

**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:

The Standard Life Assurance Company of Canada as represented by Cushman & Wakefield Property Tax Services, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
A. Wong, MEMBER
A. Zindler, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	201376332
LOCATION ADDRESS:	110 Quarry Park BV SE
HEARING NUMBER:	60721
ASSESSMENT: (Amended)	\$9,150,000

This complaint was heard on 24th day of May, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *Mr. J. Goresht – Cushman & Wakefield Property Tax Services*

Appeared on behalf of the Respondent:

- Ms. A. Jerome – Assessor, City of Calgary

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

None

Property Description:

The subject is a portion of a 101,466 Square Foot (SF) three-storey suburban office building complex on 4.75 Acres (Ac.) with 70 parking spaces, in Quarry Park Business Centre in SE Calgary. The complex was under construction in 2009 and was identified to be 50% complete as of Dec. 31, 2009. Construction on the complex was identified as being completed in early 2010.

Issues:

1. The assessment amount is incorrect and inequitable

Complainant's Requested Value: \$7,444,000

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

Background

The referenced office complex was evidently under construction during 2009 and 2010. While the completion date is unclear, the Complainant suggested that it was between Dec. 15 2009 and January 15, 2010. However, at the end of 2009 the subject was deemed to be only 50% complete and was assessed using the Cost approach to Value. In this approach, the value of the land was coupled with 50% of the estimated value of the building permit to arrive at an estimated value. In this case, the land was valued at \$2,175,000 and the building was (at 50%) at \$8,495,460. The 2010 Annual Assessment Value (rounded) was calculated to be \$10,670,000.

On January 4, 2010 a "2010 Property Assessment Notice" in the amount of \$10,760,000 was mailed to the owners. The Board was advised by the Parties that this assessment was evidently not appealed, and of course is not before this Board.

On page 7 of the Complainant's Brief C-1, a copy of the City's "Assessment Summary Report" for 2009 shows a Supplementary Assessed Value of \$19,340,000 was also issued by the City for the subject. The Board was advised by the Parties that this assessment was evidently not appealed, and of course is not before this Board.

Subsequently it was determined that an undefined (to this Board) portion of the \$10,670,000 constructed portion of the subject, was leased to the MS Society, which therefore renders the space occupied by the Society to be exempt.

Thereafter on Dec. 17, 2010, an Amended 2010 Property Assessment Notice was mailed to the owners which showed an Exempt Value of \$1,520,000 for the MS Society's space. The Board was advised by the Parties that this assessment was evidently not appealed, and of course is not before this Board.

Concurrently then, on Dec 17, 2010 an Amended 2010 Property Assessment Notice in the amount of \$9,150,000 was issued by the City for the subject. This represents the Taxable portion of the subject, identified previously as part of the site valued at \$10,670,000.

This value of \$9,150,000 was appealed and is before the Board today.

Argument and Analysis

Issue #1

"The assessment amount is incorrect and inequitable"

The Complainant argues that the overall value of the 101,466 SF office complex at \$30,010,000 is incorrect and inequitable because the City – at various points in time (undetermined to the Board) - has valued the entire property in part using the Income Approach to Value, and in part using the Cost Approach to Value. And moreover, in using the Income Approach, the City erroneously used a 6% vacancy rate instead of 9.5%.

Nevertheless, in the case before this Board, the \$9,150,000 taxable portion of the subject under appeal, was valued using the Cost Approach.

The Complainant also argues that notwithstanding that none of the previous assessments (see "Background" above) had been appealed, the current Amended Assessment of \$9,150,000 on a portion of the site, which was appealed and is before the Board today, offers a "window" to challenge the assessment on the entire property, and effectively those previous assessments levied on the property which were not appealed. He argued that "the Board must determine what the correct assessment is on this Roll number".

The Complainant argues therefore that when the City applied the Income Approach to the subject – or a portion of the subject (timing and process unclear and not revealed to the Board), it should have used a 9.5% Vacancy rate for the property instead of 6% because the property was incomplete and largely unoccupied as of December 31, 2009. In support of his position, the Complainant provided in his Brief C-1, an "Income Valuation Tool" in which he re-calculated

the assessment for the entire building of 101,466 SF and the 70 parking spaces utilizing a 9.5% vacancy rate. He concluded from this calculation that a correct value for the entire building is \$28,310,317.53.

The Complainant also provided complete copies of Calgary Assessment Review Board Decisions ARB 0506/2010-P and ARB 0507/2010/P wherein nearby Quarry Park suburban office buildings, assessed using the Income Approach, received increases in Vacancy rates from 6% to 9.5%.

The Complainant also provided copies of Calgary ARB Decisions ARB 0501/2010-P; ARB 0502/2010-P; and ARB 1065/2010-P which contained similar vacancy increases for suburban offices in other SE quadrants of the city. He argued therefore that unless an Income Approach to Value calculation is used to value the subject, and, a 9.5% vacancy rate is used in the ensuing calculations, then an inequity occurs with the subject relative to other nearby and SE quadrant suburban office buildings.

The Respondent however argues that the Complainant has appealed only the December 17, 2010 Amended Notice in the value of \$9,150,000 for a portion of the site, and is therefore limited to disputing how that value alone was calculated. She argues that the Complainant cannot now try a "back door" approach to challenge how previous non-appealed assessments for the site were calculated.

Therefore she argues that in this hearing today, the Complainant is limited to challenging only the two inputs – i.e. the value of the land, and, the value of the building – used to calculate the Amended assessed value of \$9,150,000. The Respondent reiterated that relevant Legislation governing these matters require that the Complainant must show on the Complaint Form:

1. What information shown on an assessment notice or tax notice is incorrect
2. In what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues - and
3. What the correct information is

The Respondent argues that the Complainant has not complied with the Legislation because he has not challenged either or any value, or thing, related to the assessment under appeal today.

The Respondent also argues that the vacancy rate increases advanced by the Complainant in the referenced Decisions are irrelevant because the \$9,150,000 value before the Board today was determined using the Cost Approach to Value and not the Income Approach. She again reiterated that the Complainant has raised no issue with any of the inputs used in the Cost approach to arrive at the \$9,150,000 value as is required under relevant Legislation. Therefore, she argued, the Complainant has failed to address any part of the assessment under complaint today and the Complaint should therefore be dismissed.

Board's Decision With Reasons

The Board is satisfied from analysis of the verbal and written evidence that:

1. the only matter under appeal before this Board is the value of \$9,150,000 in an Amended assessment for an undefined portion of the office complex, which value has been calculated by the City Assessor using the Cost Approach to Value. It is clear from the testimony and evidence from both Parties that previous assessments issued from time to time for this suburban office complex, were not appealed. There is no dispute regarding this point. Therefore the Board considers that the Complainant cannot now, under the guise of appealing this Amended Assessment on a portion of the complex, purport to "retroactively" challenge other properly-issued assessments covering the whole of the complex, none of which were appealed.
2. the Respondent is correct, in quoting from the Legislatively-prescribed Complaint Form, that the Complainant must show on the Complaint Form:
 - a. What information shown on an assessment notice or tax notice is incorrect
 - b. In what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues - and
 - c. What the correct information is

It is clear to the Board that the Complainant failed to introduce any evidence whatsoever to challenge either of the two component inputs to the Cost Approach used to calculate the \$9,150,000 value – the only value before the Board. Those two components were clearly identified as being firstly – the value of the land; and secondly, the value of the assessed improvement (in this case, an undefined portion of a larger structure of some 101,466 SF). Therefore the Board concurs with the Respondent that the Complainant has failed to comply with relevant Legislation governing these assessment matters.

3. the Board concurs with the Respondent that the Complainant's position with respect to a 9.5% versus a 6% vacancy rate to be applied in an Income Approach to value for the entire complex, is irrelevant with respect to this appeal. Nevertheless, the Board noted that in any event, the Complainant failed to link the subject and its characteristics with any of those properties he identified in the referenced ARB Decisions, other than to point out that a 9.5% was common to all of them. Therefore the Board was unable to make any determination regarding the Complainant's equity issue.
4. it was unclear to the Board as to how the Complainant had, in his calculations on page 2 of his Document C-1, arrived at his requested value of \$7,444,000. On page 2 of C-1 the Complainant references the assessed \$30,010,000 of the entire complex; mentioned vacancy rates of 6% and 9.5%; then claimed in a final underlined statement that "The correct, requested, amended original assessment is \$7,450,000." In examining the various matrices and calculations he provided in all of C-1, the Board was unable to determine precisely how this value was derived.

Board's Decision:

The Amended assessment is Confirmed at \$9,150,000.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF June 2011.



K. D. Kelly
Presiding officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. R-1	Respondent Disclosure Brief

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.*