

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD (CARB)
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(4).

between:

Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Fleming, PRESIDING OFFICER

T. Usselman, MEMBER

R. Glenn, 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: 200922474

LOCATION ADDRESS: 3330 23rd St. NE

HEARING NUMBER: 58711

ASSESSMENT: \$30,500,000

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

Appeared on behalf of the Complainant:

- S. Meiklejohn *for the Complainant*

Appeared on behalf of the Respondent:

- S. Powell; City of Calgary *for Respondent*

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

There were no procedural or administrative matters raised.

Property Description:

The property is a Class "A" suburban office building in North Airways. The property is owned and intended to be entirely occupied by the Shaw Cable group of companies. The site is 9.86 acres and is developed with a three storey building of 136,922 square feet. The Land Use designation is Direct Control with Industrial Business guidelines. The site has traffic expressway and corner lot influences and the property is assessed on the Income approach.

Issues:

1. What is the best evidence of rental rate for the subject? Is it the actual rentroll and 3rd Party studies or rental comparables from the area.
2. What is the best evidence of vacancy rate applicable to the subject? Is it 3rd Party evidence obtained from published sources or an analysis of vacancy in the area of the subject?
3. What is the best evidence of the appropriate Capitalization Rate for the subject? Is it 3rd Party evidence obtained from published sources or a capitalization rate study?

Complainant's Requested Value:

\$24,000,000

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

1. Third party evidence may be used to provide additional support for market evidence, but is generally of limited weight when it is the prime source of evidence.
2. The best evidence of a "typical" market rental rate comes from the rental comparables provided by the Respondent.
3. The vacancy analysis provided by the Respondent forms the most appropriate basis for establishing the vacancy rate, however the vacancy analysis of the Respondent must be adjusted to remove property identified as owner occupied. When this adjustment is made, the Vacancy rate for suburban offices in the North East quadrant of the City rises to 11.0%.
4. The best evidence of a capitalization rate for the subject is the Cap Rate study submitted by the Respondent.
5. For an appeal to succeed based on equity, it is usually necessary to compare properties that are very similar to one another.

Board's Decision:

The complaint is allowed in part and the Assessment is reduced to \$29,770,000.

Reasons:

The Complainant relied on 3rd Party Studies for support for a significant number of their requests. With respect to the rental rates, the property was assessed using a rental rate of \$20.00 per square foot and the Complainant was requesting a rate of \$18.00 per square foot. The primary evidence from the Complainant was reports from Avison Young (Ex. C1 pg. 42 & 43). These reports demonstrated that rental rates for suburban offices in northeast Calgary had declined significantly from 2009 to 2010 ("A" Quality from \$25 per square foot to \$20 per square foot and "B" Quality from \$20 per square foot to \$15 per square foot). Had this been the only evidence provided in the hearing, it may have been compelling. The Respondent included a list of rental comparables in the northeast (Ex. R1 pg 23) which supported the assessed rent at \$20.00 per square foot and demonstrated that rents had not declined as the 3rd Party report suggested. Accordingly, the rental comparables provided by the Respondent were given greater weight and the rental rate was confirmed at \$20.00 per square foot.

With respect to the vacancy rate, the Complainant presented 3rd party evidence from Barnicke and Colliers which demonstrated vacancy rates from 2001 to 2010 (Ex. C1 pg. 45). This information showed current vacancy (2010) of over 14%. The Complainant also argued that the years 2007 to 2009 (which had low vacancy) should be excluded because they were not examples of a "normal" market but rather examples of the booming economy. They submitted that when the vacancy rates from these years are removed, the average vacancy rate was 13.26% which supported the Complainants request for a 12% vacancy rate. The Respondent, on the other hand, submitted a vacancy rate analysis for north east Calgary (Ex. R1 pg 69). It contained an analysis of the vacancy in 72 properties, and was the basis for their assessed vacancy rate of 9%. The CARB puts greater weight on the Respondents vacancy analysis than on the Complainants 3rd Party analysis, because the vacancy analysis of the Respondent highlights actual buildings in the market as opposed to general information contained in the 3rd party reports. As well 3rd party reports generally contain disclaimers which potentially limit the reliability of the study.

However, through questioning it emerged that the City study contained two buildings that were owner occupied, and the Complainant argued that if one was to include owner occupied buildings, it was logical that vacancy in those buildings should also be included. Alternatively, those buildings should be excluded from the survey. The CARB agrees with the Complainant that owner occupied buildings should either, not be included in the vacancy analysis, or alternatively, if the buildings are to be included, any vacant space in those buildings should also be included. The CARB chose to exclude the two buildings in the study identified as owner occupied and based on these revisions to the study, determined that the vacancy rate in the north east suburban office market should be rounded to 11.0%.

With respect to the Capitalization Rates, the Complainant provided 3rd party studies from Colliers and from CB Richard Ellis demonstrating support for their request for a capitalization rate of 8.0%. The Respondent submitted a capitalization rate study (Ex. R1 pg.35) which included 5 sales of suburban office buildings City wide dating from 14-Jul-08 to 20-Oct-08. This study showed an average cap rate of 6.86%. The City also noted that concentrating on the most recent of those sales suggested a Cap Rate of 7.32% The City had rounded up the Cap Rate to

7.5% for A class buildings. The CARB put greater weight on cap rate study of the respondent as it dealt with identified buildings which were not evident in the 3rd party studies. As well, in reviewing the evidence of both parties, the CARB notes that both the cap rates of the Respondent and the Complainant do find support in the 3rd party evidence. The difference between the two parties appears to be that the Complainant requested a rate at the higher end of the range while the Respondent requested a rate at the low end of the range. As noted previously, the Board placed greater weight on the evidence of the Respondent who provided identifiable data in support of their attributes. Accordingly, the CARB accepts the Capitalization Rate of the Respondent at 7.5%.

Finally, the Complainant provided an analysis of 26 sales of suburban office buildings in the 3 year period dating from 13-Jul-06 to 9-Apr-09 (Ex. C1 pg. 74). These sales were City-wide. They provided an analysis of all these sales showing the Assessment to Sales Ratios (ASR) on both an unadjusted basis (i.e.: relating the 2010 Assessment to the unadjusted sales price) and as well they provided an ASR analysis based on a time adjusted sales price (TASP) to the 2010 Assessment. The purpose in providing this type of analysis was to demonstrate that using the attributes (Rental Rate, Vacancy Rate and Capitalization Rate) which the Complainant requested (as shown on page 40 of C1) resulted in an Assessment which compared favourably with adjusted values from the actual sales. The main basis of comparison was the assessed value per square foot.

The Complainant categorized this as an equity argument as well as additional support for his other arguments. He indicated that the average adjusted sales prices (AASP) represented an Equity argument which entitled the Complainant to an assessed value similar to the AASP of the comparables. In developing this argument, the Complainant had calculated a time adjustment of negative three percent (- 3%) per month (or -36% per year) for the period from July 1st, 2008 to June 30th 2009. This -36% per year was based on the average difference between rents from 2009 and 2010 identified in the 3rd party documents discussed in the rental rate issue above. While this difference in rents itself does not support a -36% per year, the Complainant argued that the balance of the difference came from the change in the vacancy rate and the capitalization rate although no exact calculation was provided.

In order to accept this argument the CARB concludes it is necessary to have confidence that the effects of time were adequately accounted for in the analysis, particularly during the time period in question where the evidence of both parties suggests significant changes were occurring in the market attributes. To the Complainants first line of argument which addresses ASR's versus unadjusted sales prices, the failure to adjust for time in the analysis in a declining market means the analysis is flawed, because it would likely overstate the value of the property, particularly if the sale occurred within a year of the valuation date where both vacancy and capitalization rates increased in the analysis of both parties.

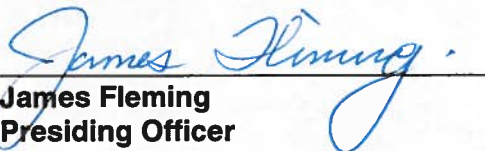
The other line of argument adjusted the prices for time. Both parties agreed that the time adjustment for sales prior to 1-July-08 was the Respondent's time adjustment (+2.5% per month). The Respondent however indicated that they did not know if there was a time adjustment for the year from July 08 to July 2009 and in any event it was irrelevant in their opinion because they disagreed with the methodology and conclusions of the Complainants analysis.

In reviewing the Complainant's time adjustment, the CARB does not accept the basis of calculation for the adjustment. The premise of using the periodic change in rental rates as the primary support to substantiate a change in value is not common and therefore questionable

without additional supporting information which was not made available. In addition, the use of 3rd Party reports as the sole basis for establishing the rental rates is problematic for previously noted concerns with methodology and reliability. The Complainant also noted that one can infer a (lesser) time adjustment from the Respondent's evidence, but the Respondent was unwilling to confirm the basis of the inference again noting that the Complainant's analysis was irrelevant to the issues in the complaint.

The CARB thus concludes that the analysis using the unadjusted sale price is flawed without a proper time adjustment, and likewise the adjusted sales price analysis is flawed because the analysis does not make use of a time adjustment considered reliable by the CARB. Accordingly, the Complainant's argument on equity and support for other calculations could not be pursued because the underlying premise was not accepted.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF September 2010.


James Fleming
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

No.	Item	
1.	Exhibit C1	Completed Complaint Form
2.	Exhibit C2	Complainant's Brief
3.	Exhibit R1	Respondent's 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.*