

**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:

**1260642 ALBERTA LTD., COMPLAINANT
1023822 ALBERTA LTD., COMPLAINANT
(Represented by Altus Group Ltd.)**

and

The CITY OF CALGARY, RESPONDENT

before:

**Board Chair P. COLGATE
Board Member K. COOLIDGE
Board Member E. BRUTON**

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 2011 Assessment Roll as follows:

ROLL NUMBER: 068079508
LOCATION ADDRESS: 304 8 AVENUE SW
HEARING NUMBER: 67921
ASSESSMENT: \$17,810,000.00

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

- Scott Meiklejohn, Altus Group Ltd. – *Representing 1260642 Alberta Ltd., and 1023822 Alberta Ltd.*
- Robert Brazzell, Altus Group Ltd. – *Representing 1260642 Alberta Ltd., and 1023822 Alberta Ltd.*
- Karen Lilly, Altus Group Ltd. - *Representing 1260642 Alberta Ltd., and 1023822 Alberta Ltd.*

Appeared on behalf of the Respondent:

- Emilia Boresenko – Representing the City of Calgary
- Andy Czechowskyj – Representing the City of Calgary

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

The preliminary matter raised in File Number 67921, Roll Number 068079508 – 304 8 Avenue SW has been cross referenced to this hearing and the Decision on the preliminary matter has been entered into the record for this complaint as follows:

Board Ruling on the Preliminary Matter with respect to the complaints for Roll Numbers 067023002, 068052802, 068053206, 068079508 and 068224500

The Complainant raised a two-prong argument with respect to the requests for information filed pursuant to the Municipal Government Act, Sections 299 and 300. (See Addendum) The Complainant raised two elements to be examined by this Board. Firstly, did the City of Calgary Assessment Business Unit fail to comply with Section 299 and 300 of the Act when they failed to provide specifically, requests for studies prepared by the City of Calgary Assessment Business Unit in the development of the 2012 assessment? Secondly, did the City of Calgary Assessment Business Unit subsequently submit in its hearing evidence documents in violation of Section 9(4) of the Matters Relating to Assessment Complaint Regulation (MRAC)?

From the evidence presented, the Board found that the Complainant submitted requests for information to the City of Calgary Assessment Business Unit on January 20, 2012, March 13, 2012 and March 30, 2012. The Complainant received a Non-Residential Properties Income Valuation Report in response to the request; however, their request for specific studies – rental rate studies, vacancy rate studies, non-recoverable rate study, operating cost study and market parameters in determination of class were not provided. The Complainant testified a meeting was held with the Assessment Business Unit representative but requests for the studies were declined.

In a letter dated April 13, 2012 from Mr. Fairfield, the Acting City Assessor/Director, to Mr. Brazzell, Senior Director of the Altus Group, Mr. Fairfield responded "Section 299 is designed for an assessed person to get documentation in the possession of the assessor about the property that was used in the assessment, listings of the variables in the model and the ranges of those variables. Studies used in the creation of those variables, or coefficients of valuation model are not producible under the terms of the legislation." Mr. Fairfield went on to state, "There is no obligation under Section 299 to produce all the sales in the valuation model, all the leases in the valuation model, capitalization rate studies, vacancy studies, or any of the other studies that you reference in your request letter. In fact the provision of much of the information you are requesting would breach the confidentiality of various sources of information and is therefore prohibited by law."

Both the Complainant and the Respondent agreed that rates for vacancy, operating costs, etc. were provided by the City of Calgary during the customer review period, but there was no exchange of the studies requested by the Complainant.

The Complainant had filed with the Minister of Municipal Affairs a complaint on the matter of non-compliance by the City of Calgary Assessment Business Unit under Section 27(6) of the Matters Relating to Assessment and Taxation Regulation. Both parties have agreed this matter is now before the Minister for review and therefore this Board would not address the first prong.

As to the second prong of the Complainant's preliminary matter, this related to the application of Section 9(4) of MRAC, which sets out:

9(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested under section 299 or 300 of the Act but not provided to the complainant.

This Board took guidance from the Alberta Court of Queen's Bench decision, on a Leave to Appeal, of the Honourable Madam Justice D.A. Sulyma, in this matter between Canadian Natural Resources Limited v. The Regional Municipality of Wood Buffalo, The Regional Municipality of Wood Buffalo Composite Assessment Review Board and the Minister of Justice, Attorney General for Alberta. (2012) ABQB 177 (Wood Buffalo)

Wood Buffalo addresses the question of a municipality's compliance with Sections 299 and 300 of the MGA and the question of what constitutes "*sufficient information*". In Wood Buffalo the municipality provided only the specific information requested by the Complainant and then submitted additional reports before the Wood Buffalo Composite Assessment Review Board.

In the hearings before this Board, a very detailed list of information, identifying studies prepared by the City of Calgary Assessment Business Unit were requested by the Complainant from the municipality in the manner required by the municipality.

The question raised before this Board was "Did the Assessment Business Unit set restrictions on the information it would release to the Complainant and then contradict those restrictions by including the information in the Respondent's evidence submissions?"

The Wood Buffalo Decision of Justice Sulyma clearly indicated there should be no limits placed upon the information provided by the municipality in response to an information request. In

Wood Buffalo, the municipality put forward the argument that it had provided the information requested. In the case before this Board, the Respondent stated that it provided the information as set out in the Municipal Government Act and its Regulations or refused on the basis of their interpretation of the Freedom of Information and Privacy Act, as stated in the letter of reply dated April 13, 2012.

Justice Sulyma established what is "sufficient information". All information the municipality has in its possession that was instrumental in the establishment of the assessment. The Act states in its wording:

299(1.1) stipulates that, "sufficient information in respect to a person's property must include (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control".

Justice Sulyma has established the threshold or standard to which all municipalities must now achieve with respect to the disclosure of information. In the opinion expressed by Justice Sulyma, the essence of Sections 299 and 300 is full disclosure of all information to allow the taxpayer to fully appreciate the information used to establish the assessment.

The Board found the argument put forward by the Respondent in refusing to provide information based upon the Freedom of Information and Privacy Act is not supported in law or in fact. The action of the Assessment Business Unit itself undermined their position. The Act states:

Section 301.1 that "Sections 299 to 301 prevail despite the Freedom of Information and Privacy Act".

The Respondent sought to provide the requested information in its evidence submission after refusing the Complainant's request of March 30, 2012. The Respondent must comply with the disclosure requirements prescribed in the Act. Any documents it is prepared to submit in its evidence packages, which show how the assessor prepared the assessment of that person's property, must be available to the Complainants/taxpayers upon request, including any studies conducted to determine assessments.

The request for the Board not to hear evidence with respect to studies of the Assessment Business Unit requested under Sections 299 and 300 is well founded. Accordingly, the Board will not allow the introduction of the studies for the scheduled hearings. The Board will not consider the relevant pages and the Respondent will not be allowed to present them into evidence. The specific pages will be identified as each hearing is conducted.

This decision does not affect working documents and coefficients which have been restricted in prior decisions and under legislation, but is specific to any documents the Respondent was purporting to submit in an evidence package before this Board. It must be appreciated that the decision by Justice Sulyma is recent and so its full meaning must be worked out over time, for the assessment process and the tribunal system are ever evolving systems.

The decision of this Board in no way is a ruling on the merits of the individual hearings. There is still an onus/burden of proof to be met by the Complainant. The merit hearings will proceed.

Ruling presented June 12, 2012

Following the preliminary matter ruling on June 12, 2012 it was made clear to the Board through questions raised by the Respondent and comments of the Complainant that the documents that the Board ruled to exclude were in fact part of the Complainant's rebuttal document.

The Board discussed the question of what was evidence, when it became evidence and if it could be questioned and therefore introduced indirectly for the Respondent. It was the ruling of the Board to expand and clarify the original ruling to encompass all submitted documents, from both the Complainant and the Respondent, resulting in the exclusion of the studies. It was the opinion of the Board that justice would not be served if documents excluded under the initial ruling were permitted to be entered through another source, effectively nullifying the intent of the Board's ruling.

Ruling presented June 13, 2012

Merits of the individual hearings were then heard by the Board and decisions rendered.

At the request of the Complainant and the Respondent the merit presentations for the following roll numbers – 067023002, 068052802, 068053206, 068079508 and 068224500 would be cross-referenced.

For Roll Number 068079508 the excluded material was R1, Pages 25, 26, 31 and the column "The City of Calgary Analysis" from the table on page 30 and C3, Pages 37, 38, 40, and 41.

Property Description:

The subject property, identified as the Lancaster Building, is a 9 storey, B- class commercial office/retail building (CS1025) located on the north-west corner of 8th Avenue and 2nd Street SW in the Downtown Commercial Core (DT8). The structure, situated on a 0.24 acre parcel, has a total area is 78,433 square feet broken into 54,904 square feet of office space, 15,270 square feet of retail, 3,121 square feet of food court, 3,386 square feet of recreational space and 1,744 square feet of storage. There are no assessed parking stalls on the site. The building was constructed in 1913 and completely renovated in 1978. The subject property has been assessed, based upon the Income Approach, for \$17,810,000.00 or \$227.00 per square foot.

Complainant's Requested Value: \$12,430,000.00

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

In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

Both parties also placed Assessment Review Board decisions before this Board in support of

their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

ISSUE 1: Is the classification correct for the subject property?

Complainant Evidence:

The Complainant stated to the Board, both in presentation and through questioning, that the request was for a change of the class of the property from a B- to a C with the corresponding changes to the rates applied in the calculation of the assessment. To support the requested value, the Complainant examined the individual parameters employed by the City of Calgary Assessment Business Unit as applied to the subject property, with emphasis on Net Rental Rate, Vacancy Allowance, Operating Costs and Capitalization Rate for which rate changes were requested.

The Board notes the Complainant's evidence identified as C2 contains the supporting documents - RealNet and Alberta Data Search – for the sales submitted by the Complainant. The evidence, package C2, was submitted for all hearings for the week of June 11, 2012.

In addition to the material reference relating to the specific rate changes, the Complainant submitted equity studies comparing the subject property to downtown office building of both C and B- class. The Complainant reviewed the similarities and difference with respect to year of construction, total area, assessment and assessment per square foot, operating costs, non-recoverable allowances, parking stalls, parking rates, parking vacancy, office area, retail area and storage area. (C1, Pg. 61-62 and C3, Pg. 33-34)

The Complainant attempted to show through statistics how the subject property more closely fit the analysis of C class buildings as opposed to the B- class structures.

ADDRESS	AYOC	STORIES	FLOOR PLATE (SQ.FT.)	SITE AREA (SQ.FT.)	OFFICE SPACE (SQ.FT.)	RETAIL SPACE (SQ.FT.)	STORAGE (SQ.FT.)	OTHER (SQ.FT.)	TOTAL AREA (SQ.FT.)	FAR	PARKING STALLS	PARKING RATIO (SQ.FT PER STALL)
SUBJECT												
304 8 AVE SW	1913	10	8300	10398	54908	18399	1744	3386	78433	7.54	0	
C CLASS	BASED ON 6 PROPERTIES											
MAXIMUM	1966	10	15915	38965	106137	19772	13155	0	116711	7.54	22	5305.05
MINIMUM	1911	4	8000	8610	35112	0	0	0	48267	1.91	0	3017.53
MEAN	1943.5	6.85	11292.5	18146.83	65901.17	9386.17	3762.83	0	79050.17	5.11	6.5	4161.29
MEDIAN	1954	6.5	11065.5	14921.5	64554.5	9038.5	1616.5	0	79799.5	5.32	0	4161.29
B- CLASS	BASED ON 12 PROPERTIES											
MAXIMUM	1981	27	62635	160896	357092	70959	107750	603	376061	13.32	87	28117.5
MINIMUM	1958	5	6403	8293	72019	2320	10	603	75443	1.62	6	1596.67
MEAN	1972	17	16666.6	29758.17	160446.33	13820	23493.67	603	188481.83	9.61	49.88	6139.31
MEDIAN	1971	18.5	12474.5	18058.5	145745	8880	3942	603	171203.5	11.36	47.5	3335.01

It was the position of the Complainant that overall the subject property was a better 'fit' as a C class building than a B building, so the parameters should be adjusted to reflect the C class standard.

Respondent Evidence:

As previously mentioned, portions of the Respondent's submission were excluded from the submission to the Board.

The Respondent identified an error was made in the calculation of the assessment with respect to the vacancy allowance, applied at 5% instead of the correct 8%. The corrected assessment would be \$17,090,000.00 or \$217.00 per square foot. (R1, Pg. 11) The Board accepted the corrected value.

The Respondent noted the actual income of \$1,443,798.24 for the subject property and a capitalization rate of 7.25% indicated a market value of \$19,914,458.48. The current assessment is \$17,090,000.00.

The Respondent submitted a "2012 Downtown Office B- Class Equity" report (R1, Pg.41) illustrating the consistent application of the rates in the determination of the 2012 assessments, with the exception of the capitalization rate.

Sales were submitted into evidence – 119 6 Avenue SW (R1, Pg. 42) which sold April 13, 2011 and 604 1st Street SW (R1, Pg. 34-38) which sold on September 2, 2010.

Findings of the Board

The Board restricted its findings to those parameters, which the Complainant requested to be changed for the subject property – Class, Net Rental Rate, Vacancy Allowance and Capitalization Rate.

The Board found it difficult to rule on the class with respect to the subject property. The Complainant analysed many of the key factors that the City of Calgary identified as being considered in the review of structures to determine their class. (C1, Pg. 54-56). The Complainant had quantified a number of the criteria and shown how the subject differs from the statistical norms of B- class properties and arguably falls within the statistical standards of C class properties. The Board found the subject fits into both class B- and C depending on the individual criteria being examined, such as +15 access and food courts versus year of construction and number of stories. Some criteria could not be quantified, such as location and quality or condition but were a subjective call left to individuals.

The Board considered only the evidence placed before it at the hearing, which makes subjective analysis difficult in comparison to reviewing a statistical analysis of rent rates. Neither the Complainant nor the Respondent could advise the Board how much weight was given to each of the individual factors identified in determining the class of a building.

Lacking sufficient compelling evidence, the Board rules the class of the subject property will remain unchanged as a B-. In doing so, the Board proceeded to review the variables that determined the assessment of the subject property.

The Board did not place significant weight on the sales provided by the Respondent, as reliance on the sale information was affected by several factors, including post facto sales, non-arms length sales or foreclosures or distress sales.

ISSUE 2: Are the parameters applied to the subject property correct and reflective of actual rates for the subject property?

Complainant Evidence:

Net Rental Rates

The Complainant introduced the following changes to the net rental rates based upon a reclassification of the structure from a B- class to a C class:

SPACE TYPE	CURRENT NET RENTAL RATE	REQUESTED NET RENTAL RATE
Food Court	90.00	90.00
Office Space	15.00	12.00
Recreational Space	12.00	12.00
Retail – 1 st Floor – Poor	16.00	16.00
Retail – 1 st Floor – Prime	30.00	30.00
Retail -1 st Floor – Prime, Poor	20.00	20.00
Retail 3 rd Floor	20.00	20.00
Retail Basement	15.00	15.00
Storage Space	8.00	8.00

In support of the request the Complainant submitted a copy of the May 5, 2011 Rent Roll for the subject (C1, Pg. 35-39 & 46-48), an Income Statement for December 31, 2010 (C1, Pg. 34) and seven Tenant Lease Profile documents.

An analysis of the lease rates per square foot was provided indicating the range for leases was \$8.00 to \$130.00, with a mean of \$30.06, a weighted mean of 18.41 and a median of 20.00. (C1, Pg 31-32) The analysis, however, was not reflective of only the office leases in the building and included dated leases.

A “Comparable Rent Summary – Class C” table (C1, Pg. 83) was submitted, composed of leases from five different buildings commencing from January 1, 2010 to November 1, 2011. The analysis of the leases presented indicated a mean of \$11.50 per square foot, a weighted mean of \$9.94 per square foot and a median of \$12.00 per square foot.

Vacancy Allowance

The Complainant requested the vacancy allowance for the subject be increased to 15.0% for all space types from their current allowance.

SPACE TYPE	CURRENT VACANCY ALLOWANCE	REQUESTED VACANCY ALLOWANCE
Food Court	2.0%	15.0%
Office Space	8.0% (Corrected Rate)	15.0%
Recreational Space	2.0%	15.0%
Retail – 1 st Floor – Poor	2.0%	15.0%
Retail – 1 st Floor – Prime	2.0%	15.0%
Retail -1 st Floor – Prime, Poor	2.0%	15.0%
Retail 3 rd Floor	2.0%	15.0%
Retail Basement	2.0%	15.0%
Storage Space	2.0%	15.0%

The Complainant submitted there was on May 5, 2011 a total office area of 55,818 square feet of office area, with 3,144 square feet vacant. This represented a vacancy of 5.6%. The retail component was listed at 22,615 square feet, with 8,845 square feet vacant or 39.11%. The Complainant submitted, based upon the total area of 78,433 square feet, with 11,989 square feet vacant, that an overall vacancy allowance of 15.28% should be applied to all space in the subject building.

Third party reports included CRESA, "Historical Office Vacancy – June 30 – CRESA Partners" (C1, Pg 85) which indicated total vacancies of 10.06% for B class office space and 13.98% for C class office space. This represent a combining of headlease and sublease vacancy rates for the C class building in the downtown (C1, Pg. 94). Supporting documents were found in the submission (C1, Pg. 99-100).

CRESA Partners, recognizing the subject building as a C class structure, indicated 1.95% headlease vacancy in the building for the second quarter of 2011 (C1, Pg. 109).

Operating Costs

The Complainant requested the operating costs be adjusted for the office space, reducing the costs from \$17.00 to \$16.00 per square foot, this better reflecting the current operating costs assigned to a C class building. The operating costs, as shown on the Rent Roll and Tenant Lease Profiles, appear to be around \$15.72 per square foot for common area and premise tax.

The document "Historical Operating Costs- June 30 – CRESA Partners" (C1, Pg 85) shows 2011 operating costs to be \$15.46 per square foot for B class office space and \$14.20 per square foot for C class office space. Supporting documents are found on C1, Pg. 100, 112-115.

CRESA Partners, recognizing the subject building as a C class structure, indicated \$15.72 per square foot for operating costs for the second quarter of 2011 (C1, Pg. 115).

Capitalization Rate

The Complainant advised the Board of the difficulty, for both the Complainant and the Respondent, to establishing a current capitalization rate due to the lack of valid sales in the downtown district. In fact, no sales had occurred in the downtown since 2008.

The Complainant requested a change to the capitalization rate from 7.25% to 8.0%

The Complainant reviewed 12 sales of B class buildings which occurred in DT1 and DT2 market zones in the years 2007 and 2008, one of which was the subject building at 521 3 Avenue SW (C1, Pg 141). Capitalization rates were determined for each sale based upon the Net Operating Income at the time of sale. The resulting analysis indicated a mean of 6.99%, a weighted mean of 6.9% and a median of 7.2% for the capitalization rate. The subject property at the time of sale had a capitalization rate of 6.73%.

A similar analysis was conducted on five sales of C class buildings which occurred in DT2 and DT9 market zones in the years 2007 (C1, Pg. 143) The resulting analysis indicated a mean of 7.59%, a weighted mean of 7.39% and a median of 8.11% for the capitalization rate.

The Complainant submitted third party capitalization reports covering the years 2007 through

2010 by CB Richard Ellis and the years 2008 through 2011 by Colliers International. (C1, Pg. 147-161)

The Complainant submitted to this Board that in the absence of current sales to establish a capitalization rate one should return to the time when sales were available in order to do so. One would then review how the market has changed over time to adjust or extrapolate a current capitalization rate.

The Complainant submitted that the market rents have decreased since the market highs in 2007-2008 to the market of 2011, specifically referring to the Rent Roll (C1, Pg 47-52) to illustrate the decline for rents from highs of \$41.00 to \$44.00 per square foot to the current rents of \$13.00 to \$17.00 per square foot. The Complainant testified vacancy rates have increased over time and the risk level of ownership has also increased. The overall change in market conditions has resulted in the need to recognize an increase to the capitalization rate for application to the 2011 assessments. It was the Complainant's position that the review of the changes over time warranted an increase to the capitalization rate.

Respondent Evidence:

Net Rental Rates

The Respondent submitted a Rent Roll for the subject property dated November 1, 2011 (R1, Pg.13-20) and a Lease Summary table (R1, Pg 21). The Respondent calculated the mean office rate of \$19.04 per square foot, a weighted mean office rate of \$18.99 per square foot and a median office rate of \$17.00 per square foot. The current typical net rental rate is \$15.00 per square foot for office space.

The Respondent submitted a "2012 Downtown Office Net Rent Rates" table (R1, Pg 24) which showed for City of Calgary typical net rent rate at \$15.00 a square foot in DT8 for B- buildings. Third party reports indicated rates of \$19.56 per square foot by CB Richard Ellis, \$18.00 per square foot by Barclay Street and \$18.00 per square foot by Avison Young. The third party reports do not distinguish different levels within the class. The Respondent testified third party reports are not used to determine the City of Calgary rates, but are reviewed as a check against the values set.

The Respondent advised the Board that typical retail space net rental rate is currently set at \$16.00 per square foot for class B- in DT8.

Vacancy Allowance

The Respondent presented a "2012 Downtown Office Vacancy" table (R1, Pg. 30) which showed for City of Calgary typical vacancy rate at 8% in DT8 for B- buildings. Third party reports indicated vacancy rates of 8.47% by CRESA, 9.54% by Altus InSite, 11.5 % by Avison Young and 9.8% by Barclay Street. The third party reports do not distinguish different levels within the class.

The Respondent's evidence consisted also of a third party report by Altus InSite (R1, Pg 32) which indicated a total vacancy rate for class B space at 8.6% for the second quarter of 2011

and 6.8% for the third quarter of 2011.

The table, "Downtown Shopping Malls 2012 Assessment Parameters" (R1, Pg. 35) was submitted showing the vacancy allowance applied to B- class of buildings was 8% for office space and 2% for retail space in DT8.

Operating Costs

The Respondent testified the operating costs for office space was \$17.00 for the subject property as a B- class.

Capitalization Rate

The Respondent stated the capitalization rate for DT8, where the subject property is located, is identified as a Downtown Shopping Centre and structures in DT8 are assessed with a rate 0.25% lower than for other downtown office buildings in adjacent DT market zones.

The table, "Downtown Shopping Malls 2012 Assessment Parameters" (R1, Pg. 35) was submitted showing the capitalization rates as applied to AA, A and B- class of buildings was 0.25% lower in DT8.

The Respondent presented a "2012 Downtown Office Capitalization Rate" table (R1, Pg. 34) which showed for City of Calgary typical capitalization rate at 7.5% in DT1 for B buildings. Third party reports indicated capitalization rates of 6.3%-7.8% by Altus InSite, 7.75%-8.25% by CB Richard Ellis and 7.25%-8.25% by Colliers International. Documents from Altus InSite were submitted showing historical changes in capitalization rates for B class office space and also rates for other Canadian cities. (R1, Pg. 36-39)

Findings of the Board

Net Rental Rates

The Board noted the Complainant requested only the net rental rate of the office space be adjusted in the requested recalculation of the assessment.

Taking some guidance from the Complainant and the Respondent, the Board looked at the recent office leases signed within a year of the valuation date (July1, 2010 to July 1, 2011) with limitations – no leases of 1 year or less and no month-to-month leases.

The Board determined 8 leases met the criteria set with an indicated range of \$8.00 to \$14.00 per square foot, an average of \$11.63 and a median of \$12.00 per square foot.

The Board was unable to place weight on the Complainant's "Comparable Rent Summary – Class C" for several reasons. The analysis included month-to-month leases, owner occupied spaces, short term leases and buildings which were not currently classified as C class.

The Board found the Complainant's requested rate of \$12.00 per square foot for office space was supported through the rent roll for the subject property. The Board found the subject

property was exhibiting atypical rates for a property in its location and accordingly adjusts the rate to \$12.00 per square foot.

Vacancy Allowance

The information provided by the 2011 Rent Roll indicated to the Board the office space was experiencing a lower than typical vacancy rate. However the retail space on May 5, 2011 had a much higher vacancy rate than established as typical. The Board found the evidence submitted by the Complainant failed to establish a history for the subject property of higher than typical vacancy rates. Failing in this requirement, the Board does not change the vacancy rate.

Operating Costs

In order to recognize the requested change to the operating cost to be the same as the C class, the Board would be recognizing a change to the classification of the subject property. The Board has ruled the class of the subject building will remain as a B-; therefore the operating costs are unchanged at \$17.00.

Capitalization Rate

The Board notes the third party report, "Canada Cap Rate Report – Q2 2011 – Investments" by Colliers International (C1, Pg. 159) indicated for Calgary class B structures a capitalization rate ranging from 7.25% to 8.25%. Both the current rate of 7.5% and the requested rate of 8.0% fall within the range set by this report.

The Board found that while the Complainant's analysis of changes over time did show trends and how parameters can be subjectively applied, there was a failure to adequately connect and weigh the requested changes and the current capitalization rate. It is fair to show how individual parameters have changed over time when supported by empirical data, but the failure to clearly demonstrate the cumulative effect of these factors on the capitalization rate through market evidence leaves the Board trying to mix subjective and objective data to establish a new rate.

As the Board has previously stated the class of the structure would not be altered the applicable rate for C class would not be applied.

The Board found there is insufficient market evidence to substantiate a change to the capitalization rate.

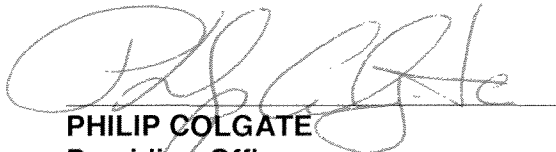
The Board did not place significant weight on the sales provided by the Respondent as it was apparent the sale of the Loughheed Building at 604 1 Street SW was a distress sale by court order and had been extensively renovated recently.

Board's Decision:

The Board notes the calculation for the subject property recognizes an exempt portion of the building – Historical Society of Alberta. As this roll number was not before the Board the assessment has remained unchanged in the determination of the final assessment. The effect of changing the exempt property to correspond to the Board's decision was not, in the opinion of the Board, significant.

The Decision of the Board is to reduce the assessment to \$15,040,000.00

DATED AT THE CITY OF CALGARY THIS 19th DAY OF July 2012.



PHILIP COLGATE
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant's Rebuttal
4. R1	Respondent's Disclosure

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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	- Net Market Rent - Capitalization Rate - Vacancy

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer:

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) "assessment year" means the year prior to the taxation year;

Part 1

Standards of Assessment

Mass appraisal

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Addendum for Preliminary Matter.

Access to assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,
 - (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and
 - (c) any other information prescribed or otherwise described in the regulations.
- (2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

RSA 2000 cM-26 s299;2009 c29 s5

Access to summary of assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

- (a) a description of the parcel of land and any improvements, to identify the type and use of the property;
 - (b) the size of the parcel of land;
 - (c) the age and size or measurement of any improvements;
 - (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;
 - (e) any other information prescribed or otherwise described in the regulations.
- (2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6

Right to release assessment information

301 A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

1994 cM-26.1 s301

Relationship to Freedom of Information and Protection of Privacy Act

301.1 Sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*.

1994 cM-26.1 s738