

**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:**

***Roslyn Building Holdings INC. (as represented by Colliers International Realty Advisors),  
COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***K. D. Kelly, PRESIDING OFFICER  
P. Pask, MEMBER  
K. Farn, 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 2011 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>068052703</b>
<b>LOCATION ADDRESS:</b>	<b>400 – 5 AV SW</b>
<b>HEARING NUMBER:</b>	<b>61417</b>
<b>ASSESSMENT:</b>	<b>\$18,910,000</b>

This complaint was heard on 6<sup>th</sup> day of September, 2011 at the office of the Calgary Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Mr. S. Meiklejohn* *Colliers International Realty Advisors*

Appeared on behalf of the Respondent:

- *Mr. A. Czechowskyj* *Assessor, City of Calgary*

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

None

**Property Description:**

The subject is a 1966 era, "B-" Quality, ten-storey single-building commercial office and retail complex (the Roslyn Building) at 5<sup>th</sup> AV NW and 3<sup>rd</sup> ST NW in the Downtown #1 (DT 1) market zone of Calgary. It has 122,033 square feet (SF) of office space assessed at \$14 per SF; 33 parking stalls assessed at \$400 per stall; and 9,299 SF of main floor retail space assessed at \$21 per SF. The complex sits on 20,988 SF of land and is assessed at \$18,910,000.

**Issues:**

1. The 122,033 SF of office space should be assessed at \$12 per SF and not \$14 per SF.
2. The 9,299 SF of retail space should be assessed at \$16 per SF and not \$21 per SF.
3. The Vacancy Allowance for the office, retail, and parking spaces should be 13.50% for all, and not 8% (office, retail) and 2% (parking) respectively."
4. The Capitalization Rate for the Office, Retail, and the Parking spaces should be 9.5% and not 9%.

**Complainant's Requested Value:**     \$12,790,000

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

**Issue #1:** "The 122,033 SF of office space should be assessed at \$12 per SF and not \$14 per SF."

The Complainant provided his Brief C-1 and argued that the age, site characteristics, and physical condition of the subject dictate that the subject is a "C+" Quality building and not a "B-" building as assessed. The Complainant suggested the age of the building, its relatively small floor plate, its leasing history, and inferior parking count, suggest it is not a "B-" building and hence should be assessed using lesser assessment values and parameters.

The Complainant argued that the trend in office lease rents during the past 3 to 4 years has been sharply downward due to the world-wide economic downturn. Therefore, he argued, while some may dispute it, the date that a lease deal is finally negotiated is as relevant as the date that a lease commences.

On pages 30 and 31 of C-1 the Complainant provided the Fourth Quarter 2010 "Tenant Roll" for the subject, noting that several recently-signed leases on floors 2 and 5, and others on floors 8, 9, and 10, demonstrate that \$12 per SF and not \$14 per SF is correct. He clarified that while his tenant matrix appears to show a Median rent of \$15.58 per SF, it is important to delete the "dated" leases. Having done so, he clarified, brings the average value down from \$15.58 per SF, closer to \$12 per SF. The Respondent argued however that the fourth quarter 2010 is post facto June 30, 2010 – the cut-off date for the City's Legislated Mass appraisal assessment process. Therefore, the data examined by the Complainant after the June 30 date, would not have been used by the City and hence not be relevant to the current assessment.

On pages 40 to 57 of C-1 the Complainant provided consecutive matrices of his analysis of "Downtown Office Leases – Class "B" for each of - (Quarters) Q-2; Q-3; and Q-4 of 2009 and Quarters 1, 2, 3, and 4 for 2010. Each matrix contained lease values from several "B" or "B-" Class downtown office buildings from all over the downtown – that is from DT-1; DT-2; and DT-3. The matrices were intended to support the Complainant's "lease summary" on page 39, and his argument regarding the downward trend in lease values in Calgary before and during the current assessment cycle. He provided the City's "Assessment Summary Reports" for each of the buildings.

On pages 58 to 61 of C-1 the Complainant provided a detailed matrix containing his analysis of several 2009 Calgary Composite Assessment Review Board (CARB) Decisions for downtown offices; "Broker Deal Sheets" of "Deals Done" downtown; and downtown Rent Rolls – all in one matrix. He suggested that analysis of this information provided clarification and update as to recent market trends in leasing, and to the general "directions" provided by various Board Decisions in the use of "recent leasing trends." His inclination was that in 2010, various CARB Boards determined that leases commencing in the six month period from January 1 to June 30 of each assessment cycle were the best indicators of current lease value.

The Complainant argued that his analysis of 18 months of leases supported his "scatter graph" on page 38 of C-1, in which he concluded that rents had been in the \$14 per SF range, but have trended down to the \$10 per SF range. He suggested that "value is forward-looking and therefore one must look at post facto leases" to properly gauge the Market. He noted that while

the City cannot use post facto leases, they could time-adjust them and use them to determine market trends themselves.

The Respondent argued however that several 2010 Calgary Assessment Review Board Decisions make it clear that only the "commencement date" of leases is relevant information, whereas the date "deals were done", or "lease negotiated" dates are invalid information. He referenced Calgary Assessment Review Board Decisions CARB 1331/2011-P and CARB 1571/2011-P which have previously decided these matters this year (2011).

Therefore, he argued, the Complainant's conclusions regarding such information are flawed and invalid as confirmed by other Boards and the Courts – all as also partially identified on page 95 of R-1. He confirmed that the City does not use post facto leases in its analysis of the Market, and indicated that when the \$10 per SF post facto, and the dated leases are removed from the Complainant's lease data on pages 30 and 31, the remaining leases indicate an average value of \$15.42 per SF. The subject is assessed at \$14 per SF.

On pages 27 to 34 of the Respondent's Brief R-1 he provided Third Party data from Avison Young; C.B. Richard Ellis; and Barclay Street, regarding Q1, Q2 and Q3 Average Asking headlease rates for four quadrants of the city – Downtown; Beltline; Suburban North, and Suburban South. He also provided on page 28, an extensive matrix he prepared on behalf of the City, of 34 downtown (DT-1 only) "B-" Class leases from 10 building sites which he analyzed in detail for the Board.

The Respondent clarified that unlike the Complainant, his leases were only from DT-1, and not from all three downtown zones (DT1; DT-2; and DT-3) so therefore his data was more accurate and reliable as a market indicator. He noted that the City's analysis of leases over the years, had clearly identified differences in rents for three different sectors of the downtown, the highest being in the core (DT-1). He noted that as one moved outward from the core to DT-2 and further out to DT-3, rents declined, therefore, in assessing buildings in each sector, it was critical to analyze only leases from that sector – not mix them as the Complainant had done. He argued that when values from all three market zones are mixed together, naturally lower rent/lease values would emerge, which distorts the true value of a property under examination.

The Respondent noted on page 28 of R-1 that only 2010 leases from DT-1 – i.e. from January 2010 to June 30, 2010 were listed and examined in this matrix, except for four, one each from August, September, October, and November of 2009. He concluded that in examination of all 34 leases (both 2009 and 2010) the Mean was \$16.72 per SF; the Median was \$15.50 per SF; and the Weighted Mean was \$16.82 per SF. The subject is assessed using \$14 per SF. He further concluded that by using only the 2010 leases, the Mean was \$15.38 Per SF; the Median was \$15 per SF; and the Weighted Mean was \$14.92 per SF. Therefore, he argued, this data supports the assessment of \$14 per SF used for the subject.

### **Board's Analysis and Conclusions – Reasons**

The Board notes that the Respondent's DT-1 office lease evidence – as supported by independent Third Party data on pages 27 to 34 of R-1, and particularly page 28 of R-1, appears to be persuasive. It appears to target the most relevant time frames as recommended by previous Assessment Review Boards in 2010 and offers values that appear to strongly support the assessed rate of \$14 per SF.

The Board is also persuaded by the Respondent's argument that it is important when analyzing lease data to ensure that only leases from the downtown zone (i.e. DT-1 or DT-2 or DT-3) in which the subject is located are used. In this case it is DT-1. To do otherwise and mix data from all three zones it appears, leads to a distortion of results, with an apparent trend to lesser values. Consequently an incorrect typical lease/rent value can result, which has the effect of skewing the ultimate valuation result for the affected building.

The Board also notes that when the "post facto" and "dated" leases are removed from the Complainant's own lease data and its summaries, the resultant values appear to support the \$14 per SF assessed. Moreover, this Board concurs with the Respondent (and with those Bodies referenced heretofore and on page 95 of R-1) that – firstly, the "commencement date" for leases is the relevant consideration and not the "deal done" or "deal negotiated" dates; and secondly, the use of post facto leases is inappropriate. Therefore the Board rejects the arguments of the Complainant regarding these points.

Therefore, on balance, and based on the evidence and argument presented in this Hearing, the Board considers that it is not persuaded by the Complainant that the subject office space should be assessed at \$12 per SF instead of \$14 per SF.

**Issue #2** "The 9,299 SF of retail space should be assessed at \$16 per SF and not \$21 per SF."

The Board noted that while the Complainant had, at the outset, initially identified the Retail Rent rate in the subject's assessment as an Issue, requesting a change from \$21 per SF to \$16 per SF, he advanced no substantive or sustained argument, nor did he present any quantifiable evidence regarding this issue.

The Respondent noted that because of the Complainant's lack of any sustained approach to this matter, he did not feel compelled to speak to this issue other than to request that the Board confirm the assessed rate of \$21 per SF for the retail space in the subject.

### **Board's Analysis and Conclusions – Reasons**

The Board notes that there was entirely insufficient evidence advanced by the Complainant to justify any change to the retail rent rate used to assess the subject.

**Issue #3** "The Vacancy Allowance for the office, retail, and parking spaces should be 13.50% for all, and not 8% (office, retail) and 2% (parking) respectively."

### **Office Vacancy**

The Complainant again referenced in C-1, the several detailed Rent Rolls for the subject that he had introduced from his C-1 Brief and which he carefully examined in Issue #1 above. On pages 93 and 94 of his Brief C-2, he also introduced and referenced a lengthy office vacancy analysis by quarter, commencing Quarter 4 (Q-4) of 2002 and ending Q-4 of 2010. He clarified that the source of this material was contained on pages 95 to 127 of C-2. The materials were excerpts

of CRESA Partners "Market Overview" documents by quarter. The Complainant argued that the heavy concentration of sub-lease space on the Calgary downtown office market continues to negatively affect the market overall, particularly with respect to headlease values, and, the vacancy rates in "B" Class and other similar classes of downtown Office buildings. He also referenced a matrix prepared by Colliers Realty advisors on page 203 in his Brief C-3 in this regard.

The Complainant argued that the Third Party literature, his own analysis of the market, and his analysis of the performance of the subject, leads him to believe that office vacancy rates generally continue to increase, and have done so in the subject. Therefore, the Complainant argues that the evidence demonstrates that a 13.5% vacancy rate and not the assessed 8% vacancy rate for the office space in the subject, is appropriate.

However, the Respondent noted that the data from the Rent Roll for the subject, and the City's Assessment Request For Information (ARFI) sheets – data reported by the building owners, and copied to pages 51 to 60 of R-1, clearly demonstrate that an actual 6% vacancy existed in the subject during the 2011 assessment cycle, and not 13.5%. Therefore, the Respondent argued that while an actual 6% office vacancy existed in the subject, the City had assessed it using a more liberal 8% vacancy rate, which is to the benefit of the subject.

In addition, the Respondent argued that it is incorrect to use sub-lease space in any office vacancy calculation as the Complainant had done, and several Assessment Appeal Board Decisions have confirmed this point. Therefore, he argued, the Complainant's arguments about sub-lease space and its alleged affect on vacancy rates is flawed and invalid. Hence, the Respondent argued that, because of the flawed position and argument of the Complainant, the Board should not change the office vacancy rate as requested by the Complainant.

#### **Board's Decision – Office Vacancy - Reasons:**

The Board concurs with the Respondent – and the several recent 2010 and 2011 Composite Assessment Review Board (CARB) Decisions on this topic, that the use of sub-lease space in the identification of office vacancy space is inappropriate. It is apparent to the Board that the data and conclusions generated by the Complainant using this methodology, appear to be flawed and hence unreliable.

Moreover, the parties have concurred via evidence from the subject's tenant roll that the actual vacancy in the subject's office space is 6%. Therefore the 8% vacancy allowance provided by the City appears generous and appropriate, whereas the Complainant's request for 13.5% does not.

Therefore the Board rejects the Complainant's request for a vacancy allowance of 13.5% for the office space in the subject.

#### **Retail Vacancy**

The Complainant advanced certain minimal data and related argument to suggest that there was a greater than 8% retail vacancy in the subject – that in fact it should be 13.5%. In referencing the subject's Tenant Roll on page 30 of his Brief C-1, the Complainant noted that

retail activities were generally confined to the first and second floors. He identified 925 SF of space in unit #120 as potentially being vacant retail space. However, since the Tenant Roll was dated as of December 2010, it was unclear as to precisely when the potential retail space became and remained vacant, and how it might or might not have affected the 2011 assessment period of July 1, 2009 to June 30, 2010. No other such space was specifically identified.

The Complainant was unable to provide any other market data from DT-1, or indeed any downtown zone, to attempt to demonstrate that the 8% typical retail vacancy provided in the assessment is incorrect. Nevertheless, the Complainant argued that the vacancy rate for the retail portion of the building should be 13.5%, the same as the office space.

The Respondent argued however, that given the total retail floor space of 9,299 SF in the subject as shown on page 31 of C-1, the apparent vacant percentage of retail space in the subject – assuming that the 925 SF of Unit #120 is in fact retail space, and is the only retail vacant space, represents a 9.9% vacancy and not 13.5%. Therefore, he argued, the Complainant's data appears to confirm that the 8% "typical" vacancy is appropriate and the 13.5% requested is not.

#### **Board's Decision – Retail Vacancy - Reasons:**

The Board accepts the arguments and data clarifications of the Respondent in this issue. The Tenant Roll data supplied by the Complainant appears to clearly suggest that the typical retail vacancy allowance for the subject of 8%, clearly approaches the actual 9.9% retail vacancy in the subject – as of December 2010. There was no indication, or indeed argument, that this vacancy is chronic in any way. Indeed, there was no clear evidence as to precisely when this vacancy occurred, or even if it occurred during the current assessment cycle. Therefore there is no compelling reason for the Board to increase the retail vacancy allowance to 13.5%, or for that matter, to any other value higher than the 8% typical used to assess the space.

In addition, the Complainant failed to provide any independent market evidence, or indeed any broader market analysis to demonstrate that the typical 8% retail vacancy allowance provided under Mass Appraisal was incorrect or inequitable for the subject and DT-1 properties. In short, the Board received insufficient information from the Complainant on this issue to make any determination other than that the 8% retail vacancy allowance is valid.

#### **Parking Vacancy**

Referencing pages 160 to 201 of his document C-2, the Complainant noted that various sections of the City's Land Use Bylaws establish, and have established, parking requirements for downtown office buildings, including the subject. He argued that in the case of the subject, since the City's Bylaws require one parking space per every 4,000 SF of office space, then the vacancy rate for parking spaces should reflect the same vacancy rate as is applied to office space. In addition, he argued that the "Op. Costs" for parking should normally be recovered in the Op. Costs charged to the tenants. Therefore, the Op Costs should be charged to the office rent. Consequently, he argued, the vacancy rate for the subject's parking should be his requested office vacancy rate of 13.5% and not the 2% assessed.

The Respondent noted however that the Complainant had argued that one of the deficiencies in the subject is an apparent lack of parking for most of the tenants in the building. The Respondent suggested that this argument is counter-intuitive in that fewer parking spaces would mean an increase, not a decrease in demand for them.

The Respondent referenced page 36 of the Complainant's C-1, noting that the total monthly parking revenue for the subject is identified in the Dundee Tenant Roll as \$14,558.25. The Respondent argued that his calculations indicate that this evidence demonstrates that the spaces are rented for \$440 per month, but are assessed at \$400 per month. It also appeared to indicate that there were no vacant parking spaces. Therefore, he argued, while the City allows for a 2% parking vacancy, the evidence appears to demonstrate that there is no vacancy at all. Therefore, he suggested, the Board should not adjust the vacancy rate for parking from 2% to 13.50%.

#### **Board's Decision – Parking Vacancy - Reasons:**

The Board was not persuaded by the Complainant's totally unsupported speculative argument that the Land Use Bylaw's parking ratio of one space per 4,000 SF of office space infers that the same vacancy rate as is applied to office space, should also be applied to parking spaces. The Board considers that the Complainant advanced no rational reason why this should be so.

Moreover, the Board noted that the Complainant's own evidence demonstrates the contrary in that the Tenant Roll shows all spaces to be utilized and there are no vacant spaces. Nevertheless, the City has provided a 2% vacancy allowance for parking in the subject in its valuation calculations – clearly a benefit to the subject.

In addition, the Board concurs with the Respondent and disagrees with the Complainant that a lack of parking in the subject relative to its "resident population" and the current Land Use Bylaw, would result in a parking vacancy. The Board considers, and agrees with the Respondent, that just the opposite result should occur, a conclusion which appears to be supported by the Complainant's tenant roll which shows no parking vacancy.

Therefore, the Board considers that the Complainant has failed to demonstrate that the 2% parking vacancy allowance is either incorrect or inequitable.

#### **Issue #4**

"The Capitalization Rate for the Office, Retail, and the Parking spaces should be 9.5% and not 9%."

The Complainant argued that the Capitalization Rate for the subject should be 9.5% and not the assessed 9% based on his analysis of various independent Third Party reports and documents which he referenced in his Briefs C-1; C-2; and C-3. He indicated that because there have been no market sales of office buildings in downtown Calgary recently, and within the current assessment cycle, then it was necessary to consult Third Party sources for guidance. He suggested that the City would have to use the same methodology in the preparation of assessments.

The Complainant argued that the current and ongoing downturn in lease/rent values, accompanied by an increase in vacancies, means that there is greater risk in the market. Therefore, he suggested, since Capitalization Rates are a "reflection of risk", then an increase to



9.5% from the assessed 9% in the cap rate for the subject is warranted. The Complainant referenced pages 204 and 205 of his Brief C-3 and an excerpt of two matrices entitled "Canadian Cap Rate Survey – Q1, 2010 and Q2, 2010" prepared by CB Richard Ellis (CBRE). He noted that the survey indicated that Calgary Cap Rates for Downtown Offices range between 9% and 9.5%. He also indicated that his own firm Colliers International had identified similar Cap rates. Therefore, he argued, because of his view that the risk in the Calgary market had increased during the assessment cycle, a 9.5% Cap rate should apply to the subject.

The Respondent argued that the Complainant has identified no valid reason to support an increase in Cap Rate to 9.5% from the assessed 9%. He noted that while the Complainant has spoken at length about increased risk, based on his chosen parameters of sublease space and alleged vacancy increases, he had provided insufficient data to support this theory. He suggested that the Complainant's position and argument was largely unsubstantiated speculation that he failed to directly relate to the subject. The Respondent referenced the rent roll for the subject and noted that the subject continues to remain substantially leased and only experiences a 6% vacancy unlike other similar buildings which appear to have higher vacancies. He noted that the subject is well-placed in the downtown core and appears to be a desirable building, given its rental history.

In addition, the Respondent noted that the Cap Rate for the subject had been 8% last year, and the City had increased it to 9% this year in recognition of the negative changes in the marketplace. He noted that the 9% was entirely within the range referenced by the Complainant and CBRE, but that the Complainant had offered no valid argument or evidence to identify why it should be at the higher end of this range at 9.5%.

The Respondent noted that in further recognition of the changing City market, the City had reduced assessed rents and increased vacancy and other allowances such that, in the case of the subject, the assessment had been reduced from \$38,120,000 in 2010 to \$18,910,000 in 2011. Therefore, he argued, the City had already "built into the assessment", allowances for the negative market changes described by the Complainant.

### **Board's Analysis and Conclusions – Reasons**

The Board is not persuaded by the Complainant's largely speculative suggestions and arguments regarding increased risk and hence an increase in Cap rate for the subject. The Board considers that it received insufficient relevant data from the Complainant to support his arguments and therefore the Board sees no valid reason to increase the Cap Rate for the subject to 9.5%.

The Board considers that the Respondent has demonstrated, using the rent roll and other data from the subject and similar buildings, that the so-called risk element in the subject appears to be minimal in the context of the market and similar buildings. The Board is satisfied that the Respondent has selected an appropriate Cap Rate for the subject at 9%, noting that independent Third Party sources have indicated Cap rates ranging between 9% and 9.5%. Given the leasing history of the subject as evidenced by the tenant roll, and that the subject enjoys a 6% "actual" vacancy rate and the typical market rate is higher at 8%, the Board is satisfied that the 9% Cap rate is appropriate.

**Board's Summary Analysis and Conclusions**

The Board is satisfied on the basis of the evidence and argument presented at this Hearing that the subject is fairly and equitably assessed. As outlined in detail above, the Board considers that the typical lease, vacancy, and cap rates used by the City Assessor are appropriate to the subject given the evidence apparent in the Tenant roll, third party documents, and briefs.

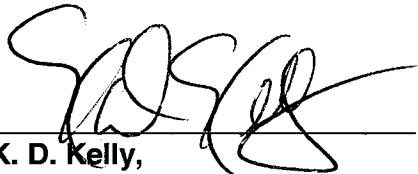
The Board notes that in assessing the subject for this assessment cycle, the City appears to have addressed issues relating to an apparent declining market in downtown Calgary during this period. The City has in general, reduced typical rent values and increased vacancy and cap rate allowances in recognition of these issues – and in the case of the subject, by amounts greater than the actual values in the subject. As a result, the assessment has fallen from \$38,120,000 in 2010 to \$18,910,000 in 2011.

Therefore, the Board considers that, on balance, the assessment should be confirmed.

**Board's Decision:**

The assessment is confirmed at \$18,910,000.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF September 2011.

  
K. D. Kelly,  
Presiding Officer**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure
3. C-3	Complainant Disclosure
4. C-4	Complainant Disclosure
5. R-1	Respondent Disclosure

*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 Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Downtown Office	Office Tower	Income Approach	<div>Rent; lease; vacancy; Cap; Rates</div> <hr/> <div>Site leases, Third Party market</div>