



Calgary Assessment Review Board

DECISION WITH REASONS

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

between:

WESTFIELD KENSINGTON LTD., COMPLAINANT
C/O AX PROPERTY MANAGEMENT L.P.
(as represented by Fairtax Realty Advocates Inc.)

and

The City Of Calgary, RESPONDENT

before:

BOARD CHAIR: P. COLGATE
BOARD MEMBER: P. PASK
BOARD MEMBER: J. MASSEY

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: 059155606
LOCATION ADDRESS: 301 14 STREET NW
FILE NUMBER: 72040
ASSESSMENT: \$11,800,000.00 (AMENDED)

This complaint was heard on 22nd day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 8.

Appeared on behalf of the Complainant:

- *Syd Storey, Fairtax Realty Advocates Inc.*

Appeared on behalf of the Respondent:

- *Tyler Johnson, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

[2] The Respondent raised a preliminary matter under Section 295(4) of the Municipal Government Act.

[3] (4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.

RSA 2000 cM-26 s295;2002 c19 s5

[4] The Respondent submitted the Complainant's documents contained a Rent Roll – Lease Charges which the owner of the property should have returned to comply with the City of Calgary Assessment Request for Information (ARFI) sent to Marwest Management Canada Ltd. on August 31, 2012. The response from Ax Property Management L.P. was the rent roll September 01, 2011. The Respondent noted the rent roll submitted by the Complainant was dated July 01, 2012, so was available for submission.

[5] The Respondent stated there was very little difference between the two rent rolls, with the rental on unit 420, Genivar Inc., the only new lease. Also the vacancy rate was higher than the previous rent rolls.

[6] The Board, after reviewing the two rent rolls, allowed the submission of the rent roll for 2012, with the provision that it would place less weight on the changes between the two rolls and significantly less weight on the vacancy rate. The vacancy rate had not been previously disclosed and was not part of the City of Calgary analysis of vacancy rates.

[7] The merit hearing proceeded.

[8] The Board accepted the amended assessment value at \$11,800,000.00 as the value under complaint.

Property Description:

[9] The subject property contains a suburban high rise office building (CS0302) constructed in 1969. The structure, rated as 'B' quality, is located at 301 14 Street NW in the Hillhurst community. The structure, situated on a 0.85 acre parcel, has an assessable area of 62,882 square feet, designated 54,504 square feet of office space and 8,378 square feet of retail space. There are 89 parking stalls. The land use designation is Commercial. The Building is known as the Hillhurst Building

Issues:

[10] The Complainant stated there were three issues in the complaint:

1. Market rent should be \$12.00 for office space,
2. Vacancy rate should be 15%, and
3. The Complainant states "it is the owner's position that this building should be classified as a Class C". (C1, Pg. 1-1)

Complainant's Requested Value: \$8,490,000.00 (Revised at Hearing)

Board's Decision:

[11] Based on the Board's decision for each of the issues stated, the Board found insufficient information to support the changes requested by the Complainant.

[12] The Board confirms the assessment at \$11,800,000.00

Legislative Authority, Requirements and Considerations:

[13] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[14] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

Position of the Parties**Issue 1. Market Rent for Office space****Complainant's Position:**

[15] The Complainant argued the office rental rate should be at \$12.00 per square foot, as opposed to the current rate of \$15.00 per square foot.

[16] The Complainant submitted the July 01, 2012 rent roll into evidence in support of the request, with reference to a number of the leases commencing in the analysis period July 1, 2011 to July 1, 2012. No detailed analysis of those leases was submitted. Only two new leases were found in the analysis period for rates of \$12.00 and \$14.50 per square foot.

[17] In support of the requested office rental rate of \$12.00, the Complainant submitted its Hillhurst Rent Analysis page which indicated a weighted average lease rate of \$11.78. Also noted by the Complainant was the 50% turnover in tenants in the period of 2010 to 2012. (C1, handout for missing page)

Respondent's Position:

[18] The Respondent submitted their 2013 Suburban Office Rental Analysis: B Quality NW into evidence. The analysis of the 41 leases submitted indicated the following:

Mean	\$15.83
Median	\$16.00
Weighted Mean	\$14.46
Assessed Rate	\$15.00

(R1, Pg 61-62)

[19] The Respondent argued the one new lease provided by the Complainant would not have a significant effect on the overall statistics in the analysis.

Board's Reasons for Decision:

[20] The Board was not persuaded by the Complainant with only two leases in the analysis period. The Board found this insufficient justification to change the office rental rate. Upon review of the rental document the Board found a number of the older leases were at significantly higher rental rates on their escalating rents.

[21] The Board found the Complainant's rent analysis, while lower than the request for \$12.00, was site specific. Typical rental rates must be determined through a mass appraisal analysis of all available leases for comparable buildings, not only one building. The Board found the weighted average lease rate fell within the range of lease rates as provided by the Respondent, from \$10.00 to \$25.00 per square foot.

[22] The Board found, based upon a mass appraisal analysis, the Respondent had provided sufficient evidence to support the office rental rate at \$15.00 per square foot.

[23] The Board does take note there was only one lease on 14 Street NW at number 609 for a rental rate of \$13.00. The range for the Respondent's lease rates was from \$10.00 to \$25.00 per square foot.

Issue 2. Vacancy Rate**Complainant's Position:**

[24] The Complainant argued the vacancy rate should be at 15%, as opposed to the current rate of 9% for the office space.

[25] The Complainant submitted the July 01, 2012 rent roll into evidence in support of the request, with reference to five office spaces vacant at the time the form was created. The vacancy rate was 17.15%. (R1, Tab 3, Pg. 12)

[26] In verbal testimony the Complainant stated the vacancy rate fluctuate from a low of 5% to the 17% in the latest rent roll.

Respondent's Position:

[27] The Respondent referred to the rent roll of September 01, 2011, which indicated a total vacant area of 3,006 square feet from a total area of 62,882 square feet of rentable area or 4.78%. The Respondent argued vacancy rates fluctuate on an annual basis, as shown by the subject property, and it was not an acceptable mass appraisal technique to use a site specific rate from only one year as the basis for the assessment. (R1, Pg. 40)

[28] The Respondent reminded the Board this rent roll was not provided to the City of Calgary and was not included in the analysis of vacancy rates it presented.

[29] The Respondent submitted the Northwest CS0302 (Suburban Office) 'B' and 'C' Quality vacancy study of 54 properties. The analysis indicated an average vacancy rate of 9.15%. The City of Calgary used 9% in its calculation of suburban office assessments. The analysis of the vacancy rate was based upon the ARFI's that were returned to the City of Calgary. The ARFI for the subject property indicated the rate of 4.78%.

Board's Reasons for Decision:

[30] The Board was not persuaded by the Complainant use of vacancy rate based upon a rent roll that was not properly submitted under an ARFI request. The Board found this insufficient justification to change the vacancy rate and noted that the Complainant stated the vacancy rate fluctuated on an annual basis. The rental documents submitted by the Respondent clearly showed the fluctuating vacancy rate in the subject property on a yearly basis.

[31] The Board found, based upon a mass appraisal analysis, the Respondent had provided sufficient evidence to support the vacancy rate at 9%.

Issue 3. Classification**Complainant's Position:**

[32] The Complainant argued the subject property would be better classified as a 'C' class property instead of its current classification as a 'B' class property.

[33] The Complainant argued this was supported by the rental rates received in the subject property, with recent rents falling from \$23.00 to \$13.00 per square foot. Additionally the current vacancy rate in the subject property is 17%.

[34] In verbal testimony, the Complainant alluded to other problems for the subject property such as parking, the lower quality of retail clients and the possibility of functional obsolescence.

Respondent's Position:

[35] The Respondent argued the subject property was correctly classified as a 'B' class office building. The Respondent submitted CARB 0944-2012-P and CARB 1978/2011-P, both of which directly addressed the subject property.

[36] The Respondent argued the rental rates achieved by the subject property fell within the range of lease rates used to establish the typical market rental rate, as supported by the "2013 Suburban Office Rental Analysis: B Quality NW". (R1, Pg. 61)

[37] The Respondent stated the vacancy rate was higher than typical for 2012, but this was not a consistent rate as shown by the ARFI for 2011 which had a significantly lower vacancy in the subject building.

[38] The Respondent argued the Complainant had provided no market evidence to support his statements the building suffered from parking problems, retail tenant problems or functional obsolescence.

Board's Reasons for Decision:

[39] For the reasons previously stated, the Board was not receptive to the Complainant's arguments on the office rental rate or the vacancy rate.

[40] The Complainant's argument with respect to parking, composition of retail clients and functional obsolescence was not supported by any market evidence to support a change to the assessment.

[41] The Board found the Complainant did not provide sufficient evidence to change the current classification, a similar ruling as found in CARB 0944-2012-P and CARB 1979/2011-P. CARB 0944-2012-P spoke specifically to the class of the subject property and confirmed the structure as a class 'B'. The Board quotes from that decision :

"The Board finds the Complainant did not provide sufficient evidence to change the current classification of the subject properties. The Complainant provided little explanation in regards to the factors he cited to support a change in classification...". (R1, Pg. 89)

[42] The Board was not convinced, based on the lack of compelling evidence by the Complainant, the subject property is incorrectly classified.

Board's Decision:

[43] Initially there was a request to change the capitalization rate from 6.5% to 6.75%. However, this was based upon incorrect information used by the Complainant as the capitalization rate was already at 6.75% and so no adjustment was necessary. The Complainant acknowledged the error and withdrew the issue against the capitalization rate.

[44] The Board, based on its review of the issues found insufficient evidence to justify a change to the assessment.

[45] The Decision of the Board was to confirm the assessment at **\$11,800,000.00**

DATED AT THE CITY OF CALGARY THIS 4th DAY OF September 2013.

A handwritten signature in black ink, appearing to read 'Philip Colgate', written over a horizontal line.

PHILIP COLGATE

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent 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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Office	Income Approach	-Market Rental Rates -Vacancy - Classification

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(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;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

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,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

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.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.