

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: 067023002

LOCATION ADDRESS: 521 3 Av SW

FILE NUMBER: 72030

ASSESSMENT: \$56,190,000

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] Request from the Respondent that we refer to presentation from file #72004 to the current file before us. The Board agreed and there was no objection from the Complainant.
- [2] No other procedural or jurisdictional matters were raised. The Board proceeded to hear the merits of the complaint.

Property Description:

The subject property, known as Eau Claire Place 2, is a Downtown, 16 storey multi tenanted office building comprising 136,800 square feet (sq. ft) of office space, 2320 sq. ft. of ground floor retail, and 87 parking stalls. It was constructed in 1981 with a land area of 12,321 sq. ft. Assessment has this property classed as a B- office in the DT1 area and used the Income Approach to value with a Capitalization Rate of 5%. This property is assessed at \$56,190,000.

Note: This property sold in June of 2012 for \$52,150,000.

Issues:

- [3] **Issue 1** - Market Rent - the Complainant submits the market rent for class B office buildings in this area should be \$18.
- [4] **Issue 2** - Capitalization Rate - the Complainant submits that 6.75% is a more appropriate Capitalization Rate for the subject property.

Complainant's Requested Value: \$39,827,748

Board's Decision:

- [5] Assessment is confirmed at \$56,190,000

Legislative Authority, Case Law and Considerations:

[6] 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).

[7] Case Law: Court of Queen's Bench of Alberta, Citation 697604 Alberta Ltd. v. Calgary (City of , 2005 ABQB512).

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

[8] **Issue 1 - Market Rent** - market rent in this area should be \$18 based on 2011 and 2012 rents in this building.

[9] The Complainant provided the 2012 Rent Rolls for the subject property. He then provided a chart of the 2011 and 2012 current market leases for the subject building, (12 leases, four in 2012 and eight in 2011, representing 39% of the leasable area) showing an average lease rate of \$18.03. He gave comparable leases in the Ford Tower/ Alpine Building averaging \$14.02 and Canada Centre averaging \$16.84 for 2011/2012.

[10] **Issue 2 – Capitalization Rate** - the Capitalization Rate of 5% 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. He had specific knowledge of four of the properties, as they were purchased by his clients.

[12] Further he presented 3rd party reports on 2012 Capitalization Rate from CBRE indicating rates between 6.75%-7.25%, and from Colliers between 6.25%-7.0%.

[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 assessor 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 DT1 area. This included 35 leases in the 2011 - 2012 timeframe.

[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. Twenty two 2011 leases from the DT1 area were used and thirteen 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 data there was a noticeable increase in rental rates between 2011 and 2012. The combined 2011/2012 mean was \$16.67 while the 2012 was \$19.35. The City used the 2012 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. The City DT1 rental analysis did not include leases from the Complainant's list. All four were in the \$20 range which would support the \$19 rent rate used for this type of property's.

[17] **Issue 2 – Capitalization Rate** - the Capitalization Rate of 5% was used to value this building 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 RealNet, 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 in 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 by the City.

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 which 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 had no issue with the typical rents being derived using only the 2012 information provided. There was sufficient 2012 rental information to convince the Board that the analysis had not drawn flawed conclusions. The evidence pointed to a distinct change in the market between 2011 and 2012. The Board concluded that the subject property assessment was valued as of July 1, 2012 and therefore using only the 2012 rental rate analysis for this group of properties made sense.

[22] **Issue 2 - Capitalization Rate** – Capitalization Rate analysis were provided by both parties and reviewed at length by the Board. 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.

[23] Arguments from the Complainant that there should be a percent reduction in the

Capitalization Rate because the sale price represents the Leased Fee interest and that would be reduced to reach the Fee Simple Estate were neither sufficiently supported nor specific enough to the subject property to cause the Board to change this assessment.


[24] General Issues: The subject property sold in June of 2012 and was one of several used to develop the typical factors to apply to properties in this class, this included the Capitalization Rate. In reviewing the sale and deciding whether or not it is appropriate to be used as a test of the derived assessed market value, we find there is nothing that would bring cause to adjust this value. Nor did the Complainant bring forward any arguments that this was anything but an arm's length open market transaction.

[25] 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. "

[26] The subject property sold in an arm's length transaction for \$52,150,000 shortly before the July 1st assessment date and the calculated typical assessed value at \$56,190,000 is a reasonable representation of the property's Market Value.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF August 2013.



K. Thompson

Presiding Officer

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

NO.	ITEM
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.*