

**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:

***Fortis Properties Corporation
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER

J. Rankin, MEMBER

A. Wong, 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:

ROLL NUMBER:	031021009
LOCATION ADDRESS:	3515 26 Street NE
HEARING NUMBER:	63389
ASSESSMENT:	\$17,630,000

The complaint was heard on June 16 and July 22, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Hamilton; P. Milligan (Counsel)

Appeared on behalf of the Respondent:

- R. Powell; P. Frank (Counsel); S. Cook, T. Johnson

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

There was no objection to the composition of the panel by either party; however, Counsel for the Complainant raised an issue with respect to (inherent) bias with respect to members of the Board being residents of the jurisdiction in which the subject property is located. The Complainant did not pursue the matter; however, asked that it be noted on the record.

The Respondent raised a procedural matter with respect to one of the Complainant's witnesses, Mr. David Baker, Financial Analyst, Fortis Properties Corporation. The Respondent argued that a witness statement was not provided within the prescribed time pursuant to s.8 of *Matters Relating to Assessment Complaints Regulation, AR 310/2009*, but rather, notice the witness would attend was included in the disclosure of rebuttal evidence. The Respondent asked that the witness be excluded from the hearing, or alternatively, that the evidence the witness provides, be restricted to the letter included at page 34 of exhibit C1.

The Complainant argued that a letter signed by the witness and included on page 34 of exhibit C1 was an indication that the witness would attend, and the contents of the letter was the witness statement. The Complainant argued that the witness would provide testimonial evidence pertaining to the issues raised in the letter and their effect on the financial statements of the subject property.

Board's Decision:

The Board finds that notice of the witness was provided with the disclosure of rebuttal evidence, and the Board will allow the witness to provide testimony with respect to the letter on page 34 of exhibit C1, during the Complainant's rebuttal submission. The Board will not hear testimony from the witness relating to any matter not specifically set out on the letter. The Board is concerned with the apparent disregard of the regulation; if it was expected that this witness would provide evidence relating to the Complainant's position, a signed witness statement as described in the legislation should have been disclosed 42 days in advance of this hearing.

Notwithstanding the above ruling, the Complainant did not call Mr. Baker as a witness in these proceedings.

In response to a request by Counsel for the Respondent, the Complainant's witness, D. Hamilton, and the Respondent's witnesses, R. Powell, S. Cook and T. Johnson were sworn in by the Board.

The Board heard argument with respect to qualification of witnesses from both parties.

The Board accepts D. Hamilton (witness for the Complainant), is not an expert witness, however, is qualified to give opinion evidence with respect to the assessment of hotel properties as a result of extensive experience in reviewing hotel assessments. There was no objection to this qualification by the Respondent.

The Board accepts S. Powell (witness for the Respondent), is not an expert witness, however, is qualified to give opinion evidence with respect to the assessment of hotel properties by virtue of his delegated authority pursuant to section 284(1)(d) of the Act. There was no objection to this qualification by the Complainant.

Property Description:

The subject property is a 241,981 sq.ft. (square foot) parcel of land improved with a multi storey, 210 room, full service hotel, constructed in 1999 and known as the Greenwood Inn and Suites. Amenities include dining and beverage lounges, moderate conference areas, fitness and aquatic facilities, and limited underground parking stalls in addition to exterior surface parking.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment
4. an assessment class

During the course of the hearing the Complainant did not provide evidence or argument in respect of matter 4. The Complainant set out 12 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$13,000,000, however at the hearing the Complainant's evidence and argument related to only the following issues, as outlined on page 5 of exhibit C1:

Issue 1: More weight should be placed on financial performance as of the base date of valuation and anticipated future earnings to reflect declining revenue. The financial data of the subject property up to June 30, 2010, should be given consideration in the income analysis for assessment purposes.

Issue 2: The capitalization rate should be increased by one point to reflect the increased inherent risk of the closure of Barlow Trail.

Complainant's Requested Value:

The Complainant's evidence set out the requested assessment at \$13,755,000 [C1, p.5].

Board's Decision in Respect of the Issues

Issue 1: More weight should be placed on financial performance as of the base date of valuation and anticipated future earnings to reflect declining revenue. The financial data of the subject property up to June 30, 2010, should be given consideration in the income analysis for assessment purposes.

The Complainant argued that the assessor failed to consider the most recent financial data up to the legislated valuation date of July 01, 2010 in the income analysis for application in the income approach to value, and as a result, failed to reflect a recent decrease in net operating income in the assessment of the subject property. In support of this argument, the Complainant provided a summary of the subject's revenues and expenses for the 12 month periods ending June 30, 2008, June 30, 2009, and June 30, 2010, which exhibited net operating income (before non-realty deductions) as follows: [C1, p.35]

12 months to June 30, 2008:	\$3,449,737
12 months to June 30, 2009:	\$2,889,654
12 months to June 30, 2010:	\$2,267,769

These levels of income were compared to the net income (before non-realty deductions) set out in the assessor's Valuation Proforma Analysis, as follows: [C1, p.13]

12 months to December 31, 2007:	\$3,465,780
12 months to December 31, 2008:	\$3,165,899
12 months to December 31, 2009:	\$2,816,166

The Complainant further argued that the assessor's "calendar year" methodology excluded relevant income from the first six months of 2010, but included the significantly higher income of the first six months of 2007; some 36 to 42 months prior to the valuation date and much less relevant in a current income valuation.

The Complainant accepted the assessor's selected weighting of the income periods of 10% (2007); 30% (2008); 60% (2009) as appropriate, and applied those weightings to the 12 month periods ending June 30, to arrive at the requested assessment [C1, p.37].

The Complainant also submitted the Calgary Assessment Review Board decision, CARB 1376/2010-P in respect of the subject property's 2010 assessment complaint, and argued that the Board in that instance had ruled in the Complainant's favour on precisely the same issue as the current matter before the Board [C1, pp.26-31].

The Respondent argued that the Calgary Assessment Review Board decisions referenced by the Complainant were rendered in the fall of 2010, and there was insufficient time to collect and analyze data to the valuation date of July 01, 2010 for the 2011 taxation year. As a result, the Respondent submitted that the assessor attempted to follow the spirit of the Board's decisions, and reflect the change in the market by changing the weightings applied to the 3 calendar years of income from 20% (2007); 30% (2008); 50% (2009), to 10% (2007); 30% (2008); 60% (2009), therefore applying more weight to the most recent income level, and significantly less weight to the most dated income level.

Decision: Issue 1

The Board finds that the financial data of the subject property up to June 30, 2010, should be given consideration in an income analysis for assessment purposes. The Board further finds that the Respondent's revised weighting approach was insufficient in recognizing the full extent of the change in financial performance to the valuation date.

Matters Relating to Assessment and Taxation, AR 220/2004, sets out the legislated valuation date of July 01, 2010, for taxation in 2011.

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.

1. In this Regulation,

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

The Board accepts the Complainant's argument that an estimate of value on July 01, 2010 must consider recent data up to (and including) the valuation date, as this data would obviously be relevant to the parties in a real estate transaction of the property on the valuation date. Further, the Board notes that the assessor typically relies on market data (rents, vacancy rates, capitalization rates) that are reflective of the legislated valuation date for other types of revenue producing properties; it would appear to be inequitable to ignore market data as of the valuation date for only this class of property.

The Board accepts that the Respondent attempted to recognize the change in the market by altering the weighting applied to the historical data from 20% (2007); 30% (2008); 50% (2009), to 10% (2007); 30% (2008); 60% (2009), however the actual financial data in the Complainant's evidence demonstrates that this approach was insufficient in capturing the full extent of the change in financial performance of the subject property at the legislated valuation date. As there was no evidence or argument to the contrary, the Board considered the actual financial data of the subject as being representative of the typical full service hotel market in the municipality.

The Board however does not accept that the Respondent's altered weightings should be applied to the Complainant's recent financial data. The Respondent's testimonial evidence was that weightings were altered to reflect the difference between the 2010 Assessment Review Board's (June 30) methodology and the assessor's calendar year methodology; to apply the altered weightings to the Complainant's recent income statements would be to reflect the reduced income levels twice in the assessment calculation. In this regard, this Board concurs with the decision of the Board in CARB 1376/2010-P included in the Complainant's submission, and allows the Complainant's financial data, weighted as follows: 20%: (12 months to June 30, 2008); 30%: (12 months to June 30, 2009); 50%: (12 months to June 30, 2010).

Issue 2: The capitalization rate should be increased by one point to reflect the increased inherent risk of the closure of Barlow Trail.

The Complainant argued that the announced closure of Barlow Trail, a major access route to the Calgary Airport from the subject property would affect the risk associated with maintaining the subject's current income stream; therefore a higher capitalization rate is warranted. In support of this argument, the Complainant provided a letter from David Baker, Financial Analyst for the owner, Fortis Properties Corporation dated April 2011, setting out the estimated occupancy levels for the remainder of 2011, as well as reference to the recent loss of business from an airline crew, "primarily if not exclusively due to the closure of Barlow Trail". From this information, the Complainant projected the decline in room revenue from \$5,141,853 as currently assessed (weighted), to \$3,466,113, and concluded a capitalization rate of 12.5%. The Complainant further argued that as a result of the increased travel time for shuttles, the expense associated with providing shuttle service to the airport would increase.

The Respondent argued that the closure of Barlow Trail as of April 3, 2011, is subsequent to both the legislated valuation date of July 01, 2010, and the legislated date respecting the characteristics and physical condition of the property of December 31, 2010; as such the closure of the road is not relevant with respect to the current assessment. The Respondent submitted that this issue was also heard by the Municipal Government Board in MGB 106/10 concerning the Sheraton Cavalier Hotel also located along Barlow Trail in the vicinity of the subject property, and the Board in that instance maintained the assessment without an adjustment to the capitalization rate as sought by the Complainant.

The Respondent also argued that Mr. Baker's estimate of future occupancy was largely speculative and unsupported by evidence and the Complainant's calculated room revenues did not correlate to a 12.5% capitalization rate conclusion as suggested; further, there was no market evidence to support a 12.5% capitalization rate.

Decision: Issue 2

The Board finds that there was insufficient evidence to support the requested increase to the capitalization rate to reflect any increased inherent risk of the closure of Barlow Trail.

The Board referred to section 289 (2) of the Act, which states:

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, and

(b) the valuation and other standards set out in the regulations for that property.

In this instance the Board finds that the characteristics of the property as of December 31, 2010 are properly reflected in the current assessment; the subsequent closure of Barlow Trail on April 3, 2011 should be reflected in the characteristics as of December 31, 2011 for taxation in 2012.

There was no market evidence of hotel capitalization rates with respect to the impact of the closure of Barlow Trail, therefore the Board was unable to make a finding of fact with respect to this issue.

The opinion evidence of Mr. Baker in the letter at page 34 of C1 was afforded little weight as there was no documentary evidence submitted to support the author's opinion. Further, the opinion was found to be highly speculative as the letter was dated in the same month Barlow Trail was closed; therefore there would have been little material evidence available upon which to base an opinion.

The Board finds that issue #4 in MGB 106/10 is very similar to the current matter, and the Board reiterates the reasons as set out in MGB 106/10, insofar as they relate to the similar arguments made in the hearing of this matter.

Board Decision:

The assessment is revised from \$17,630,000 to **\$15,642,000.**

DATED AT THE CITY OF CALGARY THIS

8

DAY OF SEPTEMBER, 2011.


J. Krysa,
Presiding Officer

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

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

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.*