

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Cushman & Wakefield Property Tax Services, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

K. Coolidge, MEMBER

E. Reuther, MEMBER

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

ROLL NUMBERS:	101015394	200783850	101040103
LOCATION ADDRESSES:	5980 Centre St SE	5980 Centre St SE	111 58 Ave SW
HEARING NUMBERS:	57790	57782	57791
ASSESSMENTS:	12,570,000	1,480,000	9,950,000

This complaint was heard on the 28 day of July, 2010 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *Jan Goresht*

Appeared on behalf of the Respondent:

- *Tanya Woo*

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

A preliminary matter was raised with respect to the late filing of rebuttal evidence which was emailed on July 21, 2010 at 12:51pm. There is no dispute that it was entered at that time. The position of the Complainant is this is within the required time. The Respondent's position is that it was late, therefore was not included in her package and she had not seen it. The Complainant stated that the nature of the rebuttal evidence was details of the Respondent's comparables including photographs.

Decision and Reasons:

The Board considered the matter and determined that the rebuttal evidence was late, and did not accept it. The relevant legislation is Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation which states:

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

...

- (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

...

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

The Interpretation Act, RSA 2000, states with respect to computation of time:

22(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.

The Board concludes that for the July 28 hearing, the rebuttal evidence was required to be disclosed by July 20. The rebuttal evidence was not disclosed in accordance with Section 8 of the regulation, and therefore, the Board must not hear it. In considering the matter, the Board noted that the details of the comparables were not critical to the Complainant's case and that he

did not request a postponement so that the evidence might be considered. Accordingly, the hearing proceeded without the Complainant's rebuttal evidence.

Property Description:

The subject complaint is of two office properties, Phillips Square (5980 Centre St SE) and Phillips Centre (111 58 St SW) in the Phillips Park development, located in the Manchester Industrial area. Phillips Square has a sub-account consisting of a non-profit tenant exempt from taxation, which is also under appeal. A small portion of Phillips Square was built in 1967 but the buildings were predominantly built in 1999. They are single storey buildings with brick cladding and surface parking, with loading facilities.

The assessment is based on the income approach. The properties are assessed as suburban A quality office space at \$21 per sq. ft. lease rate, 6% vacancy, \$12.50 operating costs and 2% non-recoverables with a 7.5% cap rate.

Issues:

The Complainant identified three issues on the Complaint form:

1. The assessment is too high.
2. The assessment is inequitable in comparison with similar properties.
3. The assessment is above market value. The assessment is incorrect as to the nature, the size, the use, the condition, the actual and potential income, the actual and typical expenses, the appropriate sales comparables, the correct cap rate, and the inherent obsolescence of the property.

The only issues argued and considered were the market value as determined by the use and the actual and potential income.

Complainant's Requested Values:

Roll number	Assessment
101015394	9,900,000 revised to 11,660,000 at the hearing
200783850	1,200,000 revised to 1,439,000 at the hearing
101040103	7,000,000 revised to 9,148,000 at the hearing

Board's Decision in Respect of Each Matter or Issue:**Issue 1 - Use****Complainant's position:**

The properties are assessed as 100% office space. The Complainant stated that a portion of the buildings are warehouse, as evidenced by the loading facilities that could be seen in the exterior photographs submitted. The Complainant had not inspected the interior of Phillips Square, but highlighted the commercial lease summary, which showed 4,111 sq. ft. of space leased in October 2008 as "warehouse" at \$9 per sq. ft. compared to other space leased by the same tenant also in October 2008 listed as "office" at \$21 per sq. ft.. The Complainant did inspect the interior of Phillips Centre and stated that the three loading doors visible in the

photographs were contiguous with warehouse storage areas that were not carpeted, comprising about 10% of the total area or 4,016 sq. ft. The Complainant requested that 4,111 sq. ft. in Phillips Square and 4,016 sq. ft. in Phillips Centre be assessed based on \$10 per sq. ft. lease rate for warehouse instead of the office rate of \$21.

Respondent's position:

The Respondent stated that assessments of office or warehouse were not based on use but physical characteristics. The Complainant's own description of this space is "flex" space that could be used for office, light manufacturing or storage. The City uses \$6 per sq. ft. for storage space, but applies it to buildings that have limited HVAC and finishes that could not be used for office or light manufacturing. Had this issue been brought up during the two month consultation period, the assessor could have inspected the properties and adjusted the assessment if warranted. This was not done, and only brought up on appeal. The Respondent pointed to the lack of interior photographs and floor plans in the Complainant's submission, and stated there was no evidence to support assessment as warehouse.

Decision and Reasons:

The Board agrees that assessment as warehouse or office should be based on physical characteristics of the space and not on the use to which the tenant puts the space.

In Phillips Square, two spaces were leased by the same tenant commencing October 2008. The notes on the commercial lease summary and the lower base rent suggest one of the spaces was leased as a warehouse. The Complainant had not viewed the interior and could not comment on its characteristics, therefore there was no evidence provided to suggest that the space lacked amenities or finishes. Under the circumstances, the Board could not determine whether the distinction between "office" and "warehouse" in the lease summary was based on physical characteristics or simply assignment of space type in the negotiation of a lease.

In Phillips Centre, the Complainant stated that the storage space that is contiguous with the loading area was not demised from the rest of the building, was not carpeted but did have heating. The commercial lease summary shows the leased area at a single base rent. Under those circumstances, the Board is of the opinion that the storage use could be a choice made by the tenant and does not provide sufficient evidence to support assessment as warehouse.

Issue 2 – Actual and potential income

Complainant's position:

The properties are assessed at \$21 per sq. ft.. The range of lease rates for class A suburban office space is \$18.50 to \$25. The Complainant presented the commercial lease summary for both properties. There was only one lease signed in 2009, at \$20 per sq. ft. for 9,478 square feet commencing May 2009. 2008 to 2009 were turbulent economic times. Other leases signed in 2008 and earlier were for higher rates but included \$10 and \$11 per sq. ft. in tenant improvement allowances. The leases signed in the relevant time period for the subject properties support a \$20 lease rate. The leases presented by the Respondent are not comparable to the subject, being in much newer multi-storey buildings with heated underground parking or in a much older renovated "character" building close to downtown. The leases in the subject are the best indication of market rates in this location for properties of this type.

The actual operating costs are approximately \$7 per sq. ft. based on the recoverable costs indicated on the income and expense statement over the area of the properties.

Respondent's position:

The Respondent stated that for assessment purposes, properties are stratified based on location, quality and year of construction. Lease rates are assigned based on the class, not on the specific rates achieved by the particular properties. She presented 15 lease comparables for SE Central suburban offices signed between August 2008 and July 2009, for spaces between 717 and 59,124 sq. ft. at lease rates between \$10 and \$26.50. The median was \$21 and the mean was \$22. The comparables support the \$21 rate used for the subject.

The leases in the subject properties signed after July 2008 include rates at \$25 and \$21, and also support a \$21 lease rate.

Decision and Reasons:

The leases presented by the Respondent were in a very wide range of sizes and rates, and the Board agreed with the Complainant that the buildings were not similar to the subject. Given the number of leases signed in the relevant time frame in the subject properties, the Board considered these leases to be the best indication of market value. There were 5 leases that commenced between October 2008 and May 2009 for \$9, \$20, \$20, \$21 and \$25 per sq. ft. for lease areas from 4,111 to 12,550 sq. ft. Three of the leases included tenant improvement allowances of \$10 to \$11 per sq. ft. for 5 year terms which would reduce the effective rent by \$2 per sq. ft. Based on the adjusted lease rates, the weighted average of the leases commencing in the relevant time period is \$19.95 which supports the Complainant's requested rate of \$20. Further, the Board agrees with the Complainant that leases signed closer to the valuation date should be assigned more weight. There was no dispute on the cap rate, the vacancy rate or the non-recoverable allowance. There was no evidence that the actual operating costs were typical. Accordingly, the decision of the Board is to apply a lease rate of \$20 with all other parameters unchanged for all three roll numbers.

Board's Decision:

The complaint is allowed and the assessments are reduced as follows:

Roll number	Assessment
101015394	11,950,000
200783850	1,410,000
101040103	9,460,000

DATED AT THE CITY OF CALGARY THIS 23 DAY OF August 2010.



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.*