

**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:

GWL Realty Advisors INC (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, W. Garten
Board Member J. Rankin
Board Member Y. Nesry***

This is a complaint to the Calgary Assessment Review Board 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: 067079285

LOCATION ADDRESS: 701 8th Ave. S.W.

HEARING NUMBER: 64078

ASSESSMENT: \$302,270,000

This complaint was heard on 11 day of August, 2011 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:

- *D. Chabot - Representing Altus Group*

Appeared on behalf of the Respondent:

- *D. Satoor - Representing the City of Calgary*
- *A. Czechowskij – Representing the City of Calgary*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Alberta Municipal Government Act.

There were no procedural or jurisdictional matters brought before the Board.

The Board proceeded to hear the complaint, as outlined below.

Property Description:

The Subject Property is located in the downtown core and was constructed in 1983. The two towers are assessed as "A" Buildings and have an average floor plate of 18,400 and 15,120 SF. The buildings are 41 floors and 31 floors. The subject is approximately 1,098,245 SF. It is connected to the +15. The building has 153 parking stalls.

Issues:

Is the office rental rate of \$23.00 used in the 2011 City of Calgary Assessment equitable when compared to other "A" class office buildings?

LEGISLATION***The Municipal Government Act, R.S.A. 2000, c. M-26 (MGA);***

s. 1 (n) "market value" means the amount that a property, as defined in section 284(1)(r) might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.

s. 284 (1)(r) "property means"

- i) a parcel of land,*
- ii) an improvement, or*
- iii) a parcel of land and the improvement to it;*

s. 293(1) In preparing and assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

s.293(2) If there is no procedure set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

s. 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s. 467 (3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

- a) the valuation and other standards set out in the regulations,*
- b) the procedures set out in the regulations, and*
- c) the assessments of similar property or businesses in the same municipality.*

Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004 (MRAT);

s. 2 *An assessment of property based on market value*

- a) must be prepared using mass appraisal*
- b) must be an estimate of value of the fee simple estate in the property, and*
- c) must reflect typical market conditions for properties similar to that property*

s. 4(1)(a) *The valuation standard for a parcel of land is market value*

s. 5(1) *The valuation standard for improvements is*

- a) the valuation standard set out in section 7, 8 or 9, for the improvements referred to in those sections, or*
- b) for other improvements, market value*

s. 6(1) *When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvement is market value unless subsection (2) or (3) applies.*

Complainant's Requested Value: \$276,660,000

Complainant's Position:

The Complainant provided evidence package C-1 and C-2 (rebuttal) for her presentation. The Complainant argued that the rental rate of \$23.00 used in the City of Calgary assessment is excessive and should be change to \$21.00. The trend for rental rates have moved from a average high of \$42.75 in Q3 of 2008 to an average of \$21.00 by Q2 of 2010 as evidenced in Barklay Street Real Estate (pg. 20, 21 C-1). This was further supported by evidence from CBRE publication reporting average asking rental rates in Q2 of 2010 of \$20.00 to \$22.00.

The Complainant supported the rental rates with stats on increased vacancy rates (pg. 22, 23) where the vacancy moved from 1.82% in Q1 2008 to 10.00% in Q2 2010.

The Complainant further produced a 2011 Downtown Office A Rental Analysis (pg 25 and 26 C-1) where the "Weighted Mean" for all leases totalled \$20.97per SF. This included a single large lease with BP Centre of 279,694 SF at \$20.00 per SF with a lease start date of Dec. 15, 2009.

The Complainant requested that the Board give consideration to the "Deal Done Date" in

addition to the "Lease Start Date".

When questioned as to whether or not the BP lease was value as it may be an early renewal, the Complainant gave evidence to show that the City of Calgary includes renewals in their model for assessment purposes.

Respondent's Position:

The Respondent provided evidence package R-1, R-2, R-3, R-4 and R-5 for his presentation. The Respondent argued that \$23.00 was fair and equitable as there was no evidence to the contrary.

The Respondent argued that more weight should be given to the Lease Commencement Date as this is the effective start date of the lease and the start of the rental payments. "Deal Done Date" does not reflect the time it takes to move in or in a situation where the tenant is already moved in may be post facto.

The Respondent provided evidence pg. 29-35 from Avison Young, CBRE and Barclay Street including the City of Calgary 2011 Downtown Office A Class Rental Analysis. These publications provided information that rental rates ranged from \$20.00 to \$24.34 in Q2 of 2010. Further, the Respondent provided a copy of the Assessment Request for Information for the subject and noted that the closest lease to valuation date was completed with Russel Metals with a lease commencement date of July 1, 2010 at a rental rate of \$28.00 per SF. When questioned, it was agreed that this was a lease renewal and not a new lease.

The BP lease was questioned by the Respondent and requested that this lease be removed from the list of comparables presented to the Board by the Complainant. The Respondent claimed that this was an outlier and was not a market deal. It was a re-negotiated lease and should not be considered. The Respondent argued that when this large lease is removed from the list then the weighted mean will increases to approximately \$23.00 per SF.

Further the Respondent claimed that lease renewals were not included in the City of Calgary modelling and since this is a renewal it should be removed. It was further argued by the Respondent that this one lease distorts the overall calculation of the weighted mean per SF.

The Respondent requested the assessment to be confirmed.

Rebuttal

In rebuttal the Complainant argued that the BP lease was a good comparable due to its size and affect it will have on the market value of the BP Center.

The Complainant noted that the City of Calgary has a wide range of office rental rates in its own rental analysis on pg 30 of R-1 so it is difficult to determine what is typical from that list and the Board should not apply much weight to this list.

The Complainant requested the Board to reduce the office rental rate used in this assessment from \$23.00 to \$21.00 resulting in a revised assessment of \$276,660,000.

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

The CARB finds that:

1. The BP lease is a re-negotiated lease and not a market lease.
2. Current rent roll supports the rental rate of \$23.00 per SF.

Board's Decision:

It is the Board's Decision to confirm the Assessment at \$302,270,000.

Reason(s) for Decision

The Board applied the most weighting to the list of comparables in the Complainant evidence package pg. 25 and 26 of C-1. However the Board determined that the BP lease was a renegotiated extension where the motivated landlord will give up current rental revenue in exchange for increased term in the lease in order to secure a long term rental stream.

When removing this \$20.00 per SF lease from the Complainant's comparable list, the weighted mean increases much closer to \$23.00 which supports the City of Calgary assessment.

Evidence of the BP lease was provided by the Complainant in the Rebuttal C-2 where the lease amending agreement was dated December 18th 2009. This modified the original lease which was due to expire on September 30th 2013. It appeared obvious to the Board that the Landlord was highly motivated to extend the lease and modify the original lease rate of \$23.00 (pg. 93 of R-1)

From the evidence provided in the City of Calgary Assessment Request for Information, the Rental rates achieved in the latter part of 2009 and first half of 2010 are determined as follows:

Curtis Westersund	1,787 SF	Sept. 1, 2009	\$29.00
Russel Metal	5,965 SF	July 1, 2010	\$28.00
Castle Coombe Mgmt	45,340 SF	Jan. 1, 2009	\$40.00
Trinidad Drilling	30,820 SF	Oct 1, 2010	\$25.00 Post Facto

The Board found that the forgoing result provided no hard evidence that the lease rates should be reduce to \$21.00.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF September 2011.



W. Garten
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Rebuttal
3. R1	Respondent Disclosure
4. R2	CARB Decision 1455/2011-P
5. R3	CARB Decision 1779/2011-P
6. R4	CARB Decision 1451/2011-P
7. R5	CARB Decision 1571/2011-P

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.*