



## **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:

**ARTIS ALPFORDEAU LTD., COMPLAINANT**  
*(as represented by Fairtax Realty Advocates Inc.)*

and

**The City Of Calgary, RESPONDENT**

before:

**BOARD CHAIR: P. COLGATE**  
**BOARD MEMBER: P. PASK**  
**BOARD MEMBER: J. MASSEY**

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>067027995</b>
<b>LOCATION ADDRESS:</b>	<b>833 4 AVENUE SW</b>
<b>FILE NUMBER:</b>	<b>71987</b>
<b>ASSESSMENT:</b>	<b>\$60,090,000.00</b>

This complaint was heard on 22nd 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 8.

Appeared on behalf of the Complainant:

- *Syd Storey, Fairtax Realty Advocates Inc.*
- *Tony Omura, Wernick Omura Ltd.*

Appeared on behalf of the Respondent:

- *Tyler Johnson, City of Calgary*
- *Margaret Byrne, 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 no preliminary matters raised the Board proceeded with the merit hearing.

**Property Description:**

[3] The subject property contains a Downtown Office B class building located in the DT2 area and known as Canadian Centre. The structure has an assessable office area of 156,402 square feet. There are 89 parking stalls.

**Issues:**

- [4] The Complainant placed two issues before the Board in the complaint:
1. Market rent should be \$17.00 for office space, and
  2. Capitalization rate should be 6.75%.

**Complainant's Requested Value: \$39,900,000.00**

**Board's Decision:**

[5] Based on the Board's decision for each of the issues stated, the Board found insufficient information to support the changes requested by the Complainant. Further, the Board found the actual sale price of the subject property the most compelling evidence as to the market value.

[6] The Board confirms the assessment at \$60,090,000.00

**Legislative Authority, Requirements and Considerations:**

[7] 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.

[8] 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 1. Market Rent for Office space****Complainant's Position:**

[9] The Complainant argued the office rental rate should be at \$17.00 per square foot, as opposed to the current rate of \$19.00 per square foot.

[10] The Complainant submitted the analysis of 4 leases from the rent roll of July 1, 2012 into evidence in support of the request. The presented leases ranged in start dates from March 1, 2010 to November 1, 2011. The analysis of those leases was submitted indicating an average lease rate of \$16.27 per square foot. (C1, Tab 2)

[11] An analysis of the leases for the Ford Tower Alpine Building was submitted for the 2012 leases. The total of 6 leases produced an average lease rate of \$16.99 per square foot, with a range of \$15.00 to \$21.00 per square foot for the leases. A second analysis looked at the leases from 2010 to 2012, inclusive, with a resulting average lease rate of \$14.03 per square foot. The rent roll was submitted to show the source of the lease information. (C1, Tab 2 & 3)

[12] The Complainant submitted a third analysis of the leases in the Britannia Building. The seven leases showed an average lease rate of \$15.15 per square foot for the period November 1, 2011 to July 1, 2012. No rent roll was produced to support the lease rates. (C1, Tab 3)

[13] The Complainant submitted the decision CARB 1589/2012-P, Trimac House, into evidence. The decision was based on a reduction on the rental rate for the property, reducing the rate from \$20.00 to \$18.00 per square foot for the office space. (C1, Tab 5)

**Respondent's Position:**

[14] The Respondent submitted the 2013 Downtown Office Rental Analysis for A & A-Classes, B Class in DT1 and DT2/DT3, B- Class in DT1/DT8 and DT2/DT3 and the C & C-Class into evidence. The only table directly referred to was the B Class in DT2/DT3. (R1, Pg. 65-66)

[15] The analysis of the 66 leases submitted indicated the following lease rates per square foot for the B Class buildings:

Mean of All Leases	66 leases	\$16.83
Median of All Leases		\$16.00
Weighted Mean of All Leases		\$17.47
Mean 2012 Leases	30 leases	\$17.41
Median of 2012 Leases		\$16.18
Weighted Mean of 2012 Leases		\$20.12
Mean of 2012 Leases >10,000 square feet	6 Leases	\$19.71
Median of 2012 Leases >10,000 square feet		\$20.00
Weighted Average of 2012 Leases >10,000 square feet		\$21.26

(R1, Pg. 65-66)

[16] The Respondent submitted it did not have the legislative authority to select only a small sample of leases to support a request but must use all valid leases in the market place to determine the typical rental rate. The Respondent stated that if there are sufficient leases in the 2012 period it would use the shorter period as more reflective of the July 1, 2012 valuation date. For the 2012 period the City of Calgary had 31 leases to support the rental rate of \$19.00 per square foot.

[17] The Respondent noted the Trimac House decision was for an 'A-' class building, based on different criteria of rental rates and capitalization rates.

[18] The Respondent entered into evidence the sale of the subject property on June 15, 2012 for the amount of \$63,725,000.00. The Respondent entered copies of supporting documents from RealNet, Commercial Edge and Alberta Government Services Land Titles Office. (R1, Pg. 26-38)

#### **Board's Reasons for Decision:**

[19] The Board determined, when reviewing the submissions, that two approaches to the valuation had been employed by the two parties. The Respondent is required to determine the typical market rents based upon the use of all available leases in the market for comparable properties, not just a limited selection of the subject and two additional properties, as presented by the Complainant.

[20] The Board noted on review of the Complainant's rent roll there were two additional leases which it did not include in the rental rate analysis – units 0500 and 1010, with leases of \$18.00 and \$12.00, respectively. The Board questions their exclusion as they fall within the time parameters set by the Complainant.

[21] The Board found in total the Complainant relied on thirty-three (33) leases dating from January 1, 2010 to derive its 'typical' rental rate. Only seventeen (17) fell within the analysis period used by the City of Calgary from July 1, 2011 to July 1, 2012. The Board found when



reviewing the submissions the Britannia Building, used by the Complainant as a comparable property, is currently classified as a B- Class property. The Complainant provided no evidence to show this building should be classified as a B Class property. When the Board removed the seven leases and analysed the remaining ten leases the resulting average lease rate was \$17.14 per square foot. If the Board reviewed only the 2012 leases, as presented by the Respondent, the remaining six leases have a resulting average lease rate of \$17.39 per square foot. The analysis tends to support the Complainant's request for \$17.00 per square foot, but it is based upon an increasingly smaller data base in comparison to the analysis provided by the Respondent.

[22] The Board found all the leases from July 1, 2011 forward were common to both submissions, with the exception of one - Unit 410 in the Ford Tower Alpine Building – which had been incorrectly identified as a January 1, 2012 when in fact the rent roll shows it commencing June 1, 2012.

[23] The Board found, based upon a mass appraisal analysis, the Respondent had provided sufficient evidence to support the office rental rate at \$19.00 per square foot. The Board concluded the subject property was assessed on a rental rate for July 1, 2012 which was fair and reasonable for the class 'B' offices.

[24] The Trimac House decision (CARB 1589/2012-P) was not found to be relevant as it dealt with a class 'A-' building, which utilized different rental rates. The Complainant failed to adequately show to the Board the relationship to a class 'B' property.

[25] The sale of the subject property is addressed later in the Board's decision.

## **Issue 2. Capitalization Rate**

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

[26] The Complainant argued the capitalization rate should be at 6.75%, as opposed to the current rate of 5% for the B Class buildings.

[27] The Complainant introduced Mr. Omura, Wernick Omura Ltd, who presented a study on determination of a capitalization rate. Mr. Omura had been contracted by Fairtax Realty Advocates to "examine the reasonableness of the City of Calgary's Assessment Department's Fee Simple capitalization rate for Class 'B' office buildings of 5% versus the Leased Fee market sales evidence of 6.7% to 7.00%". The analysis and conclusions of the document were developed by Mr. Omura to critic the capitalization rates only and not to provide an opinion of the market value of the subject property.

[28] Mr. Omura submitted an analysis of the "Assessor's Derived (Fee Simple) Capitalization Rates". Mr. Omura analyzed eight class 'B' office buildings in the Downtown market zones or DT1, DT2, DT3 and DT8. Mr. Omura, using the Net Operating Income (NOI) for roll year 2013 calculated a capitalization rate for each of the eight properties. (C1, Tab 4, Pg. 4 of 10)

[29] Mr. Omura presented the analysis of the eight sales utilizing the Leased Fee Net Income for the properties. His analysis indicated a mean rental rate of \$23.61 and a medium rental rate of \$22.49. The resulting mean and median for the capitalization rate were 6.82% and 6.73%, respectively. (C1, Tab 4, Pg.6 of 10)

[30] Mr Omura compared the Fee Simple typical rental rates with the rates he presented in his Leased Fee table and determined there was a mean difference of 23.92% between the two values, which if applied would support the capitalization rate of 6.82% from his Leased Fee

analysis. (C1, Tab 4, Pg 7 of 10) Mr. Omura's analysis of the relationship between the Respondent's and Complainant's NOI values indicated an adjustment, based on the percentage difference between the two NOI values, would result in a mean capitalization rate of 6.78% and a median of 6.77%, supporting the request for the requested 6.8% rate. (C1, Tab 4, Pg. 8 of 10)

[31] The Complainant submitted its "2013 Cap Rate Study" of thirteen sales in 2011 and 2012 indicating an average capitalization rate of 6.83% for class 'B' office buildings in the downtown market area. The Complainant noted specific knowledge of four of the sales as his client had purchased them. (C1, Tab 4)

[32] The Complainant submitted third party reports from CBRE National Research indicating capitalization rates between 6.75% and 7.25% and Colliers International indicating rates between 6.25% and 7.00%

#### Respondent's Position:

[33] The Respondent introduced challenges to the complainant's submission with respect to lack of evidence to support calculated capitalization rates and the inclusion of properties not suitable for use in an analysis of capitalization rates.

[34] The Respondent noted the "2013 Cap Rate Study" submitted by the Complainant lacked support for the calculated capitalization rates as the Omura study did not provide verifiable evidence to show the source of the leased fee NOI's.

[35] The Respondent argued two properties – 910 7 Avenue SW and 816 7 Avenue SW used by the Complainant were class 'C' properties and should not be part of a capitalization study for class 'B' office buildings. (R1, Pg. 42)

[36] Two sales – 218 8 Avenue SW and 209 8 Avenue SW - were not part of the City of Calgary capitalization rate studies for class 'B' offices as they were located on the Stephen Avenue Mall. The Stephen Avenue Mall properties are part of a different model than other Downtown offices with "different assessment parameters including typical rental rate, capitalization rate, vacancy, operating costs, etc". (R1, Pg. 43-44) Additionally, the sale of 218 8 Avenue was part of a portfolio sale and transfer with the Scotia Centre & Scotia Fashion Centre. (R1, Pg. 44) These properties formed part of the DT8 inventory.

[37] With respect to the Complainant's Fee Capitalization Rates table (C1, Tab 3) in the presentation by Mr. Omura, the Respondent challenged a number of the NOI's submitted as they were from an incorrect roll year for the determination of the capitalization rate. (R1, Pg. 46-47)

[38] The Respondent submitted its "2013 Downtown Office Capitalization Rate Summary" document to show its source of the City of Calgary Capitalization rates. The statistical results for 'B' class office buildings indicated the following:

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%

(R1, Pg. 73)

[39] Supporting documents were submitted for the first nine properties in the respondent's rate analysis chart. (R1, Pg. 74-271)

**Board's Reasons for Decision:**

[40] The Board, when reviewing the presentation by Mr. Omura, was confused when differences were presented for the properties in the first table – Assessor's Derived Capitalization Rates and the second table - Market Derived Capitalization Rates. The Board noted in five cases the areas used differed between the tables. This had a direct impact on the results shown for the net income per square foot and the resulting statistics. The Board noted the areas used in Mr. Omura's leased fee analysis were correct to the Property Summary Report.

[41] The Board noted Mr. Omura used the NOI for the roll year 2013, even on a sale that occurred on April 13, 2011. Effectively the NOI used was based upon leases that could be over a year after the actual sale date.

[42] The Board found when comparing the submissions by the Complainant and the Respondent that two properties were placed in question. The Centennial Building at 816 7 Avenue SW, used by Mr Omura in his analysis, is rated as a 'C' class by the City of Calgary and would not be a part of the City of Calgary capitalization study. The second property at 209 8 Avenue SW on the Stephen Avenue Mall, is considered by the City of Calgary to be a retail property and so not included in their analysis. The Board questions the designation as it appears from the Property Detail Report to be a six storey structure with only one floor of retail.

[43] The Board noted no source was provided in Mr. Omura's analysis, based on Leased Fee sales, to support the net income or net income per square foot. The failure to provide this evidence results in the Board placing less weight on the analysis and the resulting capitalization rate.

[44] The Board found the Complainant's 2013 capitalization study did not provide evidence to support the capitalization rate for two of properties – 218 8 Avenue SW and 910B 7 Avenue SW – which did not form part of Mr. Omura's analysis. The Respondent failed to provide supporting documentation for the sales at 615 Macleod Trail SW and 510 5 Street SW, providing supporting documentation for only the first nine sales.

**Board's Decision:**

[45] The Board noted the Complainant withdrew, at the hearing, the rebuttal document submitted to the Assessment Review Board. The Board accepted the withdrawal of the document, so the document was not entered into evidence and was not utilized in the decision process of the Board.

[46] The Board, when making its decision, took special note of the sale of subject property on June 15, 2012, just weeks before the valuation date. No evidence was submitted on the sale to lead the Board to believe this was not a valid arms-length transaction. The Board noted that both parties used the sale in the preparation of their respective capitalization presentations.

[47] In making its decision the Board accepted guidance from the Court of Queen's Bench of Alberta case 697604 Alberta Ltd. v. City of Calgary, 2005 ABQB512 decision by Honourable Madam Justice L.D. Acton in which the Justice states "...I agree with the following comments from Re Regional Assessment commissioner, Region No. 11 v. Nesse Holdings Ltd., et al

(1984), 447 O.R. (2<sup>nd</sup>) 766 (Ont. H.C.J. Div. Ct) at Page 767:

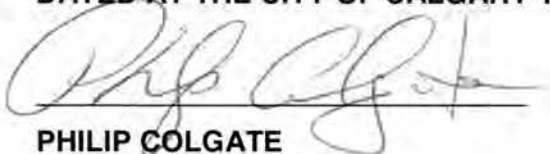
*"It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980, c.31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 1892), the price paid in a recent free sale of the property itself, where in the case there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that a recent free sale of the subject property is generally accepted as the best means of establishing the market value of that property... ...I think that generally speaking the recent sale price, if available as it was in this case, is in law and, in common sense, the most realistic method of establishing market value."*

[48] The Board found the subject property sold in an arms-length transaction for \$63,725,000.00 shortly before the July 1<sup>st</sup>, 2012 valuation date and the calculated assessed value is a reasonable representation of the property's market value.

[49] On review of the evidence submitted by both parties on the issues stated and previous decisions rendered by the Board, this Board found insufficient evidence to justify a change to the assessment.

[50] The Decision of the Board was to confirm the assessment at **\$60,090,000.00**

DATED AT THE CITY OF CALGARY THIS 11<sup>th</sup> DAY OF September, 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. 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.