

**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:

***THE GREAT-WEST LIFE ASSURANCE COMPANY, COMPLAINANT
LONDON LIFE INSURANCE COMPANY, COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member J. RANKIN
Board Member E. BRUTON***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 067238402

LOCATION ADDRESS: 530 8 AVENUE SW

FILE NUMBER: 67952

ASSESSMENT: \$131,860,000.00

This complaint was heard on 17th & 18th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta in Boardroom 10.

Appeared on behalf of the Complainant:

- G. Kerslake, Altus Group Ltd. – Representing The Great-West Life Assurance Company & London Life Insurance Company
- M. Cameron, Altus Group Ltd. – Representing The Great-West Life Assurance Company & London Life Insurance Company

Appeared on behalf of the Respondent:

- A. Czechowskyj – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] A joint request, put forward by the Complainant and the Respondent, for the cross-referencing of the evidence presented with respect to the capitalization rate argument was presented to the Board. It was submitted that the evidence presented would be essentially the same for each of the hearings before this Board.

[3] The Board accepted the request and will review the evidence submitted by both parties when making the decisions on File Number 66932 - Roll Number 067235101, File Number 67952 - Roll Number 067238402, File Number 67913 - Roll Number 068032895, File Number 67969 - Roll Number 068051705 and File Number 66668 - Roll Number 201027760.

[4] The Complainant withdrew its issue under Section 299 & 300 of the Municipal Government Act.

[5] The Board corrected the 2012 assessment to reflect an amendment which the City of Calgary issued on February 9, 2012.

Property Description:

[6] The subject property is located at 530 8 Avenue SW, in DT1, a downtown district of the City of Calgary. The site is improved with an A- class office building, known as the Watermark Tower, constructed in 1982. The assessment record indicates the subject has 405,419 square feet of net rentable area consisting of 378,216 square feet of office space, 8,346 square feet of main level retail, 7,455 square feet of second level retail, 8,018 square feet of third level retail, 3,324 square feet of third level retail – poor location, 60 square feet for an automated teller machine and 286 parking stalls.

[7] The subject property was assessed by the Income Approach for a 2012 assessment of \$131,860,000.00 or \$325.24 per square foot. The assessment record indicated the subject was assessed at the following rates:

<u>Space</u>	<u>Assessment Rate</u>
Office Space	\$20.00 per sq.ft.
Parking stalls	\$5,700 per annum per stall
Retail 2 Level	\$32.00 per sq.ft.
Retail 3 Level	\$20.00 per sq.ft.
Retail 3 Level - Poor	\$12.00 per sq.ft.
Retail Main Level	\$32.00 per sq.ft.
Automated Teller	\$150.00 per sq.ft.

Issues:

[8] The Assessment Review Board Complaint form contained a list of reasons and grounds for the complaint. The issues the Complainant presented at the hearing were:

1. Is the office rent rate appropriate?
2. Is the capitalization rate appropriate?

Complainant's requested Value: \$105,760,000 or \$260.87 per square foot (revised at hearing).

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

[9] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[10] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[11] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially similar to the subject complaint.

Issue 1: Is the office rent rate appropriate?**Complainant's Evidence:**

[12] It was the Complainant's position that the subject assessment was incorrect and argued the assessed office rate of \$20.00 was inconsistent with market comparables which suggested the correct office rent for the subject was \$18.00 per square foot.

In support of the Complainant's position, an analysis of the lease rates for 2012 Downtown A, B and C Class office rent rates was submitted. (C1, Pg. 58-68) The analysis looked at the leases

in DT1 and DT2 market zones and produced statistical results for weighted average, maximum and minimum rents, mean and median values. Sub-analyses of the leases were calculated based on DT1 leases only, the removal of atypical leases, leases greater than 3 year terms and full floor leases. The results for the lease analysis are summarized below, including the results of the Class A – Old and A- submitted in the rebuttal document: (C2, Pg. 14-16)

CLASS	STATISTICAL ANALYSIS	TOTAL LEASES (\$)	DT1 LEASES (\$)	REMOVED ATYPICAL LEASES (\$)	TERMS GREATER THAN 3 YEARS (\$)	FULL FLOOR LEASES (\$)
A - Old	WEIGHTED AVERAGE	20.94	20.65	19.50	19.50	19.56
	MEAN	20.70	20.29	19.22	19.22	19.63
	MEDIAN	20.00	19.75	19.25	19.25	19.75
A - Old & A- (Rebuttal)	WEIGHTED AVERAGE	20.67	20.91	19.86	NO ANALYSIS	19.77
	MEAN	20.19	20.48	20.05	NO ANALYSIS	20.06
	MEDIAN	20.00	20.00	20.00	NO ANALYSIS	20.00
B & B-	WEIGHTED AVERAGE	16.94 ALL LEASES IN DT1		15.10	15.06	13.98
	MEAN	17.21		15.94	15.57	14.16
	MEDIAN	16.00		15.00	15.00	15.00
C	WEIGHTED AVERAGE	13.35	10.12	13.01	8.69	NO ANALYSIS
	MEAN	12.90	11.04	12.57	9.89	NO ANALYSIS
	MEDIAN		10.50	12.00	10.00	NO ANALYSIS

[13] The Class A leases examined only those from buildings designated as A – Old, meaning built prior to 2009 (as defined by the Respondent); the analysis of Class B leases examined leases from building designated as Class B or B-; and the analysis of Class C leases examined leases from buildings designated as Class C. The rebuttal analysis of the Class A buildings combined both the Class A – Old and Class A- to determine the results.

[14] The Complainant argued that the hierarchy of rental rates as reflected in the analysis shows the median for Class B at \$16.00 and class A at \$20.00. The Complainant stated that based upon this hierarchy the Class A- should be the requested rate of \$18.00 per square foot.

The Complainant submitted the Tenant Rolls – July 31, 2011 into evidence, indicating space occupied and area, lease commencement and end dates, and rental rates. (C1, Pg. 39-57)

Respondent's Evidence:

[15] The Respondent submitted an Assessment Request For Information (ARFI) dated December 31, 2011 which provided a December 31, 2010 Rent Roll for the Watermark Tower. (C1, Pg. 16-20) The Respondent noted that no lease on the ARFI or the Tenant Roll, provided by the Complainant, showed any lease in the subject building to support the request for \$18.00. The ARFI return showed the most recent leases with start dates in 2010 ranging from \$21.00 to \$28.00 per square foot. Older leases were signed for \$44.00 per square foot in 2008. Referencing the Tenant Roll provided by the Complainant, leases were signed for April 1, 2011 commencement dates for \$38.00 per square foot and \$19.00 per square foot. The Respondent's position was that the leases in the subject building more than reasonably support the assessed rate of \$20.00 per square foot.

[16] Additionally, the Respondent submitted 2012 Downtown Office Rent Equity Comparables for Class A and A- structures. The statistical analysis of the mean, weighted mean and median per square foot are summarized below: (R1, Pg.101-104)

CLASS	STATISTICAL ANALYSIS	ALL LEASES (\$)	2011 LEASES (\$)	2011 LEASES GREATER THAN 10,000 SQ.FT. (\$)
A	MEAN	20.70	21.03	NO ANALYSIS
	WEIGHTED MEAN	20.94	21.65	NO ANALYSIS
	MEDIAN	20.00	20.00	NO ANALYSIS
A-	MEAN	19.74	18.96	19.89
	WEIGHTED MEAN	20.25	19.83	20.84
	MEDIAN	20.00	19.00	20.62

(R1, Pg. 23, 65)

[17] The Respondent provided additional lease information with lease data from A – New office spaces from Bankers Court and Le Germain, A Class office spaces from Encor Place, Western Canadian Place, Shell Tower, Fifth Avenue Places – East, Bow Valley Square #1, #2 and #3, Energy Plaza, Gulf Canada Square and Scotia Centre. (R1, Pg. 24-27)

[18] It was the Respondent's position that the analysis supported the rate of \$20.00 per square foot for office space in the subject building as shown by the analysis of leases in DT1 and the actual leases in place on July 1, 2011.

Findings of the Board on Issue 1:

[19] The Board was not persuaded by the Complainant's argument that the rent should be based upon the hierarchy of rental rates in the market place. The Board found that an analysis of actual leases for each class provided a better indicator of typical market rents.

[20] The analysis provided by the Complainant did not analyze the Class A- leases in isolation. The Complainant's initial analysis included no leases from Class A-, instead analyzed

the leases for Class A – Old and an analysis of class B and B- combined. The Complainant submitted a rebuttal document which analyzed the Class A – Old and A- together, but again did not focus solely on the Class A- group. The Board was unable to rationalize why the Complainant chose to combine the different sub-classes within each major Class grouping to obtain its statistical analysis results.

[21] The Board reviewed the leases provided by the Complainant which were identified as Class A- and found the following rates per square foot:

CLASS	STATISTICAL ANALYSIS	TOTAL LEASES (\$/Sq. Ft.) DT1 & DT2	DT1 LEASES (\$/Sq. Ft.)	REMOVED ATYPICAL LEASES (\$/Sq. Ft.)	FULL FLOOR LEASES (\$/Sq. Ft.)
A -	MEAN	19.75	20.54	20.69	20.33
	MEDIAN	20.00	21.00	21.00	20.50

[22] Based upon this result it would appear the assessment value of \$20.00 per square foot was supported by the Complainant's and Respondent's evidence.

[23] The Respondent's analysis of Class A- falls in line with the results of the Complainant's lease data for the Class A-. The Board noted that the Respondent's evidence does not show what market zone the buildings are situated - DT1 or DT2.

[24] The Board was further dissuaded from altering the rental rate for the subject property when shown, through the evidence of the Complainant Tenant List and the Respondent ARFI, that rental rates in the building exceeded the current assessment rental rate of \$20.00 per square foot.

[25] Following the review of the submissions, the Board found there was insufficient evidence to support the requested change to the assessment lease rate. The rental rate for office space is confirmed at \$20.00 per square foot.

Issue 2: Is the capitalization rate appropriate?

Complainant's Evidence:

[26] The Complainant argued that the capitalization rate, based on a sale of the Scotia Centre, should be 7.75%, not the currently assessed capitalization rate of 6.75%.

[27] In support of the Complainant's position that the capitalization rate is incorrect, the Complainant presented the two sales for the Scotia Centre, a class a property in the DT1 zone of Downtown Calgary. The two sales represented a purchase of a 50% interest in the building:

Scotia Centre sale dated 04/21/2011 for 190,000,000.00 (100% interest equivalent)

Scotia Centre sale dated 04/21/2011 for 232,000,000.00 (100% interest equivalent)

[28] Based upon the Complainant's Net Operating Income (NOI), a capitalization rates for the two sales of Scotia Centre was calculated:

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	14,253,300	7.5
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	14,253,000	6.14

(C1, Pg. 85)

[29] It was argued by the Complainant that Sale 2 was not a sale to be relied on due to a number of factors affecting the transaction, such as Scotia Capital Real Estate being a broker in the transaction and Scotia Mortgage Corporation providing the mortgage for the purchase. The Bank of Nova Scotia Properties Inc. was the vendor of the property.

[30] The Complainant argued that Sale 1, with a capitalization rate of 7.5%, was the only sale on which to base the capitalization rate of the subject property.

The Complainant supported the request for a 7.75% capitalization rate by referring the Board to the difference in capitalization rates in Downtown Market Zone 1 (DT1) with those located along Stephen Avenue mall. Properties on the Stephen Avenue 'Retail Spine' are assessed using a capitalization rate which is .25% lower than the balance of DT1. When this differential of .25% is added to the capitalization rate for Scotia Centre (7.5%), the Complainant arrived at the requested rate of 7.75%. The Complainant submitted a 'corrected' assessment parameters table for the downtown offices. (C1, Pg. 35)

Respondent's Evidence:

The Respondent introduced the same two Scotia Centre sales as the Complainant, plus introducing a third sale for Gulf Canada Square. The Respondent stated the third sale was not used in the determination of the capitalization rate as it was post facto to the July 1, 2011 valuation date. It was stated by the Respondent that the Gulf Canada Square sale was only an indicator that the capitalization rate used by the City of Calgary Assessment Business Unit (ABU) was correct.

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	13,975,247	7.36
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02
					Mean for 2 Sales	6.69
					2012 Capitalization Rate	6.75
Sale Number	Name	Address	Sale Date	Sale Price	NOI	Capitalization Rate (%)
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39
					Mean for 3 Sales	6.59

(R1, Pg. 44)

[31] The Respondent provided the 2012 Downtown Office Cap Rate Sales chart, using typical NOI for 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.

[32] The Respondent argued that Sale 2 should be included as the sale was on the open market, as shown in the RealNet document (R1, Pg. 48) which showed the sale type as 'Market'. Further, the RealNet documents indicated the transaction was brokered by two different brokers – CB Richard Ellis Canada representing the purchaser, Homburg Canada REIT GP Inc. and Scotia Capital Real Estate representing the vendor, The Bank of Nova Scotia Properties Inc.

[33] In rebuttal to the Complainant's assertion that the sale was not valid as the Bank of Nova Scotia provided the mortgage for the purchase, the Respondent showed the Board how the financing was not preferential. The financing for the Scotia Centre 50% purchase was for \$69,900,000.00 at an interest rate of 4.6% for a period of 7 years. (R1, Pg. 49) A sale for a 50% interest in Gulf Canada Square was for \$150,000,000.00 at an interest rate of 4.606% for a period of 5 years. (R1, Pg. 59)

[34] The Respondent introduced evidence that the original purchase for 50% of the property by The Bank of Nova Scotia was for \$94,900,000.00 on September 29, 2006 for the Scotia Centre. (R1, Pg. 68-73)

Findings of the Board on Issue 2:

[35] The Board notes the following transactions for an interest in the Scotia Centre:

Vendor	Purchaser	Sale Date	Interest	Consideration (\$)
Oxford Properties Group Ltd.	The Bank of Nova Scotia	September, 2006	50%	94,900,000
Aspen Properties	The Bank of Nova Scotia	April, 2011	50%	95,000,000
The Bank of Nova Scotia	Homburg Canada REIT GP Inc.	April, 2011	50%	116,000,000

[36] In verbal testimony, the Respondent indicated that the Aspen Properties – Bank of Nova Scotia sale was completed in October 2010, but not registered until April of 2011.

[37] To coin the expression, the Board finds that both of the sales for an interest in the Scotia Centre "have some hair on them". It was suggested that Sale 1 was possibly tainted by the granting of a right of first refusal to the Bank of Nova Scotia, but no evidence was presented to support this contention.

[38] The Board noted that Aspen Properties Ltd., the vendor in Sale 1, has remained associated with the property as the property Manager, as shown on the Assessment Request for Information. (C2, Pg. 121)

[39] The Board did note, from the evidence submitted, the consideration paid for a 50% interest increased from \$94,900,000.00 in September of 2006 to \$95,000,000.00 in April of 2011 - an increase of only \$100,000.00 over a period of four and a half years.

[40] The Board considered the Respondent's argument that one sale of the Scotia Centre for

\$190,000,000.00 (100% interest) may not reflect market value, as one 50% owner was selling to the other 50% owner. The Board is of the opinion that a sale of this nature may occur with predetermined factors such as the right of first refusal or other mechanisms. Additionally, the small increase in value over four years does not appear to reflect a true market value, given that in a period of only months a 50% share in the property sold for \$116,000,000.00, an increase of \$21,000,000.00. For these reasons the Board placed no weight on Sale 1 for \$95,000,000.00.

[41] The Board found the Complainant's argument against Sale 2 was without support and therefore accepts the sale as an indicator of market value and a capitalization rate. The Board did not find it unreasonable for the owner of the building, The Bank of Nova Scotia, to use an in-house broker to handle the negotiations for the sale of an interest in the property. Further, the Board did not find it unreasonable for The Bank of Nova Scotia to be a party to the financing of the property, given that they were intimately involved with the transaction and in the position to offer financing during the negotiations. The Board also noted the arrangement did not provide the Purchaser with a preferred interest rate.

[42] The Board reviewed the details of the Gulf Canada Square sale as presented. The sale was post facto, occurring in September of 2011, but both the Complainant and the Respondent during their testimony stated sales of this type occur in advance of the actual registration date. This was clearly shown in the two sales for Scotia Centre when both sales were registered on April 21, 2011. The Board therefore accepts the Gulf Canada sale as an indicator of market value and the resulting capitalization rate is used by the Board in its decision.

[43] The Board analyzed the two sales to determine a capitalization rate based upon Sale 2 for the Scotia Centre and the Gulf Canada Square transaction, using typical NOI as submitted by the Respondent:

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)	Capitalization Rate (%) Adjusted .25%
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02	6.27
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39	6.39
					Mean	6.21	6.33
					2012 ABU Capitalization Rate	6.75	6.75

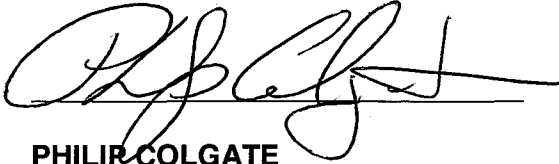
(1) .25% adjustment to reflect negative adjustment in capitalization rates for properties on the Stephen Avenue 'Spine' and those located elsewhere in DT1.

[44] The Board accepts the Respondent's capitalization rate of 6.75% to be applied to the subject property, although the Board's analysis indicates a lower capitalization rate. The Board finds insufficient support for the 7.75% request by the Complainant.

Board's Decision:

[45] Based upon the reasons given, the Board confirms the assessment at \$131,860,000.00.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF NOVEMBER 2012.

A handwritten signature in black ink, appearing to read 'P. Colgate', written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure – Pat 1
2. C1A	Complainant Disclosure – Part 2
3. C2	Complainant Rebuttal
4. R1	Respondent Disclosure
5.	Numerous MGB and CARB Decisions

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	-Capitalization Rate -Net Market Rent