



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:

***Westfield Horizon Heights Ltd. (Represented by Fairtax Realty Advocates Inc.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***W. Kipp, PRESIDING OFFICER
D. Julien, BOARD MEMBER
J. Mathias, 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:	031010911
LOCATION ADDRESS:	3508 – 32 Avenue NE, Calgary AB
FILE NUMBER:	75847
ASSESSMENT:	\$23,220,000

This complaint was heard by a Composite Assessment Review Board (CARB) on the 30th day of July, 2014 in Boardroom 11 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- S. Storey *Agent, Fairtax Realty Advocates Inc.*
- B. Boccaccio *Agent, Fairtax Realty Advocates Inc.*

Appeared on behalf of the Respondent:

- C. Yee *Assessor, The City of Calgary*

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

- [1] Neither party objected to the composition of the CARB panel.

Property Description:

[2] The property that is the subject of this assessment complaint is Horizon Heights, a neighbourhood shopping centre located on the north side of 32 Avenue NE, one property west of 36 Street NE. In all, five commercial buildings occupy the 6.08 acre site. The buildings were constructed in 1985, 1986 and 2008. The total floor area is 75,961 square feet. There were 20 leases in place as shown on the October 2013 rent roll. Among the tenants are Tim Hortons and Bank of Nova Scotia but this centre does not have an anchor tenant. The property adjoins and shares parking with a centre anchored by a Safeway supermarket. Safeway is considered to be a "shadow anchor" tenant because it attracts shoppers which patronize stores in the subject centre.

[3] For 2014, this property is assessed using an income approach. Typical rent rates from \$19.00 to \$38.00 per square foot are applied to the various sizes and types of retail space. A 5.50 percent vacancy allowance is made and operating costs on vacant space are deducted on the basis of \$11.50 per square foot. After a 1.0 percent deduction for the non-recoverable operating expenses, the net operating income of \$1,740,012 is capitalized at a rate of 6.75 percent to arrive at a value of \$25,777,956. The 10,050 square feet occupied by the Salvation Army thrift store (\$2,550,000 value) are exempt from taxation so the net taxable assessment which is the subject of this complaint is \$23,220,000.

Issues:

[4] The Assessment Review Board Complaint form was filed on March 3, 2014 by Fairfax Realty Advocates Inc., on behalf of Westfield Horizon Heights Ltd., the "assessed person." Section 4 – Complaint Information had a check mark in the box for #3 "Assessment amount".

[5] In Section 5 – Reason(s) for Complaint, the Complainant stated "The market rents do

not reflect market conditions.”

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

- 1) The leased premises occupied by Salvation Army and Dollarama are assessed using a typical rental rate of \$19.00 but their actual rent rates of \$17.00 and \$12.00 per square foot, respectively, should be used.

Complainant's Requested Value: \$21,470,000

Board's Decision:

[7] The assessment is confirmed at \$23,220,000 (Taxable)

Legislative Authority, Requirements and Considerations:

[8] The CARB is established pursuant to Part 11 (Assessment Review Boards), Division 1 (Establishment and Function of Assessment Review Boards) of the Act. CARB decisions are rendered pursuant to Division 2 (Decisions of Assessment Review Boards) of the Act.

[9] Actions of the CARB involve reference to the Interpretation Act and the Act as well as the regulations established under the Act. When legislative interpretation is made by the CARB, references and explanations will be provided in the relevant areas of the board order.

Position of the Parties

Complainant's Position:

[10] The Complainant's evidence and argument are contained in the disclosure document filed on June 17, 2014 and marked as Exhibit C1 by the CARB.

[11] The premises for the Salvation Army (10,050 square feet) and Dollarama (12,623 square feet) place them within the "CRU 6,001-14,000 SF" stratum wherein a typical rent rate of \$19.00 per square foot is applied in calculating the assessment.

[12] There is a lack of comparable lease data for that size stratum as is exhibited by the Respondent's use of rents as dated as January 2006. Given the lack of lease data, the actual leases for these two store areas should be applied. The Salvation Army lease was renewed in February 2004 for a 10 year term at a rent rate that escalated from \$15.00 to \$17.00 per square foot. As at the valuation date of July 1, 2013, the rate was at \$17.00. Dollarama commenced a lease on January 1, 2006 at a rent rate of \$11.00 per square foot for the first five years of its 10 year term with an escalation to \$12.00 per square foot for the final five years that commenced January 1, 2011.

[13] Some support for these rents comes from a study of four leases of premises in the 32 Avenue NE – Sunridge area. Two 2010 leases set the rents at \$13.00 and \$18.00 per square foot and two 2000 leases set the rents at \$15.00 and \$16.00 per square foot.

[14] The Complainant acknowledged that the Salvation Army is a tax exempt tenant so the changing of its rent rate would not impact the taxable assessment.

Respondent's Position:

[15] The CARB marked the Respondent's disclosure of evidence and argument (filed July 15, 2014) as Exhibit R1.

[16] The subject property is coded as a neighbourhood shopping centre due to the shared parking with the Safeway supermarket property. Safeway becomes the "shadow anchor" for the subject.

[17] The application of the income approach involves use of typical rent rates. Actual rent rates are not used.

[18] A study of rents in the subject's area produced eight leases for premises from 7,003 to 12,623 square feet in area. The largest sample was the Dollarama store in the subject centre. The lease rent rates ranged from \$12.00 to \$21.00 per square foot with a median of \$19.00 which became the typical rate for this stratum. Two of the more recent leases were for space in a shopping centre across 32 Avenue NE and provide strong support for the \$19.00 rate. One of those was a May 2013 lease on 6,721 square feet at \$19.00 per square foot. The Respondent conceded that the lack of rental data required the study to include three leases dated in 2006, one in 2008 and one in 2010. Typically, a study of this nature looks at data from the 30 month period leading up to the valuation date.

Board's Reasons for Decision:

[19] In the subject shopping centre, there are three tenants with premises within the 6,001-14,000 square foot stratum but the Complainant argued that just two of those tenants should be assessed using the actual rates from their leases. The third tenant, Automotive Village Northeast, was paying a rent of \$15.00 per square foot as at the valuation date. This tenant's lease commenced in April 2000 and provided for escalating rents from \$14.00 to \$16.00 per square foot. The Complainant gave no reason for excluding this tenant space from the requested reduced assessment.

[20] The Respondent's list of comparable lease data included properties in the immediate market area of the subject. Some of the more current leases (2010, 2011 and 2013) supported the assessed rate. The Complainant's lease comparables included two leases that commenced 13 years ago, in 2000. The study also included two tenant spaces that exceed 14,000 square feet..

DATED AT THE CITY OF CALGARY THIS 18 DAY OF August 2014.



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

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

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	RETAIL	NEIGHBOURHOOD MALL	INCOME APPROACH	RENT