

**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:

First Real Properties Limited (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

**C. J. Griffin, Presiding Officer
J. Joseph, 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: 067230409

LOCATION ADDRESS: 540 – 5th Avenue SW

HEARING NUMBER: 65996

ASSESSMENT: \$44,940,000.

This complaint was heard on 14th 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] It was agreed by both parties, as a result of the issue and evidence being identical, that all of the evidence and argument of both parties as presented in a preceding Hearing #65940 (CARB Decision 1446-2011-P) be carried forward and apply to this Hearing. The CARB agreed with that request and accordingly the CARB acknowledges that the evidence, argument, questions and answers of both parties relating to the rental rate issue has been carried forward and applied to this and ensuing Hearings also scheduled to be heard by this panel this week. The CARB noted that one of the panel members was not present for the initial Hearing and thus requested each party to provide an overview of their evidence and answer any questions, if any, posed by the Board member. This was also agreed to by all parties.

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) that the subject is a class 'B' office building located within the downtown core area and is commonly known as Aquitaine Tower. The building contains a total of 245,704 assessed Sq. Ft. of which 236,507 Sq. Ft. is the office component, 8,897 Sq. Ft. is a retail component and 300 Sq. Ft. is the storage component. There are 82 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		236,507 Sq. Ft.	\$15.00/Sq. Ft.	8.00%
Retail		8,897 Sq. Ft.	\$16.00/Sq. Ft.	8.00%
Storage Space		300 Sq. Ft.	\$ 8.00/Sq. Ft.	8.00%
Parking		82 Stalls	\$4,800/Stall	2.00%
Vacant Space Shortfall	@	\$17.00/Sq. Ft. office		
	@	\$20.00/Sq. Ft. retail		
	@	\$ 5.00/Sq. Ft. storage		
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: \$39,260,000. (Exhibit C1 pg. 18)

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 \$15/Sq. Ft. however the Complainant suggests a more appropriate rate would be \$13/Sq. Ft. In support of their requested rental rate the Complainant introduced (Exhibit C1 pg. 20) a list of twenty-one (21) leases signed between September 1/10 and June 1/11. All leases are from 'B' Class buildings located within one or two blocks of the subject, 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 1,518 Sq. Ft. to 21,478 Sq. Ft. and the indicated lease rates range from a low of \$8.57/Sq. Ft. to a high of \$17.00/Sq. Ft. with an indicated mean for all the leases of \$12.84/Sq. Ft. and an indicated mean for the 2011 leases of \$12.96/Sq. Ft. The indicated median of all the leases is \$13.00/Sq. Ft. and for the 2011 leases it is \$12.50/Sq. Ft. This information forms the basis for the Complainant's request for \$13.00/Sq. Ft.

[6] The Complainant contends that there were no sales of downtown located 'B' class office buildings in the valuation year but 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 57 – 62) 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/Assessor made the CARB aware that the request of the Complainant, if granted, would result in an assessed value that would equate to approximately \$159/Sq. Ft. of building area versus the current assessed value of approximately \$182/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. 66) 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 \$159/Sq. Ft. The sales summary for each of the sales is also provided (Exhibit R1 pgs. 67 – 110). 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/Assessor introduced (Exhibit R1 pgs. 12 – 24) a copy of the *Assessment Request For Information* (ARFI) received from the property manager in May of 2011 noting that at that time the property reportedly was experiencing a 15% vacancy rate. Additionally the Respondent pointed out that the property was generating net lease rates as high as \$36/Sq. Ft. but also acknowledged that these leases were dated. A rent roll for the subject property, dated May 1/11, was provided (Exhibit R1 pgs. 25 -28) which, the Assessor pointed out, listed three leases signed between Feb. 01/10 and Jan. 01/11 at rates between \$17

and \$20/Sq. Ft. Further evidence of recent leases was presented in the form of ARFI Schedule A (Exhibit R1 pg. 29) which shows leases signed between Dec. 01/10 and Oct. 01/11 at rates ranging from \$15 to \$20/Sq. Ft. These leases are noted as being extensions, expansions, relocations and a new lease. A second ARFI, dated April 30/12 (Exhibit R1 pgs. 31 -38) includes a rent roll dated May1/12. The Assessor also pointed out that the cover page of this ARFI indicates the vacancy rate had dropped to 1%. Included with this ARFI is a copy of ARFI Schedule A (Exhibit R1 pg. 39) which indicates 10 leases were signed in 2011 and two of which were signed on or before the July 1/11 valuation date. One of these leases relates to an extension and expansion at a rate of \$17/Sq. while the other is a new lease signed at a rate of \$16/Sq. Ft.

[9] The Assessor introduced (Exhibit R1 pg. 42) a copy of a marketing brochure highlighting the recent improvements and upgrades to the building including such items as: hi technology security systems, upgraded elevators with state-of-the art micro-process controls, upgraded life safety systems, mechanical systems and lighting systems. The Assessor was of the opinion that these upgrades made the building very competitive in the market place.

[10] The Assessor introduced (Exhibit R1 pg. 44) 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 pgs. 45 – 46) a copy of the *2012 Downtown Office B Class Rent Equity Comparables* noting that same incorporated some 57 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 400 Sq. Ft. to a high of 104,335 Sq. Ft. Their analysis indicates a weighted mean of \$15.16/Sq. Ft. for all leases in the list and a weighted mean of \$15.77/Sq. Ft. for the 2011 leases. The median lease rate for all leases is indicated to be \$15/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.

Board's Decision:

[11] The assessment is **confirmed** at **\$44,940,000**.

Decision Reasons:

[12] The Complainant maintains that leases from the subject property should serve as the best indicators of market rent for the subject property and while the CARB does consider such information to be important and worthwhile, it is important to remember that the Assessor 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 for that class of building, would result in an inequitable situation for that building class.

[13] The Assessor provided some fifty lease comparables (Exhibit R1 pgs. 45 – 46) that were used to establish the basic 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 where the matter of which leases should be given consideration and which should not appear, over time, to be somewhat inconsistent and this situation causes 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 the 2012 ARFI, which is clearly pos-facto but which was not objected to by the Complainant, did show examples of leasing activity on or before the valuation date which support the assessed rental rate.

[14] The Assessor 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 total 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 20 DAY OF September 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. 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

<i>Decision No. 1450-2012-P</i>			<i>Roll No. 067230409</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