

## **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:

***NARLAND PROPERTIES (4TH AVENUE) LTD., 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: 067017004**

**LOCATION ADDRESS: 395 7 STREET SW**

**FILE NUMBER: 71949**

**ASSESSMENT: \$34,970,000**

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:

- *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 mixed residential and office complex of 'B-' quality, located in the non-residential, Downtown 2 (DT2) market area. The office component of the subject property is a ten storey tower with a rentable area of 83,718 square feet of space. The residential component is an eight storey, multi-tenant apartment with a mix of bachelor and 1 bedroom units. The property has been identified as both McDougall Place and United Place in documentation submitted.

[4] The assessment reflects a mix of an Income Approach to Value for the office component and a Multi-Residential Gross Income Approach to Value for the apartment component.

[5] The office component, the only portion under complaint, with an area of 83,718 square feet is demised into 83,547 square feet of office space assessed at \$15.00 per square foot and 171 square feet of retail main level assessed at a rate of \$16.00 per square foot. There are 83 parking stalls assessed at a rate of \$4,800 per parking stall. The Net Operating Income (NOI) is capitalized at 5.00%.

[6] There is an exempt portion, assigned its own roll number, valued at \$526,500 deducted from the assessment.

**Issues:**

[7] The Complainant stated the complaint was in relation to elements of the Income Approach to Value, specifically the capitalization rate, office space rental rate, the parking rates, and the quality classification.

[8] The issues put forward for the Board's consideration:

Issue 1: The Complainant requested a capitalization rate of 7.5%, instead of the current rate of 5.00%;

Issue 2: The Complainant requested an office rental rate of \$14.00 per square foot, instead of the current rental rate of \$15.00 per square foot;

Issue 3: The Complainant requests the parking rental rates be segregated by surface and underground parking with rates of \$4080 and \$3980 per stall, respectively, instead of the current rate of \$4,800 per stall regardless of location;

Issue 4: The Complainant requests a reclassification of the office component from a quality 'B-' to 'C'.

**Complainant's Requested Value: \$24,040,000**

**Board's Decision:**

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

[10] The assessment was confirmed at \$34,970,000.

**Legislative Authority, Requirements and Considerations:**

[11] 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.

[12] 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 1: Capitalization Rate**

**Complainant's Position:**

[13] The Complainant stated the capitalization rate should be 7.50%, based upon a revised analysis of capitalization rates in the City of Calgary.

[14] The Complainant argued mixed use buildings are shunned by investors as there is a need for "different types of management skills to operate an office complex versus a multi-family building". (C1, Pg. 10)

[15] The Complainant presented an historical review of the 1999, 2004, and 2010 sales for the subject property, stating the capitalization rates were 10.5%, 11.2% and 9.0%, respectively. The Complainant argued that when compared to other office buildings it was shown the capitalization rate for the subject was greater by 1.2% to 2.87% depending upon whether average or median values were used in the comparison. (C1, Pg. 16)

[16] The Complainant submitted two tables for office sales city wide. The table for sales in 1998 and 1999 produced an average capitalization rate of 8.98% and a median of 9.30% using 21 sales. The subject property indicated a capitalization rate of 10.50% for the October 22, 1999 sale, which is a 1.52% and 1.20% increase over the city wide average and median

capitalization rates. (C1, Pg. 12)

[17] The second table applied a similar approach in a comparison of the average and median for sales city wide in 2003 and 2004 to the 2004 sale. The Complainant argued the capitalization rate for the subject property, at 11.20%, indicated an increase of 2.13% and 2.3% over the average and median for city wide capitalization rates. (C1, Pg. 13)

[18] The Complainant presented two methods in the determination of the capitalization rate for the 2010. For Method 1, the Complainant calculated a capitalization rate using the City of Calgary typical to determine the NOI. Having established the NOI, the value is divided by the adjusted Sale Price (sale price less Residential component) to calculate the capitalization rate of 10.09%. (C1, Pg. 14-15)

[19] The Method 2 process used a normalized vacancy rate which increased the NOI and the capitalization rate. This method was based upon an assumed 21.5% vacancy rate in comparison to the 14% typical vacancy rate. The resulting capitalization rate was 12.4%. (C1, Pg. 61-62)

[20] The Complainant established its capitalization rate for 2010 through a review of four sales from a citywide search. The result of the analysis resulted in a 7.23% average and a median of 7.50%. The difference between the subject and the sale comparables' capitalization rate indicated an increase on 2.87% and 2.59% for the average and median values. (C1, Pg. 15)

[21] The Complainant requested a 2.5% addition to the City of Calgary capitalization rate for a revised capitalization rate of 7.5%. It was the Complainant's submission the capitalization rate should be higher for the subject property based upon the difference between the actual and typical capitalization rates at the time of the 2010 sale. (C1, Pg. 16)

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

[22] The Respondent submitted the City of Calgary "2013 Downtown Office Capitalization Rate Summary" which presented an analysis of the sixteen quality 'A', 'B', and 'C' office buildings. (R1, Pg. 50) The submission presented six sales which fell into the quality 'B' grouping, with the analysis indicated:

Statistical Method and Grouping	Capitalization Rate
Median (B quality Class)	4.82%
Mean (B Quality Class)	4.82%
Median (B Quality Class sold since 2011-07-01)	4.82%
Mean (B Quality Class sold since 2011-07-01)	4.65%
Median (B Quality Class sold in 2012)	5.02%
Mean (B Quality Class sold in 2012)	5.07%

[23] The Respondent noted the capitalization rate was set at 5.00%, significantly below the requested rate of 7.50% and none of the quality 'B' office building sales in the downtown market area supports the requested capitalization rate.

[24] The Respondent argued the Complainant's capitalization rates were derived from

RealNet opinion of capitalization rates and the Complainant provided no documentation to support the rates used in the Complainant's presentation.

**Board's Reasons for Decision on Issue 1:**

[25] The Board found a number of comments made by the Complainant were opinions of requirements in the market place, but offered no market evidence to support the claim of special requirements by investors being needed.

[26] The Complainant's argument with respect to the historical capitalization rates was not supported with market evidence, but was taken from RealNet documents which provided no support for the capitalization rate values. In the case of the 2010 sale the RealNet documents shows the capitalization rate as 9.0%, but put in brackets the word 'Estimated'.

[27] The Board further noted in the Complainant's list were sales which showed both higher and lower capitalization rates than the rate provided for the subject property. As no evidence was presented on those properties, the Board fails to see any special significance in the subject's capitalization rates as submitted by the Complainant.

[28] The Board was further unable to place significant weight on the historical argument when the Complainant failed to provide the support for its comparison to 'other office sales'.

[29] The Complainant's comparison of the subject property capitalization rate with a city wide analysis of capitalization rates for the 1999 and 2004 sales was not given significant weight by the Board. The Complainant derived the capitalization rate for comparison by using sales which occurred in different market areas than the subject property. When questioned by the Board, the Complainant was unable to identify which of the city wide sales were located in the vicinity of the subject property. The analysis would have carried more significance if it had focused on sales in same area as the subject.

[30] In the Complainant's review of the 2010 sale, it stated there was an "abnormally high vacancy rate of 21.5% and referenced the RealNet document in Appendix F. The Board was unable to find in the submitted evidence support for the stated vacancy rate. The Board found the document referenced by the Complainant stated here was an 83% occupancy or a 17% vacancy, which the Purchaser had had reduced to a 10% vacancy, supportive of the city of Calgary Typical vacancy rate. (C1, Pg. 59) The Board found this did not support the Complainant's stabilized Income Approach and the calculated Capitalization rate of 12.4%. (C1, Pg. 62) The Board placed little weight on the Method 2 calculation of the Net Operating Income (NOI).

[31] The Board found the Respondent's capitalization rate was established through the analysis of sales within the downtown market area and the result was unaffected by the use of suburban office sales as in the Complainant's analysis.

[32] The Board found the Respondent's presentation on the capitalization rate clearly established the methodology used to determine the capitalization rate applied to the quality 'B' office properties or the office component for a mixed property, such as the subject property.

[33] The Board found the argument by the Complainant failed to support the requested change to the capitalization rate.

## Issue 2: Office Rental Rate

### Complainant's Position:

[34] The Complainant stated the office rental rate was "not reflective of the market" at the current rental rate of \$15.00 per square foot.

[35] The Complainant submitted an analysis of thirteen (13) leases, commencing between April of 2010 and April of 2012, that indicated an average rate of \$14.04 per square foot, a median rate of \$14.00 per square foot and a weighted mean of \$14.06 per square foot. (C1, Pg. 7) The Complainant requested the rate be adjusted to \$14.00 per square foot.

### Respondent's Position:

[36] In response to the Complainant's argument on office rental rate, the Respondent submitted trending graphs to show the rents in the subject property had increases over time. The first graph looked at the subject rents in the year prior to the valuation date, plotting nine lease rates. The Respondent argued the linear line for the rents indicated an upward trend, with the two of the recent leases in 2012 exceeding the \$15.00 per square foot typical rental rate. (R1, Pg. 17)

[37] The second graph of the subject property leases added two post facto leases signed after the valuation date of July 1, 2012 for lease rates of \$15.00 and \$16.00 per square foot, supporting the currently determined typical rental rate of \$15.00 per square foot. (R1, Pg. 19)

[38] The Respondent submitted the "2013 Downtown Office Rental Rate Analysis: B- Class in DT2 & DT3" analyzed the leases commencing from July 1, 2011 to July 1, 2012. (R1, Pg. 47-48) The analysis indicated :

STATISTICAL ANALYSIS	RATE
MEAN ALL LEASES	\$14.33
MEDIAN ALL LEASES	\$15.00
WEIGHTED MEAN	\$14.52
MEAN 2011	\$13.56
MEDIAN 2011	\$14.00
WEIGHTED MEAN	\$13.57
MEAN 2012	\$14.79
MEDIAN 2012	\$15.00
WEIGHTED MEAN	\$15.14

[39] The analysis examined forty-five (45) lease rates, with seventeen commencing in 2011 and twenty-eight commencing in the period January 1, 2012 to July 1, 2012.. The Respondent argued the analysis of all the leases indicated a rate of \$15.00 per square foot was supported through both the 'All Leases' rate analysis and the 2012 lease rate analysis. The Respondent argued the assessment was to reflect market value on the valuation date of July 1, 2012, so the best indicator of typical rental rates was the use of leases close to the valuation date.

[40] The Respondent noted seven leases from the subject property were used in the analysis of the typical rental rate, with three of the leases rates being within 2012.

### **Board's Reasons for Decision on Issue 2:**

[41] The Board found the Complainant presented an argument for the use of site-specific office lease rates to establish the rental rate to be applied in the Income Approach. The Board would accept this argument if the lease rates were shown to be atypical of the rates found in the quality 'B-' office buildings in the downtown market area. However, the Respondent's submission clearly indicated the subject property's lease rates fell within the range of leases in the downtown DT2 and DT3 market zones that range being from \$12.00 to \$18.75 per square foot in 2012.

[42] The Board found insufficient evidence to support a change the office rental rate applied to the subject property.

### **Issue 3: Parking Rates**

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

[43] The Complainant challenged the methodology applied by the city of Calgary to assess all parking stalls at the same rate of \$4,800 per stall for 'B' office premises .

[44] The Complainant argued that of the eighty-three (83) parking stalls, eleven (11) are surface stalls and suffer from "exposure to the elements" (C1, Pg. 8)

[45] The Complainant submitted that, based upon the parking rent roll, there should be a different rate applied to surface and underground parking stalls at \$3,480 (\$290 per month) and \$4,080 (\$340 per month) per stall, respectively. (C1, Pg. 47-48)

[46] The Complainant noted the parking stalls associated with quality 'C' office premises were assessed at a rate of \$4,500 per stall.

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

[47] The Respondent submitted the City of Calgary "2013 Downtown Office Monthly Parking Rates: B Class" which analyzed two categories of Parking in the market area – reserved rate and unreserved rate. (R1, Pg. 53-54)

[48] The analysis of 41 quality 'B' office buildings indicated the mean and median values:

	Reserved Rate	Unreserved Rate
Mean	\$424.61	\$362.46
Median	\$425.00	\$375.00

[49] The Respondent noted the analysis of the parking rates to establish the typical parking stall rate included the subject property at a rate for \$340.00 per parking stall.

**Board's Reasons for Decision on Issue 3:**

[50] The Board found the Complainant's argument for the use of site specific parking stall rates was not clearly demonstrated as being atypical of the market place.

[51] The rates submitted as being consistent within the subject property were shown, by the Respondent, as being used in the establishment of the typical parking rate. Further the rate for the subject property, \$340.00 per stall for reserved parking stalls, fell within the range of downtown quality 'B' offices, ranging from as low as \$210.00 per stall to a high of \$550.00 per stall.

[52] The Board found insufficient grounds to alter the parking stall rental rate for the subject property.

**Issue 4: Quality Classification****Complainant's Position:**

[53] The Complainant provided five (5) office buildings similar to the subject that were classified a quality 'C' buildings whereas the subject is classified as a Quality 'B-'. (C1, Pg. 111-134)

[54] The Complainant argued these building were in direct competition with the subject property but assessed at a rental rate of \$13.00 per square foot.

[55] The Complainant argued the comparables were of equal or better quality than the subject property, but assessed at higher rental rates for the office space and parking stall rate and had a higher capitalization rate applied.

**Respondent's Position:**

[56] In response to the Complainant's request for a reclassification of the quality for the subject property, the Respondent submitted a document from Altus InSite, which rated the subject property as a 'B' Office Class. (R1, Pg. 45)

[57] The Respondent submitted the City of Calgary "2013 Downtown Office B- Class Equity" report that indicated the rates consistently applied to the subject property and all similar quality 'B-' office premises. (R1, Pg. 56)

**Board's Reasons for Decision on Issue 4:**

[58] The Board is unable to accept the Complainant's request to change the quality classification for the subject property, as it does not fall within the mandate for the Board of allowed matters for complaints. The Board must operate under the authority of the Municipal Government Act and its Regulations which stipulates the matters which a Board can address. A review of the Matters Relating to Assessment Complaint Regulation (MRAC) AR310/2009 clearly defines the Matters a Board can address with respect to the assessment.

**MATTERS FOR A COMPLAINT**

A complaint to the assessment review Board may be about any of the following matters shown on an assessment notice or on a tax notice (other than a property tax notice).

- 1 the description of the property or business
- 2 the name or mailing address of an assessed person or taxpayer
- 3 an assessment amount
- 4 an assessment class
- 5 an assessment sub-class
- 6 the type of property
- 7 the type of improvement
- 8 school support
- 9 whether the property or business is assessable
- 10 whether the property or business is exempt from taxation

[59] The Board finds that 'quality' does not fall with the description of the matters and does not appear on the assessment notice provided to the owners.

[60] The Board found that 'quality' is a designation applied by the City of Calgary Assessment Business Unit in order to group similar properties in order to analyze market values.

[61] The Board found there is insufficient information for it to have the ability to question the 'quality' designation and directed the parties to resolve the issue outside of the hearing process.

[62] The Board found the previous decisions on the subject property, while referring to the methodology of the assessment procedure, based the decisions upon the sale price of the subject property, not on a change to the components of the assessment process. While the 2011 Board stated there was support for the argument that a mixed use property was unique, the Decision did not base its final decision on this argument.

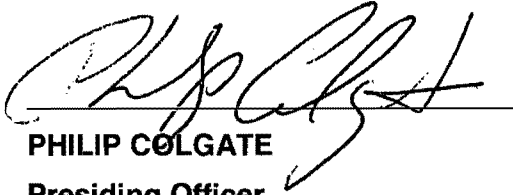
[63] The 2012 Board again based its Decision upon the sale price not the assessment values being used or the capitalization rate, although it did review these elements and make comments on them as part of the Board's review.

[64] The Board noted the Complainant's calculated request was based upon changing the assessment to the exempt portion, assessed under a separate roll number. As the exempt property was not under complaint, the Board cannot recognize a change based upon the altering of a separate roll number, regardless of the fact the roll number is located within the subject property. The Board is restricted with addressing only the roll number before the Board in the complaint.

[65] An argument was raised with respect to the year-over-year increase in the assessed value of the subject property. This is an issue the Board is unable to address, as its authority is to render decisions only on the current year's assessment and the factors that go into the creation of the assessment. Each assessment year is based upon a different set of factors – rental rates, vacancy allowance, operating costs and capitalization rates – which the Board can review on an annual basis during its deliberation. The Board is not in a legislated position to review prior year's rates when making its decision.

[66] For the reasons provided on each of the issues, the Board confirmed the assessment at \$34,970,000.

DATED AT THE CITY OF CALGARY THIS 28<sup>th</sup> DAY OF November 2013.



PHILIP COLGATE  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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 - Net Leases Rates