

**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 Bank of Nova Scotia, HCR LP (SC Calgary 2012) Inc.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
T. Usselman, MEMBER
P. Pask, MEMBER***

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:	068232305
LOCATION ADDRESS:	225 7 AV SW
HEARING NUMBER:	67931
ASSESSMENT:	\$211,160,000

This complaint was heard on October 1 & 2, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- Mr. S. Meiklejohn Agent, Altus Group Ltd.
- Mr. K. Fong Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- Mr. A. Czechowskyj Assessor, City of Calgary

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

[1] There are six complaints that were scheduled before the Board on October 1 – 5th, all of which relate to downtown office high-rises. The complaint filed for the property located at 407 2 ST SW (file #67968) was subsequently withdrawn later that week before the Board. The parties indicated that the issues pertaining to the office rental rate, vacancy rates and the capitalization rate would be similar for all of the complaints, and had requested that their evidence and argument be cross referenced to the "Scotia Centre" file. The Board agreed with the parties' request and designated file #67931 as the "master file", and would reference those exhibits contained in that file to the remaining complaints that are before the Board.

[2] At the commencement of the hearing, the Complainant submitted that he would not be pursuing issues in the case at hand in relation to sections 299 & 300, 362 & 364 of the MGA.

[3] During the course of the hearing, the Respondent asked if he could present the following Board decisions in support of his argument: CARB 1281/2012-P and CARB 1282/2012-P. These decisions were not disclosed in accordance with section 8(2)(b) of *Matters Relating to Assessment Complaints Regulation* AR 310/2009 ("MRAC"). The Complainant indicated that he did not object to the Board receiving these decisions. The Board therefore allowed the Respondent to present those decisions to the Board.

[4] No additional procedural or jurisdictional matters were raised by the parties during the course of the hearing.

Property Description:

[5] The subject property is a 40 storey office high-rise commonly known as the Scotia Centre. The building was constructed in 1975, and has a total area of 595,148 sq. ft. The office area is comprised of 495,422 sq. ft. and the retail area, located on the first three floors, is comprised of 75,941 sq. ft. There is also a food court (2,607 sq. ft.), kiosk (163 sq. ft.), and storage area (20,931 sq. ft.). The subject property is located on a 1.13 acre parcel of land in the Downtown Commercial Core. The land use designation is Direct Control District. The subject property has +15 and +30 walkway connections. There are 84 underground parking stalls associated with this site. The subject property has been assessed as A- old quality.

[6] The subject property has been assessed based on the Income Approach to value of \$211,160,000 or \$355 psf. The Complainant is in agreement with the areas and assessed rates applied to those areas except for the assessed rate applied to the office area (\$22.00 psf). The

Complainant is also challenging the vacancy rates applied to the office (4%) and retail (2%) and the capitalization rate (6.5%). It is noted that the Complainant revised his request for the capitalization rate at the hearing from 7.5% to 6.75%.

[7] Several transactions have occurred in regards to an undivided 50% interest in the subject property which are significant and directly affect this complaint. It is also noted that there are two smaller office/retail properties, located adjacent to the Scotia Centre, that are included in these transactions: the property commonly known as Mango Shiva, located at 218 8 AV SW, and Riley McCormick, located at 220 8 AV SW. This results in a total area of 607,360 sq. ft. for all three properties, as reported in the sales documents. The Board will refer to all three properties as the "Scotia Centre" for the purposes of this complaint.

Issues:

[8] The Board was asked to determine the validity of the two sale transactions that had occurred on April 21, 2011 for the subject property. The validity of those sales further impacts several sub - issues as identified below:

- (a) The office space rental rate should be reduced from \$22.00 psf to \$20.00 psf.
- (b) The office vacancy rate should be increased from 4% to 5%.
- (c) The capitalization rate should be increased from 6.5% to 6.75%.

Complainant's Requested Value:

[9] The Complainant had originally requested an assessment of \$165,640,000 or \$278 psf for the subject property which was then revised at the hearing to \$184,050,000 or \$309 psf.

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

[10] The hearing was predicated on the sales that occurred in regards to the Scotia Centre, specifically the transactions that occurred on April 21, 2011. Each party argued at length in regards to the validity (or invalidity) of these sales transactions. The Board has briefly set out the undisputed details of the sales of the Scotia Centre from 2006 – 2012 to provide some context of the issue that is before it:

Vendor	Purchaser	Sale Date	Price	Percentage Transferred	Financing
Oxford Properties Group Inc.	Bank of Nova Scotia Properties Inc.	2006	\$94,900,000	50% Interest	
Aspen Properties	The Bank of Nova Scotia Properties Inc.	21/04/11	\$95,000,000	50% Interest	All Cash Transaction
The Bank of Nova Scotia Properties Inc.	Homburg Canada REIT GP Inc.	21/04/11	\$116,000,000	50% Interest	Primary Lender Scotia Mortgage Corporation Interest Rate 4.6% Principal Amount \$69,900,000
The Bank of Nova Scotia Properties Inc.	Homburg Canada REIT GP Inc.	26/01/12	\$140,000,000	50% Interest	Subsequent Demand Debenture Primary Lender TD Bank Interest Rate 25% Principal Amount \$40,000,000

[11] The Complainant submitted that the (first) sale between Aspen Properties and the Bank of Nova Scotia is a valid sale transaction, and forms the basis of his request (Exhibit C2 pages 84 – 86). He submitted this is a typical market sale between a willing seller and a willing buyer and it was an all cash transaction. The sale price of \$95,000,000 or \$156 psf reflects an undivided 50% interest that was transferred (which, for a 100% equivalent is \$190,000,000 or \$312 psf). The Complainant submitted the (second) sale which occurred on the same day between the Bank of Nova Scotia and Homburg Canada REIT is questionable (Exhibit C2 pages 81 – 83). It sold for \$116,000,000 or \$191 psf for an undivided 50% interest (which, for a 100% equivalent is \$232,000,000 or \$382 psf). The Complainant argued it is not possible to make a \$42,000,000 profit in one day. The Complainant submitted that there were several atypical factors that affected the second transaction which suggests it is not a valid sale and does not reflect market value. He set out the following four factors for the Board's consideration:

- i. The Bank of Nova Scotia terminates its existing leases within the building as reflected in the May 13, 2011 Assessment Request for Information, and strikes up new leases of approximately 80,000 sq. ft. for \$20.00 psf. This sale reflects a lease back transaction.
- ii. The Bank of Nova Scotia lends Homburg REIT the money to purchase the property which reflects vendor take back financing.
- iii. The Bank of Nova Scotia acts as a broker. It has a vested interest in the ultimate price.
- iv. The Bank of Nova Scotia grants Homburg REIT the right to manage the property in a property management contract.

[12] Based on these atypical factors, the Complainant argued the second sale is an invalid sale for the purposes of deriving an assessment and therefore the Board should not place any weight on it.

[13] The Complainant argued the third sale is akin to a land assembly in which Homburg REIT purchased the remaining undivided 50% interest of the subject property. He indicated that the 25% interest rate for interim financing was questionable especially given the 4.6% interest rate that Homburg REIT has secured with the Bank of Nova Scotia on the second sale. Moreover the sale price of \$244,000,000 or \$402 psf included additional properties which were not part of the April 2011 transactions.

[14] The Respondent submitted that the two sales of Scotia Centre that took place on April 21, 2011 are valid sales (Exhibit R1 pages 77 – 82). However the Respondent advised the Board that less weight should be attributed to the first sale because it was not an open market transaction and it was not professionally brokered. He submitted CARB decisions 1281-2012-P and 1282-2012-P in support of his position. He noted that the sale price is close to the 2006 sale price in which the Bank of Nova Scotia acquired an undivided 50% interest in the Scotia Centre for \$94,900,000 or \$156 psf in an arm's length transaction (Exhibit R1 pages 100 – 111). While market conditions have changed since that time, the sale occurred at the height of the market.

[15] The Respondent submitted that more weight should be attributed to the second sale which was professionally brokered and it was on the open market. He noted the interest rate of 4.6% is typical and was the same interest rate reported in the Gulf Canada Square sale (Exhibit R1 pages 90 – 92). It is further supported by the post facto sale that occurred on January 26, 2012 for the remaining undivided 50% interest of Scotia Centre between the Bank of Nova Scotia and Homburg REIT for \$116,000,000 or \$191 psf (which, for a 100% equivalent is \$232,000,000 or \$382 psf)(Exhibit R1 pages 165 – 167).

[16] In rebuttal, the Complainant argued that the first sale was subject to the Right of First Refusal, and that Aspen Properties exercised its right as the vendor to sell its undivided 50% interest in the property for \$95,000,000. The Complainant argued that it was an open market transaction because the entity could either match that price or let someone else buy it. In this instance Aspen Properties was a “willing seller”, which did not require a broker, and the Bank of Nova Scotia was a “willing buyer”, and therefore the \$95,000,000, in cash, represents the market value for the undivided 50% interest in Scotia Centre.

Board's Findings and Reasons:

[17] In reviewing the sales transactions of Scotia Centre that occurred on April 21, 2011, the Board finds that neither sale is a typical market transaction, yet there is insufficient evidence to discard one or both of these sales in their entirety. There is also insufficient evidence before the Board to find one sale is superior in comparison to the other. As such, the Board accepts both sales as valid indicators of market value for the subject property. These two transactions provide the Board with a range of values. The Board finds the sales cannot be overlooked given these are sales of the subject property which occurred within the valuation year and given the scarcity of comparable sales of Class A downtown office buildings in the market. These are significant factors that the Board has taken into consideration. Moreover the courts have viewed the free sale of a subject property as the best indication of its market value. In this instance, the Board finds the current assessment of Scotia Centre falls midway between its two sales prices, which may not be unreasonable, given the limited sales evidence before the Board.

[18] Moreover this is further supported by the post facto sale of Gulf Canada Square, which the Board has utilized in its analysis, given the lack of Class A office building sales in the market. The Board finds Gulf Canada Square is larger than the subject property, with a much larger and more difficult to lease floor-plan and has an inferior location compared to the Scotia Centre. Upon review the parties' submissions, the Board noted discrepancies in the total building area reported by the Respondent for Gulf Canada Square. The Respondent submitted the total building area as 1,120,841 sq. ft. in the sales chart and the Income Approach Valuation for Gulf Canada Square (Exhibit R1 pages 76 & 95). Yet Real Net reported a total building area of 1,074,125 sq. ft. which is close to the 1,073,712 sq. ft. that the Respondent submitted for Gulf Canada Square in his vacancy chart (Exhibit R1 pages 162 – 164, 98). While the Respondent reported that Gulf Canada Square sold for an undivided 50% interest at \$318 psf, Real Net reported that sale price at \$331 psf. In any event, the Complainant is requesting \$309 psf for the Scotia Centre's assessment which the Board finds is unreasonable in light of the sale of Gulf Canada Square and the two sales of Scotia Centre.

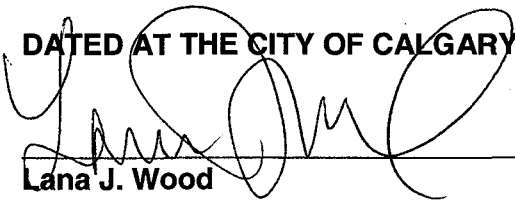
[19] Notwithstanding the remaining individual assessment variables that were presented by the parties, the Board finds the two sales transactions of the subject property that occurred

within the base year provide the best indicators of market value for the subject property. The current assessment falls within that range. The Board finds it is unnecessary to make further findings on this matter.

Board's Decision:

[20] The decision of the Board is to confirm the 2012 assessment for the subject property at \$211,160,000 or \$355 psf.

DATED AT THE CITY OF CALGARY THIS 6th DAY OF December 2012.



Lana J. Wood
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Evidence (Part 1 of 2)
2. C2	Complainant's Evidence (Part 2 of 2)
3. C3	Complainant's Rebuttal
4. R1	Respondent's Evidence

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	Leasable Area Net Market Rent/ Lease Rates Capitalization Rate Vacancy Rate