

## **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:**

***PLACE 9-6LTD.***  
***(as represented by MNP LLP), COMPLAINANT***

**and**

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

**before:**

***Earl K. Williams, PRESIDING OFFICER***  
***K. B. Bickford, MEMBER***  
***A. Maciag, 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 2013 Assessment Roll as follows:

**ROLL NUMBER: 067043794**

**LOCATION ADDRESS: 940 6 AV SW**

**FILE NUMBER: 70512**

**ASSESSMENT: \$46,500,000**

This complaint was heard on 27<sup>th</sup> day of August, 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. Worsely Agent, MNP LLP

Appeared on behalf of the Respondent:

- K. Gardner Assessor, The City of Calgary

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

[1] The parties identified to the Board that the evidence and arguments to be presented in respect of the hearing on Capitalization Rate (cap rate) and vacancy rate for the subject property will be the same as presented in respect of File # 70677 for Property Roll # 067050427 and requested that the evidence and arguments be carried forward to the subject property. It was accepted that the Board's findings and decision regarding the cap rate issue would therefore be common to the subject property. The Board found this to be an appropriate approach to the matters at hand.

[2] The subject property has an exempt portion which was not appealed by the Complainant. The Respondent agreed to recalculate the assessment with an adjustment that recognizes the exempt area. Both parties agreed that to not recognize the exemption is inequitable.

[3] No additional Procedural or Jurisdictional Matters were raised by the parties.

**Property Description:**

[4] The subject property at 940 6 AV SW is a 157,319 square foot (sq. ft.) office building on 0.40 acre of land with a 1981 approximate year of construction (ayoc), as reported by the Complainant, assigned a B- quality rating in the Downtown Commercial Core in Downtown Zone 2 (DT2) with the Property Use: Commercial and Sub Property Use: CS1253 Office/Parking. The space profile of the subject property is 6,420 sq. ft. of retail of which 2,598 sq. ft. is exempt from taxation; 149,632 sq. ft. of office of which 11,570 sq. ft. is exempt from taxation and 1,267 sq. ft. of storage. The subject property is named Place 9-6.

[5] The assessment was prepared on the Income Approach with a capitalization rate (cap rate) of 5.00%, a rental rate of \$15.00 per square foot (psf) for the office space, \$16.00 psf for the retail space, \$8.00 psf for the storage space and an office vacancy rate of 8.25%.

**Issues:**

[6] Should the subject property be assessed on the Income Approach with the assessed office rental rate reduced from \$15.00 psf to \$14.00 psf?

[7] Should the subject property be assessed on the Income Approach increasing the office vacancy rate from 8.25% to 12.0% or 20.0% to reflect the chronic vacancy in the subject property?

[8] Is the current assessed cap rate of 5.00% reflective of the market conditions as of the designated valuation date or is the correct capitalization rate to apply 6.00%?

**Complainant's Requested Value: \$28,370,000**

**Board's Decision:**

[9] Based on the evidence and argument presented the Board confirms the cap rate of 5.0%, and an office rental rate to \$15.00 psf in the determination of the assessment.

[10] Based on the evidence in respect of the subject property's historic chronic vacancy and the 2012 leases which provided for months of free rent as incentives to lease space in the subject, the Board has decided to allow a one time, site specific, 20% vacancy allowance for the office area in the determination of the assessment value of the subject property.

[11] The assessment is reduced to \$35,360,000. As the exempt portion of the assessment is not before the Board, it cannot deal with any adjustment to that calculation.

**Position of the Parties**

[12] The Complainant and Respondent presented a wide range of evidence consisting of relevant and less relevant evidence. In the interests 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.

[13] The Complainant's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the exterior of the subject property, the City of Calgary 2013 Property Assessment Notice, the Property Assessment Detail Report, and the City of Calgary Non-Residential Properties – Income Approach Valuation work sheet. In support of the vacancy rate the evidence included the MNP's "B-" Vacancy Analysis. For the office rental rate the evidence included recent leasing activity in the subject property and MNP's "B-" Lease Study for DT1. In support of the cap rate issue the Complainant submitted an overview of the City of Calgary and the MNP methodology, an analysis of a number of comparable properties including supporting documentation, market studies on cap rates, excerpts from applicable legislation, excerpts of technical information related to capitalization rate methodology, excerpts of decisions from the Alberta Court of Queen's Bench, as well as Assessment Review Board and Municipal Government Board decisions in support of their position.

[14] The Respondent's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the exterior of the subject property, the City of Calgary 2013 Property Assessment Summary Report, the City of Calgary Non-Residential Properties – Income Approach Valuation work sheet, and the Assessment Request for Information (ARFI). In support of the vacancy rate the evidence included the City of Calgary 2013 Downtown Office Vacancy Analysis: B-DT1. In support of the rental rate the evidence included the City of Calgary 2013 Downtown Office Rental Rate Analysis: B- Class in DT2& DT3. In support of the cap rate issue the Respondent submitted an overview of the City of Calgary Capitalization Rate Summary, the analysis of a number of comparable properties including supporting documentation, excerpts from applicable legislation, excerpts of technical

information, as well as Assessment Review Board and Municipal Government Board decisions in support of their position.

[15] As noted above, both parties placed before this Board a number of Alberta Court of Queen's Bench, Assessment Review Board and Municipal Government Board decisions in support of their position. These decisions were made in respect of issues and evidence that may however be dissimilar to that before this Board.

### **Issue – Capitalization Rate**

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

[16] The Complainant argued that the methodology utilized by the City of Calgary in the derivation of the cap rate is based on flawed assumptions related to the development of the net operating income (NOI). One assumption that is challenged is the absence of consistency in the application of time frames. For example, the use of income parameters from July 1, 2010 to July 1, 2011 to calculate the NOI to derive the cap rate for sales occurring in the period July 1, 2011 to December 31, 2011, is flawed as there is a difference in timing by up to 6 months. The NOI is not reflective of the period when the transaction occurred. The Complainant purposes that the 12 month period used to determine the income to calculate the NOI should be the same as the 12 month period during which the sale occurred. For example the income parameters for the period July 1, 2011 to July 1, 2012 should be used for sales which occurred in that same 12 month period. Details and supporting documentation on the Complainant's position are provided on pages 31 to 51 of Exhibit C1.

[17] A second concern expressed by the Complainant related to the practice of the City of Calgary to include portfolio sales in the derivation of the cap rate. The Complainant's primary concern with portfolio sales is the difficulty in determining what the actual value is for each property included in the portfolio. Supporting documentation for this position is provided on pages 52 to 87 of Exhibit C1.

[18] Page 34 of Exhibit C1 presents the parameters used by the City of Calgary for the income approach to assess downtown office buildings in the DT1 and DT2 zones. The cap rate by office classification for DT1 and DT2 is as follows:

<u>Office Classification</u>	<u>Cap Rate</u>
AA New/AA/A/A-	6.00%
B/B-	5.00%
C/C-	5.50%

[19] The Complainant reviewed the MNP Capitalization Rate Study (pages 88 to 116 of Exhibit C1) for the period July 1, 2011 to July 1, 2012. Their methodology excludes portfolio sales and calculates the NOI based on rental rates for the same 12 month period as the sales. The table on page 89 presents particulars on the 5 sales in DT1 and DT2 on which the MNP study is based. The 5 sales include 3 Class A, 1 Class B and 1 Class C building. The median capitalization rate determined by the study is 6.02% which is rounded to 6.00%. This cap rate would be applied to all downtown office classifications.

[20] As further support the Complainant reviewed the details on the Class B transaction reported in paragraph [18]. This January 2012 transaction is reported by the Complainant as an office building in DT1 and derived a cap rate of 5.87%.

[21] As additional evidence the Complainant reviewed the CBRE Canadian Cap Rate Study for Q2 2012 (pages 267/268 of Exhibit C1) which reported a range of 6.25% to 7.0% for

downtown Class B buildings.

[22] In summary the Complainant argued that the MNP methodology determines a cap rate on consistent assumptions of 6.0% which is to be allied to the subject property.

**Respondent's Position:**

[23] The Respondent presented an argument in defence of the methodology used to determine the cap rates used in the income approach valuation.

[24] A table titled 2013 Downtown Office Capitalization Rate Summary on page 75 of Exhibit R1 presented details on 16 transactions for Class A, B and C buildings reported for the period 2011 and 2012. The Class B transactions included B and B- buildings. An analysis by building class and year provided further details.

[25] The analysis of all the B transactions reported a median and mean cap rate of 4.82%. A further analysis of the 2012 Class B transactions reported a mean of 5.07% and a median of 5.02%.

**Board's Reasons for Decision:**

[26] The Respondent and Complainant outlined their respective positions on cap rate methodology and the cap rate for Class B buildings. Specifically:

- 1) Respondent—the mean of 5.07% and median of 5.02% is based on a sample of 2012 transactions which included 2 B buildings, one A/B blend and one B/C blend.
- 2) Complainant – argued for a 6.00% cap rate regardless of building class and highlighted one B Class transaction with a cap rate of 5.87%.

[27] The Board determined that the Respondent's evidence related to the B Class transactions was more representative of the market and there is a lack of compelling evidence to support a change on the cap rate.

[28] Based on the evidence and arguments presented the Board confirms the cap rate of 5.0% in the determination of the assessment.

**Issue – Vacancy Rate**

**Complainant's Position**

[29] In support for the request that the subject property be recognized as having a chronic vacancy and assigned a 20% vacancy rate, the Complainant reviewed the table on page 23 of Exhibit C1. The subject property has experienced a high vacancy rate since 2009. Specifically: 2009 – 63.3%; 2010 – 53.0%; 2011 – 54.0% and 2012 – 26.6%. Because of its location adjacent to the Light Rail Transit lines, access and egress is a constant challenge for the property.

[30] In support of the request for a 12.0% vacancy the Complainant reviewed the Vacancy Study for "B-" Buildings in DT2 on page 30 of Exhibit C1. The study reports a 12.89% vacancy based on a sample of 6 "B-" class office buildings in DT2. The sample included the subject property with a reported vacancy of 26.59%.

[31] In summary the Complainant argued that the market study supports at least a 12.0% vacancy rate. However, the Complainant submitted that a 20% vacancy allowance would be

more representative of the subject property's chronic vacancy.

**Respondent's Position:**

[32] The Respondent on page 73 of Exhibit R1 presents a table titled the City of Calgary 2013 Downtown Office Vacancy Analysis: B- DT2, DT3, DT9. The study reports a 7.52% vacancy based on the same sample of 6 buildings as reported by the Complainant. However, the Respondent's table shows a significant difference in the vacancy for the subject property.

**Board's Reasons for Decision:**

[33] The Complainant and Respondent both presented vacancy studies which used the same sample of 6 B- Class buildings. Their respective analysis reported vacancy of 12.89% versus 7.52%.

[34] The primary factor contributing to the difference in vacancy rate between the two studies referenced in paragraph [33] is the vacancy reported for the subject property. The Complainant reported a vacancy rate of 26.59% while the Respondent reported 3.79%.

[35] The Complainant argued that the vacancy studies are not applicable when determining the vacancy rate for the subject property, which has experienced a high vacancy since 2009, a period of 4 years. The table on page 23 of Exhibit C1 and noted in paragraph [29] reported the vacancy to be: 2009 – 63.3%; 2010 – 53.0%; 2011 – 54.0% and 2012 – 26.6%.

[36] A review of the 2012 ARFI for the subject property presented on pages 18-21 of Exhibit R1 determined that free rent periods ranging from 4 to 22 months have been provided as incentives so tenant's will lease space in the property. This provision of months of free rent as an incentive is an indicator that the subject property has experienced a chronic vacancy.

[37] The vacancy studies may support the mass appraisal office vacancy rate of 8.25%. However, upon further review of the evidence related to the history of a chronic vacancy and the provision of months of free rent as incentives to lease space in the subject, the Board has decided to allow a one time, site specific, 20% vacancy allowance, applied to the office area, for determining the value of the subject property.

**Issue – Office Rental Rate****Complainant's Position**

[38] The Complainant reviewed the table titled Recent Leasing Activity at 940 6 Ave SW on page 28 of Exhibit C1. For the period November 2011 to July 2012 a total of 61,091 sq. ft. (40.8% of the office area) was leased to 7 tenants at a median rental rate of \$14.00 psf. The rental rates ranged from \$14.00 psf to \$18.75 psf.

[39] A table titled MNP's "B-" Lease Study in DT 2 on page 29 of Exhibit C1 reported lease particulars on 39 leases with commencement dates in the period July 2011 to July 2012. The median rental rate was \$14.00 psf and the mean \$13.92 psf.

[40] In Summary the Complainant argued that the leasing in the building and the market leases presented in the table referenced in paragraph [39] support the requested office rental rate of \$14.00 psf.

**Respondent's Position:**

[41] The Respondent on page 70 of Exhibit R1 presents a table titled the City of Calgary 2013 Downtown Office Rental Rate Analysis: B- Class DT2& DT3. The study provided lease particulars on 45 office leases with commencement dates in the period July 2011 to July 2012.

[42] The following table presents the rental rate analysis:

	2011 – 2012 Comm. Date	2012 Comm. Date
Number of Leases	45	28
Range	\$9.00-\$18.75 psf	\$12.00-\$18.75 psf
Mean Rental Rate	\$14.33 psf	\$14.79 psf
Median Rental Rate	\$15.00 psf	\$15.00 psf
Weighted Mean	\$14.52 psf	\$15.14 psf

Comm. Date: Commencement Date

[43] In summary the Respondent argued that the mean, median and weighted mean rental rate for the 28 leases with 2012 commencement dates all support the \$15.00 psf.

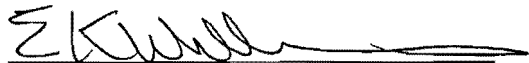
**Board's Reasons for Decision:**

[44] The Respondent's analysis of leases with a 2012 start determined a median rental rate of \$15.00 psf.

[45] A review of the Complainant's study referenced in paragraph [39] determined that 25 of the reported lease start dates were in the period January 2012 to July 2012. An analysis of the 25 leases calculated a median of \$15.00 psf.

[46] Based the arguments and evidence presented the Board supports the use of a \$15.00 psf rental rate for the office space.

DATED AT THE CITY OF CALGARY THIS 27 DAY OF November 2013.



Earl K. Williams  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure Subject Property Disclosure
2. C2	Complainant Rebuttal
2. 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**

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	OFFICE	HIGH RISE	INCOME APPROACH	CAPITALIZATION RATE/RENTAL RATE/VACANCY RATE