

## **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 Alpordeau Ltd. (as represented by Fairtax Realty Advocates), COMPLAINANT***

**and**

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

**before:**

***K. Thompson, Board Chair***

***A. Blake, MEMBER***

***B. Kodak, 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: 200971216**

**LOCATION ADDRESS: 635 6 Av SW**

**FILE NUMBER: 72004**

**ASSESSMENT: \$69,360,000**

This complaint was heard on 9th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9

Appeared on behalf of the Complainant:

- *S. Storey* *Agent, Fairtax Realty Advocates*

Appeared on behalf of the Respondent:

- *D. Grandbios* *Assessor, City of Calgary*
- *E. Borisenko* *Assessor, City of Calgary*

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

[1] No procedural or jurisdictional matters were raised. The Board proceeded to hear the merits of the complaint.

**Property Description:**

The subject property, known as Ford Tower/Alpine Building, is a Downtown, 20 storey and 5 storey adjoined office building comprising 144,079 and 47,096 square feet (sq. ft) of office space respectively, 8924 sq. ft. of ground floor retail, and 89 parking stalls. It was constructed in 1976/1964 respectively with a land area of 26,073 sq. ft. Assessment has this property classed as a B office for the Ford Tower and C office for the Alpine building in the DT2 area and used the Income Approach to value with a Capitalization Rate of 5%. This property is assessed at 69,360,000.

Note: This property sold in June of 2012 for \$69,125,000.

**Issues:**

[2] **Issue 1** - Market Rent – the Complainant submits that the market rent for class B office buildings in this area should be \$17.

[3] **Issue 2** – Capitalization Rate – the Complainant submits that 6.75% is a more appropriate Capitalization Rate for the subject property.

**Complainant's Requested Value:** \$47,742,978

**Board's Decision:**

[4] Assessment is confirmed at \$69,360,000

**Legislative Authority, Case Law and Considerations:**

[5] MGA Sec 460.1(2) Subject to 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

[6] Case Law: Court of Queens Bench of Alberta, Citation 697604 Alberta Ltd. v. Calgary (City of , 2005 ABQB512)

**Position of the Parties****Complainant's Position:**

[7] **Issue 1 - Market Rent** - market rent in this area should be \$17 in accordance with an October 2012 Board decision (CARB 1589/2012-P) for a superior or equal office building.

[8] The Complainant provided the 2012 Rent Rolls for the subject property including both the Ford Tower and the Alpine Building. He then provided a chart of the 2011 and 2012 current market leases for those 2 buildings, (15 leases, six in 2012 and nine in 2011, representing 40% of two buildings total leasable area: 58,172 sq. ft. of the 146,811 sq. ft. in the two buildings) showing an average lease rate of \$14.02. Adding in 2010 market leases also showed a lease rate of \$14.03 and 2012 market leases for only the Ford Tower showed a \$16.99 average lease rate.

[9] A CARB decision from 2012 was included in the evidence (CARB1589/2012-P) showing a decision on the Trimac building (a similar B class office building) reducing the rent rate to \$18/sq. ft. from \$20.

[10] **Issue 2 – Capitalization Rate** - the Capitalization Rate of 5.00% used by the City of Calgary to value this building is not supported by the sales of Class B buildings or by third party reporting agencies. A 6.75% Capitalization Rate is more appropriate for the subject property.

[11] The Complainant presented evidence of 14 sales in 2011 and 2012 indicating an average Capitalization Rate of 6.83% in B class buildings in the downtown area with specific knowledge of four of the properties, as they were purchased by his clients.

[12] Further the Complainant provided 3<sup>rd</sup> party reports on 2012 Capitalization Rate studies from CBRE indicating rates between 6.75%-7.25%, and from Colliers between 6.25%-7.00%.

[13] A Leased Fee versus Fee Simple Capitalization Rate Analysis was included from Wernick Omura Real Estate Advisory Services. The report was based on the premise that an office building sells on the leased fee value: to get to the fee simple sale price an adjustment is required to reflect higher than market contract rents. Market derived Capitalization Rates between 6.7 and 7.00 were based on the leased fee sales. T. Omura analysed 8 sales in the 2011 and 2012 timeframe and concluded that the City would need to add a 1.78% adjustment to their Capitalization Rate to recognise the difference between the Leased Fee and Fee Simple value in an office building in the downtown area. The formula and conclusions were developed by Omura.

**Respondent's Position:**

[14] **Issue 1 - Market Rent** – the Respondent provided the City of Calgary's Downtown Office

Rental Rate Analysis for B class office buildings in the DT2 and DT3 areas. This included 66 leases in the 2011 - 2012 time frames.

[15] Information in the City's Rental Rate Analysis was based on leases/rents collected through the annual Request for Information sent out by the City. 36 - 2011 leases from the DT2 and DT3 areas were used and 30 - 2012 leases were used. The Respondent pointed out that the typical rental rates used by the City for calculating assessed values are derived from all the rents in the area being analysed, not just the subject building.

[16] The Respondent also pointed out that in reviewing the analysis data there was a noticeable increase in rental rates between the 2011 and 2012 period. The combined 2011/2012 weighted mean was \$17.47 while the 2012 was \$20.12. The City used the 2012 weighted mean to determine typical rental rates for this area as they felt it better represented the rent for the valuation date of July 1, 2012.

[17] **Issue 2** – Capitalization Rate - the Capitalization Rate of 5% was used to value this property by the City of Calgary. The summary of the City's Capitalization Rate study and conclusions were presented with the mean and median Capitalization Rates showing 5% for 2012. All supporting documentation was included.

[18] Information on the sale of the subject property was included along with Real Net, Land Titles documents, and Corporate Search documents. The Respondent also provided assessment property information for the subject property along with the 2012 rent rolls obtained from the City's Request for information.

[19] Rebuttal of the Fairtax Realty 2013 Capitalization Rate Study included information on sales #10 and #12 showing they are class C offices and therefore should be removed. Sales #5 and #13 are on Stephen Avenue Mall and therefore are not comparable to the subject property; they compete in different markets. Sale #14 is a Beltline property so not in the same market and should be removed. Five additional sales of 8 West, Gulf Canada Square and Scotia Centre (Scotia Centre sold three times) were not included in the Capitalization Rate study presented by Fairtax but were used in the City's study.

[20] With regard to the study by Wernick Omura the Respondent commented that four of the eight sales used in the study had incorrect NOI's (using the wrong year of data based on the sale year) or incorrect classes that resulted in incorrect calculations of the Capitalization Rates. Supporting documentation was provided.

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

[21] **Issue 1** - Market Rent – in reviewing all the data from both parties the Board determined that for assessment purposes the City is required to determine a typical market rent and that must be determined by using rental information from all the properties in any given group of properties, not just rents from the subject property. In addition the Complainant did not at any time indicate that he believed the subject building was not getting typical rents for this area. The Board also had no issue with the typical rents being derived using only the 2012 information provided. There was sufficient rental information provided to convince the Board the analysis had not drawn flawed conclusions. The evidence pointed to a distinct change in the market between the 2011 and 2012 rental information. The Board concluded that the subject property assessment was to set a value for July 1, 2012 and therefore the 2012 rental rate analysis for this group of properties made sense.

[22] At the end of the day it comes down to the Market Value of the property. Two rents

brought forward by the Complainant were not in the Respondents analysis (an \$18 rent and a \$21 rent in 2012) which would further support the typical of \$19. Also one rent was included in the Respondent's analysis that the Complainant did not include, a 2012 \$23.90 lease in the subject building - all these support the rental rate being higher than the requested \$17.

[23] **Issue 2 - Capitalization Rate** – Capitalization Rate analysis were presented by both parties and reviewed at length by the Board. Arguments from the Complainant that the sale price needs to reflect Fee simple Estate, and sells as Leased Fee (and therefore the Capitalization Rate should be reduced by a percentage) were neither sufficiently supported nor specific enough to the subject property to cause the Board to change this assessment.

[24] **Sale Price** - The Board does recognise that for assessment purposes it is legislated to produce a market value using mass appraisal and that the best test or indication of Market Value is a typical market sale.

[25] The subject property in this case sold in June of 2012 and was one of several sales used to develop the typical factors for this class of properties. The Board must reasonably apply the evidence before us and there is nothing in the terms of the sale that would lead us to look for factors to adjust the sale. Nor did the Complainant bring forward any arguments that this was anything but an arm's length open market transaction.


[26] Court of Queen's Bench of Alberta case 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB512 memorandum of decision Honourable Madam Justice L. D. Acton " ..agree with the following comments from Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al (1984), 47 O.R. (2d) 766 (ont. H.C.J. Div. Ct.) at pg 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 sales price, if available as it was in this case, is in law and, in common sense, the most realistic method of establishing market value. "

[27] The subject property sold in an arm's length transaction for \$69,125,000 shortly before the July 1<sup>st</sup> assessment date and the calculated typical assessed value at \$69,360,000 is a reasonable representation of the property's Market Value.

[28] Alpine Building leases were given no weight in making this decision as they are in a C class building.

DATED AT THE CITY OF CALGARY THIS 9<sup>th</sup> DAY OF August 2013.

  
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K. Thompson  
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. R1a & R1b	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.*