



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:

***SOUTHLAND PARK INC., COMPLAINANT
C/O MORGUARD INVESTMENTS LTD.
(as represented by AEC Property Tax Solutions)
and***

The City Of Calgary, RESPONDENT

before:

***PRESIDING OFFICER: P. COLGATE
BOARD MEMBER: T. LIVERMORE
BOARD MEMBER: J. PRATT***

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:	129178505
LOCATION ADDRESS:	10101 SOUTHPORT ROAD SW
FILE NUMBER:	72183
ASSESSMENT:	\$180,640,000

This complaint was heard on the 24th, 25th, 26th and 27th days of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Brock Ryan, Agent, AEC Property Tax Solutions*
- *Michael Oh, Agent, AEC Property Tax Solutions*
- *Brian K. Dell, Legal Counsel, Wilson Laycraft, Barristers & Solicitors*
- *Shawna Pineau, Alberta Health Services (Observer)*

Appeared on behalf of the Respondent:

- *Mike Ryan, Assessor, City of Calgary*
- *Jarrett Young, Assessor, City of Calgary*
- *Christina Neal, Assessor, City of Calgary*
- *Susan Trylinski, Legal Counsel, City of Calgary Law*

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.

[2] While the complaint form indicated that Matters 1, 2, 3, 4, 5, 6, 7, and 10 were to be addressed, the Complainant stated that the presentation would address only Matter 3, the assessment amount, and Matter 10, whether the property or business is exempt from taxation.

[3] Two preliminary matters were submitted to the Board for decisions.

[4] Preliminary Issue 1 – Carry forward of the Board decision on the capitalization rate to Hearing File 72283, Roll Number 200142107, 4639 Manhattan Road SE. The Complainant stated the evidence to be presented was identical for both hearings. The Complainant noted the property at 4639 Manhattan Road SE was described as an 'A-' property.

[5] The Respondent had no objection to the carry forward of the evidence, questions and decision to the noted Hearing File 72283.

[6] The Board accepted the request and carried forward the evidence submitted by both parties, the questions put through the Board and the Board's decision on the capitalization rate to Hearing File 72283.

[7] Preliminary Issue 2 – The Respondent requested the exclusion of the Complainant's Rebuttal documents identified as "RE: AEC Property Tax Solutions – Rebuttal For September 23". The Respondent argued the document contained new evidence which should correctly be submitted as part of the Complainant's disclosure document as in the case of the 2010 suburban Office Vacancy Study, which was in the possession of the Complainant when the disclosure was submitted. The Respondent argued, the documents contained evidence supporting the Complainant's position in the disclosure and should correctly be included in the disclosure. The Respondent argued the City of Calgary was not given the opportunity to review and respond to the document.

[8] The Complainant argued it was not new evidence, but would leave it to the Board to decide on the admissibility of the documents.

[9] After a review by the Board, it was found that portions of the rebuttal document were new evidence and should be excluded from submission.

[10] In the document identified as "RE: AEC Property Tax Solutions – Rebuttal For September 23 – Document 1 of 2", the Board found portions of the document were new evidence and would be excluded. The exclusion included the table on the top of page 5 and pages 40 to 70, addressing Post-Facto – Model Inaccuracies. The Board accepted the balance of the document C3.

[11] The Board found in respect to the document identified as "RE: AEC Property Tax solutions – Rebuttal For September 23 – Document 2 of 2", the document should have been submitted as part of the Complainant's disclosure document. The document was ruled to be new evidence and excluded in its entirety from the hearing evidence.

Property Description:

[12] The subject property, known as Southland Park, is a 668,982 square foot parcel of land improved with four office buildings. The suburban office buildings have a total area of 872,018 square feet composed predominantly of office space.

ADDRESS	NET RENTABLE AREA	QUALITY	YEAR OF CONSTRUCTION
10101 Southport Road SW	142,247 sq. ft.	A2	1978
10201 Southport Road SW	267,483 sq. ft.	A2	1980
10300 Southport Lane SW	226,360 sq. ft.	A2	1981
10301 Southport Lane SW	235,730 sq. ft.	A+	2008

[13] The office area is demised as 636,288 square feet of Southwest Office Space, assessed at a rate of \$18.00 per square foot, and 235,730 square feet of Southwest Office Space, assessed at a rate of \$22.00 per square foot. There are a total of 1,738 enclosed parking stalls assessed at a rate of \$1,080.00 per stall. The assessed value is determined through an Income Approach to Value, with the Net Operating Income (NOI) being capitalized at a rate of 6.00%.

[14] A portion of the office area has been granted exempt status as it is occupied by Alberta Health Services. These areas has been assessed under separate roll numbers, 129178513, 201814373 and 200194140 and the assessed valued deducted from the over-all assessed value of the premises.

Issues:

[15] Two issues were placed before the Board for its consideration:

Issue 1: Whether the 697 parking stalls leased to Alberta Health Services should be granted exempt status;

Issue 2: Whether The capitalization rate should be 6.50%, instead of the current capitalization rate of 6.00%.

Complainant's Requested Value: \$155,510,000

Board's Decision:

[16] The Board found there was sufficient evidence on Issue 1, the exemption of the parking stalls, to reduce the assessment. On Issue 2, the capitalization rate, the Board found the Complainant did not meet the burden of proof and the request was denied.

[17] The assessment was confirmed at **\$180,640,000**, however the Board orders the property assessment to be split to reflect the exemption of the 697 parking stalls. The Board determined the property assessment to be portioned **93.26% for the taxable component and 6.74% for the exempt component.**

Legislative Authority, Requirements and Considerations:

[18] 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.

[19] 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 decisions reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[20] 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.

[21] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Position of the Parties**Issue 1: Exempt Status of 697 Parking Stalls****Complainant's Position:**

[22] It was the Complainant's position that 697 parking stalls were held by Alberta Health Services under its lease agreement with the landlord, and were therefore exempt from taxation, based upon a proper interpretation of the Act.

[23] The Complainant was seeking a tax exemption for the parking stalls under Section 362 (1)(g.1) of the Act.

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property;

(g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that receives

financial assistance from the Crown under any Act;

[24] The Complainant submitted the "Morguard Investments Limited – Southland Park – Assessed Parking Tenant Schedule (2012)" to show the distribution of the 697 parking stalls under the different lease agreements. (C1C, Pg. 609-611)

Tenant	Suite	Lease Expiry	Number of Stalls – Underground	Number of Stalls - Parkade
Alberta Health Services	10125	December 2017	20	
Alberta Health Services	Floors 1 and 2	December 2017	90	227
Alberta Health Services	Main to 9 th Floor	December 2017	34	326
Total			144	553

[25] The Complainant submitted copies of the lease agreements signed between Alberta Health Services (AHS) and the Landlord. (N.B. some leases were originally signed by the former Calgary Health Region) (C1C, Pg. 612-710; C1D, Pg. 711-846; C1E, Pg. 847-865)

[26] The Complainant acknowledged under the lease agreements that the Landlord retained the right that "any parking area or facility provided by the Landlord shall at all times be subject to the exclusive control and management of the Landlord or those the Landlord may designate from time to time. The Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to any parking areas or facilities ..." (C1C, Pg. 678)

[27] The Complainant argued this provision of the agreement was for the purpose of maintenance and security of the parking area and did not surrender the Tenant's use to the parking stalls allocated in the lease agreements. Further the Complainant noted the phrase used in the agreement that the Landlord exercised these rights from "time to time"

[28] The Complainant noted in another lease agreement under the heading "Parking", the clause, "The Tenant shall be entitled during the Term of the Lease to have sole use of 41 parking stalls...". The Complainant argued the Landlord had granted exclusive use of a designated number of parking stalls to the Tenant. (C1D, Pg. 721)

[29] The Complainant presented a copy of the AHS Parking Application which employees must submit to obtain access into the parkade at the subject property. The Complainant argued that, while ownership lays with another party, the Landlord has surrendered control of the 697 parking stalls to AHS so that it can control who has use of the stalls.

[30] The Complainant presented a lengthy presentation on the process for accessing and exiting the parking structures of the subject property and showing that only those persons authorized through key card could access the parking areas. The Complainant emphasized the granting of the access had been transferred from the owner to AHS for 697 parking stalls and only employees of AHS can lease parking in the restricted areas.

[31] The Complainant noted that AHS is being billed for and paying the property taxes on the 697 parking stalls. (C2, Pg. 11-20)

Respondent's Position:

[32] The Respondent argued the parking stalls used by the AHS were not specifically designated stalls but rather designated as exclusive use. The parking process was 'scramble' parking stalls within a designated parking area.

[33] The Respondent argued that AHS does not have absolute control of the parking stalls, but rather under the leases, Section 5.11 Parking, the Landlord retains 'control' of the facilities. Lacking the control of the space, the Respondent argued that the parking stalls are not exempt from taxation. (R1, Pg. 219)

[34] The Respondent argued the evidence presented to this Board was the same as presented to the 2012 Composite Assessment Review Board, (CARB 2279/2012-P), which confirmed the taxable status of the parking stalls. Further, the Respondent noted the complaint on the exemption status was refused in CARB 2569/2011-P.

Board's Reasons for Decision on Issue 1:

[35] The Board found the facts of the argument with respect to the exemption status of the parking as follows:

- Both parties agree the total number of parking stalls under complaint is 697 stalls;
- The parties agree AHS has leases in place with the Landlord allocating specific office space to its use and that a specified number of parking stalls are allocated under each lease;
- Both parties agree that Section 362(1)(g.1) of the Act exempts certain properties from taxation, if they are held by a health region and used for certain purposes,

362(1) The following are exempt from taxation under this Division:

(g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that receives financial assistance from the Crown under any Act;

- There is no disagreement that the office space occupied by AHS falls under this section of the Act and is exempt from taxation.

[36] In reaching its decision the Board deliberated on the meanings of 'ownership', 'control', 'held by' and 'used in connection with', in relation to the parking stalls.

[37] The Board found that ownership of the parking stalls has been established through the title for the property and the owner has the right to possess, use or convey the rights associated with the property, in this case the right to rent the property or a portion of the property through leases.

[38] Through the lease, the owner 'conveys the right to use and occupy that property in exchange for a consideration, usually rent'. (Black's Law Dictionary, 7th Edition) By way of the lease the tenant receives the right to use and occupy that space for the term of the lease.

[39] The Board found the owner had surrendered some, but not all of the control to the tenant, laying out in the lease the circumstances under which the owner retained control. In the complaint before the Board, the leases in Section 5.11 stipulated that 'any parking area or facility provided by the Landlord shall at all times be subject to the exclusive control and management of the Landlord ...' The Respondent argued that the retention of this control showed the tenant, AHS, did not control the parking stalls. To the contrary the Complainant

argued the clause was limited and AHS did hold or control the space, as it was the responsibility of AHS to make the decision on who used the 697 parking stalls.

[40] From the Board's reading of Section 5.11 of the lease document, it would appear that the Landlord's 'control' related only to the maintenance and operation of the parking areas, not to the designated users of the parking stalls. From the evidence submitted, the Landlord would appear to have surrendered the 'control' to AHS as to who was granted access into the parking areas. The fact is, AHS was guaranteed 697 parking stalls, and the Landlord retained control over them subject to the Tenant's rights.

[41] The Board found an argument could be put forward that the Landlord had surrendered its rights to control the parking stalls in that it passed responsibility for the property tax payments to the tenant as part of the lease agreements.

[42] The Board found from the evidence presented that the parking stalls were being used in connection with the offices occupied by AHS and described in the lease documents. The 697 parking stalls are for the sole use of the tenant, AHS, and its employees. While the Board acknowledges there are no specifically designated parking stalls, the tenant does have exclusive use of stalls within controlled access areas. The number of stalls can be neither used by the Landlord nor leased to other tenants in the complex. While the employees may vary as to which parking stall they occupy on a daily basis, the employee is guaranteed a parking stall within the parking area.

[43] The Board found the parking stalls were used in connection with its purposes, as contemplated by the Act.

[44] The Board found 697 parking stalls were held by AHS and exempt from taxation and amended the assessment accordingly.

Issue 2: Capitalization Rate

Complainant's Position:

[45] It was the position of the Complainant that the City of Calgary's capitalization rate was incorrect at 6.00% and requested a revised capitalization rate of 6.50%. The Complainant based its revised capitalization rate on the exclusion of three sales from the rate analysis and adjustments to rental rates for the remaining four sales, operating costs for one sale and the bank rental rate for one sale. (C1A, Pg. 135)

[46] The Complainant submitted a Calgary Suburban Office 'A' Capitalization Rate Analysis – Original, showing the seven sales utilized in the analysis and the applicable rates and areas used to determine the NOI and capitalization rates. (C1A, Pg. 126) The analysis indicated an average capitalization rate of 5.63%, a median capitalization rate of 5.84% and a weighted mean of 5.8%.

[47] The Complainant submitted a series of reports from CBRE with capitalization rates ranges for the third and fourth quarters of 2011 and the first and second quarters of 2012. The Complainant submitted that the City of Calgary capitalization rate was "well below third-party indications". (C1A, Pg. 127-133)

[48] A second chart submitted by the Complainant presented its revised Calgary Suburban Office Class 'A' Analysis. The Complainant had removed three of the sales from the analysis and adjusted rental rates, a bank rental rate and an operating cost to determine new capitalization rates for the four remaining sales. The Complainant calculated an average

capitalization rate of 6.35%, a median capitalization rate of 6.36% and a weighted mean of 6.78%.

[49] The Complainant removed the sales for the properties at 7236 10 Street NE, 6010 12 Street SE and 1215 13 Street SE from the City of Calgary analysis.

[50] The Complainant argued the property at 7236 10 Street NE, classified as an Office/Warehouse, should be excluded as it was not comparable with the subject property. The Complainant noted the property, now occupied by the exempt organization St. John Ambulance - Calgary Centre, had a large warehouse component used as a service and storage bay. (C1A, Pg. 236-243)

[51] The Complainant submitted the property at 6010 12 Street SE, classified as a CS1835 Office/Warehouse, should also be excluded from analysis as it was dissimilar to the subject property as it also had a high warehouse component of nearly 25% of the premises. The Complainant noted also the presence of a theatre occupying 4,170 square feet of the basement. The Complainant argued the current tenant's use of the property was more reflective of a retail space than an office space. (C1A, Pg. 244-C1B, Pg. 257)

[52] The Complainant argued the third sale at 1215 13 Street SE should be excluded as the office, purchased by Allied Properties REIT, was an older building which occupied a unique niche in the market place. The Complainant felt the property should be recognized as Class I, as the structure was "originally industrial in nature" and the historical nature attracted a smaller percentage of the purchasers in the market place. The Complainant submitted a number of property sales which fell into this grouping. (C1B, Pg 258-283)

[53] Having excluded the three sales, the Complainant submitted that the remaining four sales, with adjustments, into evidence – 1107 53 Avenue NE, 31 Sunpark Plaza SE, 3345 8 Street SE and 1915 11 Street SE. (C1A, Pg. 134)

[54] For the sale at 1107 53 Avenue NE, identified as an Office/Warehouse, the Complainant adjusted both the rental rate for the space to \$18.00 per square foot from the typical at \$14.00 per square foot and the operating costs to \$9.25 per square foot from the typical at \$12.00 per square foot, for the year of the sale. Based upon the two changes, the Complainant recalculated the NOI and determined a capitalization rate of 6.29%

[55] The Complainant submitted into evidence the City of Calgary response to a Section 299 request for information on the properties used to determine the market rental rate for the class A+ warehouse /office spaces. The response was a single lease for \$26.00 per square foot commencing in March of 2009. The Complainant noted the City of Calgary applied a typical rental rate of \$15.00 per square foot as the typical for 2012. (C1A, Pg. 206)

[56] The Complainant submitted a review of the leases for 7661 20 Street NE arguing this was a comparable property to 1107 53 Avenue NE. The review of the property supported the requested rental rate of \$18.00 per square foot, with new leases signed in July 1, 2012 for \$17.00 and \$18.00 per square foot. The Complainant submitted the operating costs for the property ranged from \$9.27 to \$9.72 per square foot, supporting the request for the \$9.25 per square foot operating cost. (C1A, Pg. 234)

[57] For the sale of 31 Sunpark Plaza SE, the Complainant argued the rental rate for the medical/dental space should be \$22.00 per square foot instead of the \$19.00 per square foot typical rental rent in the year of the sale. The Complainant submitted an analysis of three leases in 290 Midpark Way SE, ranging from \$20.00 to \$22.00 per square foot and signed in 2011. The Complainant submitted that based upon the sale date of December 1, 2011 the rate should be based upon July 1, 2012 typical rates. The Complainant submitted a linear graph of the

three leases that indicated for July 1, 2012 the rate would be \$22.00 per square foot. (C1A, Pg. 135) The Complainant argued support for this was provided by the City of Calgary when it assessed the sales for the properties at 31 Sunpark Plaza SE and 290 Midpark Way SE for \$22.00 per square foot for roll year 2013. (C1A, Pg. 139-140 and 146-147) Based upon the rental rate change, the Complainant recalculated the NOI and determined a capitalization rate of 7.01%

[58] For the sales of 3345 8 Street SE and 1915 11 Street SE, the Complainant argued the office space should be valued at \$22.00 per square foot in place of the \$21.00 per square foot rate applied by the City of Calgary. The Complainant supported its position through an analysis of 18 leases in the south east quadrant for A+ quality suburban offices. With lease commencement dates ranging from August 1, 2011 to June 1, 2012, the statistical analysis of the lease rates produced an average of \$20.91 per square foot, a median of \$22.00 per square foot and a weighted average of \$20.51 per square foot. (C1A, Pg. 148) A second table removed two leases, which the Complainant felt were not valid leases, both at 1101 9 Avenue SE, altering the results to an average of \$21.80 per square foot, a median of \$22.30 per square foot and a weighted average of \$21.98 per square foot. (C1A, Pg. 158)

[59] The final adjustment requested by the Complainant was the rental rate applied to the bank at 3345 8 Street SE. The Complainant requested a rental rate of \$42.00 per square foot. It was the position of the Complainant that the City of Calgary had failed to recognize that the bank occupying space in the premise. The Complainant obtained its rental rate through a comparison to a bank space at 1940 9 Avenue SE, assessed at \$42.00 per square foot. (C1A, Pg. 169)

[60] With the changes to 3345 8 Street SE and 1915 11 Street SE, the Complainant recalculated the NOI and determined capitalization rates of 6.44% and 5.64%, respectively.

[61] Based on the revised capitalization rates the Complainant determined:

Address	Capitalization Rate
1107 53 Avenue NE	6.29%
31 Sunpark Plaza SE	7.01%
3345 8 Street SE	6.44%
1915 11 Street SE	5.64%
Average Capitalization Rate	6.35%
Median Capitalization Rate	6.36%
Weighted Capitalization Rate	6.78%
Requested Capitalization Rate	6.50%

[62] Based upon the Complainant's adjustments a corrected assessment of \$155,510,000 was requested. (C1C, Pg. 464)

Respondent's Position:

[63] In support of its capitalization rate the Respondent submitted the City of Calgary study prepared for that purpose. The analysis of the 2013 Suburban Office Capitalization Rate determined a median capitalization rate of 5.85% and an average capitalization rate of 5.63%

for the seven office sales with quality ratings of A+ and A-. (R1, Pg. 71) The Respondent testified that during the consultation period for the 2013 assessments the owners and agents expressed the opinion the rate was too low, resulting in the City of Calgary adjusting the capitalization rate upward to 6.0%.

[64] A series of rebuttals were made by the Respondent to the Complainant's presentation on the adjustments necessary to the analysis of the sales to determine a revised capitalization rate and the exclusion of three of the City of Calgary sales.

[65] The Respondent argued the sale at 7236 10 Street NE, deemed by the Complainant as "too industrial be similar", was a valid sale. The property was identified as a CS1835 – office /warehouse, one of the group of properties used in the suburban office analysis. The Respondent noted the relationship of 25,000 square feet of office to 10,000 square feet of warehouse supports both its designation and therefore its use in the analysis. The Respondent also noted that Colliers International, which brokered the property, described the property as a suburban office. (R1, Pg. 155-159)

[66] The Respondent noted the characteristics for 7236 10 Street NE were very similar to those of the property at 1107 53 Avenue NE, an office/warehouse, which both the Complainant and Respondent used in their separate analyses of the capitalization rate.

[67] In the Respondent's rebuttal to the exclusion of the sale at 6010 12 Street SE, it was argued the property was correctly classified as an office/warehouse, with the majority of the space designated as office area. The Respondent further noted the documents from Colliers International, RealNet and Altus InSite reference the premises as having office space or being an "office building". (R1, Pg. 160-169)

[68] The Respondent argued that the Complainant's comments with respect to a 'Class I' designation were not supported in the industry for there is no definition in any assessment or appraisal text to define such as the class. Rather, it is a creation of Colliers International to describe older, restored or renovated properties. The Respondent argued the properties still fell within the traditionally accepted class categories, with recognized characteristics. (R1, Pg. 170-171)

[69] With respect to the four sales used by the Complainant, the Respondent described 'errors' made in the determination of the individual capitalization rates.

[70] The error noted on the recalculation of 31 Sunpark Plaza SE was the use of the 2012 typical vacancy rate and operating costs. The Respondent argued the correct rates should have been the typical rates for the 2011 year of the sale. (R1, Pg. 85-90)

[71] With respect to the calculation of the office rental rate for 3345 8 St SE and 1915 11 St SE, the Respondent argued that the exclusion of two leases for being a 'not-for-profit' space or having a too low rental rate for an area were not valid reasons to exclude a lease. The Respondent submitted that leases are signed after negotiation with the purpose of both the Tenant and the Landlord to arrive at a mutually agreed rate. Evidence submitted indicated the lease rates were on the low end of the range but should not be excluded. (R1, Pg. 91-104)

[72] The Respondent argued the rate used by the Complainant for the bank space was in excess of the market rental rate for the location. The Respondent agreed recognition should be made of the bank space, but the correct rate would be \$32.00 per square foot, given the banks location in an industrial area, as opposed to the Complainant's comparable in a superior location in Inglewood. (R1, Pg. 105-128)

[73] The Respondent took issue with the comparable property the Complainant used for the

sale at 1107 53 Avenue NE. The Respondent argued the property presented, a suburban office, was not comparable to the office/warehouse character of the sale property. Further it was argued the Complainant was using the actual parameters of the comparable and mixing them with the typical rates determined by the City of Calgary. (R1, Pg. 129-154)

Board's Reasons for Decision on Issue 2:

[74] The Board in its deliberation was tasked with first deciding on the Complainant's request for the exclusion of three sales from the analysis of the capitalization rate to determine the value. It was the considered opinion of the Board that the final capitalization rate would be dependent upon which sales were used in the analysis, for the inclusion of any of the excluded sales could have an impact on the resulting capitalization rate.

[75] Before it proceeded, the Board noted the Complainant's request for a capitalization rate increase from 6.00% to 6.50%.

[76] The Board accepts the use of office/warehouse properties for use in the determination of the capitalization rate as presented by the Respondent. The Complainant supported the use of office/warehouse properties as it use of the office/warehouse property identified at 1107 53 Ave NE. For this reason the Board was not persuaded to exclude the sale at 7236 10 Street NE, notwithstanding the reasons submitted by the Complainant. The Board placed little significance on the argument the property was occupied by an exempt owner, for it is the assessment of the property for market values that is relevant, not the exempt status of the occupant. Exemptions can change as occupants change, but the market value is a constant expression of property worth. The decision of the Board was to include the property in the analysis.

[77] The Board's review of the sale at 6010 12 Street SE found insufficient grounds for its exclusion from the capitalization rate study. The Board found, while there were unusual features within the structure, i.e. a theatre, there was a lack of compelling evidence to question the classification of the property as an office/warehouse. The Board found that there was sufficient office area designated within the structure to allow its use in the analysis. The decision of the Board was to include the property in the analysis.

[78] The sale of 1215 3 St SE presented the Board with additional challenges as it was apparent this premise was originally an older warehouse structure. However, from the evidence submitted, the property was extensively renovated in 2008 to be marketed as office space. The Board found the Complainant had not provided sufficient evidence to persuade the Board to exclude the sale. The decision of the Board was to include the property in the analysis.

[79] Based upon the Board decisions with respect to the three sales, which the Complainant requested to be excluded, the Board recalculated the Complainant's capitalization rate with the inclusion of the sales. As the Complainant presented no alternative capitalization rates for the questioned sales or presented no requests for adjustments, the Board accepted the original capitalization rates as submitted. The Board used the original capitalization rates determined for the three sales and the adjusted capitalization rates, as determined by the Complainant, for the Board's analysis of the overall capitalization rate. This analysis indicated:

ADDRESS	CAPITALIZATION RATE
1107 53 Avenue NE	6.29%
31 Sunpark Plaza SE	7.01%

3345 8 Street SE	6.44%
1915 11 Street SE	5.64%
7236 10 Street NE	5.85%
6010 12 Street SE	6.02%
1215 13 Street SE	5.87%
Average Capitalization Rate	6.16%
Median Capitalization Rate	6.02%

[80] Based upon the analysis conducted by the Board, it was found that the average and median values provided little support for the Complainant's request for a 6.50% capitalization rate.

[81] On the basis of this finding, the Board felt the Complainant's arguments for the adjustments in the requested capitalization rate analysis became moot. The Board did, however, make comments on the adjustments as to their suitability.

[82] The Board is always reluctant to accept the use of site specific rates, whether they are from the subject property or a comparable, unless it is clearly shown the subject property is an atypical property experiencing extenuating factors. The Complainant in this case has not established this fact to the satisfaction of the Board. The basis of assessment in Alberta is to establish the market value a property might be expected to realize on the valuation date. The methodology for establishing the assessment is through mass appraisal using typical market conditions.

[83] The Board also noted the Complainant's use in a number of cases the use of site specific rates, which it then mixed with City of Calgary typical rates for the calculation of the capitalization rate. The Board found the mix of actual or site specific with typical rates was an inappropriate methodology and therefore placed less weight on the results.

[84] The Board found the adjustments requested by the Complainant failed to convince the Board to change the capitalization rates. If the Board took this into consideration the resulting NOI's and capitalization rates would be significantly lower and further evidence as to the lack of support for the Complainant's requested capitalization rate.

[85] For the reasons provided the Board confirms the capitalization rate at 6.00%.

[86] The assessment was confirmed at **\$180,640,000**, however the Board orders the property assessment to be split to reflect the exemption of the 697 parking stalls. The Board determined the property assessment to be portioned **93.26% for the taxable component and 6.74% for the exempt component.**

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

A handwritten signature in black ink, appearing to read 'Philip Colgate', written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1 - PARTS A,B,C,D,E	Complainant Disclosure
2. C2	Complainant Rebuttal
3. C3	Complainant Rebuttal
4. R1	Respondent Disclosure
5. Numerous Board Decisions form both Parties	

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	-Income Approach -Exemption	-Capitalization Rate -Health Governance -Mixed Use (Exempt/Non-Exempt)