



**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:**

***926 Capital Corp. (as represented by MNP LLP), COMPLAINANT***

**and**

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

**before:**

***H. Kim, PRESIDING OFFICER***

***P. Charuk, BOARD MEMBER***

***J. Pratt, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>067032508</b>
<b>LOCATION ADDRESS:</b>	<b>932 5 Ave SW</b>
<b>FILE NUMBER:</b>	<b>70510</b>
<b>ASSESSMENT:</b>	<b>\$21,540,000</b>

This complaint was heard on the 29<sup>th</sup> of July, 2013 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:

- *G. Worsley*
- *W. Van Bruggen*

Appeared on behalf of the Respondent:

- *K. Gardiner*
- *R. Ford*

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

[1] The subject property was one of four C class office buildings in downtown Calgary under complaint by the Complainant's representative with broadly similar issues and argument to be considered. The Complainant requested that the subject property be considered in detail but that their presentations be carried forward to the other complaints with small modifications to the submissions based on site specific details. The Respondent agreed that it would be expedient to present their position on the four files in that manner.

[2] As the parties were in agreement, the Board agreed to proceed on that basis, and CARB 70515P-2013, CARB 70546P-2013 and CARB 70548P-2013 refer to portions of this order.

**Property Description:**

[3] The subject is a 10 storey, 87,743 sf office building constructed in 1979 on a 12,307 sf parcel located in the DT2 Sub Market area of downtown Calgary known as Place 926. It is assessed on the income approach to value using the City's 2013 parameters for C class office buildings in DT2: 81,695 sf office space at a market net rental rate of \$13/sf, 6,048 sf retail at \$16/sf and 52 parking stalls at \$4,500 per annum for a potential net income of \$1,392,803. Vacancy of 6.75% for office, 7.75% for retail, and 2% for parking space is deducted. Vacant space shortfall based on operating costs of \$16/sf office and \$20/sf retail, and 2% non recoverables are applied and the resulting net operating income is capitalized at 5.5% to arrive at the assessment under complaint.

**Issues:**

[4] The Complaint form identified a number of reasons for complaint; however at the hearing the following issues were argued:

1. The capitalization rate should be increased to 7.0% from 5.5%
2. The office vacancy rate should be increased to 9.75% from 6.75%
3. The office rental rate should be \$12 instead of \$13.
4. The main floor space should be assessed as office and recreation space not retail.

**Complainant's Requested Value: \$14,890,000**

**Board's Decision:**

[5] The assessment is confirmed at \$21,540,000

**Issue 1 - Capitalization Rate:****Complainant's Position:**

[6] The cap rate for class C buildings in 2012 was 8% and for 2013 is 5.5%. The 2013 cap rate for class AA and A office buildings is 6.0%, as evidenced by the Assessment Explanation Supplement (AES) reports for the Bow, the Transcanada Tower, and Centrium Place, all premier buildings in the prime areas of the downtown core. The Complainant argued that it is unreasonable to consider class C buildings to have less risk to their income stream than class A. Historically there has always been a hierarchy of cap rates wherein class AA had the lowest cap rate and it increased for successive classes of building. The 2012 assessment was \$10,370,000 and it more than doubled for 2013.

[7] The Respondent's cap rate study is flawed, as they analyzed sales in all of 2011 using 2012 typical income parameters, and sales in all of 2012 using 2013 income parameters. The Complainant contends that this is incorrect, since 2012 income parameters are arrived at using information from July 1, 2010 to July 1, 2011. A sale in the latter half of 2011 should be analyzed using the 2013 income parameters that are derived from information from July 1, 2011 to July 1, 2012, the same time frame as the sale. Two class C sales were used to determine the 5.5% cap rate. The Complainant contends that neither are valid sales, and even if they were, the derived cap rate is incorrect:

- The Northland Building at 910 7 Ave SW sold on August 23, 2011 for a reported \$38,606,000 however it was part of a portfolio sale of 29 office properties in Toronto, Ottawa, Edmonton and Calgary for a total purchase price of \$831.8 million. The Complainant notes that the Respondent did not use portfolio sales in the cap rate study for suburban office buildings but relied on them heavily for downtown office buildings. The sale occurred in August 2011 but the Respondent's analysis uses the 2012 income parameters to arrive at a cap rate of 4.22%. The sale occurred after July 1, 2011 therefore it should be analyzed using 2013 parameters, resulting in a cap rate of 5.67%. The Complainant notes that the cap rate reported for the sale on RealNet was 7%.
- The Centennial Building at 816 7 Ave SW sold on January 18, 2012 for \$6,020,000 but the Non Residential Property Sale Questionnaire indicates that the property was unlisted, and that it was not an arms length transaction. The purchase was motivated as the purchaser owned the adjacent building and intended to redevelop. The Centennial building's rent roll at time of sale showed annual rent of \$762,424 compared to \$399,875 market rent in the Respondent's analysis, and the Commercial Edge report on the sale indicates Reported NOI (Net Operating Income) of \$421,400 and a Cap Rate of 7%.

[8] The Complainant presented two sales that were not considered by the Respondent:

- The Burns Building at 237 8 Ave SE transferred on August 17, 2012 just slightly after the valuation date for \$13,100,000. The 2013 AES shows a \$10/sf rate for Office Space Poor Location that is not supported in the sales literature. Applying the typical \$13/sf office rate and 2013 income parameters, the cap rate is 6.27%. The Respondent typically applied a cap rate 0.25% lower than other C class buildings to 8<sup>th</sup> Avenue properties (DT8) so this sale supports the requested 7.0% cap rate.
- The KIK FM building at 1105 7 Ave SW sold on November 7, 2011 for \$2,000,000. This corresponds to a cap rate of 10.55% using 2013 income parameters. That property was initially assessed at \$5,800,000 for 2013 using the income approach

but was amended to \$2,000,000 on February 14, 2013 based on assessment for land value only. The Complainant contends that this is contrary to the Respondent's practice, whereby the land value is applied only when it is higher than the value using the income approach. The Complainant presented an excerpt from the Respondent's submission on a previous hearing to support this. The highest and best use would not be vacant land if the income parameters yield a greater value. This sale demonstrates that the 5.5% cap rate applied is too low.

[9] Third party reports do not report cap rates for C class buildings. The Complainant presented third party reports indicating the range of cap rates for A and B class buildings in the second quarter of 2012:

	CBRE	Colliers
AA	5.25 - 5.75%	
A	5.75 - 6.25%	5.5 - 6.0%
B	6.75 - 7.25%	6.25 - 7.0%

The ranges of cap rates shown supports the Complainant's position that class C rates should be no greater than 7.0% and that the Respondent's 2013 rates do not follow the hierarchy of cap rates normally found in the marketplace.

#### **Respondent's Position:**

[10] The Respondent agreed that historically, cap rates for class C were higher than for class A; however, the sales support the cap rates applied. The Respondent stated that unlike previous years, there were a number of sales of class A to C buildings in the analysis period (July 2011 to July 2012). There were two sales of class C buildings, both in the DT2 zone:

Address	Building	Registration. Date	Sale price	Area (sf)	AYOC	Typical NOI	Cap rate
816 7 Ave SW	Centennial Building	01/18/2012	6,020,000	27,203	1965	337,833	5.61%
910 7 Ave SW	Northland Building	08/23/2011	38,606,000	145,251	1982	1,628,440	4.22%

[11] The median and mean of the C class sales since July 1, 2011 were both 4.92% while A class were 5.64% and 5.61%, and B class were 4.82% and 4.65% respectively. Considering only sales in 2012, the median and mean of the C class sales were 5.61% while A class were 5.63% and 5.46%, and B class were 5.02 and 5.07. On that basis, the cap rates were set at 6.0% for A, 5.0% for B, and 5.5% for C.

[12] The Respondent stated that the use of the 2012 income parameters is appropriate in analyzing a sale in 2011. The parameters closest to the date of sale should be used, which is the July 1, 2011 valuation date for sales in 2012. The Respondent presented one 2013 CARB decision and two MGB decisions highlighting that a cap rate applied to NOI based on typical factors (inputs) must be a cap rate that also has been derived using typical NOI factors, and that typical factors for the year of sale should be used to maintain consistency.

[13] The Respondent defended the use of the Northland Building sale, presenting two 2013 CARB decisions where the sworn transfer values in portfolio sales were accepted as an indicator of market value. The Affidavit of Transferee was submitted along with corporate search documents to support the transfer value and to show the parties were unrelated. The Respondent stated that the Centennial building was reported on RealNet as brokered by CBRE Limited, contrary to the Sale Questionnaire response that it was "unlisted", which initially had a

name that was blacked out. The question regarding arms length sale was initially answered "yes" and crossed out to change to "no". The Respondent insisted that both were valid sales that support the 5.5% cap rate.

[14] The Respondent presented a comparison of the Complainant's requested income parameters to those used to arrive at the 2013 assessment of the two buildings. The requested parameters would result in an Assessment to Sale Ratio (ASR) of 0.55 for the Northland Building and 0.75 for the Centennial Building compared to the actual 2013 ASRs of 0.82 and 1.02 respectively.

[15] The sale of the KIK FM building was not considered as it was an extreme outlier. There are no other sales that have cap rates of over 10%. The Burns Building is post facto but in any event it is on leased land and would not be considered a typical sale.

[16] The Respondent stated that with respect to equity, while the A class buildings have a 6.0% cap rate, rental rates applied are much higher, therefore the assessment per square foot is equitable. The Bow is assessed at \$591/sf while the subject is at \$245/sf, well within the range of the per square foot selling price of \$221/sf for the Centennial Building and \$263/sf for the Northland Building. The requested assessment would bring the per square foot value of the subject down to \$170/sf, outside the range of similar buildings and would create inequity. The Respondent presented a list of 35 class C buildings in DT1, DT2, DT3, DT8 and DT9 that are all assessed using the same income parameters as the subject.

#### **Findings and Reasons:**

[17] The capitalization rate should be 5.5%. While the Board agrees that it is unusual to have a class C cap rate of 5.5% when 6.0% is applied to class A, the cap rates are only a means to an end, which is to determine a value that is a reasonable estimate of the market value of the property, as required under the legislation. The relationship between 2013 class A and class C cap rates may be atypical; however the other income parameters are such that the overall value applied to class A compared to class C maintains equity.

[18] The Northland Building was part of a portfolio sale involving properties across the country. The Board was of the opinion that differences in local market conditions, applicable legislation and tax regimes could motivate an allocation of value for a property in a portfolio sale that might not accurately reflect the value for which it would have transacted in a standalone sale, and therefore gave little weight to the affidavit value.

[19] The Board finds the transfer of the Centennial Building to be a valid sale. The characterization of the sale as non-arms length was due to statements on the sale questionnaire that the purchaser was the owner of the adjacent parcel and wanted to redevelop. The Board does not consider this relationship to be non-arms-length, and was of the opinion that intent to redevelop is not unusual in a real estate transaction. Therefore, the Board was of the opinion that the purchase price reflects market value.

[20] The \$247/sf assessed value of the subject is within a reasonable range of the \$221/sf selling price of the Centennial building. The \$170/sf result of the requested parameters would be significantly out of line. While the Complainant's arguments for the 7.0% cap rate was logical, and supported by the reported cap rates, it was clear that the actual income generated was different from the typical income applied using the parameters in place at the time of sale. Under those circumstances, applying the actual "going-in" cap rate to the lower typical income parameters would result in a value below market value, and would be inequitable with other similar properties in the municipality.

**Issue 2 - Office Vacancy Rate:****Complainant's Position:**

[21] The Complainant presented a vacancy study of 22 class C buildings in DT2 supporting the 9.75% requested vacancy. The actual vacancy is higher than noted: 622 5 Ave SW is shown as fully occupied but this was MNP's offices, and they moved out of the building on July 1, 2012.

[22] The Complainant also presented third party market reports for the first and second quarters of 2012. The reported head lease vacancy for downtown class C buildings is significantly more than the 6.75% used by the City:

	2012 Colliers	Cresa	Avison Young	Barclay Street	Altus Group	CBRE
Q1	12.30%	7.44%	12.90%			12.00%
Q2	10.75%	8.67%	11.98%	16.60%	15.10%	10.19%

Note - the Cresa Class C Office Vacancy Report included three properties (Barron Building, Joe Philips Building and Strategic Centre) that are valued as land. The vacancy rate noted for Cresa has those properties removed from the inventory.

[23] The Complainant noted that the Respondent's vacancy rate analysis included both C and D class buildings in all areas of downtown grouped together with an overall vacancy rate of 6.75%. It also included the Education Centre building and Joe Philips building, which are land value and should not be included in the inventory.

**Respondent's Position:**

[24] The Respondent stated that the vacancy rate is determined from the vacant space amounts reported in the Assessment Request for Information (ARFI) reports that are mailed out at the beginning of every year and returned between March and April. The vacancy amounts are used as reported and not analyzed and adjusted for leases about to expire before the July 1 valuation date. The Respondent stated that vacancy is a snapshot in time, as tenants move out and others move in so as long as it is measured for the entire inventory and at the same time, it is reasonable to use the vacancy reported by the building owners in the ARFIs to determine the vacancy parameters.

**Findings and Reasons:**

[25] The Board did not find compelling evidence to increase the vacancy allowance. While the Board agrees that it would be preferable to determine the vacancy rate at the July 1 valuation date, it is more important that it is measured at a consistent time. To illustrate, the Complainant had argued that the actual vacancy rate was higher than indicated in their analysis because MNP had moved out on July 1, 2012 from a building that was noted as fully occupied. However, the vacancy rate would be impacted by factors such as whether another tenant was scheduled to move into the space, whether the new space had previously been vacant and was now occupied, and the period of vacancy for each space. It would also be impacted by a decision not to immediately re-lease in order to renovate, as in the case of the Burns Building which had a reported vacancy of 53.77% in the Complainant's Revised Vacancy Study.

[26] Due to the challenges of identifying and determining the impact of such factors, the Board is of the opinion that vacant space as reported by the building owners and managers on the annual ARFI returns provides a more reliable indicator of the vacancy rate than the Complainant's analysis and third party reports, notwithstanding the information is provided for a time period several months prior to the valuation date.

**Issue 3 - Office Rental Rate:****Complainant's Position:**

[27] The DT2 market zone, also known as the West End, is the area west of 5 St. SW in the downtown core. The DT2 zone can be divided into DT2 East between 5 St and 8 St and DT2 West. The subject building is at the very western edge of DT2 West next to the LRT tracks. All the C class office space in DT2 is assessed at the same \$13/sf rate but the disadvantages of location should be recognized, and the subject should be assessed at a lower office rate of \$12/sf. In support of this position, the Complainant presented July 2011 to July 2012 C class lease rates. The 55 leases in all of DT2 had a median of \$13/sf and a weighted average of \$12.62/sf compared to the 16 leases in DT2 West which had a median of \$12/sf and a weighted average of \$12.68/sf. The lower lease rates in DT2 West should be recognized in the office rates applied to the assessment.

**Respondent's Position:**

[28] The Respondent presented the C and C- class 2013 Downtown Office Rental Rate Analysis listing 62 leases with commencement dates between July 2011 and July 2012. There was a general increase in lease rates over that period - the median was \$13.15 for all leases and \$14.00 for 2012 leases, while the weighted mean was \$12.91 for all leases and \$13.33 for 2012 leases. The \$13 lease rate is supported by the leases and should not be varied based on location in DT2.

**Findings and Reasons:**

[29] The Board finds the \$13/SF office rate is appropriate. The leases submitted by the Complainant to support a lower rate in DT West did not demonstrate a clear difference in lease rates. The Board notes that the weighted average of DT2 West was slightly greater than the weighted average of the total sample, and that all of the leases in the subject building were at or above the \$13 lease rate applied. Therefore the Board did not agree that a \$12/sf rate would be more representative of the typical office lease rate for the subject property.

**Issue 4 - Main Floor Space:****Complainant's Position:**

[30] The Complainant submitted that the main floor space was incorrectly assessed at the retail rate of \$16/sf. Due to the inferior location at the extreme west of DT2, the retail space has not done very well. The bulk of the main floor space is occupied by the Bridgewater Bank, which is more like office space than retail space. The Complainant presented a screen shot of the bank's web page which stated they are a virtual bank without traditional branches found at other banks, and that their customers visit them by coming to their website, secure banking portal(s) or by telephone.

[31] The balance of the main floor space is 1,616 sf used as a fitness centre, as shown on the Business Assessment Detail Report identified as "Fitness Centre – 926 Capital". The Complainant presented the Business Annual Calculation Report for another building in DT2 to show that the rate applied to recreational space is \$14/sf.

[32] The Complainant submitted that the subject building's main floor space does not have good street exposure and should not be assessed as retail, and that the office and recreation space rates should be applied.

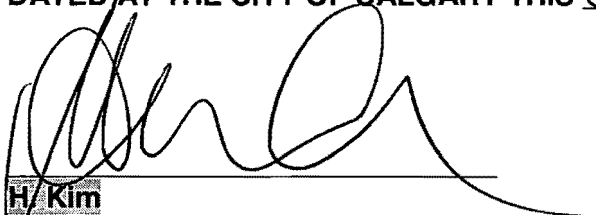
**Respondent's Position:**

[33] The Respondent inspected the property on July 12, 2013 and presented photographs of the main floor space. There is identification signage for the bank at the street frontage, there is a reception area with signs advertising CAA Rewards Mastercard that are clearly intended for customers attending the space. The Respondent submitted that this shows that it is a retail type use. Further, even if it were used only as office space, the main floor would still be assessed as retail, because the assessment is based on the characteristics of the space, not on the actual uses in place. The main floor space has street exposure and access, and is therefore properly assessed as retail.

**Findings and Reasons:**

[34] The main floor space has direct access from the street as well as street level exposure. The Board agrees with the Respondent that whether or not a main floor space is in fact being used for retail, if it could be used for retail it should be assessed at the retail rate. In the subject situation, the Board is satisfied that the space could and is benefitting from the street level exposure and should be assessed at the retail rate.

DATED AT THE CITY OF CALGARY THIS 30<sup>th</sup> DAY OF August 2013.

  
H. Kim  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant's Rebuttal
4. C3	Complainant's Supplemental Rebuttal
5. R2	Respondent's Rebuttal CARB 72016P-2013
6. R3	Respondent's Rebuttal DL019/10
7. R4	Respondent's Rebuttal MGB123/10
8. R5	Respondent's Rebuttal CARB 70282P-2013
9. R6	Respondent's Rebuttal CARB 72586P-2013

*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.*

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Property Type	Property Sub-Type	Issue	Sub-Issues
(3) Office	High Rise	Income Approach	Expenses (vacancy) Net Market Rent Capitalization Rate