



## **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:**

***TELUS COMMUNICATIONS INC., COMPLAINANT***  
***(represented by Colliers International Realty Advisors Inc.)***

**and**

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

**before:**

***BOARD CHAIR: P. COLGATE***  
***BOARD MEMBER: A. WONG***  
***BOARD MEMBER: A. ZINDLER***

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 2013 Assessment Roll as follows:

**ROLL NUMBER:** 068076207  
**LOCATION ADDRESS:** 130 7 AVENUE SW  
**FILE NUMBER:** 70232  
**ASSESSMENT:** \$47,030,000.00

This complaint was heard on 15th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 9.

Appeared on behalf of the Complainant:

- Adam Farley, *Colliers International Realty Advisors Inc.*

Appeared on behalf of the Respondent:

- Emilia Borisenko, *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.

#### **Preliminary Matter:**

[2] The preliminary matter, raised during the hearing on File Number 70164, Roll Number 067049098, 736 6 Avenue SW, on July 15, 2013, was a request for portions of the presentations respecting the capitalization rate, and the resulting questions and comments, be carried forward to two hearings before the Board. This request was made jointly by the Complainant and the Respondent.

[3] The Board accepted the request of the Respondent and the Complainant and carried forward the information received for File Number 70164 hearing to the following two hearings:

File	Roll Number	Address
70232	068076207	130 7 Avenue SW
70715	068228402	615 Macleod trail SE

[4] The Board noted the carrying forward of information does not mean the decisions will be the same for each hearing, for each must stand upon its own merits.

#### **Property Description:**

[5] The subject property is a 1973 era, "B-" class, 16 storey office building, known as the Len Weary Building, located in the DT1 market zone at 130 7 Avenue SW. The structure has an assessable area of 209,726 square feet, designated as 101,976 square feet of office space, assessed with a market rental rate of \$19.00 per square foot and 107,750 square feet of storage space, assessed with a market rental rate of \$8.00 per square foot. The property is assessed on the Income Approach to valuation with a capitalization rate of 5.00%.

#### **Issues:**

[6] The Complainant placed two issues before the Board in the complaint:

Issue 1. Rental rate should be \$15.00 for the office space, instead of the current rate of \$19.00.

Issue 2. Capitalization rate should be 6.50%, instead of the current capitalization rate of 5.00%.

**Complainant's Requested Value: \$30,770,000.00**

**Board's Decision:**

[7] Based on the Board's decision for each of the issues stated, the Board found sufficient information to support in part the changes requested by the Complainant.

[8] The Board revised the assessment at **\$39,300,000.00**

**Legislative Authority, Requirements and Considerations:**

[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.

**Position of the Parties**

**Issue 1. Rental Rate for Office Space**

**Complainant's Position:**

[11] The Complainant argued the office rate should be at \$15.00 per square foot, as opposed to the current rate of \$19.00 per square foot, as shown in the proposed assessment recalculation. (C1, Pg. 17)

[12] The Complainant submitted the office component for the building was substandard in comparison to other "B-" Class buildings. Through testimony and photographs the Board was informed the "building lacks fenestration", with most floors having only seven windows. It was the argument of the Complainant this was atypical of "B-" buildings which have large window areas. The Complainant notes the office space was formerly used as switching equipment for the telephone system. Over time the equipment was downsized and the resulting space converted to offices. (C1, Pg. 3, 19-25)

[13] The photographs submitted show window area to be a significantly lesser quantity, in comparison to purpose built office buildings with large areas windows or entire glass curtain walls.

[14] The Complainant submitted nine leases from 2011 and 2012 in three comparable properties – Canadian Western, Roslyn Building and Five Ten Fifth. It was the Complainant's argument the three properties, while sharing the "B-" classification, were "superior to that of the subject". Photographs of the comparables were submitted. (C1, Pg. 29 - 32)

[15] The analysis of the leases indicated a mean for the leases of \$15.29 per square foot and a median of \$15.00 per square foot. The median was selected as the requested rental rate for

the office component of the assessment. (C1, Pg. 27)

[16] The Complainant submitted a sublease brochure for 510 5 Street SW to show, through the photographs, the superior characteristics of the comparable property in window openings and quality of finish. (C1, Pg. 34-38)

**Respondent's Position:**

[17] The Respondent submitted a 2013 Downtown Office Rental Rate Analysis: B- Class in DT1 & DT8, with a total of 35 leases between July 1, 2011 and July 1, 2012. The analysis of the leases indicated: (R1, Pg. 39 - 40)

Market Zone	Number of Leases	Statistical Analysis	Rate (per sq. ft.)
DT1, DT8, B Class	35 – 2011 & 2012 Leases	Mean of All Leases	\$16.67
		Median of All Leases	\$16.00
		Weighted Mean of All Leases	\$15.27
	13 - 2012 Leases	Mean 2012	\$19.31
		Median 2012	\$18.00
		Weighted Mean 2012	\$19.00
City of Calgary Office Space Rental Rate			\$19.00

(R1, Pg. 39-40)

[18] The Respondent submitted two charts which indicated that over the time periods July 2011 to July 2012 and the second to December 2012, there has been an upward trend in the leases rates for office space. (R1, Pg. 41)

[19] The Respondent submitted two CARB decisions from 2011 and 2012 dealing specifically with the subject property – CARB 2195/2011-P and CARB 1641/2012-P. (R1, Pg. 23-37)

[20] CARB 2195/2011-P found the Complainant “failed to provided any photographic or other evidence to support his arguments regarding the allegedly inferior condition of the subject”. CARB 1641/2012-P found the Complainant “did not document the superiority in any physical terms” of the comparables and the information on the windows was “unsupported with any actual count”. (R1, Pg. 32 and 25)

**Board's Reasons for Decision:**

[21] The Board found the Complainant, having learned from the hearings of previous years, presented sufficient evidence to support its argument with respect to the interior condition and lack of windows in the subject property. The Complainant has met the requirement, as set by prior CARB Boards to provide both visual evidence and information on the quantity of windows in the building.

[22] The Board found the Respondent presented no evidence to show the property did not have deficiencies, but only submitted past decisions to support its request for a confirmation.

As this Board was not privy to the evidence presented for those hearings, there was only the reasons for their decisions to advise this Board.

[23] The Board found the Respondent has assessed the subject as a typical "B-" Class property with no adjustments for deficiencies in the building characteristics.

[24] The Board found the subject property does suffer from a lack of windows compared to other typical "B-" class office buildings. Further, based on the brochure submitted for 510 5 Avenue SW there does appear to be a lesser quality in the interior finish of the building.

[25] As no evidence for a possible adjustment percentage was submitted by the Respondent, the Board has only the Complainant's requested value as a rental rate.

[26] The Board found, in recognition of the deficiencies, the office rental rate was reduced to \$15.00 per square foot.

## **Issue 2. Capitalization Rate (Carried from Hearing 70164.)**

### **Complainant's Position:**

[27] The Complainant argued the capitalization rate should be at 6.5%, as opposed to the current rate of 5.0% for the B Class office buildings. (C1, Pg. 17)

[28] The Complainant submitted that sales occurring in the period July 2010 to July 2011 should use the Net Operating Income (NOI) for roll year 2012, which is based on the July 1, 2011 valuation date. Sales occurring between July 2011 and July 2012 should use the NOI for roll year 2013, based upon the July 2012 valuation date. (C1, Pg. 43)

[29] The Complainant submitted a capitalization rate analysis, based on the City of Calgary 2013 Downtown Office Capitalization Rate Summary. The Complainant had removed a number of properties, including the C Class buildings and the AGT Telephone building, from its analysis. Further the NOI's for the 2011 sales differed from those used by the City of Calgary in its analysis of the capitalization rate. (C1, Pg. 44) The statistical analysis submitted by the Complainant is summarized:

Statistical Analysis and Grouping	Capitalization Rate
Median (All Quality Classes) <b>Only A &amp; B Quality</b>	5.64%
Mean (All Quality Classes) <b>Only A &amp; B Quality</b>	5.89%
Median (All Quality Classes, sold since 2011-07-1) <b>Only A &amp; B Quality</b>	5.63%
Mean (All Quality Classes, sold since 2011-07-1) <b>Only A &amp; B Quality</b>	5.74%
Median (All Quality Classes, sold in 2012) <b>Only A &amp; B Quality</b>	5.24%
Mean (All Quality Classes, sold in 2012) <b>Only A &amp; B Quality</b>	5.31%
Median (All A Quality Class)	5.83%
Mean (All A Quality Class)	6.13%

Median (All A Quality Class, sold since 2011-07-1)	5.63%
Mean (All A Quality Class, sold since 2011-07-1)	5.86%
Median (All A Quality Class, sold in 2012)	5.63%
Mean (All A Quality Class, sold in 2012)	5.46%
<b>City Capitalization Rate for A Class</b>	<b>6.00%</b>
Median (All B Quality Class)	5.39%
Mean (All B Quality Class)	5.60%
Median (All B Quality Class, sold since 2011-07-1)	5.39%
Mean (All B Quality Class, sold since 2011-07-1)	5.60%
Median (All B Quality Class, sold in 2012)	5.02%
Mean (All B Quality Class, sold in 2012)	5.07%
<b>City Capitalization Rate for B Class</b>	<b>5.00%</b>

(C1, Pg. 38)

[30] Although the Complainant submitted the capitalization rate analysis, it argued the Class B sales were all portfolio sales and should not be used by the City of Calgary in its capitalization rate analysis. Lacking the capitalization rate for class B office buildings the Complainant argued the rate should be based upon the Class A office building rate and the historical stratification between the quality A and B buildings.

[31] The Complainant relied upon the Respondent's submission to show three of the six Class B sales were identified as portfolio sales, but submitted no evidence in support of the argument.

[32] The requested capitalization rate of 6.50% was based on the argument that a hierarchy existed in the relationship between class A and B office buildings. The Complainant showed this relationship in the capitalization rates in a graph which plotted the rates for the period 2008 to 2012. (C1, Pg. 45) It was noted the lines of the graph did not cross until the latter part of 2011 assessment year. The Complainant argued there was a traditional difference of 0.5% between the rates for Class A & B office buildings, with Class B having the higher capitalization rate. The Complainant submitted, if the historical trend was extended to Roll Year 2013 and using the capitalization rate for Class A office buildings, then the resulting rate would be 6.5% (6.0% + 0.5%).

#### Capitalization rate between A & B Properties

	2008	2009	2010	2011	2012
A Class	6.25%	7.50%	7.50%	6.75%	6.00%
B Class	6.75%	8.00%	9.00%	7.50%	5.00%

[33] The Complainant noted that if the Class B properties were reassessed as Class A-properties the resulting assessment would be reduced. Supporting documentation for this

situation was supplied. (C1, Pg. 64-87) The Complainant did not request a reclassification of the building to a Class A-, and used the City of Calgary typical rates for Class B offices in its request calculation (vacancy rate, operating costs, non-recoverable percentage).

### Respondent's Position:

[34] The Respondent stated the City of Calgary methodology when determining the capitalization rate was based upon the calendar year of the sales and used the NOI for the following roll year, with valuation date of the year of the sale. As example, sales which occurred between January 1, 2010 and December 31, 2010 used the NOI determined for the 2011 roll year, with valuation date July 1, 2010.

[35] The Respondent noted the Complainant's submission showed a higher capitalization rate for Class A office buildings over the Class B office Buildings.

[36] The Respondent conceded there was an historical pattern in the capitalization rates, but argued the changing market place has reversed the pattern for the current assessment year. The argument that the trend was a fact was not supported by market evidence by the Complainant, but was only an opinion. The Respondent argued each year was a new analysis with the variables responding to the market conditions.

[37] The Respondent submitted its analysis of the capitalization rates for Class A, B and C office buildings in DT2 and DT3:

Statistical Analysis and Grouping	Capitalization Rate
Median (All Quality Classes) <b>A, B &amp; C Quality</b>	5.24%
Mean (All Quality Classes) <b>A, B &amp; C Quality</b>	5.30%
Median (All Quality Classes, sold since 2011-07-1) <b>A, B &amp; C Quality</b>	5.09%
Mean (All Quality Classes, sold since 2011-07-1) <b>A, B &amp; C Quality</b>	5.18%
Median (All Quality Classes, sold in 2012) <b>A, B &amp; C Quality</b>	5.39%
Mean (All Quality Classes, sold in 2012) <b>A, B &amp; C Quality</b>	5.34%
Median (All A Quality Class)	5.83%
Mean (All A Quality Class)	5.88%
Median (All A Quality Class, sold since 2011-07-1)	5.64%
Mean (All A Quality Class, sold since 2011-07-1)	5.61%
Median (All A Quality Class, sold in 2012)	5.63%
Mean (All A Quality Class, sold in 2012)	5.46%
<b>City Capitalization Rate for A Class</b>	<b>6.00%</b>
Median (All B Quality Class)	4.82%
Mean (All B Quality Class)	4.82%
Median (All B Quality Class, sold since 2011-	4.82%

07-1)	
Mean (All B Quality Class, sold since 2011-07-1)	4.65%
Median (All B Quality Class, sold in 2012)	5.02%
Mean (All B Quality Class, sold in 2012)	5.07%
<b>City Capitalization Rate for B Class</b>	<b>5.00%</b>
Median (All C Quality Class)	4.92%
Mean (All C Quality Class)	4.92%
Median (All C Quality Class, sold since 2011-07-1)	4.92%
Mean (All C Quality Class, sold since 2011-07-1)	4.92%
Median (All C Quality Class, sold in 2012)	5.61%
Mean (All C Quality Class, sold in 2012)	5.61%
<b>City Capitalization Rate for C Class</b>	<b>5.50%</b>

(R1, Pg. 43)

[38] It was the Respondent's position that all sales were valid, arms-length transactions and should be used for the establishment of the capitalization rate.

[39] In support of the market value assessments, the Respondent submitted a chart of the "2013 Downtown Market transactions" which showed the Assessment to Sales Ratio (ASR) for the grouping of the three classes of office buildings fell within the legislated requirement under Matters Relating to Assessment and Taxation Regulation (MRAT), Section 10(3).

Quality	Statistical Method - ASR	Median ASR
Class A	Median	0.97
Class B	Median	1.04
Class C	Median	1.03

(R1, Pg. 46)

[40] The Respondent submitted an analysis of the assessed values per square foot for the different classes of offices in the Downtown area, which indicated the assessed value decreased as the class of office building became lower. (R1, Pg. 34)

Overall Quality	Mean	Median	Weighted Mean
AA New	\$576	\$585	\$577
AA	\$566	\$561	\$565
A2 New	\$529	\$533	\$543



A2	\$435	\$442	\$444
A-	\$409	\$409	\$412
B	\$382	\$382	\$385
B-	\$322	\$320	\$312
C and C-	\$266	\$223	\$219
D	\$224	\$221	\$204

(R1, Pg.47 – 49)

[41] In rebuttal to the Complainant's argument that the subject property would have a lower assessment if reclassified as a Class A- building, the Respondent submitted a recalculation of the subject assessment showing the value, in this case, would increase if reclassified to an A-Class. (R1, Pg. 50)

#### **Board's Decision:**

[42] The Board found the capitalization rate table submitted by the Complainant was lacking in supporting documentation. The submission failed to provide the source of the NOI's submitted in the table for the 2011 sales. Further the Board found the Complainant's analysis of the capitalization rates provided greater support for the current rate over the requested rate of 6.5%. The Complainant's evidence indicated a median capitalization rate of 5.39%.

[43] The Complainant's argument to exclude all the Class B office buildings, based upon their being part of portfolio sales, was not supported by any evidence. The Complainant expressed an opinion the sales were above market transactions, not reflective of actual worth. The Respondent stated the sales had been reviewed and tested against other sales in the downtown market area. The Complainant relied on the Respondent's submission to show three of the sales were part of portfolio sales – 833 4 Avenue SW, 635 6 Avenue SW and 521 3 Avenue SW. Further, no evidence was submitted to show two sales – 615 Macleod Trail SE or 510 5 Street SW – were not valid sales. Based upon the Respondent's analysis, the capitalization rate for the two sales would support the rate of 5.0%. The Board noted the Complainant's analysis of the capitalization rate, which included the sales presented as portfolio sales, would support the requested 6.5%.

[44] The Board had concerns with the Complainant's argument of a hierarchy in the capitalization rates between classes. The Complainant, accepting the 6.0% capitalization rate for Class A office buildings, requested a +0.5% difference between the Class A and Class B office buildings based upon historical trends resulting in the requested 6.5%. The concern for the Board is the hierarchy from this request would be a 6.0 % for Class A office buildings, 6.5% for Class B office buildings and 5.5% for Class C office buildings. The Complainant offered no evidence the Class C office building capitalization rate was incorrect. This pattern of capitalization rates would go against the Complainant's argument that a hierarchy should exist in the hierarchy. To support this argument the Complainant would need to show an error existed in the capitalization rate of the Class C office buildings.

[45] The historical information regarding the spread in the capitalization rates was given little weight by the Board. Capitalization rates are a function of the market transactions within the assessment analysis period. While the Board noted the unusual hierarchy in the capitalization rates for the office classifications, it also noted the resulting assessment values satisfied the

requirement for a reasonable relationship between the market value and the assessed value. The final purpose is to determine a fair and reasonable value, not to look at the individual components of the process.

[46] The Board found it was presented with two similar approaches to determining the capitalization rate, but with significantly different findings as a result of selected NOI's. The Board found there was significant merit in the approach presented by the Complainant as the results were more representative of the market at the time of sale, using a more recent valuation period and more current NOI. The Respondent's methodology offers a consistent approach in the determination, with the resulting capitalization rate being applied to all similar properties in a like manner.

[47] In reaching its decision, the Board looked to the Municipal Government Act, Section 467 for guidance.

Division 2

Decisions of Assessment Review Boards

Decisions of assessment review board

**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.

**(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.

RSA 2000 cM-26 s467;2009 c29 s24

[48] The Board found that the changing of the capitalization rate, based upon a revised analysis, would create an inequity when compared with similar properties. The Board decision was not to change the capitalization rate based upon the Complainant's analysis, but strongly suggests to the City of Calgary Assessment Business Unit to explore the approach for future years.

[49] In its deliberation the Board looks to two principles – equity and market value. The Board found there is equity among the Class B office buildings in the downtown, having been valued with the same rates and allowances. The Board found the requested change to the capitalization rate did not provide better market values when tested against the sales.

[50] The Board confirmed the capitalization rate at 6.0%

[51] The presentations over the resulting assessment if the property was reclassified was not an issue brought before the Board for a decision. While an interesting point, argued by both parties, the Complainant did not request a reclassification of the subject property to a different class of office building and used the Class B variables in the calculation of its request.

[52] On review of the evidence submitted by both parties on the issues stated and the decisions rendered by the Board, the Board found sufficient evidence to justify a change to the

assessment.

[53] The Decision of the Board was to revise the assessment to **\$39,300,000.00**.

DATED AT THE CITY OF CALGARY THIS 11<sup>th</sup> DAY OF September 2013.

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

**PHILIP COLGATE**

**Presiding Officer**

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

<b>NO.</b>	<b>ITEM</b>
1. C1A	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	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**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Office – High Rise	Income Approach	-Market Rental Rates -Capitalization Rate

**LEGISLATIVE REQUIREMENTS****MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(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;

**Division 1****Preparation of Assessments****Preparing annual assessments**

**285** Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

**289(2)** Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

**ALBERTA REGULATION 220/2004****Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

**Part 1****Standards of Assessment****Mass appraisal**

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

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

**Valuation date**

**3** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.