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-26.1, Section 460(4).

between:

Linnell Taylor Assessment Strategies, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, Presiding Officer
C. McEwen, Board Member
J. O'Hearn, Board Member

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: **067208504**

LOCATION ADDRESS: **1002 – 17 Avenue SW, Calgary AB**

HEARING NUMBER: **55994**

ASSESSMENT: **$3,810,000**

This complaint was heard on the 6th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- J. David Sheridan

Appeared on behalf of the Respondent:

- Emilia Borisenko

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

At the outset of the hearing, the Respondent raised an objection to the Rebuttal evidence of the Complainant, suggesting that it contained new lease evidence. The Complainant explained that the lease evidence was for one of the lease comparables that was in the Respondent's evidence.

Finding:

The CARB found that it was appropriate to provide rebuttal evidence that pertained to lease data that was in evidence before the Board.

Property Description:

The property that is the subject of this complaint is a commercial property known as Hillier Square located on the north side of 17th Avenue SW, in the area of south downtown Calgary known as The Beltline. The property comprises a multi-tenant retail/office, two storey building containing 18,457 square feet, built on an 8,253 square foot commercial lot circa 1962. There is a basement under the building.

For 2010, the property is assessed as an income property at $3,810,000.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:
Assessment amount

The Complainant also raised the following specific issues in section 5 of the Complaint form:

1. Areas and space types are incorrectly shown
2. Assessed office rent rate is incorrect
3. Assessed basement rent rate is incorrect
4. Assessment is excessive

As of the date of this hearing all issues remained in dispute.

Complainant's Requested Value:

$3,200,000

Board's Decision in Respect of Each Matter or Issue:

Issue 1: Areas and space types are incorrectly shown

The Complainant provided a table showing areas for office, retail, fast food and storage space as determined by the assessor and as indicated by lease records.

Space Type	City Records	Lease Records
Office	4,143	3,988
Retail	4,685	6,768
Fast Food	933	0
Storage	8,696	7,701
Total	18,457	18,457

A rent roll for the property was reproduced but that also showed an inconsistency in the area of retail space that the Complainant could not explain.

Lease record areas were subsequently used by the Complainant in calculating the requested assessment.

The Respondent acknowledged that there had been inconsistencies in the allocation of space within the building but these were being worked out.

Findings – Issue 1:

It is expected that factual data such as floor areas or space allocations can be sorted out by the parties and it should not be up to the CARB to decide on such matters.

It is the mandate of the CARB to determine whether assessments are carried out in a fair and equitable manner. It is the reasonableness of the total assessed value that is important.

In this instance, the Board considered all aspects of the assessment preparation and it was concluded that the allocation of space within the building was not a major factor to be determined by the Board once all other factors had been taken into account.

Issues 2 and 3: Assessed office rent rate is incorrect and Assessed basement rent rate is incorrect

Evidence of the Complainant was that all of the second floor office space was leased on a "gross lease" basis where the rent paid by the tenants includes all of the costs of operating and maintaining the property. After taking operating expenses of $12.00 per square foot into account, the Complainant determined that the net rental rate for the two most recent office space leases was $5.43 per square foot.

The Complainant provided a table containing lease data for office space in Beltline buildings. Most of the leases in the table involved space in multi-storey office buildings. For 16 lease samples in the table, rent rates ranged from $10.50 to $17.00 per square foot. Based on the lease data plus consideration of the subject leasing situation, the Complainant selected a typical office space rent of $13.00 per square foot which is $13.00 per square foot less than the $26.00 rate used in preparing the assessment. The Complainant also questioned the increase from the $18.00 2009 rate when indications were that the market had shown declines over that one year period.

For the basement, there were two leased areas and with regard to gross lease terms and a $12.00 per square foot operating cost negative net rents were indicated. The Complainant rationalized that $2.00 per square foot would be the maximum rate achievable for basement space.

The Respondent produced tables that showed NARV's (Net Annual Rental Values) which are used in preparing the Business Tax assessments for office space in buildings similar to the subject. These rates were $26.00 and $28.00 per square foot. Some of the properties were two storey retail/office buildings like the subject while others were three or four storey office buildings. Actual leases for comparable office space in other buildings showed rental rates from $25.00 to $29.00 per square foot for leases that started between December 2007 and February 2009. Some of the lease data was for leases in Mount Royal Village and The Devenish. Other data was from a four storey building with ground floor retail space.

A table of NARV's for basement space in Beltline buildings showed that all were assessed at $3.00 per square foot.

On a copy of the lease rate table from the Complainant's evidence, the Respondent added notes that questioned the accuracy of the data. For example, there were post-facto lease starts, there were discrepancies in lease area and one property was located in Kensington, not in The Beltline.

By way of rebuttal, the Complainant provided photographs and other descriptive data to show that Mount Royal Village and The Devenish were superior properties, in superior locations to the subject. An older rent roll for another comparable, Rockwood Square, suggested that there should have been some new or renewal leases during the period of time leading up to the valuation date of July 1, 2009 that the Respondent had not included in evidence. With respect to Rockwood Square, the Respondent confirmed that there was no additional evidence of leasing that was not already in evidence.

Findings – Issues 2 and 3:

The CARB was not impressed with the office lease data from either party. Much of the data had been extracted from properties that were clearly not comparable to the subject and there was insufficient analysis of the data to show how the Respondent's $26.00 office and $3.00 basement rates were derived. Almost all of the Complainant's rents came from multi-storey office buildings. At least, the Respondent's NARV evidence seemed to show that there was consistency in assessing second floor offices in two storey buildings like the subject.

For the subject office and basement spaces, the Complainant derived net rents by deducting operating costs at $12.00 per square foot. Evidence shows that actual operating costs may have been only $7.64 per square foot. The CARB has difficulty in accepting a mix of actual rents with typical operating costs.

Overall, the CARB finds the Respondent's office rent to be the best supported rate but there remains concern about the very low rents being achieved from the subject office space. Most of the second floor offices are very small (200 to 600 square feet) compared to the lease rent comparables but other than that, there is no explanation for the low rents being achieved.

Issue 4: Assessment is Excessive

The 2010 assessment of the subject property was prepared by use of the income approach. Rents for building components were:

Fast Food Restaurant	$40.00 per square foot
Retail space	$36.00 per square foot
Office space	$26.00 per square foot
Storage space	$ 3.00 per square foot

The Complainant's evidence was that there was no fast food restaurant in the building. The Respondent had placed a specialty coffee shop tenant in that classification. 933 square feet of the main floor were assessed using the fast food restaurant rate.

In recalculating the assessment, the Complainant adopted the 8.5% vacancy rate, 2.0% non-recoverable expense rate, $12.00 per square foot vacancy shortfall rate and 7.5% capitalization rate. All of the main floor space was considered to be retail (no fast food restaurant) and rents for all three space types were changed:

Retail space	$33.00 per square foot
Office space	$13.00 per square foot
Storage space	$ 2.00 per square foot

Using these rents and input coefficients, the indicated value of the property was $3,223,280.

The retail rental rate had not been specifically raised as an issue but the analysis included study of the leases in the subject retail area and comparison to lease rates for other Beltline retail space. There were a number of comparables summarized in a table. Rent rates ranged from $23.00 to $95.00 per square foot. Significant weight was put on the only 2009 lease in the subject. Steeling Home leased 1,667 square feet for a 10 year term from June 2009 at a rent of $32.50 for 5 years, escalating to $36.00 for the last five years of the term. Together with the market lease data, the $32.50 rate was rationalized into the "typical" rate of $33.00 per square foot.

Office space and basement space rents were discussed under Issues 2 and 3.

The Respondent provided photographs of the subject building, highlighting the Caffè Beano premises, indicating that it was operated much like a fast food restaurant would be operated (take-out, small seating area, food and beverage service).

The 2009 ARFI for the subject property was provided. The Respondent highlighted some lease data and pointed out that the actual operating expenses for the property appeared to be $7.64 per square foot. It was also pointed out that the vacancy shortfall allowance in the assessment was $12.00 per square foot. In the ARFI, it showed that Caffè Beano leased two areas at rental rates of $60.00 per square foot. Other recently set rents were at $40.00 per square foot.

Using the actual rent roll for the property, the Respondent prepared a valuation of $4,061,590 based on a net operating income amount of $304,619, capitalized at 7.5%.

A copy of the retail leasing table from the Complainant's evidence was included in the Respondent's brief with comments regarding comparability of the leased premises to the subject. One lease was post-facto, one was a listing and not an actual lease and others could not be confirmed, thus they were questioned.

Findings – Issue 4:

As noted under findings for the other issues in this complaint, the CARB was unimpressed by the rental rate data from the parties. More detail on individual leases might have helped to convince the Board of the reasonableness and reliability of the data for comparison purposes.

As previously stated, the mandate of the CARB is to test the final assessment amount. While this is typically done by reviewing input data such as rent rates, vacancy rates and so on, the Board has insufficient evidence before it to make any changes to the rent rates used by the assessor. Perhaps the office rent rate should be lower than $26.00 but perhaps the retail rate should be higher than $36.00. Actual revenue from the retail space was $218,064 but the assessment was based on $205,980. Actual revenue from the office space was $35,202 but the assessment was based on $107,718.

The Respondent's valuation based on actual operations within the subject property is not a typical application of an income approach but it does show the CARB that the current assessment is reasonable.

Board's Decision:

In summary, the CARB finds that there could be adjustments made to floor space allocation and rent rates for the various space classifications in the subject property. It finds that there is insufficient evidence before it to make adjustments in some areas. In the final outcome, the end assessment is not likely to vary significantly from the current assessment.

The 2010 assessment is confirmed at $3,810,000.

DATED AT THE CITY OF CALGARY THIS 19th **DAY OF** July. **2010.**

W. Kipp

W. Kipp
Presiding Officer

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.