



## **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:

**FIFTH AVENUE GP INC., COMPLAINANT**  
(represented by *Colliers International Realty Advisors Inc.*)

and

**The City Of Calgary, RESPONDENT**

before:

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

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:

<b>ROLL NUMBER:</b>	<b>068049907</b>
<b>LOCATION ADDRESS:</b>	<b>222 5 AVENUE SW</b>
<b>FILE NUMBER:</b>	<b>70260</b>
<b>ASSESSMENT:</b>	<b>\$703,440,000.00</b>

This complaint was heard on 18th 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:

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

Appeared on behalf of the Respondent:

- Harry Neumann, *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] This hearing was conducted, with agreement by the Complainant and the Respondent, with a two member Board. Mr Zindler was absent due to a family matter.

[3] There being no preliminary matters, the Board proceeded to the merit hearing.

**Property Description:**

[4] The subject property is a 1981 era, "A" Class, high rise office building located in the DT1 market zone at 222 5 Avenue SW. The two office towers have an assessable area of 1,487,801 square feet, designated as 1,433,140 square feet of office space assessed at a market rental rate of \$26.00 per square foot, 5,639 square feet of food court assessed at a market rental rate of \$130.00 per square foot, 27,108 square feet of retail main floor space assessed with a market rental rate of \$30.00 per square foot, 10,633 square feet of retail second floor space assessed with a market rental rate of \$35.00 per square foot and 11,263 square feet of storage space assessed at a rate of \$10.00 per square foot. There are 791 parking stalls assessed at a rate of \$5,700.00 per stall. The property is assessed on the income approach to valuation with a capitalization rate of 6.00%.

**Issues:**

[5] The Complainant placed one issue before the Board in the complaint:

Issue: Rental rate should be \$23.16 for the office space, in place of the current rate of \$26.00.

**Complainant's Requested Value: \$637,460,000.00**

**Board's Decision:**

[6] 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.

[7] The Board confirmed the assessment at **\$703,440,000.00**

**Legislative Authority, Requirements and Considerations:**

[8] 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.

[9] 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: Rental Rate for Office Space****Complainant's Position:**

[10] The Complainant argued the office rate should be at \$23.16 per square foot, as opposed to the current rate of \$26.00 per square foot, as shown in the proposed assessment recalculation. (C1, Pg. 17)

[11] The Complainant's established the request for the rental rate of \$23.16 from the weighted mean of twenty-four (24) leases from Downtown "A" Class office buildings. The leases commencement dates ranged from July 1, 2011 to July1, 2012 and had leasable area greater than 10,000 square feet. (C1, Pg.19)

Statistical Method	Lease Rate
Mean of All Leases	\$23.19
Median of All Leases	\$23.75
Weighted Mean	\$23.16

[12] A second analysis, covering the same period, was submitted by the Complainant which analyzed seventy- one (71) leases for "A" Class office buildings. (C1, Pg. 20 – 21)

Grouping	Statistical Method	Lease Rate
71 - All Leases	Mean of All Leases	\$24.77
	Median of All Leases	\$24.50
	Weighted Mean	\$23.82
43 - 2012 Leases	Mean of 2012 Leases	\$26.30
	Median of 2012 Leases	\$27.00

	Weighted Mean 2012	\$26.09
11 - 2012 Leases >10,000 sq. ft.	Mean of 2012 Leases	\$25.41
	Median of 2012 Leases	\$24.00
	Weighted Mean 2012	\$25.97

[13] The Complainant argued that leases of over 10,000 square feet were the typical for the subject building and should be the basis for the assessment

[14] The Complainant referenced Municipal Government Board Order MGB 045/09, with emphasis on the Appellant's concern with the Respondent's analysis of leases. It was the Appellant's argument that "since large leases were typical, more weight should be placed on these lease deals than small leases deals put forward by the Respondent". The decision of the hearing was a reduction to the rental rate for office space.

### Respondent's Position:

[15] The Respondent submitted a 2013 Downtown Office Rental Rate Analysis: A Class with a total of 71 leases between July 1, 2011 and July 1, 2012. The analysis of the leases indicated:

Groupings	Number of Leases	Statistical Analysis	Rate (per sq. ft.)
Downtown, A Class	71 – 2011 & 2012 Leases	Mean of All Leases	\$24.77
		Median of All Leases	\$24.50
		Weighted Mean of All Leases	\$23.82
	43 - 2012 Leases	Mean 2012	\$26.30
		Median 2012	\$27.00
		Weighted Mean 2012	\$26.09
	11– 2012 Leases Areas >10,000 sq. ft.	Mean 2012	\$25.41
		Median 2012	\$24.00
		Weighted Mean 2012	\$25.97
City of Calgary Office Rental Rate			\$26.00

(R1, Pg. 43-44)

[16] The Respondent submitted there were sufficient leases in the first six months of 2012 to allow the use of only those 43 leases. Based upon the weighted mean, the rental rate of \$26.00 was set by the City of Calgary.

[17] The Respondent submitted a chart which indicated that over the time period April 2011 to May 1 2012, the leases in the subject building decline until November 2011 and then increase to a current level of approximately \$30.00 per square foot. (R1, Pg. 31)

**Board's Reasons for Decision:**

[18] The Board found the Complainant argument for an adjustment to the rental rate was based upon a weighted mean of only 24 leases in excess of 10,000 square feet, or 33.8% of the available leases in the Complainant's total data set of 71 leases.

[19] The Board found the decision submitted by the Complainant, MGB 045/09, set the standard for statistical analysis. The decision directs that all leases should be utilized in the determination of a rental rate, but the best analysis is a weighted mean to minimize the affect of lease area differences. The use of weighted means eliminated the problem of smaller lease areas having an impact on the resulting rental rate and the need to stratify the leases by area.

[20] Although that Board was addressing rental rates for AA buildings its finding was significant in subsequent years for all classes and types of properties:

2. Using a weighted average is appropriate to account for different lease areas. (C1, Pg. 88)

[21] It was the finding of the Board for MGB 045/09 that the City of Calgary analysis was relying on only mean and median statistical analysis to determine rental rates, which did not make allowance for the difference in sizes for individual leases. The Board notes that both parties to this hearing have based their rental rates on the weighted average or weighted mean.

[22] The Board, having rejected the need to look at only leases of greater than 10,000 square feet looked to the analysis of the lease rates provided by both parties. The Board noted that both parties had submitted identical statistical results. The weighted mean for all the leases in the 1 year period was \$23.82 per square foot, while the weighted mean for only the 2012 leases was \$26.09.

[23] The Board found, based upon the submissions of both parties, there was a sufficient number of leases for the period January 1, 2012 to July 1, 2012 to support the use of the shorter time period. Use of the shorter period places more weight on the analysis of leases closer to the valuation date and therefore more indicative of the typical rental rate for July 1, 2012. The Board accepts the weighted mean lease value of \$26.09 per square foot, which supports the current typical rental rate of \$26.00 per square foot. The Board did not accept the request for a rental rate of \$23.16 per square foot.

[24] The Board noted there was much discussion with respect to a number of leases in the subject property as to whether being new, renewals or extension. The Board found the main source of the confusion stemmed from Brookfield Properties in the information provided with the Assessment Request for Information return to the City of Calgary and information provided to the Complainant. Both parties have evidence to support their positions on the leases. The Board found there would be little impact by the inclusion or exclusion of the leases from the parties analysis of the leases.

[25] On review of the evidence submitted by both parties on the issue stated and the decision rendered by the Board, the Board found insufficient evidence to justify a change to the assessment.

[26] The Decision of the Board was to confirm the assessment at **\$703,440,000.00**.

DATED AT THE CITY OF CALGARY THIS 5<sup>th</sup> DAY OF September 2013.

A handwritten signature in black ink, appearing to read 'Philip Colgate', 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.