

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:

***OPUS Properties Corporation (as represented by AEC Property Tax Solutions),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Axworthy, PRESIDING OFFICER
R. Cochrane, BOARD MEMBER
A. Zindler, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 068083500

LOCATION ADDRESS: 126A 8 AV SW

FILE NUMBER: 74789

ASSESSMENT: \$13,320,000

This complaint was heard on 10 day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *B. Ryan, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *E. Borisenko, The City Of Calgary*

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property, known as the Norman Block, was constructed in 1932 and is located on Stephen Avenue in the Downtown Commercial Core, Non-Residential Zone DT8. The property is developed with a total of 30,833 square feet (SF) of retail space consisting of 11,651 SF on the main floor, 11,182 SF of retail space on the upper level and 8,000 SF of basement storage. The assessable land area is 12,623 SF. The subject was assessed using the Income Approach to value.

Issues:

[3] While a number of issues were included in the Complaint Form, the only issue argued by the Complainant at the hearing was that the assessed Rental Rate and Net Operating Income for the subject property is incorrect and the assessed value of the property should be reduced accordingly.

Complainant's Requested Value: \$ 9,640,000

Board's Decision:

- [4] The Board confirmed the assessment.

Legislative Authority, Requirements and Considerations:

[5] Under The Municipal Government Act (The Act) Section 460.1(2) and subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property, other than property described in subsection 460.1 (1)(a).

[6] The Board was presented with decisions of Assessment Review Boards. While the Board respects the decisions made by those Boards, it is mindful that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless the issues and evidence are found to be timely, relevant and materially identical to the subject complaints.

[7] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

ISSUE: Should the assessed value of the subject property be reduced?

Position of the Parties

Complainant's Position:

[8] The Complainant stated that the subject property is used as Winners Store and is unique among the other retail premises on Stephen Avenue in that it is a single tenant occupancy of 30,833 SF in leasable area with one point of entry, and is essentially a department store.

[9] The Complainant argued that for this reason, it should not be compared to the rental rates achieved for the smaller, multi-tenant leasable areas (ranging from 720 SF to 9,739 SF) used by the Respondent in its 2014 Rental Analysis for Retail/Office Main Floor and Retail Upper Floor [R1, pp. 18 and 19].

[10] The Complainant stated that the second amendment to the lease for the subject property, signed on February 1, 2013 for a ten year term at \$600,000 was the best indicator of market value and as per the Court of Appeal for British Columbia decision of Assessor for Area 9 (Vancouver) and Bramalea Ltd. and the Alberta Court of Queen's Bench decision of Mountain View (County) vs. Alberta (Municipal Government Board) [C1, p. 104-124], should be used to determine market value in this case. The minimum rent under the agreement is the equivalent of \$19.45 per SF (\$600,000/30,833 SF). There is a percentage rent clause in the agreement that applies if sales were to exceed the minimum rent is 2.5% of the gross sales; however, the Complainant stated that Winners had never paid percentage rent to the owner. [C1, p. 33, 34]

[11] The Complainant provided a history of the lease agreement [C1, pp. 2-4 and pp.35-38] and a copy of the full lease and subsequent amendments [C1, pp 39-98], noting that the original lease was first signed on August 1, 1996, for a term of:

"..... 12 years from May 1, 1997 to April 30, 2009. The first amendment to the lease was made on April 8, 2009 extending the term to January 31, 2015. The second amendment was made on October 3, 2012, extending the term of the lease to January 31, 2023. The current term of the lease (second extension) is 10 years commencing February 1, 2013, 5 months prior to the valuation date." [C1, p. 2]

Respondent's Position:

[12] The Respondent stated that Stephen Avenue properties are typically developed with 2-3 storey buildings with retail on the main floor and office/retail/storage areas on the upper and/or lower levels. Many of the properties along Stephen Avenue are considered "historic" properties, and some have official heritage designation [R1, p. 16].

[13] The Respondent stated that separate analyses were performed for main floor retail/office, upper floor office, upper floor retail storage areas as the market clearly showed differentiated rates for these areas. The respondent stated that its 2014 Rental Rate study [R1, pp. 18 and 19] includes 12 lease comparables for Retail/Office Main floor and 6 lease comparables for Retail Upper Floor and demonstrates typical rental rates of:

Main Floor retail office- \$38.00 SF

Upper floor retail- \$30.00 SF

Storage- \$6.00 SF

[14] The Respondent stated that the rental rate for the subject property was a blended rate of main and upper floor retail and basement storage, for an average of \$19.45 per SF, and was not "typical" of the market, which showed a differentiation of rates between main and upper floor and storage areas.

[15] The Respondent disagreed with the Complainant that the lease on the subject property is a current lease, arguing that it had commenced on August 1, 1996 [R1, p. 4] and was not used in The City's 2014 Rental Rate analysis nor should it be considered "comparable" by the Board.

[16] The Respondent stated that the Complainant had produced no lease equity or comparables to support its case, and the respondent had provided 33 equity comparables [R1, p. 17].

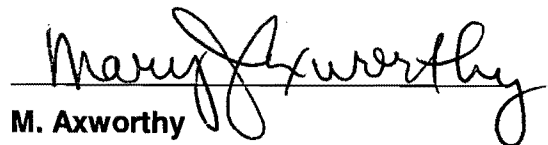
Board's Reasons for Decision:

[17] The Board agrees with the Respondent that the overall rental rate for the subject property should not be used to determine market value in this case.

[18] The Board finds that the rental rate of the subject property is a blended rate of the main and upper retail areas and basement storage that cannot be considered typical of market as demonstrated in the Respondent's rental rate analysis of rental rates differentiated by floor [R1 pp. 18, 19 and 75].

[19] Further, while the Board acknowledges that the subject property is a single tenant occupancy with one point of entry and a larger floor area than the comparables used by the Respondent in its analysis, the Complainant produced no equity or lease comparables to support its contention that a property of this nature would produce different market rents.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF July 2014.



M. Axworthy

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 Administrative Use Only

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Big Box store	Income Approach	Net Market rent/Lease rates