

**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:

**Fifth Avenue Place (Calgary) Ltd.
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**P. Mowbrey, PRESIDING OFFICER
D. Morice, MEMBER
R. Roy, 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:	068049907
LOCATION ADDRESS:	222 – 5 Avenue SW
HEARING NUMBER:	65948
ASSESSMENT:	\$516,650,000

The complaint was heard on August 02, 2012, in Boardroom 10 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Hartley; A. Farley

Appeared on behalf of the Respondent:

- H. Neumann; A. Czechowskyj; M. Ma

Board's Decision in Respect of Procedural or Jurisdictional Matters**Rebuttal**

[1] At the commencement of the hearing there was a Preliminary Matter brought forward by the Respondent, that under the Matters Relating To Assessment Complaints Regulation (MRAC) 8(2)(C), 9(3) and the Municipal Government Act (MGA) s294 and 295, that the Rebuttal evidence presented by the Complainant was not admissible as it was not true rebuttal and included new evidence. The Respondent expressed that pages 1 to 12 were acceptable, that pages 13 to 18 included the new evidence in the form of emails to and from property owners including the subject, and was not acceptable, and pages 19 to 94 was a complete City of Calgary 2011 CARB evidence package regarding an industrial property which was inappropriate as it was unrelated to the subject. Pages 95 to 134 were 2 MGB Board Orders and a 2011 CARB Decision which the Respondent stated were on public record.

[2] The Respondent explained that a Request for Information had been sent to all property owners and the information collected is relied on to prepare assessments. The Respondent indicated that the information the Complainant introduced had come after the ARFI and thus cannot be allowed. As well, the information introduced by the Complainant in Rebuttal was different to the ARFIs for those properties, with no supporting documentation. The Respondent suggested it is difficult if the information given to the assessor was different to the information given to the Complainant and that the City suffers the hardship if the information is not reliable.

[3] The Complainant explained that the Rebuttal document was in response to the Respondent's evidence and in particular the referenced emails were clarification of several recent lease rate comparables presented by the Respondent. The complete 2011 CARB evidence package was included to highlight the disclaimer of third party reports for the use for a particular purpose other than marketability. The Board Orders and CARB Decision speak to increases of assessment. The Complainant indicated that he did not have a copy of the Rebuttal document available at this time but would the next day. The Respondent had no objection

[4] The Complainant requested a postponement of the merit hearing to receive a copy of the ARFI from the owner.

Decision

[5] The Decision of the Board is to accept into evidence the Complainant's Rebuttal in its entirety.

[6] The Decision of the Board is to deny the request for postponement.

Reasons

[7] The Board found the Rebuttal document was filed in a manner compliant with the time requirements and in sufficient detail as stated in MRAC S8(2)(c)

the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the

disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

The Board found that according to MRAC S(9))3)

A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

[8] The assessor received the information it requested from rate payers in the form of ARFIs which was used for assessment purposes. The Board noted that the Complainant requested certain information from rate payers to rebut the evidence the Respondent presented, but there is no evidence that the same information was not available to the assessor had it been requested.

[9] The Board found that MGA s294 and 295 allow the assessor to make specific requests of the property owner which states in s294(1)

After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of preparing an assessment of the property or determining if the property is to be assessed, and

(b) request anything to be produced to assist the assessor in preparing the assessment or determining if the property is to be assessed,

and s295 (1)

A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.

[10] The Board found that the Complainant has the right to argue and rebut the Respondent's evidence in a Rebuttal document and the Respondent has the opportunity to question and rebut the Complainant's rebuttal evidence and bring to the Board's attention any disputed information. The Board in its opinion will place the appropriate weight on such evidence, argument and rebuttal.

[11] The Board noted that the Respondent indicated that there was a copy of the subject ARFI in the Respondent's evidence, and was disclosed to the Complainant.

Calling Of Additional Witness

[12] During the hearing a disagreement between the Complainant and Respondent occurred over evidence in the Complainant's Rebuttal about the Enbridge lease dated May 01, 2011 for the 16th floor, at \$30 per sq ft for a term of 2 years. The Respondent's information indicated the lease was new, and the Complainant's information indicated that it was an expansion. The Respondent called for Mr. Colin Norris, Asset Manager, Brookfield Office Properties (property management for the subject property) to appear as a witness to clarify the issue. The Complainant indicated Mr. Norris could be available in 1 hour.

Decision

[13] The Decision of the Board is to deny the request for Mr. Norris to appear as a witness.

Reasons

[14] The Board considered the request for Mr Norris to appear as a witness but concluded it had sufficient understanding of the issues before it and would not accept undisclosed new evidence in accordance with MRAC Division 2, s9(2)

A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

[15] The Board is of the opinion that the Respondent had sufficient time to respond to the Complainant's Rebuttal with questions, rebuttal and summary.

Property Description

[16] The subject property is located at 222 – 5th Avenue SW, in DT1, Downtown district of the City of Calgary. It is improved with a 2 building A Class office complex, has a 2 level podium and is known as Fifth Avenue Place. The development was completed in 1980. The assessment record indicates the subject has 1,487,924 sq ft of net rentable area consisting of:

Space	Assessment
18 sq ft automated teller machine	\$150 per sq ft
1,433,263 sq ft of office space	\$22 per sq ft
5,639 sq ft of retail food court	\$130 per sq ft
27,108 sq ft of retail space main floor,	\$32 per sq ft
10,633 sq ft of retail second floor	\$32 per sq ft
11,263 sq ft of storage component	\$10 per sq ft
791 parking stalls	\$5,700 per annum per stall

[17] The 2012 assessment for the subject is \$516,650,000 or \$347 per sq ft.

Issues

[18] The Assessment Review Board Complaint form, filed February 15, 2012, contained a lengthy list of reasons and grounds for the complaint. The issues the Complainant focussed on at the hearing were:

1. Is the 2012 Assessment correct?
 - (a) Is the office rent rate appropriate?
 - (b) Is the capitalization rate appropriate?

Complainant's Requested Assessment

[19] The Complainant requested an assessment of \$459,670,000 or \$308 per sq ft.

Complainant's Position

[20] The Complainant's position was that the subject assessment was incorrect and argued that the assessed office rent rate of \$22.00 was inconsistent with market rate comparables that strongly suggest a correct office rent rate for the subject was \$20.00 per sq ft. The Complainant

also argued that the capitalization rate for a stable income stream consistent with current market rent, and based on two recent Class A sales, is 7%. The subject assessed capitalization rate was at 6.75%.

[21] In support of the Complainant's position that the rent rate was incorrect, the Complainant presented a 2012 Downtown Office A Class Rent Equity Comparable chart prepared by the Respondent. From this chart of 32 rent equity comparables, the rents ranged from \$17 per sq ft to \$30 per sq ft. The Complainant removed two properties which the Complainant indicated were located in DT2, whereas the subject and the remaining comparables were located in DT1. The two properties were Western Canadian Place which included 2 rent equity comparables, and Encor Place which included 5. The Complainant added one property to the list which was located in the DT1 area but was an A- Class, and added 9 comparables to the chart. The Complainant also removed those comparables with a lease term of 3 years or less.

[22] The Complainant explained that the reason for these changes were to bring the chart into greater similarity to the subject as the subject was an A Class property, located in the DT1 area and that those properties in the DT2 area were inferior in location. Although the added Sun Life property located kitty corner to the subject in the DT1 area is an A- Class property, the Complainant considered it comparable to the subject suggesting there is little difference in the A Class and A- Class properties. The Complainant reasoned that the removal of the comparables with a lease term of 3 years or less was that the tenant may be looking for other space, the space may be due for expiry and the tenant was looking to cotermin for larger space, but generally they fall outside the typical lease term of 5 years or greater.

[23] The Revised 2012 Downtown Office A Class Rent Equity Comparables included one A-Class property and 35 rent comparables which indicated the following:

Mean All Leases	\$19.68
Median All Leases	\$19.00
Weighted Mean	\$20.10

Mean 2011 Leases	\$19.88
Median 2011 Leases	\$20.00
Weighted Mean	\$20.75

The Complainant suggested that based on the Revised A Class Rent Equity comparables the appropriate rent rate for A Class office space is \$20.00 per sq ft.

[24] In support of the Complainant's position that the capitalization rate is incorrect, the Complainant presented two 2011 sales of A Class properties in DT1 Downtown Calgary. The sales for both properties were a 50% interest:

Scotia Centre sale dated April 2011 for \$232,000,000 (100% interest equivalent)

Gulf Canada Square sale dated September 2011 for \$356,000,000 (100% interest equivalent)

[25] The Complainant explained that the Scotia Centre Sale indicated a 7.67% capitalization rate based on actual income at the time of the sale and the actual net operating income per sq ft was \$25.91. The high NOI per sq ft was the result of higher than market rent rates at \$40 per

sq ft for a significant portion of the property. The Complainant also explained the Gulf Canada Square sale indicated a 5.90% capitalization rate based on actual income at the time of the sale and the actual net operating income per sq ft was \$18.59. The indication of a lower than market rent rates suggests significant future income growth potential from higher rent rates as existing leases expire.

[26] The Complainant argued that as Gulf Canada Square had a stable and sustainable income, with no perceived downside risk and potential income growth, that the capitalization rate from the sale would establish the potential lowest A Class capitalization rate of 5.90%. Further, the Scotia Centre with rent rates considered above market rent levels, there is a perceived risk that income levels may decline which suggests that the capitalization rate from the sale, with a stable and sustainable income, would be no higher for A Class properties than 7.67%.

[27] The Complainant argued that utilizing the capitalization rates based on the actual income of properties at the time of the sale, establishes a range of potential capitalization rates that could properly establish the assessment of the subject. The Complainant suggested that with a 5.90% minimum capitalization rate and a 7.67% maximum capitalization rate, with stable and sustainable incomes, that an appropriate acceptable capitalization rate for A Class office properties in Downtown Calgary is 7%.

[28] The Complainant completed an exercise utilizing the assessment parameters for retail market rent, vacancy, non-recoverables, and parking rates for each of the sale properties, noting the resulting capitalization rates as follows:

Gulf Canada Square	7.28%
Scotia Centre	4.88%

[29] The Complainant explained the market level income had a significant impact on Scotia Centre as the capitalization rate is below 5% and is inconsistent with market expectations for stable returns, and indicative of the perceived risks that existing income levels were unsustainable.

[30] The Complainant noted that the subject was assessed in 2012 using a 6.75% capitalization rate which was decreased by 0.50% from 2011.

Respondent's Position

[31] The Respondent's Position was the subject assessment of \$516,650,000 is fair, reflective of market value and equitable with similar properties. The Respondent stated the assessment is prepared using the mass appraisal methodology which is based on typical market data. In support of its position, the Respondent provided the ARFI for the subject that was returned by the owner, dated May 12, 2011, which detailed the pertinent lease information including the size, lease rates and terms of all the leases.

[32] The Respondent pointed out several recent leases noted in the RFI as follows:

Name	Size Sq Ft	Start Date	Term	Annual Rent Rate
Enbridge	20,497	2011/05/01	2 yrs	\$30 per sq ft

Enbridge	2,182	2011/05/01	2 yrs	\$30 per sq ft
West Coast Energy	18,744	2011/09/01	6 yrs	\$23 per sq ft
West Coast Energy	3,941	2011/09/01	6 yrs	\$23 per sq ft
Inter Pipeline Fund	23,386	2010/04/01		\$31 per sq ft
Inter Pipeline Fund	11,933	2010/04/01	10 yrs	\$31 per sq ft

[33] The Respondent stated the recent leases clearly support the 2012 assessment of \$22 per sq ft for the subject.

[34] The Respondent provided a chart of 2012 Downtown Office Net Rent Rates for assessment. The chart indicated that for the 2012 A Class New, A Class, DT1, and 8, office space the net rent rates were respectively \$25, \$22 and \$20 per sq ft. The Q2 2011 Reported By Industry rates for A Class office space by CBRE was \$24.58 per sq ft, Barclay Street \$23 per sq ft, and Avison Young \$27 per sq ft. The Respondent indicated the industry rates were for reference only.

[35] The Respondent included the same 2012 Downtown Office A Class Rent Equity Comparable chart as it provided for the Complainant's use. The Respondent indicated that all the A Class comparables are included. The Respondent noted that there were 42 leases; 10 leases with a term less than 3 years, 29 leases with a term of 3 to 9 years and 3 leases with a term of 10 years. The Respondent acknowledged the following:

Mean All Leases	\$20.70
Median All Leases	\$20.00
Weighted Mean	\$20.94

However, the Respondent highlighted the following:

Mean 2011	\$21.03
Median 2011	\$20.00
Weighted Mean	\$21.65

[36] The Respondent suggested the weighted mean is the better measure of the most recent leases in June and July 2011 A Class properties which support the 2012 assessment of \$22 for the subject property. The Respondent also noted the 2011 lease rates tended to increase closer to the valuation date.

[37] The Respondent provided the 2012 Downtown Office A- Class Rent Equity Comparables to demonstrate that the A- Class office space is at a lower rent rate than the A Class Rent Equity Comparables as follows:

Mean All Leases	\$19.74
Median All Leases	\$20.00
Weighted Mean	\$20.25
Mean 2011 Only	\$18.96

Median 2011 Only	\$19.00
Weighted Mean	\$19.83
Less than 10,000 sq ft	
Mean 2011 Only	\$19.89
Median 2011 Only	\$20.62
Weighted Mean	\$20.84

[38] The Respondent provided a trend chart that plotted the lease rates in 2011 listed on the 2012 Downtown Office A Class Rent Equity Comparables. The trend line concluded at \$22 per sq ft which supports the 2012 assessment of \$22 per sq ft for the subject.

[39] The Respondent presented a 2012 Downtown Office Vacancy chart which indicated that A Class office space was assessed using a 4% factor, and 1% for A Class New. The City assessor's analysis of 2012 Downtown Office A Class Vacancy Equity Comparables reflected a 2.91%, and 0.95% for A Class New factor, and a Q2 2011 Report by Industry indicated that Cresa reported a vacancy of 3.90%, Altus Insite, 3.06%, Avison Young, 3.6% and Barclay, 6.1%. The Respondent stated the subject was assessed with a 4% vacancy factor but the subject ARFI indicates a vacancy of 0.12% which identifies the property as performing better than typical.

[40] To distinguish the typical Downtown A Class office vacancy level of 2.91% with the Downtown A- Class office vacancy level, the Respondent provided a 2012 Downtown Office A- Class Vacancy Equity Comparable chart which indicated the typical vacancy for A- Class office space is 5.3% and particularly the Sun Life Plaza North, the Complainant's preferred comparable, with a 5.47% vacancy and Sun Life Plaza East with a 2.68% vacancy.

[41] The Respondent stated the capitalization rate applied in the assessment was 6.75% which was derived from the market and three recent sales of A Class properties in DT1 Downtown Calgary. The sale of the three properties were a 50% interest.

Scotia Centre sale dated April 2011 for \$190,000,000 (100% interest equivalent)

Scotia Centre sale dated April 2011 for \$232,000,000 (100% interest equivalent)

Gulf Canada Square sale dated September 2011 for \$356,000,000 (100% interest equivalent)

[42] The Respondent noted that the Gulf Canada Square sale was after the valuation date of July 1, 2011 by 2 months, and due to the lack of sales of Downtown A Class office properties it was included as a comparable.

[43] The Respondent provided a 2012 Downtown Office Cap Rate Sales chart using Typical NOI at the Year of Sale, that indicated the first Scotia Centre Sale in April 2011 resulted in a 7.36% capitalization rate, the second Scotia Centre Sale in April 2011 resulted in a 6.02% capitalization rate, and the Gulf Canada Square sale in September 2011 resulted in a 6.39% capitalization rate. The Respondent stated that the range of the capitalization rates, 6.02% to 7.36% supports the capitalization rate of 6.75% applied in the assessment of A Class Downtown office properties.

[44] The Respondent referred to Board Order: MGB 145/07, in the Respondent's evidence, which in turn refers to the principle of "consistency" derived from the decision referred to as the West Coast Transmission decision in which the court stated that if the rent rate is derived in one manner that the capitalization rate must be derived in the same manner. The Respondent explained that consistency is an assessment principle and the assessment rates are derived from typical data.

[45] The Respondent noted that parking was not an issue to the hearing but it was significant that the subject had 790 parking spaces whereas the Scotia Centre had 86, and Gulf Canada Square had 240 parking spaces available.

Decision

[46] The Decision of the Board is to confirm the 2012 Assessment of \$516,650,000 for the subject property.

Reasons

Rent Rate

[47] The Board reviewed and carefully considered the evidence of the Complainant and Respondent.

[48] In regard to the issue, is the rent rate appropriate, the Board is of the opinion and supports the Respondent, that all of the 2012 A Class Rent Equity comparable leases reflect the market, including new leases, renewal leases and those leases less than 3 years. The Board notes that two leases were identified as expansion leases but considered them insignificant in relation to the total net leasable area. The Board suggests that if there were disputed leases in the comparable chart that the lease document be presented as evidence to clarify the dispute. The Board refers to the Supreme Court of British Columbia Bentall Decision provided in the Complainant's evidence, which states

[113] The Board appropriately disregarded sublease information in determining economic rent. It did not fail to consider evidence before it, did not ignore the experts, and did not invent a methodology to determine economic rent. It also did not err in considering that new and renewal leases provide appropriate lease data for the determination of economic rents.

[49] The Board was not persuaded, by the Complainant, that the removal of the Western Canadian Place and Encor Place and the addition of Sun Life Plaza to the A Class Downtown office comparables provided comparables more similar to the subject. The Board found that the removal and addition of the properties changed very little the weighted mean of the comparables. The Board is in agreement that the weighted mean is the better measure of comparables.

[50] The Complainant's revised comparables indicated a weighted mean of \$20.10 per sq ft for all leases, compared to the Respondents original chart of \$20.94 per sq ft, and changed insignificantly the weighted mean of the Complainant's revised comparables of 2011 leases which indicated \$20.75 per sq ft, compared to the Respondent's original comparables of \$21.65 per sq ft. The removal and addition of the properties appeared to bring the comparable chart

more inline with the 2012 A- Class comparables with a weighted mean of all leases of \$20.25 per sq ft and weighted mean of 2011 leases of \$19.83 per sq ft , and those under 10,000 sq ft of \$20.84 per sq ft.

[51] The Board placed greatest weight on the Respondent's recent lease comparables indicated on the 2012 Downtown Office A Class Rent Equity Comparables that were completed in June and July 2011,

Leased Area Sq ft	Date	Term	Rate
84,106	06/10/2011	5 yrs	\$20
15,237	07/01/2011	5 yrs	\$27
27,272	07/01/2011	8 yrs	\$19.50
54,380	07/01/2011	6 yrs	\$24
14,837	07/01/2011	1 yr	\$22

The Board noted the average of the recent leases is \$22 per sq ft which supports the 2012 assessment of \$22 per sq ft for the subject.

[52] The Board noted that the subject had reported in the ARFI six leases dated April 2010 to September 2011 ranging in lease rate from \$23 per sq ft to \$31 per sq ft. The two leases dated September 2011 were at \$23 per sq ft for a term of 6 years, which was after the valuation date of July 01, 2011, but were undisputed and further offer support of the assessment of \$22 per sq ft.

[53] The Board finds the 2012 assessment lease rate of \$22 per sq ft for the subject is appropriate.

Capitalization Rate

[54] In regard to the issue, is the capitalization rate appropriate, the Board considered the sales comparables presented by the Complainant and the Respondent and noted that the comparables were the same. The Complainant presented one sale of the Scotia Centre and the Gulf Canada Square sale and the Respondent presented two sales of the Scotia Centre and the Gulf Canada Square Sale.

[55] Since both the Complainant and the Respondent indicated the lack of sales comparables for A Class Downtown office property, and both made use of the Gulf Canada Square sale dated September 2011 as a comparable, the Board accepts the Gulf Canada Square sale as a comparable.

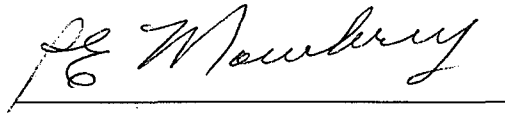
[56] The Board considered the Complainant's argument that the one sale of the Scotia Centre for \$190,000,000 may not be a market sale, as the one half owner of the property sold to the other half owner. The Board was of the opinion that sales of this nature may occur with predetermined factors such as first right of refusal, or other mechanisms and for these reasons placed less weight on the sale.

[57] The Board accepts the Respondents capitalization rates derived from the typical NOI applied to each comparable sale to arrive at the 6.75% capitalization rate to be applied to the subject.

[58] The Board finds the 2012 assessment capitalization rate of 6.75% is appropriate for the subject.

The assessment is **CONFIRMED** at: **\$516,650,000**

DATED AT THE CITY OF CALGARY THIS 18 DAY OF September, 2012.

A handwritten signature in cursive script, appearing to read "Patricia Mowbrey", written over a horizontal line.

Patricia Mowbrey
Presiding Officer

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

NO.	ITEM
	Complainant's Submission (173 pages)
1. R1	Respondent's Submission (199 pages)
2. C2	Complainant's Rebuttal Submission (134 pages)
3.	City of Calgary Assessment Brief Roll #031003502
4.	RealNet Canada Inc. – End-User License Agreement ("EULA")
5.	Board Order: MGB 018/10
6.	Legislative Authority for Property Assessment MGA, RSA 2000, c.M-26
7.	Board Order: MGB 125/99
8.	CARB 1967/2011-P
9.	CARB 1571/2011-P
10.	Assessor for Area 9 (Vancouver) v. Bramalea Ltd. [1990] C.A.V. 00992 Bentall Retail Services et al v. Assessor of Area #09 – Vancouver 2006 BCSC 424
11.	Board Order: MGB 140/01
12.	CARB 1944/2011-P
13.	Board Order: MGB 125/99
14.	CARB 2194/2011-P
15.	Assessor of Area #05 – Port Alberni v. GDP Investment Ltd. 2001 BCSC 1540
16.	Notice of Decision NO. DL 070/01
17.	Board Order: MGB 145/07
18.	CARB 1331/2011-P
19.	Wal-Mart Canada Inc. v. Assessor of Area #26 Prince George Assessor of Area #27 Peace River 2005 BCSC 1625

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