

**COMPOSITE
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 (MGA).

between:

606 Fourth Inc. (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER

J. Mathias, MEMBER

P. McKenna, MEMBER

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

ROLL NUMBER: 068078492

LOCATION ADDRESS: 606 – 4th Street SW

HEARING NUMBER: 65940

ASSESSMENT: \$41,250,000.

This complaint was heard on 13th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- C. Hartley

Appeared on behalf of the Respondent:

- H. Neumann

Procedural Matters:

[1] The Complainant explained to the CARB that the following Hearing would include considerable evidence and argument relating to the issue of rental rates that would also be applicable to several ensuing Hearings which are scheduled to be heard by this same panel of the CARB this same week and before these same parties. Accordingly the Complainant requested that all of the evidence and argument relating to the rental rate issue be carried forward and applied to those ensuing Hearings. The Respondent agreed that this would be a practical way of expediting the Hearings scheduled for the week. Accordingly the CARB agrees that the evidence and argument of both parties relating to rental rate be carried forward and applied to those ensuing Hearings also scheduled to be heard by this panel this week.

Property Description:

[2] A detailed description of the property was not provided by either party; however, the CARB was able to discern, largely from the Income Approach Valuation sheet (Exhibit C1 pgs. 6 & 7), as prepared by the Assessor, that the subject is a class 'B' office building located within the downtown core area. The building contains a total of 137,041 assessed Sq. Ft. of which 128,566 Sq. Ft. is the office component and 8,475 Sq. Ft. is a retail component. There are 175 parking stalls.

[3] The property has been valued, for assessment purposes, through application of the Income Approach with the following inputs:

| <u>Category</u> | | <u>Rentable Area</u> | <u>Rental Rate</u> | <u>Typical Vacancy</u> |
|---------------------------|---|-----------------------------|---------------------------|-------------------------------|
| Office | | 128,566 Sq. Ft. | \$19.00/Sq. Ft. | 5.00% |
| Retail | | 8,475 Sq. Ft. | \$16.00/Sq. Ft. | 8.00% |
| Parking | | 175 Stalls | \$4,800/Stall | 2.00% |
| Vacant Space Shortfall | @ | \$17.00/Sq. Ft. office | | |
| | @ | \$20.00/Sq. Ft. retail | | |
| Non-Recoverable Allowance | @ | 2.00% | | |
| Capitalization Rate | @ | 7.50% | | |

Issues:

[4] There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the single issue to be considered by the CARB to:

1. The applied typical office rent rate is incorrect and requires modification.

Complainant's Requested Value: \$36,460,000. (Exhibit C1 pg. 17)

Party Positions:**Complainant's Position**

[5] The Complainant contends that the subject property is located in the transition zone between what is referred to by the Assessor as *Downtown 1 Zone (DT1)* and *Downtown 2 Zone*

(DT2) and that this should have an impact upon the assessed value of the property as this location makes obtaining the lease rates normally associated with the DT1 zone more difficult to achieve. The subject has been assessed using an office rental rate of \$19/Sq. Ft.; however, the Complainant suggests a more appropriate rate would be \$16/Sq. Ft. In support of their requested rental rate the Complainant introduced (Exhibit C1 pg. 19) a list of six (6) leases signed between November 1/10 and June 1/11. All leases are from 'B' Class buildings located within the transition zone of 4th and 5th Streets southwest, all are triple net and all are of a term of three (3) years or greater in length. The leases are for spaces ranging from 1,995 Sq. Ft. to 45,412 Sq. Ft. and the indicated lease rates range from a low of \$13.00/Sq. Ft. to a high of \$18.00/Sq. Ft. with, based upon the CARB's calculations, a simple average (mean) rate of \$15.38/Sq. Ft. and an indicated median rate of \$15.50/Sq. Ft. This information forms the basis for the Complainant's request for \$16.00/Sq. Ft.

[6] The Complainant contends that there were no sales of downtown located 'B' class office buildings in the valuation year; however, the Complainant further contends that this matter should not prevent the CARB from determining a value based upon a ranking of the 'B' class office buildings. In support of same the Complainant introduced (Exhibit C1 pgs 46 – 51) a copy of a Decision from the *Supreme Court of British Columbia* (Assessor Area 5 vs GDP Investment Ltd. 2001 BCSC 1540) in which Madam Justice Koenigsberg deals with such a matter and found that the use of a *relative value ranking methodology* was justified in such a case.

Respondent's Position

[7] The Respondent made the CARB aware that the request of the Complainant, if granted, would result in an assessed value that would equate to approximately \$266/Sq. Ft. of building area versus the current assessed value of approximately \$300/Sq. Ft. While the Respondent acknowledged that there are many factors to be considered, the value per Sq. Ft. does serve as a good general guide. The Respondent referred the Board to (Exhibit R1 pg. 63) a summary of sales of 'A' and 'B' class office buildings which were recorded in 2011 and 2012 and suggested that the indicated sales prices per Sq. Ft. show very little, if any, support for the Complainant's requested value in the range of \$266/Sq. Ft. The sales summary for each of the sales is also provided (Exhibit R1 pgs. 64 – 111). The Respondent acknowledged that some of the sales are post-facto to the valuation date but pointed out that, if the Complainant's requested rental rate were applied to any of the sales, with no other adjustments, in no case would the indicated sales price be achieved.

[8] The Respondent introduced (Exhibit R1 pgs. 21 – 29) a copy of the *Assessment Request For Information* (ARFI) received from the property manager in April of 2011 noting that at that time the property reportedly was enjoying 100% occupancy (0% vacancy). Additionally the Respondent pointed out that the property was generating net lease rates as high as \$40/Sq. Ft. but also acknowledged that these leases were dated. A second ARFI, dated April 26/12 (Exhibit R1 pgs. 33 -37) includes a rent roll dated April 1/12 noting that same indicates (Exhibit R1 pg. 36) two leases signed in 2011 for a three year term at a base rate of \$27.50/Sq. Ft. The Assessor also pointed out that the cover page of this ARFI indicates an appraisal of the property had been completed with an effective date of July 1/11 that derived a final value estimate of \$58,100,000 which is considerably higher than the current assessed value of \$41,250,000. A copy of the cover page and Letter of Transmittal from this appraisal is provided (Exhibit R1 pgs. 38 & 39).

[9] The Respondent introduced (Exhibit R1 pg. 42) a copy of the *2012 Downtown Office Net Rental Rates* derived by and applied by the *Assessment Business Unit* (ABU) in preparation of assessments of downtown office buildings, noting the 'B' Class rate for DT1 at \$19/Sq. Ft. Additionally, the Assessor provided (Exhibit R1 pg. 43) a copy of the *2012 Downtown Office B Class Rent Equity Comparables* noting that same incorporated some 40 examples of leases signed in 2010 and 2011. The terms for these leases varied from one year to ten years in length and the areas ranged from a low of 990 Sq. Ft. to a high of 10,280 Sq. Ft. Their analysis indicates a weighted mean of \$20/Sq. Ft. for all leases in the list and a weighted mean of \$19.25/Sq. Ft. for the 2011 leases. The median lease rate for all leases is indicated to be \$20/Sq. Ft. and this remains constant for the 2011 leases as well. The Assessor maintains that this information, together with the additional information as outlined herein, fully supports the rental rate utilized for the purpose of estimating the assessed value of the subject property and requested the CARB confirm the assessment.

Complainant's Rebuttal

[10] The Complainant maintains that the Respondent's list of comparable leases (Exhibit R1 pg. 43) is in need of refinement and contends that leases of less than 3 years in term should be removed as well as any leases that are renewals, or expansions. The Complainant went on to explain that lease terms of less than 3 years typically refer to prescribed overhold periods, transitional space to be used until new space is available or constructed or represent negotiated terms for immediate requirements that will be co-terminus with primary space in another building. The Complainant introduced (Exhibit C2 pg. 6) a copy of the Assessor's lease comparables removing those leases of less than 3 years in term. This refined list of lease comparables indicates a weighted mean for all leases to be \$20.86/Sq. Ft. and a weighted mean for the 2011 leases only at \$19.50/Sq. Ft. The median of all the leases is \$20/Sq. Ft. and this remains constant with the 2011 leases as well. The Complainant also provided (Exhibit C2 pg 7) this same list of lease comparables sorted from high to low in terms of the lease rates and noted that nine (9) of the lease comparables relate to 520 – 5th Avenue SW and that these leases were among the highest on the list. The Complainant suggested that property is able to obtain such lease rates because it is a superior building that should more accurately be classified as being 'A-' as opposed to 'B'.

Board's Decision:

[11] The assessment is **confirmed** at **\$41,250,000**.

Decision Reasons:

[12] The Complainant argued that leases from the subject property should serve as the best indicators of market rent for the subject property. While the CARB does consider such information, the Respondent is mandated, through legislation and regulations, to apply typical rents as established for the particular class of property being assessed, in this case 'B' class downtown located office buildings, not just what might be considered typical for a particular property. The CARB is of the judgment that applying what might be considered to be typical rents for a particular building, as opposed to application of what is deemed typical rent for that class of building, could result in an inequitable situation for that building class.

[13] The Respondent provided some forty lease comparables that were used to establish the typical rental rate to be applied in the valuation of 'B' class downtown located office buildings. The Complainant contended that this list needed to be refined to exclude lease terms of less than three years as same may not be truly indicative of market rent; however, the Complainant did not provide any substantive evidence to support this contention. The CARB has been presented with examples of previous decisions of both this Board and the Municipal Government Board regarding the treatment leases (ie which leases should be given consideration and which should not). Over time those decisions appear to have been inconsistent causing confusion to both parties. The CARB is of the judgment that all new leases, including renewals, should be included in an analysis to determine market rent. If a particular lease should, for whatever reason, not be included in such an analysis, then the Complainant can rebut same by providing a copy of the lease in their rebuttal evidence. The CARB noted that, in the case before us, the Complainant's revised lease comparable list of the Assessor (Exhibit C2 pg. 6) refined to exclude leases of less than 3 years in term still confirmed the lease rate as applied by the Assessor.

[14] The Respondent stressed the fact that the Complainant's request to alter only the applied rental rate results in values/Sq. Ft. of building area that cannot be supported by the sales evidence. The CARB agrees that it is the final assessed value that is the primary concern and if that value is not representative of market value then it is, for assessment purposes, incorrect. It is for these reasons that the CARB confirms the assessment.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF Sept 2012.


C. J. Griffin
Presiding Officer

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 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 MGB Administrative Use Only

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|---------------------------------|--------------------|---------------------|---------------------------|---------------------|
| <i>Decision No. 1446-2012-P</i> | | | <i>Roll No. 068078492</i> | |
| <u><i>Subject</i></u> | <u><i>Type</i></u> | <u><i>Issue</i></u> | <u><i>Detail</i></u> | <u><i>Issue</i></u> |
| CARB | Office Building | Rental Rate | Typical Rent | Office Rent |