

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:

PETWIN MISSION CORPORATION, COMPLAINANT
(REPRESENTED BY Linnell Taylor Assessment Strategies)

and

THE CITY OF CALGARY, RESPONDENT

before:

PRESIDING OFFICER: P. COLGATE
BOARD MEMBER: A. ZINDLER
BOARD MEMBER: D. STEELE

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: 079044905
LOCATION ADDRESS: 2424 4 STREET SW
FILE NUMBER: 70265
ASSESSMENT: \$33,780,000

This complaint was heard on the 15th day of October 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *David Sheridan, Linnell Taylor Assessment Strategies*
- *Joel Mayer, Linnell Taylor Assessment Strategies*

Appeared on behalf of the Respondent:

- *David Zhao, 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] There being not preliminary matters raised, the merit hearing proceeded.

Property Description:

[3] The subject property is a 1978, 'B' quality Beltline office building, known as Mission Square, located on a 0.60 acre parcel. Mission Square is a ten storey structure with a multi-tenant office retail component and 40-unit apartment building.

The assessment is based upon the Income Approach to Value with six components making up the distribution of the area for the structure:

Sub Component	Area (sq. ft.)	Adjustment Area	Market Net Rental Rate \$	Vacancy Rate %	Operating Costs \$	Non-recoverable %
Living Area in Office Bldg	29,960		\$15.00	8.00%	\$12.00	1.00%
Office Retail Space	5,247		\$30.00	9.50%	\$12.00	1.00%
Office Space South West	64,197		\$15.00	8.00%	\$14.00	1.00%
Restaurant	3,071		\$33.00	9.50%	\$12.00	1.00%
Surface Parking		30	\$2,400.00	2.00%	\$0.00	1.00%
Underground Parking		113	\$2,700.00	2.00%	\$0.00	1.00%
Total	102,475					

[4] The capitalization rate applied to the Net Operating Income is 5.25%

Issue:

[5] The only issue raised was the capitalization rate as applied in the determination of the assessed value of the subject property. The Complainant requested a capitalization rate of 6.75%, instead of the current rate of 5.25%

Complainant's Requested Value: \$26,280,000**Board's Decision:**

[6] The Board found there was insufficient evidence to support a change to the assessment for the subject property.

[7] The assessment was confirmed at \$33,780,000.

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, amongst others.

Position of the Parties**Issue: Capitalization Rate****Complainant's Position:**

[10] The Complainant stated the only issue before the Board was the capitalization rate should be 6.75%, based upon a recalculation of the City of Calgary capitalization rate analysis.

[11] The Complainant put forward arguments as to the use of five of the City of Calgary components in the Income Approach calculation of the subject property— market rents for living area, retail space area, office space south west, restaurant, and surface and underground parking. (C1, Pg. 4-5) The Complainant argued the Vacancy allowance, operating costs and non-recoverable allowance were within acceptable ranges for the subject property and there was no need to adjust. (C1, Pg. 6)

[12] The Complainant argued two of the sales utilized by the City of Calgary to establish the capitalization rate presented a "concern" with their inclusion, those properties being The Keg Building/Ingersoll Building at 605 11 Avenue SW and the Cooper Blok Building at 809 10 Avenue SW. (C1, Pg.7)

[13] The Complainant stated The Keg Building/Ingersoll Building, due to the high percentage of "Restaurant area at 36% of the total" and "given other features of this property including footplate, AYOC, etc. this has limited relevancy as a comparable for the subject property".

[14] The Complainant challenged the use of the Cooper Blok Building that as a Municipal

Heritage Designation B Building it was not comparable to the subject property. Further, it was submitted the Cooper Blok purchase was part of a five building portfolio purchase by the Allied Properties Real Estate Investment Trust and therefore should be excluded from the analysis. (C2, Pg. 11)

[15] The Complainant reviewed the three remaining sales from the City of Calgary 2013 capitalization rate study - Alberta Place, sold December 2011, Dominion Place, sold December 2011 and Connaught Place, sold January 2012. (C1, Pg. 8-23)

[16] The Complainant submitted arguments in the analysis of the sales for the use of the typical rates for most of the elements in the Income Approach, with the exception of the rental rates for each sale and in the case of Alberta Place and Dominion Place the areas assigned to each component. The Complainant argued the difference between the typical rates and the actuals for each property was insignificant and "considered reasonable".

[17] The differences in the areas used were attributed to the use of rent rolls provided for each of the three sale properties. (C1, Pg. 77-92)

[18] The Complainant adjusted the sale for Alberta Place for the Office Retail Space and Office Space South West areas, supported by the rent roll, and the "Market Net Rental Rate" which was argued to be \$18.00 per square foot in place of the 2011 typical rate of \$13.00. (C1, Pg. 11)

[19] The Complainant submitted 14 leases commencing between November 2006 and March 2012, with a median value of \$17.50 per square foot. The Complainant applied a rental rate of \$18.00 per square foot. The changes resulted in a Net Operating Income (NOI) of \$1,967,287 and a resulting capitalization rate of 6.83%. (C1, Pg. 9-11)

[20] The Complainant adjusted the sale for Dominion Place for the Office Retail Space and Office Space South West areas, supported by the rent roll, and the "Market Net Rental Rate" for the office space that was argued to be \$15.00 per square foot in place of the 2011 typical rate of \$13.00. (C1, Pg. 15)

[21] The Complainant submitted 20 leases commencing between September 2004 and June 2012, with a median value of \$15.00 per square foot. The oldest lease used in the analysis commenced in February 2005. The Complainant applied a rental rate of \$15.00 per square foot. The changes resulted in a Net Operating Income (NOI) of \$2,111,660 and a resulting capitalization rate of 7.04% (C1, Pg. 13-15)

[22] The sale for Connaught Place was adjusted by the Complainant for the "Market Net Rental Rate" for the office space that was argued to be \$20.00 per square foot in place of the 2012 typical rate of \$15.00. (C1, Pg. 19)

[23] The Complainant submitted six leases commencing between November 2006 and April 2009, with a median value of \$20.00 per square foot. The Complainant applied a rental rate of \$20.00 per square foot. The changes resulted in a Net Operating Income (NOI) of \$1,768,019 and a resulting capitalization rate of 5.92%. (C1, Pg. 16-19)

[24] The Complainant submitted an analysis of the three sales and two industry reports to establish the requested 6.75 capitalization rate. (C1, Pg. 20)

Source	Capitalization Rate	Capitalization Rate
Alberta Place	6.83%	
Dominion Place	7.04%	
Connaught Place	5.92%	
	Low	High
Colliers Cap Rate Survey -- Calgary Suburban Office B	6.50%	7.00
CRRE Cap Rate Survey -- Calgary Suburban Office B	6.75%	7.25
Median	6.75%	

[25] The Complainant submitted a recalculation of the subject property value based upon the Income Approach to Value using the capitalization rate of 6.75% to determine a rounded value of \$26,280,000. (C1, Pg. 22-23)

Respondent's Position:

[26] In response to the Complainant's argument to remove the two sales - The Keg Building/Ingersoll Building and the Cooper Blok Building, the Respondent submitted appraisals for both of the properties. (R1, Pg. 19-211)

[27] The appraisal for The Keg Building/Ingersoll Building indicated an appraised value of \$14,200,000 on June 17, 2011 and a sale price of \$14,175,000 on August 8/10, 2011. The Respondent submitted the appraisal supported the sale price of the property (R1, Pg. 19-119)

[28] The appraisal for The Cooper Blok Building indicated an appraised value of \$12,100,000 on July 13, 2011 and a sale price of \$12,060,000 on September 8, 2011. The Respondent, again submitted the appraisal supported the sale price of the property (R1, Pg. 122-211)

[29] The Respondent submitted the 2013 Beltline Office Capitalization Rates table to illustrate the source of the capitalization rate use to determine the assessments. (R1, Pg. 213)

Address	Building Name	Quality	Registration Date	Sale Price	Sale Year Assessed Area (sq. ft.)	Sale Year Net Operating Income (NOI)	Capitalization Rate
605 11 Ave SW	The Keg Building/Ingersoll Building	B	2011/08/10	14,175,000	51,173	743,589	5.25%
809 10 Ave SW	Cooper Blok Building	B	2011/09/08	12,060,000	35,793	438,039	3.63
1520 4 St SW	Alberta Place	B	2011/12/01	28,800,000	106,707	1,637,086	5.68
906 12 Ave SW	Dominion Place	B	2011/12/29	30,000,000	137,801	1,957,775	6.53
1207 11 Ave SW	Connaught Centre	B	2012/01/18	29,850,000	83,880	1,431,526	4.80
						B Median	5.25
						B Average	5.18
						B Assessed	5.25

[30] The Respondent submitted supporting documentation with respect to the five sales. (R1, Pg.214-314)

Board's Reasons for Decision:

[31] The Board in reaching its decision looks to the arguments put forward by the Complainant with respect to a number of areas of concern. The removal of two sales from the capitalization rate analysis, the use of City of Calgary typical rates in conjunction with site specific rental rates for the three sales, the correction of the areas for the sub-components of the assessments and the rental rates calculated for each of the sales and the resulting capitalization rates were all reviewed by the Board.

[32] With respect to the sale of The Keg Building/Ingersoll Building, the Board found this to be a valid sale to be used in the analysis of the capitalization rate. The Complainant argument that the 36% of restaurant area was not sufficient reason to disregard the sale. History has shown that the use of space can change over time without changing the overall classification of the building or its market value. The Complainant failed to provide convincing market evidence for the Board to exclude the sale. As no alternative assessment and capitalization rate was presented for the Board, the values currently assigned to the sale were deemed valid.

[33] The Board found the sale for the Cooper Blok Building did present valid argument to its exclusion. The Board found, based upon the sale being part of a portfolio sale, questions were raised as to the accuracy of the sale price and what influences may have been applied when purchased as part of a five building transaction. For this reason, the Board excluded the sale from analysis.

[34] The Board did not accept the Complainant's use of both the City of Calgary typical rates and the site-specific rates for the sale properties. While the Complainant presented arguments that the actual rates for the variables, such as the operating costs, vacancy allowance and non-recoverable allowance, were within a reasonable range the Board did not accept the mixing in the final calculation of the capitalization rate. The approach would carry more weight if the Complainant had used site-specific rates and allowance in the determination of the individual capitalization rate.

[35] The Board did not accept the Complainant's determination of the rental rates for the individual sales. The aim in determining the assessment is to establish the market value of the property on the valuation date. The Complainant calculated the rental rate used sales that were as old as February 2005 (Dominion Place), almost seven years before the date of the sale in December 2011.

[36] On review of the leases for Alberta Place, the Board found the use of the older leases could result in a skewed rental rate. Examining leases within the prior two years, the Board found a median for the lease rates of \$14.75 per square foot, below the requested rate of \$18.00 per square foot. Further, the Board found the Complainant had used six leases commencing on the same date of January 2010 at the same lease rate of \$20.50, signed with the same tenant "Her Majesty The Queen". The Complainant was unable to satisfy the Board's question if in fact this was not one lease for multiple spaces. The Board found the use of multiple identical leases and significantly older leases was not convincing proof of an \$18.00 per square foot rate.

[37] The leases used for the Dominion Place review were taken from a period of February 2005 to June 2012, for a sale in December of 2011. The review of the Complainant's rental rate analysis found again the use of significantly older leases and the multiple uses of what could

have been a single lease for a number of spaces to establish the median value of \$15.00 per square foot. When the Board reviewed the leases commencing before the December 2011 sale date the median value dropped to \$12.00 per square foot, below the rate of \$15.00 requested by the Complainant.

[38] The Board's review of the Connaught leases indicated again the use of three leases to the ATB Financial on the same date of April 2009 at the same rate of \$24.00 per square foot. The Complainant was again unable to satisfy the Board's question as to the nature of the leases, whether it was one lease for a number of spaces or individual leases.

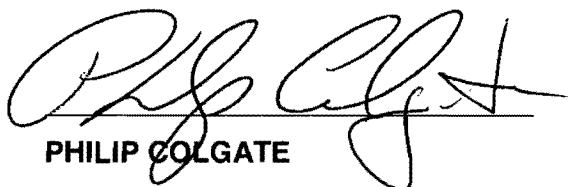
[39] The Board found the submitted rent rolls failed to shed light on the nature of the leases. The submission of actual leases may have provided the information needed to determine the nature of the questioned leases. Due to the questions raised and left unanswered the Board was unable to accept the Complainant's requested rental rates.

[40] Based on the Complainant's failure to meet the burden of proof for the Board on its rental rate changes, the Board did not accept the changes to the capitalization rate.

[41] Further, the Board did not accept the Complainant's use of the third party reports for use in the determination of the capitalization rate. Third party reports are an expression of opinion with no supporting documentation to support the rates. Further the rates were identified as 'suburban office', not specific only to the subject property market area.

[42] For the reasons provided, the Board confirms the assessment at \$33,780,000.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF November 2013.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	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.*

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.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise Mixed Use	Income Approach	-Capitalization Rate