

**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:

**Midnapore Property Investments Inc. and IVAG Investments Ltd.
(as represented by MNP LLP), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
J. Massey, MEMBER
A. Wong, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	201050135
LOCATION ADDRESS:	903 8 Ave SW
HEARING NUMBER:	65801
ASSESSMENT:	\$37,440,000

The complaint was heard on July 24 and 25, 2012, in Boardroom 9 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

G. Worsley; L. Mulholland (Counsel)

Appeared on behalf of the Respondent:

A. Czechowskyj; L. Gosselin (Counsel)

Jurisdictional Matter

At the commencement of the hearing, the Respondent raised a jurisdictional matter in respect of agent authorization. The Respondent submitted that the subject property has recently been sold, and argued that the current assessed person or taxpayer has not filed an agent authorization pursuant to s.51 of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009. The Complainant conceded that an agent authorization form was not filed by the new owner of the subject property.

Board's Decision in Respect of Jurisdictional Matters

The Board finds that MNP LLP is properly authorized to act for the Complainant.

There is no dispute that the Complainant was the assessed person in respect of the subject property, and properly prepared and filed an Assessment Complaints Agent Authorization with the Clerk of the Assessment Review Board, pursuant to section 51 of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009, authorizing MNP LLP as "agent" in respect of the complaint filed on March 2, 2012.

51 An agent may not file a complaint or act for an assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaints agent authorization form set out in Schedule 4.

Section 478 of the Act sets out criteria in respect of properties that transfer ownership subsequent to a complaint being filed.

478 A person who becomes an assessed person or taxpayer in respect of a property or business when a complaint about the property or business is being dealt with under this Part may become a party to any proceedings started by the previous assessed person or taxpayer.

In this instance, The Standard Life Assurance Company of Canada has become the assessed person or taxpayer in respect of the subject property; however, has not made application to become a party to the proceedings started by the previous assessed person or taxpayer. Consequently, the Board finds that an Assessment Complaints Agent Authorization is not required from The Standard Life Assurance Company of Canada, and the proceedings started by the previous assessed person or taxpayer (the Complainant) may continue through the legislated complaint process.

Procedural Matter

The Respondent also raised a procedural matter in respect of the hearing process. The Respondent submitted that notwithstanding the Complainant's proper disclosure of the rebuttal submission, the Respondent was unaware that he required legal counsel to attend the hearing, and could not arrange to have legal counsel present at the hearing.

The Complainant submitted that he believed the Respondent's legal counsel was notified (as a professional courtesy), and proposed that legal arguments in the matter could be delayed until July 25, 2012, when the Respondent's counsel is available.

Board's Decision in Respect of Procedural Matters

In respect of the Respondent's procedural matter, arguments in this matter were postponed to July 25, 2012, to provide both parties with an opportunity to present their legal argument.

Property Description

The subject property is a 26,695 sq.ft. (square foot) parcel of land located in the DT2 market area of the downtown core. The land is improved with a 138,942 sq.ft. "A-" quality, high-rise office structure, constructed in 2009, and comprised of 130,172 sq.ft. (office), 8,270 sq.ft. (retail), and 500 sq.ft. (storage) space, plus 43 vehicle parking stalls.

Issues

The Complainant identified the following matter in section 4 of the complaint form:

3. an assessment amount

The Complainant set out seven grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$30,910,000; however, only the following issues were in dispute at the hearing:

Issue 1: Is the subject's market value impacted by the vacant and unfinished office and retail space?

Issue 2: If the subject's market value is impacted by the vacant and unfinished office space, what is the appropriate methodology to reflect the loss in value?

Issue 3: What is the market rent rate for the parking spaces within the subject property?

Complainant's Requested Assessment

At the hearing, the Complainant requested an assessment of \$21,170,000.

The Complainant further provided eight alternate assessment value requests ranging from \$21,720,000 to \$36,890,000, reflecting various proposed methodologies to address Issues 1 and 3.

Board's Decision in Respect of the Issues

Issue 1: Is the subject's market value impacted by the vacant and unfinished office and retail space?

[1] The Complainant agreed that the income approach to value employed in the preparation of the assessment is the appropriate valuation methodology; however, the Complainant argued that the assessed market rent rates of \$20.00 and \$25.00 per sq.ft. applied to the subject's office and retail spaces are not achievable for the 41,121, sq.ft. of unfinished space within the subject property.

[2] The Complainant proposed the following various methods to reflect the value of the unfinished spaces:

1. deduct \$5.00 per sq.ft. from the assessed market rent applied to the unfinished area;
2. deduct 50% of the assessed value of the unfinished area;
3. deduct \$50 per sq.ft. (cost to cure) from the assessed value of the unfinished area;
4. increase the vacancy rate to reflect the subject's vacant, unfinished area.

[3] The Complainant submitted that the approaches have been employed by the Respondent and the Board in respect of other properties, and provided examples of the Respondent's assessment valuation worksheets and a multitude of Board decisions in which the various proposed approaches were employed.

[4] The Complainant argued that increasing the assessed vacancy allowance to reflect the subject's actual vacancy rate of 29% is the most appropriate method in this instance, as the subject property has been unable to fully lease up to typical vacancy levels since it was completed in 2009. In support of the 29% vacancy rate, the Complainant provided a three page excerpt of the subject's rent roll indicating the vacancies as of the valuation date of July 01, 2011, and submitted that this adjustment results in the requested assessment of \$21,170,000 (including an adjustment for issue 3).

[5] The Respondent argued that the assessment of the subject property at \$37,440,000 does not exceed its market value as evident by the subject's recent market transactions. In support of the argument, the Respondent provided an Alberta Data Search sale summary of the Complainant's April 1, 2010 purchase of the subject property in a court ordered transaction for \$41,450,000. The Respondent argued that the judicial process ensures the purchase price must reflect fair market value. The Respondent also provided a Land Titles Office transfer document and affidavit of value document relating to the Complainant's June 2012 sale of the subject property for \$65,745,000.

[6] In support of the subject's \$269.46 per sq.ft. unit rate, the Respondent provided seven sales of office buildings located in market areas DT1, DT2 and DT3, that transferred between July 2010 and August 2011 at unit rates ranging from \$162 to \$391 per sq.ft.

[7] The Respondent further provided an Alberta Data Search sale summary of a property located at 140 Quarry Park Blvd SE, which transferred on April 6, 2010, at a unit rate of \$355.87 per sq.ft. The Respondent submitted that the property was 25% to 30% vacant at the sale date.

[8] In response to the Complainant's arguments in respect of achievable market rents and vacancies, the Respondent argued that the subject property is achieving rents well in excess of the assessed market rent rates of \$20.00 and \$25.00 per sq.ft. applied to the subject's office and retail spaces. The Respondent also argued that the subject's 29% vacancy rate is overstated, because, although a significant area was vacant at the July 01, 2011 valuation date, many of the vacant areas were committed to new tenants and interior construction was underway, as much of the vacant areas are now finished and occupied.

[9] In support of the arguments, the Respondent provided the Complainant's ARFI (Assessment Request For Information) responses dated April 27, 2011 and May 25, 2012, and the subject's rent roll dated April 26, 2012, to demonstrate that the subject is achieving office rents ranging from \$25.00 to \$32.00 per sq.ft., and a main floor retail rent from a bank tenant at \$43.00 per sq.ft. in contrast to the assessed market rent rates of \$20.00 per sq.ft. and \$25.00 per sq.ft. applied to the subject's office and retail spaces, respectively. The Respondent also called attention to the May 25, 2012 ARFI indicating that 16,267 sq.ft. (11.7%) of the total area

remains vacant, to demonstrate that interior construction has been occurring and tenants have been occupying the finished areas.

[10] The Respondent further submitted that the subject's vacancy rate was at issue in the hearing of the 2011 assessment complaint, and the Board in that instance found there was no evidence to suggest that the subject property was not "leasing-up" in a normal manner.

[11] In rebuttal, the Complainant argued that the April 1, 2010 sale of the subject property in the Respondent's evidence is not a valid indicator of market value, as it was a court ordered sale, and therefore does not meet the legislated definition of market value. The Complainant further argued that the June 2012 sale of the subject property for \$65,745,000 should be given little weight as the sale occurred 11 months subsequent to the legislated valuation date.

[12] The Complainant also argued that the Respondent's remaining sales evidence includes non arms length sales, court ordered sales, post-facto sales, and properties in inferior locations.

Decision: Issue 1

[13] The Board finds that there was insufficient compelling market evidence to demonstrate that the subject's market value is impacted by the unfinished office and retail space.

[14] Although the Complainant argued that the assessed market rent rates of \$20.00 and \$25.00 per sq.ft. applied to the subject's office and retail spaces are not achievable for the 41,121, sq.ft. of unfinished interior space, there was no compelling market evidence presented in support of that position. On the contrary and without explanation, the subject's lease rate data was redacted on the Complainant's rent roll evidence included in exhibit C1, and only data in respect of the subject's vacancies and parking rates was indicated. The Board, however, was persuaded by the Respondent's evidence of the subject's ARFI responses and rent roll that exhibit office rent rates ranging from \$25.00 to \$32.00 per sq.ft., and a retail rent at \$43.00 per sq.ft. This evidence clearly refutes the Complainant's position that the assessed rent rates are not achievable for the unfinished areas, for the reason that if the Complainant's requested \$5.00 per sq.ft. adjustment were applied to the subject's actual rent rates, the adjusted rent rates would remain well in excess of the current assessed market rent rates.

[15] The Board accepts that the Complainant's evidence demonstrates that 29% of the total leasable area was vacant and did not have interior finish as of the July 01, 2011 valuation date; however, there was no compelling market evidence presented to demonstrate that this factor results in a market value below that of the assessment. Moreover, the Board finds the Complainant's request to be unreasonable, as a 29% vacancy allowance would result in that proportion of the property (land and building), having absolutely no value; notwithstanding that it is a new structure lacking only of interior finish. In contrast, the Respondent's evidence of the subject's April 2010 sale at \$41,450,000, albeit "court ordered", is compelling evidence of what a willing buyer was prepared to pay for the property, with the vacant and unfinished interior space. Although the transaction does not meet the precise definition of market value set out in the legislation, the Board finds it quite illogical to contend that a "willing" seller may have sought a value less than the court ordered liquidation value. Consequently, the Board accepts that the \$41,450,000 court ordered sale price represents the subject's lower range of value as of April 01, 2010.

[16] The Board was also persuaded by the June 2012 re-sale of the subject property for \$65,745,000. Although the sale occurred subsequent to the valuation date and would reflect the subject's recent 11.7% vacancy rate and unfinished interior area, it demonstrates a trend, that in relation to the April 2010 court ordered sale clearly establishes a range of values for the subject property that is more than supportive of the \$37,440,000 assessment, and well in excess of the Complainant's \$21,170,000 requested assessment.

[17] Further, although the legislated valuation date for this assessment is July 01, 2011, the Act indicates that an assessment must reflect the characteristics and physical conditions 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; in this instance, December 31, 2011.

Matters Relating to Assessment and Taxation Regulation, AR 220/2004

- 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.

Municipal Government Act, Chapter M-26, Section 460, Revised Statutes of Alberta 2000

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.

[18] The Board finds that notwithstanding the Complainant's determination of the extent of unfinished areas as of the July 01, 2011 valuation date, the ARFI and Rent Roll evidence of the Respondent indicates that the following spaces were also leased by December 31, 2011:

Unit	Lease Commencement	Lease Area
720	September 1, 2011	6,253 sq.ft.
212	December 1, 2011	2,265 sq.ft.

[19] The 2012 ARFI and Rent Roll evidence of the Respondent further indicates that by April 26, 2012 the subject's vacancy rate was 11.7%. As a result of this evidence, this Board concurs with the Board's conclusion in CARB 1747/2011-P, that the property was being leased-up in a normal and typical fashion, and therefore, an atypical vacancy adjustment is not warranted.

[20] The Board applies little weight to the sales evidence presented by the Respondent as they included non arms length sales, court ordered sales, and three post-facto sales of which only one was located in market area DT2. Further, none of the properties were of a similar "A" quality classification as the subject. The Sale of 140 Quarry Park Blvd was also afforded little weight as the property is not located near the downtown core, and there was no evidence to support the Respondent's assertion that the property had significant vacancy at the time of sale.

Issue 2: If the subject's market value is impacted by the vacant and unfinished office space, what is the appropriate methodology to reflect the loss in value?

Decision: Issue 2

[21] Whereas there was insufficient compelling market evidence to demonstrate that the subject's market value is impacted by the unfinished office and retail space, the Board makes no finding with respect to the issue of appropriate methodology to reflect a loss in value.

Issue 3: What is the market rent rate for the parking spaces within the subject property?

[22] The Complainant argued that the assessed parking rate of \$475 per month, assigned to the subject's 43 parking stalls exceeds the \$400 per month "typical" parking rate in the vicinity of the subject property. In support of the argument, the Complainant provided an analysis of the parking rates of 13 properties located in the downtown DT2 market area [C1, p.64], and a further analysis of the parking rates of 37 properties located in the downtown DT2 market area, (including the previous 13 properties) [C1, p.65] to demonstrate the following:

Monthly Parking Rates	Analysis 1	[C1, p.64]	Analysis 2	[C1, p.65]
2011 Q4	Reserved	Unreserved	Reserved	Unreserved
Median	\$400	\$350	\$415	\$385
Average	\$392	\$351	\$411	\$381

[23] The Respondent argued that the Complainant's samples of properties are dissimilar to the subject, as the samples include "B" class offices which exhibit lower parking rates than "A" class offices. In support of the assessed parking rate, the Respondent provided a Q2 2011 "CresaPartners" summary of 41 "A" class office properties exhibiting average reserved and unreserved monthly parking rates of \$508.43 and \$472.92 respectively.

Decision: Issue 3

[24] The Board finds that the market rent rate for the parking spaces within the subject property parking rate is \$475 per month.

[25] The Board was persuaded by the Respondent's evidence of parking rates of "A" class office properties, as they are of similar classification to the subject. The Board notes that the assessed parking rates are also supported by the "A" class office properties within the Complainant's analysis, which display monthly parking rates up to \$525 per month.

[26] Moreover, the subject's ARFI indicates the 2011 lease of Unit 720 (referred at pgh.18) includes monthly parking at a rate of \$450, and the Complainant's promotional material at page 110 of C2 indicates unreserved monthly parking is available at \$450 month; both of which do not support the Complainant's requested \$400 monthly parking rate.

The assessment is **CONFIRMED** at: **\$37,440,000.**

DATED AT THE CITY OF CALGARY THIS

27

DAY OF SEPTEMBER, 2012.


J. Krysa, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
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| 1. C1 | Complainant's Submission (383 pages) |
| 2. R1 | Respondent's Submission (160 pages) |
| 3. C2 | Complainant's Rebuttal Submission (111 pages) |
| | City of Calgary v. Lougheed & Company et al., 2001 ABQB |
| | Lougheed & Company v. Calgary (City of), 2003 ABCA 232 |
| | Bentall Retail Services Inc v. Vancouver Assessor, Area No.9 [2006] BCSC 424 |
| | Calgene Corporation v. Canada (Attorney General) [2011] SCC 1 |
| | Catalyst Paper Corp v. North Cowichan (District) [2012] SCC 2 |
| | CNRL v. Wood Buffalo (Regional Municipality) 2012 ABQB 177 |

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	s.289 MGA; Net Rents; Vacancy