

**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:**

***BCIMC Realty Corporation (as represented by the Altus Group), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***Paul G. Petry, PRESIDING OFFICER  
Borodin Jerchel, MEMBER  
Maurice Peters, 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 2011 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>200945343</b>
<b>LOCATION ADDRESS:</b>	<b>222 – 3 Avenue S.W.</b>
<b>HEARING NUMBER:</b>	<b>64731</b>
<b>ASSESSMENT:</b>	<b>\$377,080,000</b>

This complaint was heard on the 17th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Ms D Chabot and Mr. G Kerslake*

Appeared on behalf of the Respondent:

- *Mr. W Krynski and Mr. A Czechowskyj*

**Property Description:**

The subject property is an 859,483 square foot "AA" class office building known as Livingston Place. This building consists of two towers and was constructed in 2007 in the downtown core area of Calgary. The average floor plate is 22,756 sq. ft. and there are 500 parking stalls. The property has been assessed using the capitalized income approach for the 2011 tax year.

**Issues:**

- 1) Is the rental rate of \$30 per sq. ft. that has been applied to the 825,543 square feet of office space, a correct and equitable market rate considering lease and assessment data of similar properties?
- 2) Is the non-office space in the subject building correctly allocated?

Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 7, 2011. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on June 17, 2011 are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised by the Complainant.

**Complainant's Requested Value:**

Based on the Complainant's requested rental rate of \$27 per sq. ft for office space and the small reallocations of non-office space, the requested assessment for the subject property is \$342,690,000.

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

- 1) The CARB decision is to confirm the office rental rate of \$30 per sq. ft. as being both correct and equitable.
- 2) The requested changes to space allocation in and of themselves have an insignificant impact on the assessment and therefore no change in this regard has been made.

## **Summary of the Party's Positions**

### **Rental Rate**

The Complainant's basic premise is that there are two subsets of AA class office buildings in downtown Calgary. These being first, newly constructed buildings with leases negotiated two or three years ago that are now just commencing in the current valuation year (June 30, 2009 to July 1, 2010). The second subset is the existing AA class buildings which now have second generation lease activity which, it is argued, is more reflective of the current market. It was argued that the most relevant of such leases in this case, is a new lease in the subject building for a full floor (22,936 sq. ft) at a rate of \$28 per sq. ft. This lease was negotiated April 22, 2010 and commenced May 1, 2010.

The Complainant argued that especially during a period of decreasing markets, any analysis of typical rental rates should be based on the date negotiations are completed and the deal on the rental rate is struck ("deal done date") rather than the date the lease actually commences. Rates negotiated during the valuation year will be a truer reflection of the market than rates negotiated prior to the valuation year when all the relevant market forces may not have been evident. The Complainant referenced various valuation authorities and CARB decisions in support of this approach. It was argued that the Respondent uses the lease commencement date which will tend to overstate lease rates during a falling market. The Complainant argued that leases in the new buildings such as Jamison Place, Centennial Place and Penn West are "construction leases" negotiated primarily in mid 2008 when the down turn in the economy and real estate market were not yet recognized and therefore rates settled in this period overstate the current market significantly. It was also argued that new construction leases also tend to be higher as tenants are normally willing to pay a premium for new fresh space designed to suit their current and future needs.

In further support of their argument in this regard, the Complainant referred the Board to a number of third party reports which because of the market differences between "new construction" and "existing space", provide separate market measurements and forecasts for these two categories. Third party market reports also show that lease rates for AA class buildings have fallen from a high of approximately \$40 per sq. ft. in mid 2008 to approximately \$27 per sq. ft. by the valuation date in mid 2010. The Complainant used a graph to demonstrate that if one looks at the lease analysis offered by the Complainant based on "deal done dates" it becomes clear that rates continued to fall even during the valuation year June 30, 2009 to July 1, 2010. This analysis included eleven leases within AA class buildings where both the deal done dates and the commencement dates fall within the valuation year of June 30, 2009 to July 1, 2010. This analysis included leases for spaces ranging from 1,787 Sq. ft. to 160,853 sq. ft and produced a weighted mean rate of \$27 per sq. ft. which dropped to \$26.67 for leases of 10,000 sq. ft or greater. The Complainant placed greatest weight on this analysis and the new lease within the subject at a rate of \$28 per sq. ft. in determining their requested rate of \$27 for all office space.

The Respondent argued that it is the property's market value that must be determined and the onus is on the Complainant to show that the assessment for the subject is not at market value.

The subject assessment of \$377,080,000 results in a market value unit rate of \$438 per sq. ft.

The Respondent indicated that it has consistently relied on the commencement date or start date in determining which lease data to include in its analysis. In the case of sales analysis the City of Calgary has been directed by the Department of Municipal Affairs to use the Land Titles Transfer dates. In the case of lease data, the comparable date would be the commencement date. This information is readily available and no funds are usually payable to the landlord until that date. The so called "deal done" data would be very difficult if not impossible to get from owners and the actual leases would be required to verify this information. The market does not appear to differentiate between commencement dates and deal done dates and for purposes of mass appraisal the use of commencement dates has served well. There is therefore no need to separate lease data on this basis.

The Respondent provided lease information to show that the new lease in the subject property which was included in the Complainant's evidence is not actually a new lease as the head lease was held by BG International and the space was sublet to the Fort Chicago for a period of time under the same terms as set out in the BG International head lease. The Fort Chicago group took over the head lease in May 2010 but again with no change to the rate or terms from the previous BG International head lease. This is therefore not a market lease and should not be accorded much weight by the Board. The Respondent also challenged two of the leases the Complainant used in their analysis from Bankers Hall. The Banker Hall rent roll showed that both these leases ran through to February 28, 2015 and the rate of \$27.50 per sq. ft. quoted by the Complainant for each space is actually a step-up scheduled for March 1, 2010.

The Respondent provided a downtown AA class office equity chart to show that all have been assessed using the same parameters including the rental rate of \$30 per sq. ft. A 7% cap rate has been applied to all but two properties which have a large retail component justifying a lower cap rate of 6.75%. The Respondent also provided a number of third party reports showing that even with some decline in market lease rates during the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2010 asking rates still were in the range of \$27 to \$35 per sq. ft. The Respondent provided post facto information for trending purposes to show that the market appeared to be showing positive recovery signs by late 2010.

The Respondent brought forward their 2011 rental analysis for AA class downtown office. This analysis originally included 19 leases; however, three of these were removed leaving 16 leases of office space ranging in area from 5,727 sq. ft. to 389,779 sq. ft. The results of the analysis were recalculated by the Respondent and showed a weighted mean of all 16 leases to be \$32.51 per sq. ft. and a weighted mean of those leases of 10,000 sq. ft. and greater to be \$31.11 per sq. ft. These are the values relied upon by the Respondent in defence of the rental rate of \$30 per sq. ft. for AA class office in the downtown.

The Respondent argued that the Complainant has made no attempt to show that the proposed rental of \$27 per sq. ft. results in a reasonable estimate of market value. The Respondent acknowledged that there have been no sales of downtown AA class buildings during the valuation year. However in further defence of the \$30 rental rate which has been applied to the subject, the Respondent introduced April 2010 transfers of Brookfield Office Properties interests in the Bankers Hall, Suncore Energy and the Esso Plaza building to a REIT. While the Respondent acknowledged that these transfers are not arms length transactions they nevertheless are reasonable reflections of market value. Both parties to these transactions must report to shareholders and act in a prudent manner. The Bankers Hall building is an AA class

building and it was suggested that interests in this building transferred at a unit rate of \$460 per sq. ft. but included a second building and a parkade. No adjustment had been made to offset these additional assets that were included in the sale. The interests in the Suncore Energy building, also an AA class, transferred at a unit rate of \$444 per sq. ft. and the interests in the Esso Plaza building, which is an A class building, transferred at a unit rate of \$376. The Respondent argued that these transactions support the subject assessment of \$438 per sq. ft. In addition the Respondent submitted information on the sale of an AA class building in the Beltline known as Stampede Station. This is a 2008 building consisting of 161,501 sq. ft. which, sold July 14, 2009 for \$70,487,815 or a unit rate of \$436 per sq. ft. The Respondent argued that this transaction is reflective of the market value for the subject and also supports the assessment at \$438 per sq. ft.

In rebuttal the Complainant brought forward evidence to clarify that the two Bankers Hall leases were in fact newly negotiated leases and suggested that the rent roll referred to by the Respondent must be in error. The Complainant also submitted an excerpt from the Fort Chicago lease within the subject showing that this tenant has a new head lease with a current rental rate at \$28 per sq. ft. and any correlation between this rate and other terms in the previous lease held by BG International would only be coincidental. The Complainant reviewed the different outcomes in analysis using commencement dates vs deal done dates and explained that several of the Respondent's comparables were not included in the Complainant's analysis primarily because the leases were negotiated well in advance of the valuation year. The Complainant provided a table of six lease comparables which were common to the analysis done by both parties. This table showed a weighted average rate for the six leases to be \$27.66 per sq. ft. In rebuttal the Complainant also submitted a letter from Mr. Ian Parker, Senior Vice President of Brookfield Office Properties indicating that the transfers of interests in Banker Hall, Esso Plaza and Suncore Energy buildings were between related parties. The estimated values were done using the discounted cash flow program projecting values over a ten year horizon. He urged caution in the use of these values to determine fee simple values for assessment purposes.

### **Findings and Reasons for the Board's Decision:**

#### **Rental Rate**

The parties were in some dispute respecting certain leases and whether or not they should be used in the determination of typical rents for AA class office space. The CARB did not make specific decisions as to the disposition of each lease comparable in question, as the issue of adopting a change in the rental rate first turns on a larger question which, ultimately makes the selection of specific leases for analysis somewhat moot.

The CARB agrees that when developing the value of any factor commonly used in the capitalized income approach it is preferable to analyze market data within the valuation year and with sufficient data, perhaps weight could even be placed on the last six months of this period. While this may be preferred, it is not always possible. If there are too few sales or data events in the valuation year it may be necessary to reach back to the previous year to get a reasonable sample size. Information is not always valid, reliable or readily available. It may also be important to consider forward trending and market forecasts in order to confirm or strengthen the conclusions one is attempting to reach on the valuation date. The CARB is in general

agreement with the Complainant's premise respecting the desirability of analyzing lease rates negotiated within the valuation year and not placing as much weight on leases which were negotiated a year or two earlier. That being said the CARB also understands the limitations the Respondent faces with respect to the acquisition and analysis of lease data. As the Respondent pointed out, this task would require owners to submit all leases and any conjunctive agreements on tenant improvements or inducements in order for the Assessor to properly analyze not only the deal done dates but other terms and agreements which may have an impact on effective net rents. Deal done dates may also be somewhat fluid and vary within the practises and relationships of the parties involved. This date may not always be evident as agreements may be reached but not reduced to writing until later and documents may be dated but not signed off for some time for any number of reasons. In the case at hand evidence of the source and accuracy of the deal done dates was not before the CARB and this leaves some question as to the consistency in how these dates were determined.

The Respondent argued that a change to one component of the income approach should not be made without careful consideration of the other factors and in particular the cap rate in this case. The CARB believes that both parties are aware of the case law and decisions of both the CARB and Municipal Government Board (MGB) that speak directly to being consistent in the derivation of net income and cap rates with the application of net income and cap rates used in determining assessments within a specific stratum. Accordingly in order to properly test the validity of a proposed change to the typical rental rate, the proposed rental rate must be used in developing the net operating income (NOI) for the properties in the cap rate study for that stratum. Theoretically in this case, the proposed \$27 rate should be used to estimate the NOI for the sales used to develop the current 7% cap rate. This would in all likelihood reduce the cap rate which in turn would produce a higher value for the subject than that requested by the Complainant. Because of the lack of sales of AA class properties the 7% cap rate conclusion may have been reached using additional market data. Nevertheless, whatever the basis for the cap rate, that basis should be reviewed in light of the proposed lower NOI to determine if the 7% cap rate would require adjustment. The analysis however should not stop there. The proposed assessment criteria should then be applied to the time adjusted sales and other market data in order to determine whether or not the proposed assessments improve the assessment to sales ratios. In other words, do the proposed changes to the assessment criteria result in better estimates of market value?

In this case the Complainant is not proposing a change to the rental rate applied to the subject property because of some uniqueness that separates the subject from all other AA class buildings. Even though there is only one property complaint before the CARB, the Complainant is essentially challenging the rental rate applied by the Respondent to all AA class buildings in the downtown and in so doing is suggesting that the entire class AA stratum is substantially over assessed. In a case where mass appraisal outcomes for an entire stratum are challenged, then it is incumbent on the Complainant to show that by making their proposed correction, the resulting values are superior estimates of market value. The Complainant, however, has not made an attempt to show that the recommended change to the subject's assessment results in a more reasonable estimate of its market value or that the new value is an improved estimate of the subject's market value. The Complainant seems to believe that a correction to the rental rate will automatically produce a better estimate of the subject's market value.

So in addition some of the difficulties the CARB has described with fully embracing the proposed rental rate as being correct, the Complainant has in our view not gone far enough with

their analysis respecting market value.

The Respondent did, however, bring forward some evidence in this regard. While the CARB has not placed great weight on the transactions involving the REIT transfers referred to by the Respondent, we nevertheless because of the lack of sales evidence, accept that the transfer of interests in the Suncore Energy property at a unit rate of \$444 per sq. ft. does merit some consideration. The other transfers involved a building in a different class and a transfer involving additional assets and were not helpful to the Board. The sale of the Stampede Station building in the Beltline was given more weight for the following reasons. This is a newer AA class building constructed in 2008 and although smaller than the subject it would appear comparable. The Complainant made the observation that this building is in the Beltline and the sale price has not been time adjusted. The CARB did not have sufficient market evidence to make precise adjustments for these two concerns. Neither party provided evidence on the time adjustment question. However, in our view an off setting adjustment would be the inferior location to that of the subject. Stampede Station is the only sale available to the Board and it is the best benchmark available for values of AA class office space near the downtown. This building sold in July 2009 at a value of \$436 per square foot and this value supports the current assessment of the subject at \$438 per sq. ft.

Based on all of the reasons reviewed above, the CARB decided not to change the rental rate for the subject from \$30 per sq. ft. to the requested \$27 per sq. ft.

### **Summary of the Party's Positions**

#### **Reallocation of Space**

The Complainant stated that the 7,436 sq. ft. shown as retail space in the current assessment is actually made up of 1200 sq. ft. leased to Starbucks and the balance of 6,236 sq. ft. is used as conference space typically assessed at the office rate. The CARB was requested to make these changes along with the change to the office rental rate.

The Respondent pointed out that the conference space is on the second floor but with access to the plus 15 system and therefore perhaps the rental value should not be changed.

### **Findings and Reasons for the Board's Decision:**

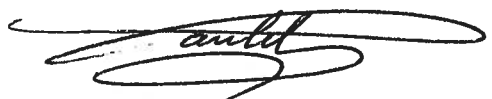
#### **Reallocation of Space**

The Respondent did not take a firm position on this issue and the CARB would have been receptive of the change recommended by the Complainant if it were not such a small change. Given the decision of the CARB not to make the requested change to the office rental rate the CARB decided not to disturb the assessment by implementing this minor change.

**Summary**

The CARB carefully considered all of the evidence and arguments advanced by the parties and concluded that a rental rate of \$ 30 per sq. ft. for subject's office space is correct and equitable. The reallocation of a small area of space to different categories is determined to have minimal impact on the subject assessment and the CARB is not prepared to make these minor changes. The Board therefore confirms the 2011 assessment for the subject property at \$377,080,000.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF July 2011.



Presiding Officer  
Paul G. Petry

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

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



**An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:**

**470(1)** *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.*

**470(2)** *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).*

**470(3)** *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*