the Complainant pointed out that former tenants in those spaces had vacated prior to their lease termination dates. That fact is indicative that it was not possible for businesses to be successful when their rents were so high.

[13] In its rebuttal evidence, the Complainant argued that three of the Respondent's lease comparables were from Sunpark Plaza, a superior property to Copperfield Corner. If those leases are removed from the data array, the median rate from the Respondent's remaining comparables is \$30.00 per square foot which tends to support the \$29.00 rate advanced by the Complainant. Further, all three of those leases were to national restaurant tenants that catered to the very large office building population in Sunpark Plaza and its surroundings.

[14] The Complainant's rebuttal document also contained a table relating to leases of medical/dental office space in a building that had not been mentioned as a comparable by the Respondent. The CARB disallowed this new evidence as well as a photo of the building introduced for the first time at the hearing by the Respondent.

[15] The rebuttal evidence of the Complainant included a Queen's Bench judgment "*Mountain View (County) v. Alberta (Municipal Government Board) 2000 ABQB 594*." That order established that the proper standard for valuation is market value. In a summary paragraph, Justice Fraser stated, "*I am of the view that the Board was entitled in law to reduce the land assessment under review to market value as it did, notwithstanding that the resulting value was not determined by the use of mass appraisal and notwithstanding that the revised assessment may not have been fair and equitable at the time having regard to other assessments in the County.*" From this, the Complainant concluded that the market value standard must at all times be met. It is not that mass appraisal cannot find market value in this case. It is that the improper classification of portions of the property means that mass appraisal applications do not lead to market value.

Respondent's Position:

[16] The Respondent is required by Alberta legislation to prepare assessments using mass appraisal processes. In this instance, that was done and the resulting assessment was prepared fairly. In order for this fairness to exist, it is necessary to rely upon more than just rent data from the assessed property. The flaw in the Complainant's case is that only site specific rental data was used.

[17] Perusal of the master rent roll for the property shows that there are other tenants in the shopping centre that are medical in nature. The veterinary clinic, chiropractic clinic and dental offices were cited. These tenants were paying rents of \$28.00, \$27.00 and \$27.00 per square foot, respectively. Those leases had commencement dates in 2005, 2006 and 2007. (It is noted that the veterinary clinic lease was renewed in 2012 at \$29.00 per square foot).

[18] The Respondent provided copies of marketing materials from CBRE real estate indicating that vacant spaces were available for lease at rent rates from \$28.00 to \$34.00 per square foot. Dates of the listings were not provided. In response to the Complainant's claim that high rents caused failure of former tenants in these areas, the Respondent argued that there was no evidence to show that rent had anything to do with the early lease terminations by those tenants.

[19] A number of leases in Calgary shopping centres were provided to support the assessed rental rates. The rates were set out for the size categories used in the assessment process. For spaces of 1,001-2,500 square feet, seven leases showed an average rate of \$34.00 per square foot. One larger category was represented as well, however, since the Complainant only made the 1,001-2,500 square foot category an issue, the Respondent did not dwell on this other data. It was argued that the seven lease rates described in the data supported the assessed rate of \$33.00 per square foot.

[20] The Respondent argued that given the similar rental evidence from the subject property and similar properties, there is no reason to value this property on a "site specific" basis using only property specific rents. This is not a property that is significantly different than other shopping centres in Calgary. The shopping centre and the tenant spaces within it are properly classified which leads to a fair, equitable and correct assessment.

Board's Reasons for Decision:

[21] Other than the fact that the original lease rent for the medical clinic space seemed to be lower than rents for other spaces in the shopping centre, the Complainant has not provided any evidence to support the request for separation of the medical clinic space and then assessing that space using a lower rental rate. The argument that that space suffers from inferior exposure is not supported by market evidence. Nor is there any market evidence to show that medical clinic space should be assessed using rental rates different than the rates for other retail space. Only the original 2007 lease of the subject space seemed to suggest a different rate.

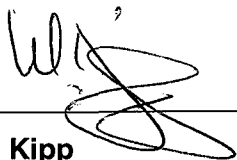
[22] The evidence does, however, show that rents in the subject building "A" are lower than rents in the other buildings within the centre and lower than rents for space in other shopping centres. Three newer leases (2011 and 2012) in that building (all for spaces between 1,001 and 2,500 square feet) specified rents of \$28.00 and \$29.00 per square foot. Two 2010-2011 leases in other buildings within the centre were at rents of \$30.00 and \$35.00 per square foot. This evidence convinces the CARB that building "A" in its entirety draws lower rents, most likely because of its situation on the site and its inferior exposure to adjoining roadways. For this reason, the CARB reduces the rental rate for all 8,552 square feet in building "A" to \$29.00 per square foot.

[23] The remainder of the space in the 1,001-2,500 square foot category remains at a rental rate of \$33.00 per square foot. The two leases in the centre at \$30.00 and \$35.00 per square foot support the \$33.00 rate. The CARB does not accept the lease samples from the Sunpark Plaza property as being comparable to the subject. Those leases, at rates of \$34.00 and \$35.00 per square foot, are clearly in a property that is superior to the subject. Sunpark Plaza is located within an office park development where there is a very high daytime population. The leases were, according to Complainant's evidence, to three restaurant tenants (Edo Japan, Starbucks, Fat Burger) that are typically found in such an environment. Even with these lease comparables removed from the array, the balance of the data supports the \$33.00 assessed rental rate.

[24] Having regard to the assessment standard of market value and the mass appraisal process, the CARB is satisfied that in this instance, the application of mass appraisal techniques can result in the achievement of a market value assessment. This shopping centre is not unique to the extent that it should be valued on a "site specific" basis.

[25] None of the other assessment parameters are changed. The revised assessment is \$12,590,000.

DATED THE CITY OF CALGARY THIS 4 DAY OF July 2013.



W. Kipp

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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 Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Plaza	Income Approach	Net Market Rent/Lease Rates