



## **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:**

***Berdaland Canyon Limited (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:

<b>ROLL NUMBER:</b>	<b>142077908</b>
<b>LOCATION ADDRESS:</b>	<b>11625 Elbow Drive SW, Calgary AB</b>
<b>FILE NUMBER:</b>	<b>71807</b>
<b>ASSESSMENT:</b>	<b>\$19,770,000</b>

This complaint was heard on the 10<sup>th</sup> 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 located within the residential community of Canyon Meadows in southwest Calgary. The property is at the southwest corner of Anderson Road and Elbow Drive however there is no direct exposure to Anderson Road. The shopping centre is an "L" shaped building oriented toward Elbow Drive and Canterbury Drive SW which forms the south boundary of the property.

[3] The building, constructed in 1979, comprises a number of ground level retail tenant spaces plus second floor offices above the north portion of the building. In all, there are 75,228 square feet of tenant space which includes 20,708 square feet of second floor office. The centre occupies a rectangularly shaped land parcel of 237,137 square feet (5.44 acres). There is a variety of tenants in the property, including a convenience store, a drug store, a real estate office, a driving school and a restaurant and lounge. A gas bar was removed from the southeast corner of the site a number of years ago.

[4] The assessed value of \$19,770,000 was arrived at by use of an income approach. Typical retail rents of \$15.00, \$24.00, \$25.00 and \$26.00 per square foot were applied to the various classifications of space. The office space rent rate is \$18.00 per square foot. One "big box" tenant area (20,297 square feet) was allowed a 1.0 percent vacancy loss while all other space was given a 7.50 percent vacancy loss allowance. For vacant space, operating expenses were \$8.00 per square foot and a 1.0 percent non-recoverable expense allowance was provided. The resulting net operating income of \$1,384,108 was capitalized at a rate of 7.00 percent to arrive at the assessment.

**Issues:**

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

[6] In Section 5 – Reason(s) for Complaint, the Complainant stated numerous grounds for the complaint.

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

- 1) The shopping centre suffers from chronic vacancy which negatively impacts its market value; the vacancy allowance for all space, other than the big-box space, should be increased from 7.5 percent to 20.0 percent.
- 2) All of the rent rates used in making the assessment are too high and should be reduced as follows:
  - i. Big box: from \$15.00 to \$8.50 per square foot
  - ii. CRU 0-1,000 SF: from \$26.00 to \$21.00 per square foot
  - iii. CRU 1,001-2,500 SF: from \$25.00 to \$23.00 per square foot
  - iv. CRU 2,501-6,000 SF: from \$24.00 to \$15.00 per square foot
  - v. Office: from \$18.00 to \$17.00 per square foot

**Complainant's Requested Value: \$12,980,000**

**Board's Decision:**

[8] The complaint is partially successful and the assessment is reduced from \$19,770,000 to \$15,000,000.

**Position of the Parties**

**Complainant's Position:**

[9] The Complainant argued that the location of this shopping centre is such that it only services the surrounding residential community and notwithstanding its proximity to the heavily travelled Anderson Road, it does not have direct exposure to that artery which would attract patrons.

[10] A three year summary of vacancy was provided showing the chronic situation:

- 1) 2010: 15% vacancy
- 2) 2011: 20% vacancy
- 3) 2012: 38% vacancy

[11] Additional support for recognition of the chronic vacancy situation is be found in the 2010 CARB order 0740/2010-P wherein evidence showed 2004 to 2009 vacancies of 9% to 22%. In that order, the CARB set the overall vacancy rate at 14.1 percent.

[12] All of this evidence supports the Complainant's request for the current assessment to reflect a 20 percent vacancy on all but the big box space.

[13] Over the past few years, 84 percent of the retail space in the 1,001-2,500 square foot category has been subject to new or renewal leases so there is ample evidence from within the property to warrant reductions in the typical rents used in making the assessment.

- 1) The lease for the big box space (the Rexall drug store) commenced on November 1, 2010 at a rent rate of \$8.50 per square foot. This is a very large block of space with a narrow frontage at the corner of the "L" shaped building.
- 2) Two spaces with under 1,000 square feet were leased in 2009 and 2010 at \$20.47 and \$21.00 per square foot.
- 3) 11 spaces of between 1,001 and 2,500 square feet were leased in 2009, 2010, 2011 and 2012 at rates from \$15.00 to \$25.00 per square foot. The median and mean average rates from these 11 leases were \$23.00 and \$21.46 per square foot.
- 4) In the 2,501-6,000 square foot category, one 2009 lease on 3,057 square feet specified a rent of \$15.00 per square foot.
- 5) In the second floor offices, three 2009 and 2012 leases contained rent provisions of 15.00, \$17.00 and \$19.00 per square foot.

[14] The Complainant argued that the foregoing was sufficient evidence to warrant reducing the typical rental rates for all categories of space.

[15] The rebuttal evidence of the Complainant included an Alberta Queen's Bench judgment "*Mountain View (County) v. Alberta (Municipal Government Board) 2000 ABQB 594.*" That decision 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 stated that vacancy allowances are based on stratifications of retail properties and not on a property by property basis. For assessment purposes, "chronic vacancy" in a particular property is no longer considered by the Calgary assessment unit. The current 7.5 percent allowance is given to all properties within the subject's stratification even if actual vacancy is lower than that. It follows that properties with higher vacancy should not be treated any differently.

[17] In response to the Complainant's claim that this centre did not have exposure to other than internal Canyon Meadows roadways, the Respondent provided a copy of a listing of space for rent by Colliers International wherein the property was described as having high exposure to Elbow Drive and Anderson Road.

[18] With respect to rental rates, the Respondent set out tables of comparable lease data for each size stratification. Lease data for spaces in other southeast and southwest Calgary communities were shown and these supported the rates applied to the subject for each category. For big box space, a city-wide lease analysis was provided. In rebuttal, the Complainant argued that most of the big box lease data was from properties that were superior to the subject – many being located on major arteries. There was only one comparable from an Elbow Drive centre and that was at one of the lowest rates (\$11.00), as was the subject (\$8.50).

The other leases in the City's response, as high as \$33.00 per square foot, tended to skew the median and mean averages.

**Board's Reasons for Decision:**

[19] The CARB is cognizant that the standard for assessment is market value. In an open market transaction involving the subject property, a purchaser of the property would be aware of and make allowances for the historically above average vacancy. That cannot be ignored in valuing the property for assessment purposes. The 2010 CARB order for the same property recognized the above average vacancy history and made an adjustment. For this complaint, the CARB also finds that the high vacancy must be considered. With no evidence to the contrary from the Respondent, the CARB accepts the Complainant's average rate of 20.0 percent to be the best evidence. This applies to all space other than the big box component which will continue to have a 1.0 percent vacancy loss allowance. The CARB finds from evidence that this shopping centre does not have ideal exposure to major roadways that would attract shoppers from outside of the immediate community. This at least partially explains why the large centre has consistently experienced higher than normal vacancies.

[20] Turning to rental rates, the CARB finds that rental rates for the various CRU categories as applied by the Respondent are reasonable. Leases within the subject property support those rates. The CARB agrees with the Respondent that lease data from comparable properties is necessary in order to determine typical rents for space in a stratification. Lease data from within a particular property, even when there are several recent leases, is insufficient when a mass appraisal valuation is a requirement. The Respondent provided numerous lease comparables and many of those were considered to reflect the market rates for space within the subject.

[21] The exception to the above is the big box space in the subject. That space is unique in that it is a large block of space with a very small exposure to the front of the shopping centre. The CARB does not accept that the majority of the Respondent's big box lease comparables are similar to this space. Regard was given to the other Elbow Drive lease which involved a similarly sized block of space and a similar lease commencement date. That space, which has full frontal exposure to Elbow Drive was leased for a 10 year term from September 2010 at \$11.00 per square foot. The current lease rate of \$8.50 per square foot for the subject space is accepted as being the appropriate rate for its assessment valuation.

[22] The CARB changes the big box rental rate from \$15.00 to \$8.50 per square foot and the vacancy rate on CRU and office space from 7.5 to 20.0 percent. The revised assessment is \$15,000,000 (truncated).

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

  
W. Kipp

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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*

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