

**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:

***WESTFIELD WILLOWGLEN LTD., COMPLAINANT,
as represented by ALTUS GROUP LIMITED***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
J. Joseph, MEMBER
Y. Nesry, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 201632197

LOCATION ADDRESS: 1729 8th Avenue NE

HEARING NUMBER: 68201

ASSESSMENT: \$23,410,000

This complaint was heard on the 11th day of June, 2012 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:

- *D. Chabot, M. Cameron*

Appeared on behalf of the Respondent:

- *C. Neal*

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

[1] From a cursory review of Exhibit C-1, the Complainant's "Written Argument," it appeared that an issue might be raised regarding disclosure pursuant to s.299 of the *Municipal Government Act* (the *Act*), but the Complainant made no argument on this issue during the hearing, hence it is not dealt with in this decision.

Property Description:

[2] The subject property is located in the community of Mayland, and is a 20.6 acre parcel of land with 11 separate suburban office buildings on it. The subject property used to be a condominium, but was subsequently consolidated. The land and all eleven buildings have been assessed together as a suburban office use.

Issues:

[3] The Board found the determinant issues in this complaint to be as follows:

1. Does the subject property suffer from a chronic, unusually high vacancy rate?
2. If the subject property is found to have a chronic, unusually high vacancy rate, should that be recognized in the assessment?
3. What is the correct, fair and equitable assessment for the subject property?

Complainant's Requested Value: \$17,050,000

Regarding Brevity

[5] The Board will restrict its reasons to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision in this matter reflect the evidence that was presented and examined by the parties before the Board at the time of the hearing.

Summary of the Complainant's Submission

[6] The eleven office buildings on the site are assessed as a complex under one roll number. The problem is chronic vacancy, something the subject property has suffered from for many

years, and vacancy is the only issue in this case.

[7] The most significant vacancy rate of all eleven buildings is to be found in the building known as 8 Manning Close NE. It is completely vacant, and has been since 2008. The reasons for this are not entirely clear, but of the eleven buildings on the site, 8 Manning Close is the one built into a hillside, and this has reduced the number of windows in that building.

[8] We will compare the recent vacancy rate of the subject property to assessed vacancy rates since 2008. The subject property was valued using an income approach, and we agree that that approach is the correct one for the subject property. Nevertheless, the chronic, higher than normal vacancy has not been recognized in the current assessment, even though last year's CARB decision reduced the assessment based on vacancy. We are asking for a vacancy rate that reflects reality, i.e., 20 percent, and with all else remaining the same, that would result in an assessment of \$17,050,000.

Summary of the Respondent's Submission

[9] The Complainant says the subject property is not typical, and requests a vacancy rate of 20 percent. We have calculated a typical vacancy rate of 11 percent, and that calculation includes the vacancy rate of the subject property. The 11 percent rate was derived from the actual vacancy data of suburban offices in the northeast quadrant, as obtained from Assessment Requests for Information.

[10] Chronic vacancy is neither defined nor legislated. Vacancy is an effect of something, not the cause. Usually the cause is some physical or locational deficiency. If an adjustment to value is made, it is not due to vacancy. Instead, we would look to the property, and adjust with respect to quality. A further increase in vacancy would undervalue the property, and create an inequity.

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

[11] On the evidence, the Board finds that the subject property suffers from a chronic, unusually high vacancy rate. The Respondent's evidence indicated an average vacancy rate of 20.25 percent over the last three years. By the Board's calculation, the current vacancy rate of the subject property is 21.6 percent, very nearly twice the vacancy rate used in the assessment. Vacancy may be an effect rather than the cause, but there is no evidence that the assessor took that cause, whatever it may be, into account in preparing the assessment.

[12] Section 293 of the *Act* requires an assessor, in preparing an assessment, to act in a fair and equitable manner. In this case, the subject property's problem with vacancy was well known. In its 2011 decision, the Composite Assessment Review Board found with respect to the subject property:

. . . that the Complainant has clearly demonstrated a situation of chronic vacancy over a three year period and agrees that if the property is assessed as a whole then the vacancy rate should be accepted for the entirety of it.

[13] The Board is well aware that assessments are to be prepared using "typical" rates, and that ideally, adjustments in those rates should be correlated with the whole, but that does not mean that a significant difference between the typical and the actual can be ignored. Further to this, it must be remembered that the Board is not empowered to re-assess property, only hear

complaints with respect to assessments, and adjust an assessment that is not correct, fair and equitable.

[14] The Respondent stated that a further increase in the vacancy rate would "vastly undervalue the subject creating an inequity," but there is no evidence to support that statement. Granted, the subject property, an agglomeration of eleven buildings, may be somewhat unique, and that may explain why no comparables were put in evidence by either party. Nevertheless, this is not a perfect world, and the Board must make its decision based on the evidence before it.

Board's Decision:

[15] The Board finds that the chronic high vacancy rate of the subject property was not taken into account in the assessment, either by adjustment to the vacancy rate, or by recognition of the cause of the high vacancy rate. Hence, the Board finds that the assessment is not fair and equitable. In the result, based on a 20 percent vacancy rate, with all other factors remaining the same, the assessment is changed from \$23,410,000 to \$17,053,000.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF July 2012.


Presiding Officer

Exhibits

C-1, Complainant's Written Argument

R-1, Respondent's Assessment Brief

C-2, Complainant's Rebuttal

<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Office	Multi-building Complex	Income Approach	Land Value

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.*

