

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:

Canadian Corps of Commissionaires (Southern Alberta) (as represented by Cushman and Wakefield Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***M. Axworthy, PRESIDING OFFICER
P. Cross, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 068096601

LOCATION ADDRESS: 522 9 AV SE

FILE NUMBER: 76252

ASSESSMENT: \$2,200,000

This complaint was heard on 7 day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *J. Goresht, Agent, Cushman and Wakefield Inc.*

Appeared on behalf of the Respondent:

- *V. LaValley, Assessor, 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 is located in the DT3 Non- Residential Zone (NRZ). It is developed with a 7,606 square foot (SF), one storey office building and eight surface parking stalls. The building was constructed in 2000 and houses offices for the Canadian Corps of Commissionaires. The building has a Quality rating of C and is located on an assessable land area of 12,999 SF. The subject is assessed using the Income Approach to value.

Issues:

[3] While a number of issues were identified on the Complaint Form, the only issue argued at the hearing was that the property had been incorrectly assessed because:

- a) An inequitable Cap Rate is applied.
- b) No vacancy is allowed against the parking revenue.

Complainant's Requested Value: \$1,900,000; revised at the hearing to \$2,000,000

Board's Decision:

- [4] The Board confirmed the assessment.

Legislative Authority, Requirements and Considerations:

[5] Under 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] Section 460 of the Act states in Sections (1) and (7) that:

“(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(7) A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.”

[7] The Board reviewed the evidence provided and will limit its comments to the relevant facts pertaining to this case and materials which led to the decision.

ISSUE: Is the property incorrectly assessed?

Position of the Parties

Complainant's Position:

[8] The Complainant asked that this file be cross referenced against file 76254.

[9] The Complainant argued that the assessed Cap Rate of 5.75% was too low as the Cap Rate for the adjacent property at 534 9 AV SE was 6.0% and no vacancy had been applied to the eight onsite parking stalls. No information was provided on the details of the property at 534 9 AV SE or what vacancy rate should be applied to the parking stalls.

[10] The Complainant stated that the assessed rental rate of \$16.00 per SF applied to the subject was too high in comparison to other nearby properties. No evidence was provided to support this contention.

[11] In response to questioning, the Complainant stated that its evidence package C1 did not contain any calculations outlining the components (vacancy rate, cap rate) used to reach its requested value. The Complainant indicated that the calculations were contained in two other files that had not yet been heard by the Board.

Respondent's Position:

[12] The Respondent asked the Board for a preliminary ruling on whether the Complainant had “met onus” in this case and stated that it did not wish to enter its Assessment Brief into evidence, pending the Board's ruling.

[13] In support of its request for a preliminary ruling on this issue, the Respondent stated that it was the responsibility of the Complainant to provide some evidence to support its requested assessment and the Complainant had failed to do so.

Board's Reasons for Decision:

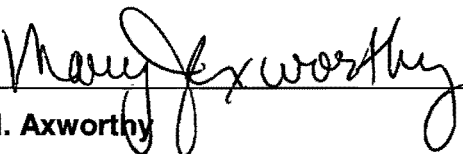
[14] It is a well accepted principle that he/she who alleges the assessment to be in error has the burden of proof to support such an allegation. The Court of Queen's Bench of Alberta in its decision: ***Pan Canadian Energy Services v. Alberta*** (Municipal Affairs), 2008 ABQB 393, considered the issue of the burden of proof at paragraph [48], as follows:

[48] The general rule with burden of proof is that its allocation is determined by the substantive law "upon broad reasons of expedience and fairness." It has often been stated that a "fundamental requirement of any judicial system is that the person who desires the court to take action must prove his case to its satisfaction....".

[15] Having reviewed the matter, the Board finds that the Complainant's requested value is without foundation. No analysis, evidence or calculations was provided to support the Complainant's requested assessed value as required by Section 460 (7) of the Act.

[16] The Board confirms the assessment at \$2,200,000.

DATED AT THE CITY OF CALGARY THIS 31st 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

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	Office	Stand alone	Cap rate and vacancy	