

## **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:**

***Sable Developments/Kensington Gate Corp  
(as represented by Avison Young),  
COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***J. Fleming, BOARD CHAIR  
B. Jerchel, BOARD MEMBER  
D. Morice, 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:** 067859926  
**LOCATION ADDRESS:** 101 10<sup>th</sup> ST. NW  
**FILE NUMBER:** 76596  
**ASSESSMENT:** \$17,880,000

This complaint was heard on 14<sup>th</sup> day of August, 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:

- *B. Peacock, Agent, Avison Young*

Appeared on behalf of the Respondent:

- *S. Turner, Assessor, City of Calgary*

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

- [1] There were no objections to the composition of the panel, and no Board member declared a conflict.
- [2] There were no preliminary matters raised.

**Property Description:**

[3] The property is a two storey retail/office development at the base of a much larger residential tower. The property, which sits on a 1 acre site, was built in 1991 and contains 38,615 square feet (sf) of leasable space. It is classed as A+ quality. 11,272 sf is unelevated office located on the second floor, and the balance is retail. The property is designated Commercial Corridor 1 and is assessed on the income approach (IAV). The assessment under complaint is \$17,880,000.

**Issues:**

[4] On the Complaint form the Complainant raised a number of issues. At the hearing however they indicated that there was only one issue that they raised.

[5] What is the best evidence for a rental rate for the subject property office space? Is it the \$30.00 per square foot (sf) assessed typical, or is it the two comparables that produce a \$22.00 per sf rate?

**Complainant's Requested Value: \$15,820,000 (Truncated)**

**Board's Decision:**

[6] The Complaint is denied and the assessment is confirmed at **\$17,880,000**.

**Legislative Authority, Requirements and Considerations:**

[7] The Board derives its authority from the Municipal Government Act RSA 2000 Chapter M-26 (the Act).

[8] More specifically, the Act reads:

s 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;

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

**Position of the Parties****Complainant's Position:**

[9] The Complainant argued that while the retail component of the property was performing very well, the second storey office had encountered consistent vacancy over the years (2013 – 23%, 2012 – 16% and 2011 – 11%). The Complainant was unable to provide a concise explanation for the vacancy but ventured that the fact it had no elevator and the rental rate might be a large part of the reason.

[10] The Complainant was asking for a vacancy rate of 16%, representing a "rough" median of the site specific vacancy over the previous three years.

[11] In so far as the office rental rate was concerned, the Complainant thought that the level of vacancy should be viewed as proof that the office rate is too high particularly at the \$30.00 per sf assessed rate. They produced a rent roll for the property (Ex C1, pg 19) which showed that the two long term office tenants were paying \$22.00 per sf, and that one of those tenants was the Manager, whose tenancy could not be considered an arms-length transaction. It also indicated that in order to generate revenue they had two month-to-month tenants.

[12] The Complainant also included a copy of the City's 2014 Retail Office Leases and highlighted that, in the whole study, there were only two similar quality comparables (A+ Class). (Ex. C1, pg 20) and the average of the comparable rents was \$22.73 per sf. An extract of that study isolating the Hillhurst Sunnyside area with properties from all quality classes was provided, and the Median and Mean rates were \$18.00 and \$17.78 per sf respectively.

[13] The Complainant argued that from this evidence, there was no support in the area for a typical office rental rate of \$30.00 per sf.

[14] Further, the Complainant provided the CARB decision on the property from 2013, which had maintained the typical vacancy but had reduced the office rental rate to \$12.00 per sf. Nothing in its arguments had changed, and so this supported the request.

[15] The Complainant concluded by requesting that the two proximate leases were a reasonable estimate of value, and they supported a reduction in the office rental rate to \$22.00 per sf, and argued for acceptance of the past three year median vacancy of 16%. This would cause a drop in the assessed value to \$15,820,000 (truncated).

#### **Respondent's Position:**

[16] The Respondent provided a summary of the 2014 Retail Office Leases showing the nine A+ class comparables they had used to develop the \$30.00 per sf typical rate (Ex. R1, pg. 19). arguing that this justified the typical rent adopted.

[17] With respect to the vacancy level, the Respondent provided a quadrant summary showing that the NW retail strip vacancy was 5.50% (Ex. R1, pg. 42). Through questioning, the Respondent advised that this likely included retail space as well as office space in their calculations.

[18] The Respondent also included a leasing brochure for the subject (Ex. R1, pg.36) which highlighted the benefits of the space for retail tenants. They subsequently realized that the office vacancy was not mentioned in the brochure, and questioned how anxious the owner was to lease the space.

[19] The main focus of its argument, which was to point out that while the office space might have some problems, from an analysis of the retail space, it showed that the retail space was under-assessed. It was estimated that the retail space was under assessed by over \$4.00 per sf.

[20] The Respondent argued that the "goal" of the assessment process was to arrive at an estimate of market value, and when comparing the actual income with the typical income, it was very similar. The goal of the process has been met: The assessment is an estimate of market value even if some of the individual components might not be exactly correct.

[21] Accordingly, because the assessment was a good estimate of market value, there was no need to change any of the input attributes, and the Respondent asked that the assessment be confirmed.

#### **Board's Reasons for Decision:**

[22] The CARB considered the evidence.

[23] In reviewing the comparables used to establish the \$30.00 per sf typical rate, the CARB noted that six of the nine properties were in the same property which was in the southwest. Further, the CARB concluded that this location (1600 85<sup>th</sup> St. SW) was higher quality than the subject. The CARB concluded that in total, the City comparables were not very comparable.

[24] With respect to the office vacancy, the CARB was not given a reason which could adequately account for the vacancy. There was a leasing brochure for the retail (actually provided by the Respondent), but no information or summaries of the owners efforts to rent the space. In addition, the CARB notes the previous year's CARB decision wherein there was found to be insufficient evidence to change the vacancy. This CARB concurs with that decision.

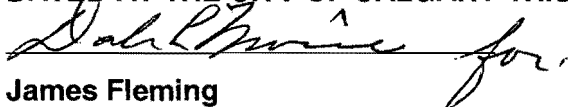
[25] In the final analysis, the CARB put a great amount of weight on the Respondent's Market Value argument. The "actual" income and the "typical" income are virtually identical and in point of fact the actual income after an allowance for vacancy is marginally more than the typical income.

[26] The CARB accepts the City's argument that the Retail is under assessed and the office "may" be over assessed (the City did not consider that the office rate is incorrect), but the result of all the calculations shows that the property is assessed at fair market value.

[27] The CARB is mindful of the previous year's CARB decision which accepted the argument for a change in office rental rate. While CARB decisions are not precedent setting, a review of the 2013 decision will distinguish that the Respondent defended the assessment based on rental rate comparables and not on overall market value. This CARB concludes that is a totally separate argument deserving of a decision made on a totally different basis.

[28] Because the CARB concludes that the property is assessed at Market Value, there is no requirement to change the office rental rate or the office vacancy rate. The assessment is confirmed as noted above.

DATED AT THE CITY OF CALGARY THIS 15<sup>th</sup> DAY OF September 2014.

 for.

James Fleming

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

*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 Official Use:*
