

**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:**

***BCIMC REALTY CORPORATION, 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: 068032895**

**LOCATION ADDRESS: 240 4 AVENUE SW**

**FILE NUMBER: 67913**

**ASSESSMENT: \$217,150,000.00**

This complaint was heard on 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 BCIMC Realty Corporation
- M. Cameron, Altus Group Ltd. – Representing BCIMC Realty Corporation

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.

**Property Description:**

[5] The subject property is located at 240 4 Avenue SW, in DT1, a Downtown district of the City of Calgary. The site is improved with an A - Old Class office building, known as the BP Centre, constructed in 1985. The assessment record indicates the subject has 659,451 square feet of net rentable area consisting of 649,048 square feet of office space, 1,212 square feet of second level retail, 748 square feet of main level retail, 5,712 square feet of storage space, 2,715 square feet of food court, 16 square feet of automated teller machine and 227 parking stalls.

The subject property was assessed by the Income Approach for a 2012 assessment of \$217,150,000 or \$329.29 per square foot. The assessment record indicated the subject was assessed at the following rates:

<u>Space</u>	<u>Assessment Rate</u>
Office Space	\$22.00 per sq.ft.
Parking stalls	\$5,700 per annum per stall
Retail 2 <sup>nd</sup> Level	\$32.00 per sq.ft.

Retail Main Level	\$32.00 per sq.ft.
Food Court	\$130.00 per sq.ft.
Storage Space	\$10.00 per sq.ft.
Automated Teller Machine	\$150.00 per sq.ft.

**Issues:**

[6] 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 vacancy allowance appropriate?
3. Is the capitalization rate appropriate?

**Complainant's requested Value:** \$175,890,000.00

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

[7] 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.

[8] 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.

[9] 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 identical to the subject complaint.

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

[10] It was the Complainant's position that the subject assessment was incorrect and argued the assessed office rate of \$22.00 was inconsistent with market comparables which suggested the correct office rent for the subject was \$20.00 per square foot.

[11] 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. 49-59) 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 submitted in the rebuttal document: (C2, Pg. 8-12)

CLASS	STATISTICAL ANALYSIS	TOTAL LEASES (\$)	DT1 LEASES (\$)	REMOVED ATYPICAL LEASES (\$)	TERMS GREATER THAN 3 YEARS (\$)	FULL FLOOR LEASES (\$)
<b>A - Old</b>	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
<b>B &amp; 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
<b>C</b>	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

[12] The Class A leases examined only those from buildings designated as A – Old; 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.

[13] The Complainant submitted its analysis of the Class A – Old leases showed a rental rate of \$20.00 was supported by the weighted average of \$19.56 for full floor leases and the \$20.94 weighted mean for all leases submitted.

[14] In the Complainant's rebuttal, it presented an analysis of three Class A - Old buildings – Bow Valley Square, TD Square and Energy Plaza. The weighted average for the three buildings was \$19.95, \$18.27 and \$20.00 per square foot, respectively.

[15] The Complainant submitted the Tenant Rolls dated July 31, 2011 into evidence, which indicated space occupied and area, lease starts and end, and rental rates. (C1, Pg. 39-48)

#### **Respondent's Evidence:**

[16] The Respondent submitted an Assessment Request For Information (ARFI) dated May 17, 2011 for the subject property. The Respondent noted recent leases on the ARFI or the Tenant Roll, provided by the Complainant, showed leases in the subject building to support the rental rate of \$22.00. The ARFI return showed leases with start dates in 2010 or 2011 which ranged from \$33.00 to \$37.00 per square foot. Older leases were signed for \$26.00 to \$37.00 per square foot in 2008. Referencing the Tenant Roll provided by the Complainant, leases were signed for July 1, 2011 starts for \$37.00 per square foot. The Respondent's position was the leases in the subject building more than support the rate of \$22.00 per square foot.

[17] The Respondent submitted 2012 Downtown Office Rent Equity Comparables for Class A structures. The statistical analysis of the mean, weighted mean and median are summarized below: (R1, Pg.55)

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

[18] 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 Place – East, Bow Valley Square #1, #2 and #3, Energy Plaza, Gulf Canada Square and Scotia Centre. (R1, Pg. 56-59)

[19] It was the position of the Respondent that the analysis supported the rate of \$22.00 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:

[20] The Board found that an analysis of actual leases for a class provided the best indicator of typical market rents. Both parties presented evidence, based upon the leases, available in the market place and agreed that the weighted mean for rental leases is \$20.94 with a mean of \$20.70 per square foot.

[21] Both parties presented refinements to their analysis – only using 2011 leases, only using full floor leases or specific building leases. While the Board accepts that analysis can look at smaller populations, the effect takes it too far from the intent of the legislation to determine the assessment based upon a mass appraisal technique. The Board prefers the analysis of the largest population possible in the creation of a typical.

The Board found there was agreement by both parties when analyzing the Class A – Old category with a weighted mean of \$20.94 per square foot.

[22] Following the review of the submissions, the Board found there was sufficient evidence to support a change to the office lease rate. The rental rate for office space is reduced to \$21.00 per square foot.

**ISSUE 2: Is the vacancy allowance appropriate?****Complainant's Evidence:**

[23] The Complainant argued the vacancy allowance for office, retail storage and Automated Teller Machine (ATM) space in the subject building should be at 5%, not the currently assessed rates of 4% for office and retail space and 2% for food court and ATM. The vacancy rate for parking was accepted by the Complainant.

[24] The Complainant submitted a page entitled "Historical Office Vacancy – JUNE 30 – Cresa Partners" which presented the 2011 vacancy as 5.81% and the average for five years as 5.00% for A Class buildings. (C1, Pg. 61). Supporting documentation for the table was provided. (C1A, Pg.8-55)

**Respondent's Evidence:**

[25] The Respondent submitted the Assessment Business Unit analysis of vacancy rates, based upon the information received in the Assessment Request for Information responses from owners and/or management companies. (R1, Pg. 61-62) Based upon the responses, the average vacancy for sixteen Class A buildings was 2.91%.

[26] The Respondent referred to the ARFI submitted by the managers for BP Centre, Bentall Kennedy (Canada) LP, which stated on May 17, 2011 space vacancy in the subject was 4,747 square feet or 0.72%.

**Findings of the Board on Issue 2:**

[27] The Board notes the vacancy request by the Complainant was based upon a third party report – Cresa Partners and specific to an individual quarter of each year.

[28] The Board notes the Cresa Partners report does not segregate the Class A buildings into the A – New, A – Old or A- classifications, unlike the City of Calgary which reviews each classification separately.

[29] The Complainant and the Respondent provided vacancy information with respect to the total space, but none was submitted to show what the vacancy rates were for office space, retail spaces, food court spaces or ATM space separately.

[30] The Board finds the Complainant's averages for vacancy are based upon a combination of Headlease and Sublease space, which results in a higher vacancy percentage. The Respondent bases its analysis on only the headlease vacancy, as reported on the ARFI's submitted in response to the annual surveys.

[31] The Board made reference to Black's Law Dictionary 7<sup>th</sup> Edition in its deliberations, specifically the definitions of Headlease and Sublease:

Headlease – a primary lease under which a sublease has been granted

Sublease – a lease by a lessee to a third party, conveying some or all of the leased property for a shorter term than that of the lessee, who retains a reversion in the lease

[32] The Board finds the best indicator of vacancy in a building is that provided by the headlease data and the ARFI returns submitted to the City of Calgary. When a comparison is made for the subject property the percentage vacancy submitted shows a very close correlation, with a vacancy rate of 0.69% for the headlease vacancy in the Cresa Partners report and 0.72%

in the City of Calgary analysis for the subject.

[33] The Board finds insufficient evidence to support a change to the vacancy allowance as applied in the assessment calculation.

### **Issue 3: Is the capitalization rate appropriate?**

#### **Complainant's Evidence:**

[34] The Complainant argued that the capitalization rate, based on a sale of the Scotia Centre, should be 7.5%, not the currently assessed capitalization rate of 6.75%.

[35] 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 232,000,000.00 (100% interest equivalent)

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

Based upon the Complainant's Net Operating Income (NOI), a capitalization rate 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)

[36] 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 negotiations, such as the 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.

[37] 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.

#### **Respondent's Evidence:**

[38] 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 used to verify or confirm 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. 65)

[39] The Respondent provided the 2012 Downtown Office Cap Rate Sales chart, using typical NOI in the year of sale, that indicated the first Scotia Centre Sale in April 2011 produced a 7.36% capitalization rate, the second Scotia Centre sale in April 2011 produced a 6.02% capitalization rate, and the Gulf Canada Square sale in September 2011 produced a 6.39% capitalization rate.

[40] 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. 69) 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.

[41] 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. 70) A similar 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. 152)

[42] 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 from Oxford Properties Group Inc. (R1, Pg. 89-101)

### Findings of the Board on Issue 3:

[43] The Board in its review looked closely at the sales of the Scotia Centre and Gulf Canada Square as both complexes are classified as A – Old structures, the same as the subject building.

[44] 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

[45] 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.

[46] 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 existence of a right of first refusal being granted to the Bank of Nova Scotia. No evidence was presented to support this contention.

[47] 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. 117)

[48] 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 in a period of four and a half years.

[49] The Board considered the Respondent's argument that one sale of the Scotia Centre for \$190,000,000.00 (100% interest) may not be 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 a first right of refusal or other mechanisms. Additionally, the small increase in value over four years does not appear to the Board to be a true market value, given that over 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.

[50] 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 a position to offer financing during the negotiations. The Board noted that the arrangement did not provide the Purchaser with a preferred interest rate.

[51] 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 states that sales of this type typically 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.

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

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)	Capitalization Rate (%) Adjusted .25% (1)
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 the negative adjustment in capitalization rates for properties on the Stephen Avenue 'Spine' and those located elsewhere in DT1.

[53] 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 no support for the 7.5% request by the Complainant.

**Board's Decision:**

[54] Based upon the reasons given, the Board revised the assessment at \$208,100,000.00.

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



PHILIP COLGATE  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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	-Net Market Rent -Capitalization Rate