



## **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:**

**2540 KENSINGTON LTD.**

**Complainant**

**and**

**THE CITY OF CALGARY**

**Respondent**

**before:**

**T. Shandro, PRESIDING OFFICER  
J. Kerrison, BOARD MEMBER  
D. Morice, 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:

<b>ROLL NUMBER:</b>	<b>060078904</b>
<b>LOCATION ADDRESS:</b>	<b>2540 Kensington Road NW, Calgary, Alberta</b>
<b>FILE NUMBER:</b>	<b>70630</b>
<b>ASSESSMENT:</b>	<b>\$4,750,000</b>

This complaint was heard on September 5, 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:

- W. Van Bruggen, Agent, MNP LLP
- G. Worsley, Agent, MNP LLP

Appeared on behalf of the Respondent:

- C. Neal, Assessor, The City of Calgary

### **Procedural or Jurisdictional Matters**

[1] There were no procedural or jurisdictional matters arising.

### **Property Description**

[2] The subject property is a suburban office building, known as the Underwood McLellan Building, located in West Hillhurst. It is assessed as a "B" quality building and 28,500 square feet ("SF").

[3] It is adjacent to three other properties described municipally as:

- 1) 2530 Kensington Road NW, an office building with 15,000 SF of space ("2530 Kensington"); and
- 2) 2520 and 2524 Kensington Road NW, which are together a surface parking lot (the "Surface Lots").

[4] The Complaint's evidence indicates 2530 Kensington assessed in 2013 to be \$1,850,000.

[5] On December 13, 2012, a Transfer of Land was executed in which the subject property, 2530 Kensington and the Surface Lots were all jointly conveyed as a portfolio sale to the Complainant for the single amount of \$5,800,000.00. The transfer occurred on January 2, 2013.

### **Issues**

[6] The Complainant identified the issues as follows:

1. Was it correct to have used the Income Approach when valuing the subject property?
2. If the Income Approach was the correct approach:
  - (a) Was the correct rental rate used; and
  - (b) Was the correct vacancy rate used?

### **Complainant's Requested Value**

[7] In the Complaint Form, the Complainant requested a reduced assessment of \$4,100,000. At the hearing the Complainant amended the requested value to \$3,790,000.

### **Board's Decision**

[8] The Board confirms the assessment of the subject property.

### **Issue 1: Was it correct to have used the Income Approach when valuing the subject property?**

#### *The Complainant's Position*

[9] The Complainant submitted that the sale of the subject property in either December or January 2013 should be used to determine the market value. (The Complainant took the position that the transfer occurred on the date the Transfer of Land was executed, December 13, 2012.)

[10] The Complainant provided three decisions, CARB 0276/2013, CARB 1999/2013 and CARB 0762/2013, which support using recent sales instead of mass appraisal if the recent sale was arm's length.

[11] The Complainant further submitted that the value of the subject property should be the global amount for the purchase of the portfolio, \$5,800,000, minus the assessed value of 2530 Kensington and the Surface Lots, \$1,850,000, which equals \$3,950,000.

#### *The Respondent's Position*

[12] The Respondent submitted that the transaction was post-facto and, therefore, mass appraisal standards were the correct method for determining market value of the subject property.

[13] Further, the Respondent disagreed that it would be accurate to subtract the assessed value of 2530 Kensington from the portfolio sale of all of the properties to determine the market value of the subject property.

#### *Reasons for Board's Decision*

[14] First, it is incorrect to base an assessment on an assessment. That is, one cannot determine the market value of the subject property by subtracting the assessed value of an adjacent property from the sale price of a portfolio.

[15] Second, the transaction was post-facto; it occurred in January 2013, which is well beyond the legislated date of valuation, July 1, 2012.

[16] Therefore it is incorrect to determine the market value of the subject property based on the transaction in January 2013.

**Issue 2: If the Income Approach was the correct approach:**

- (a) Was the correct rental rate used; and
- (b) Was the correct vacancy rate used?

*The Complainant's Position*

[17] The Complainant submitted that the prevailing lease rate for office properties in the northwest is \$15/SF and in the northeast is \$13/SF. The Complainant submitted that the Respondent uses a non-weighted mean which gives the same weight to small spaces as it does to large spaces. The Complainant submitted that a weighted average results in a \$13/SF rate.

[18] Regarding the vacancy rate, the Complainant provided its own vacancy analysis and determined the vacancy rate for office properties in the northwest to be 12.75%, not 9%.

[19] The parties also discussed the vacancy of the subject property, as the subject property was used in the analysis provided by the Complainant, in which a 100% vacancy was used. The Complainant submitted that the Complainant has been advertising for tenants and looking to have the premises occupied.

*The Respondent's Position*

[20] Regarding the lease rate, the Respondent provided its lease rate analysis, which resulted in a mean of \$15.83/SF and a weighted mean of \$14.46. The Respondent submitted that \$15.00/SF was fair and equitable for an assessed rental rate.

[21] Regarding the vacancy rate, the Respondent provided its analysis, which included office properties in the northwest and northeast. The subject property was included, to which the Respondent attributed a 0% vacancy, as the Respondent argued that the subject property was undergoing major renovations during the material times. The Respondent provided correspondence from the property manager indicating that the subject property was not chronically vacant but instead undergoing major renovations. The vacancy was therefore a management decision and the subject property was owner-occupied during the material times, the Respondent submitted.

*Reasons for Board's Decision*

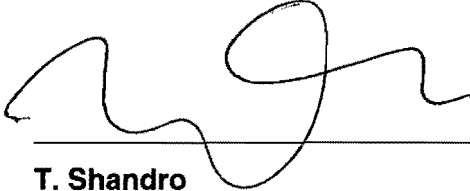
[22] Regarding the rental rate, there was insufficient evidence to convince the Board that the weighted mean as calculated by the Complainant was more accurate than the mean calculated by the Respondent or that the rental rate used by the Respondent was unfair or inequitable. The Board finds the correct rental rate to be the assessed rate of \$15.00/SF.

[23] Regarding the vacancy rate, the Board found the analysis provided by the Respondent to be more accurate. The subject property was incorrectly attributed by the Complainant to be 100% vacant, which resulted in the lease analysis of the Complainant being less accurate. The subject property instead had at the material times a vacancy rate of 0.00%. The Board therefore finds, for the purpose of determining assessment value, the vacancy rate to be 9.00%.

**Conclusion**

[24] For these reasons, the Board therefore confirms the assessment of the subject property.

**DATED AT THE CITY OF CALGARY THIS 3<sup>rd</sup> DAY OF October 2013.**

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

**T. Shandro**  
**Presiding Officer**

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

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure (parts 1 and 2)
2. R-1	Respondent Disclosure
3. C-2	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 Administrative Purposes Only**

Property Type	Property Sub-Type	Issue	Sub-Issue
Office	Low Rise	Income	Rent Rate and Vacancy