

**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 (the Act).

between:

SC Calgary Properties Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
J. Massey, MEMBER
J. Kerrison, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 068232305

LOCATION ADDRESS: 225 7 Avenue SW

HEARING NUMBER: 63897

ASSESSMENT: \$167,490,000.

This complaint was heard on 20 day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *G. Worsley*
- *D. Genereux*

Appeared on behalf of the Respondent:

- *H. Neumann*
- *W. Krynski*

Preliminary Matter(s):

Both parties requested the CARB to review an earlier CARB decision (1331/2011-P) which dealt with a similar property to those to be considered in this Hearing and which had similar issues. The parties asked if this panel of the CARB would make the same decision if the evidence were the same.

Board's Decision on Preliminary Matter:

Having reviewed the referenced CARB Decision (#1331/2011-P) the CARB told the parties that, while this panel of the CARB is under no compulsion to make a decision based upon the earlier decision of another CARB panel, if the evidence is exactly the same it would be unlikely that this panel of the CARB would interpret the evidence any differently than the other panel; however, having said that the CARB also pointed out that each case is an independent one and not having seen the evidence in question this panel of the CARB would not develop a prejudice, one way or another, towards that evidence. The Hearing will proceed.

Property Description:

225 – 7 Avenue SW (roll # 068232305) refers to a property commonly known as Scotia Centre. The property is a 41 storey high-rise "A" Class office building that is located within the downtown core area of Calgary on the Stephen Avenue Mall. The property, which was originally constructed in 1975, contains approximately 575,067 Sq. Ft. of assessable space of which 78,735 Sq. Ft. is retail in nature and 20,480 Sq. ft. is classified as storage area. The building has 85 underground parking stalls. The building is connected to the city's +15 walk-way system.

Issues:

While a number of inter-related issues were outlined on the Assessment Review Board Complaint form, at the Hearing and in their submission the Complainant reduced these to:

- 1) The assessed rental rate is too high.
- 2) The assessed capitalization rate is too low.

Complainant's Requested Value:

Roll # 068232305 **\$150,210,000** (revised at the Hearing)

Complainant's Position

The Complainant contends that the assessed office rental rate of \$23/Sq. Ft. is excessive and should be reduced to the requested \$21/Sq. Ft. rate. Additionally, the Complainant maintains that 3rd party publications report rental rates in the downtown core have declined by as much as 40% from the highs of late 2007 and early 2008. In support of their argument for a lower assessed lease rate, the Complainant produced (Exhibit C-1 pg 42 & 43) a summary of 27 leases negotiated and commencing between September 2009 and July 2010. All of the leases pertain to "A" Class office buildings in downtown Calgary. The areas involved ranged from approximately 988 Sq. Ft. to 279,694 Sq. Ft. Six of the referenced leases relate to leased areas greater than 10,000 Sq. Ft. The weighted mean of these lease rates is approximately \$21/Sq. Ft. and the weighted mean of the leases for greater than 10,000 Sq. ft. is \$20.20/Sq. Ft. In

presenting this information the Complainant maintains that *"Valid rental rate comparisons should be restricted to new lease deals which could include lease renewals if the renewal was based on landlord and tenant agreeing to current market rental terms, and any rent clause about 'no less than current rent' did not come into force."* The Complainant also pointed out to the CARB their concern over the use of 'construction leases' for comparison purposes. Developer construction leases are done with the cost of construction and a return on investment for the developer in mind. Such leases, the Complainant maintains, are high and not valid for estimating typical market rent. In their evidence the Complainant stressed that only buildings with second generation leases have been considered.

Insofar as the capitalization rate is concerned, the Complainant points out that similar Class 'A' office buildings have been assessed using a 7.50% capitalization rate to derive the assessed value whereas a capitalization rate of 7.25% has been used to derive the assessed value of the subject property. The Complainant maintains that the most recent sales of downtown office buildings similar to the subject occurred in 2006 and that these dated sales offer no assistance in determining an appropriate capitalization rate for the 2010 assessment of the subject property, especially in light of the fact that there was a market increase following the sales followed by a dramatic decrease in real estate values combined with a significant increase in office vacancy rates. The Complainant produced a chart (Exhibit C-1 pg. 89) showing the assessed office rental rate together with the applied capitalization rate for 13 other Class 'A' office buildings located within the downtown core area. All 13 of these properties were assessed using a \$23/Sq. Ft. office rental rate and all were assessed using a 7.50% capitalization rate. The Complainant recognises that the Assessor has applied the 0.25% reduction in the capitalization rate due to the retail aspect of the subject property; however, they maintain that with only 16% of the Net Operating Income (NOI) for the subject property stemming from retail leases, it is not rational to apply a reduced capitalization rate to the entire building's NOI. The Complainant points out that a 7.50% capitalization rate for 'A' Class office buildings similar to the subject can be supported by recent industry market reports (Exhibit C-1 pgs. 92 – 96); however, none of these reports indicate or suggest a premium is being paid for greater than typical retail areas within those 'A' Class buildings.

Application of the requested rental rate together with the requested capitalization rate of 7.50% results in the requested assessment of \$150,210,000.

Respondent's Position

In defence of the assessed value the Respondent submitted their Exhibit R-1 which, on page 34, shows the *City of Calgary 2011 Downtown Office A Class Rental Rate Analysis* which refers to 23 leases all of which have start dates on or before July 1/2010. The leases relate to areas ranging from 988 Sq. ft. to 23,986 Sq. ft. and the rates range from \$17/Sq. ft. to \$31/Sq. Ft. and indicate a mean of \$23.73/Sq. Ft., a median of \$23.50/Sq. Ft. and a weighted mean of \$24.13/Sq. Ft. The weighted mean for leases of greater than 10,000 Sq. Ft. is reported at \$24.34/Sq. Ft. Additionally, the Respondent presented (Exhibit R-1 pgs. 35 – 39) extracts from independent 3rd party market reports that also give credence to the Assessor's choice of \$23/Sq. Ft. for the 'A' Class office area of the subject.

In support of the applied 7.25% capitalization rate the Respondent pointed out that this reduction stems, in large part, from the lobbying efforts of the tax agent community for some over the past few years to recognise the special nature of the Stephen Avenue Mall, which the Assessor refers to as the 'retail spine' of the downtown core. As a result of the foregoing the

assessment department established a new downtown zone of DT8 which specifically deals with properties fronting the mall. The Respondent presented (Exhibit R-1 pg 85) a chart showing that buildings fronting the mall, regardless of class, have all been given a 0.25% reduction in the applied capitalization rate as opposed to the regular rate applied to that same class of building in other downtown locations. The Respondent maintains that it would be inequitable to increase the capitalization rate for the subject property in comparison to other mall fronting properties.

Complainant's Rebuttal

The Complainant presented a Rebuttal argument and supported same with their Exhibit C-2. This Rebuttal was confirmed as being the same Rebuttal Submission presented earlier in the day in a Hearing dealing with an 'AA' Class office building and the Complainant acknowledged that there was little specific information in same which would apply to the subject property.

Board's Findings in Respect of Each Matter or Issue:

The CARB finds that:

- 1) The Lease Commencement Date is more reliable than using a Lease Agreement Date.
- 2) The applied office rental rate of \$23/Sq. Ft. is appropriate for the subject.
- 3) The applied 7.25% capitalization rate is appropriate for the subject property.

Board's Decision:

The assessment is **confirmed** at: **\$167,490,000.**

Reason(s) for Decision

The lease rate analysis prepared by the Assessor, which relies upon lease commencement dates as opposed to lease agreement dates, is a more reasonable interpretation of the data. The lease agreement date is not information that is typically available in the market place and it is, in the judgment of the CARB, unreasonable to expect the assessor to amass such data. It may well be that, as in this case, one party may have access to such information as a result of their client list and/or other aspects of their business activities; however, if the information is not generally available it would be unrealistic to expect same to be utilized in application of the mass appraisal process.

New construction or developer leases do, in the judgment of the CARB, constitute an indicator of market rents. It would be unreasonable to expect that any tenant would willingly commit to paying a lease rate that is unrealistic in the market place simply because they are leasing in a new building. Certainly there are considerations, such as naming building privileges, which can have an impact upon the final lease rate, but it would be a mistake to ignore such leases entirely. It is the responsibility of a good analyst to put such weight as is necessary upon such leases.

Lease renewals are not necessarily reliable indications as to market rent regardless of whether or not that renewal rate is derived from recent negotiations. A tenant, if remaining in the same property, saves on the expense of moving, new stationary, etc. Conversely the landlord saves on remarketing costs, new tenant improvements, etc. In consideration of the foregoing the

CARB is of the judgment that Lease Renewals should not normally be included in a lease rate analysis.

The fact that the subject property has been given a slightly different capitalization rate, a minus 0.25% reduction, stems from its location on the Stephen Avenue Mall. All of the office/retail properties with frontage on the mall have been treated similarly and the CARB is of the judgment that it would be inequitable to suggest the subject property be treated differently than similar properties in a similar location. Additionally, the resulting difference between the two capitalization rates results in relatively minor adjustment to the assessed value and if such a matter were brought before the CARB in isolation it would, in all likelihood, be given little consideration.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF August 2011.


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
3. C2	Complainant Rebuttal

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.*