



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:

815 Properties Inc. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Golden, PRESIDING OFFICER

T. Livermore, BOARD MEMBER

J. Pratt, BOARD 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: 067080291

LOCATION ADDRESS: 815 8 AV SW

FILE NUMBER: 72646

ASSESSMENT: \$57,090,000

This complaint was heard on the 30 th day of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *S. Meiklejohn*

Appeared on behalf of the Respondent:

- *H. Neumann*

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

- [1] There were no procedural issues in this case.

Property Description:

[2] The subject parcel is a high rise office tower containing a total of 145,315 square feet (sq. ft.) of mostly office area with some main floor retail. This is a B quality structure constructed in 1981. The building has parking available and is located in the DT2 market area of the downtown. Parking areas and the retail spaces are not in dispute in this complaint. The assessment was prepared using the Income Approach.

Issues:

[3] **Issue 1:** Does the method used by the City, to determine the rental rate component of the assessment, result in the correct assessment? A sub issue regarding the rental rate is a determination of the leases which should make up the data set to be used in the analysis of the rental rate. The most reliable statistical tool that best reflects the data is also a sub issue.

[4] **Issue 2:** Should the vacancy rate component of the income calculation be increased to reflect a long term vacancy in the subject parcel, higher than typical for B class office buildings?

[5] **Issue 3:** Is the Capitalization (cap) rate component applied to the subject parcel the correct rate? As a sub issue is the cap rate developed in an equitable manner?

[6] **Issue 4:** As a conclusion is the overall assessment of the subject property correct?

Complainant's Requested Value: \$30,070,000

Board's Decision: The assessment is confirmed at \$57,090,000

Board's Decision on Issue 1: The method used by the City, to determine the rental rate component of the assessment, has resulted in the correct assessment. All the leases for the assessment year are useful indicators of typical rental rates. Each statistical tool adds insight to the data set.

Position of the Parties

Complainant's Position:

[7] The Complaint presented the table of 66 leases used by the City to calculate the typical rent for the assessment (pg. 39 C-1). Each lease was signed within the assessment year and used in the initial analysis by the Respondent. There were three arguments made by the Complainant demonstrating the weakness of the Respondents analysis. Firstly; the rental rates used by the Respondent represent a very wide range of values. Secondly certain leases in the table should be not be used as they are atypical and, finally the Respondent uses only the last 6 months of leases rather than the entire year of data.

[8] The Complainant suggests that the range of lease rates is very wide, being from \$10.00 per sq. ft. to \$37.00 per sq. ft. In order to narrow that wide range the outliers or lihest and lowest areas should not be considered. In the Complainants opinion 10% of the highest and lowest leases should be removed.

[9] With respect to leases, the Board should consider as non-typical, three types of leases and these should be removed from the analysis.

[10] The building referred to as the EUB building was felt to be atypical. Evidence of the atypical nature of the structure was in the form of a series of development and building permits. These permits indicate that the owners of the building had extensively renovated the structure to a very high standard. The leases signed in this building were not felt to be typical leases as they would be higher than other B class buildings, due to renovations, and should not be used in the analysis.

[11] Lastly, the Complainant explained to the Board that B class buildings do not usually have leases for full floor areas. Therefore all leases of a full floor or more should be removed from the analysis. There are 44 leases remaining with the above exclusions. With the exclusions leases produce a mean and median of \$16.67 per sq. ft. and \$16.00 per sq. ft.

[12] The second problem described by the Complainant is was that the rental rate developed from the Respondent was developed only using only the last 6 months of the leases. This results in a non-typical rate. Since the assessment is conducted annually the data used should also be developed annually and therefore the entire year of leases should be included in the analysis. Using 6 months is an arbitrary decision and yields an atypical result.

[13] When the leases discussed above are removed from the analysis and the entire year of the leases available are used the result of the calculation is a mean of \$16.67 per sq. ft. and a median of \$16.00 per sq. Ft. supporting the rent rate portion of the requested assessment

Respondent's Position:

[14] The Respondent presented the same table of leases as the Complainant in exhibit R- 1 and stated that these were all valid leases for the assessment year. In the Respondent's opinion no leases should be removed as requested by the Complainant. All the leases were exposed to the market and represent the leasing market. In response to the Complainant the Respondent stated there was no evidence that outliers should be removed from the calculations and statistical tools such as weighted mean accounts for the higher and lower values. Leases signed in the EUB building were negotiated in the market and the structure is a B class building as is the subject. There is also no evidence to suggest that full floor leases are non-typical in B class buildings.

The Respondent pointed out that when the full year of leases is reviewed, the data indicates an upward trend through the year. For example the weighted mean of the 2011 leases is \$15.27 per sq. ft. and the weighted mean of the 2012 leases is \$20.12 per sq. ft. The use of the last 6 months of the leases better represents the increasing market rent trend.

Board's Reasons for Decision on Issue 1:

[15] The first argument, regarding the applicable rental rate, was presented to the Board as to which data base produces the most accurate typical rent rate. The Compliant suggests that a table presented on pg. 39 of exhibit C-1 of all the leases used by the City in the analysis of downtown office rental rates should be amended by eliminating several leases, after which the entire 12 month period of leases should be used. This results in support for the requested rate of \$16.00 per sq. ft. The Board firstly reviewed the argued excluded leases and secondly the issue of which leases to use in the analysis.

[16] With respect to the exclusions the Board finds that there was little evidence to exclude what were termed as "outlier leases". The Complainant was unable to clarify why 10% was the level to be used or why they should be removed. The Board accepts the leases will fall within a range and that highs and lows will normally occur. The Board finds in this case that these leases are valid leases exposed to the market and should be included in the rent rate analysis.

[17] The building referred to as the EUB building is found to have been exposed to the market and the three leases are valid and should be included in the analysis. The Board reviewed the development and building permits that were presented on pg. 54 of C-1. The Board notes that some of the permits seem to be owner improvements while others are tenant improvements. However given the long EUB tenancy in the building these improvements were not proven to be unusual. The new leases were not available and the terms of rental are not known so the Board agrees with the Respondent that the leases were exposed to the market and are considered by the Board to be valid for use in the rental analysis.

[18] The Board did not accept that leases for a full floor or more should be excluded. The Complainant did not provide market evidence that this type of lease was atypical for B class office buildings. The Board notes that the subject has full floor leases.

[19] In summary the board is not persuaded to exclude the above leases.

[20] Given that all the 66 leases in the table are valid market leases; the question becomes, should the data base be the entire table or only the subset of the last 6 months, was considered by the Board. As well which satatistical tool is most representative, mean or weighted mean as was argued by the participants.

[21] The Board notes that each of the statistical tools, such as means, medians or weighted means, used to analyse data are valid and useful when viewing the data. When each of these

statistical methods seem to give conflicting results it is likely that further analysis is necessary. All of the 66 leases for the year prior to the assessment date creates a suitable sample size in the opinion of the Board. The Board finds that the Respondent had used the entire year of data in order to establish the increasing market trend of a weighted mean of \$15.27 per sq. ft. in the 2011 leases to \$20.12 per sq. Ft. in the 2012 leases. With that information they were of the opinion that the last 6 months would then be the best representation of a typical rental rate.

[22] The Board objective in this case is to determine the typical rental rate at the specific assessment date. For this purpose it is important to determine a market trend. The Board notes that the request of \$16.00 per sq. ft. was supported by the median calculation for the 66 leases, the median value of the 2011 subset of the data, and the 2011 weighted mean. All other calculations presented ranged from \$16.83 per sq. ft. to \$20.12 sq. ft. Given the median is the value at the centre of the higher value and lower value it was considered of lesser value in establishing a trend. \$15.27 per sq. ft. was the weighted mean for 2011 leases or the leases earlier in the assessment year. The weighted mean of all the lease was \$17.47 and the weighted mean of the 2012 leases was \$20.12 per sq. ft.. The data indicates a general rise in the rental rate and does not support the requested rental rate on the assessment date, Rather \$19.00 per sq. ft. typical rental rate is more accurate.

[23] To support this the Board note that that average rent rate per month across the year of leases also demonstrates an increase in the rate suggesting that \$19.00 is more likely the correct rate than the requested rate.

Board's Decision on Issue 2: The vacancy rate component of the income calculation used by the Respondent is correct and should not be adjusted due to long term vacancy.

Position of the Parties

Complainant's Position:

[24] The Complainant explained that the subject building has experienced a problem with vacancy, at least since 2009. The 2012 rent roll demonstrates an 18.2% vacancy rate, much greater than the 4.75% typical rate used by the Respondent. The chronic vacancy is further demonstrated by 3rd party reports. CRESA reports the subject building had vacancy in 2011 of 23%, in 2010 of 20.37% and in 2009 of 28.07%. Using this information a vacancy rate of 20% was used in the Complainants assessment calculation.

Respondent's Position:

[25] The Respondent was of the opinion that no convincing reasons for a higher vacancy allowance were presented by the Complainant. The Respondent also pointed out that they no longer recognizes a chronic vacancy, rather vacancy is looked at as a symptom of some other issue. If that particular issue is identified then an adjustment can be made for that specific problem. No specific reasons were given for the subjects significant vacancy.

Board's Reasons for Decision on Issue 2

[26] The Board focused on the Complainant's position and the evidence that the subject has an atypical vacancy. The evidence consisted of one year's rent roll and then several years of 3rd party reports. The Board could not ascertain how the 3rd party developed the vacancy information and therefore were unable to determine its accuracy. The Board gave the argument little weight. It is noted that the 2012 CRESA report shows the subject with a 31% vacancy while the rent roll vacancy of 18.2%, further weakening the evidence supporting an assessment reduction.

[27] The Complainant could only speculate about possible causes of the vacancy and was unable to present an actual cause which could then be examined by the Board.

[28] **Board's Decision on Issue 3:** The cap rate component applied to the subject parcel is the correct rate. Regarding the sub issue, the cap rate is prepared in an equitable manner.

Position of the Parties

Complainant's Position:

[29] The Complainant was of the opinion that the cap rate was incorrect for three reasons; firstly the cap rates for A class buildings were higher than B class buildings, ignoring the hierarchy of building qualities this supported by 3rd party published cap rates. The rate was inequitable between classes of buildings and the City applied the incorrect net operating income (NOI) in determining the cap rate.

[30] The traditional hierarchy of classes of buildings would suggest that an A building because of its attributes, would always carry a lower risk than B class. For example the Bow Building should not carry a risk greater than the subject. To demonstrate the error two 3rd party reports were submitted to the Board beginning on page 76 of exhibit C-1. Both Colliers International and CBRE suggest that an appropriate cap rate for 2012 would be between 6.25% and 7.25% rather than the Respondent's rate of 5%.

[31] An equity argument between classes was made by the Complainant. It was pointed out that A class buildings have a typical cap rate of 6% however the actual cap rate study presented on pg. 88 of C-1 showed a cap rate mean for buildings sold in 2012 at 5.46% which was then round up to 6% by the Respondent. In the same table B class buildings in the study were rounded down from 5.07% to 5%. The Complainant stated to be equitable the cap rate for B class buildings should be increased .5% as happened with A class buildings.

[32] Lastly the Complainant argued that the method the Respondent used to calculate the typical NOI was in error. The Respondent was applying the wrong NOI to the sales and the cap rate was affected.

Respondent's Position

[33] The Respondent challenged the various assertions made by the Complainant. The hierarchy between A class and B class this year was not demonstrated in the cap rate study but the Respondent noted that an income calculation includes many factors. Page 65 of R-1 demonstrates that although the cap rate hierarchy is disturbed this year, the overall values of

the various classes displays the traditional hierarchy. Third party reports used to support the Complainant's position were unreliable as there were questions regarding the sources of data and there was no understanding of the methods used to determine the cap rate.

[34] Cap rates for the two classes of properties were assigned in an equitable manner as the median cap rate of A class buildings was 5.87% rounded to 6%. Cap rates for B class buildings had a median of 4.82% rounded to 5%.

[35] In terms of the correct NOI to apply, the Respondent's method ensured that the NOI applied to a sale was never more than six months from a sale date.

[36] In conclusion the Respondent pointed out that even with the three concerns with the cap rate the Complainant could not clearly show how the requested cap rate was developed.

Board's Reasons for Decision on Issue 3

[37] The Board rejected the first contention presented by the Complainant. Third party reports in this case were insufficient to support an adjustment to the cap rate. The Board was not able to determine the source of materials used in the 3rd party reports or the methods used to develop the cap rate. The Complainant also did not indicate why a 6.25% rate was requested by the Complainant when report cap rates range from 6.25% to 7.25%. It is noted the request is the lower extreme of the range.

[38] The second issue being the equity of the application of the cap rate to the classes of buildings, was given little weight as the argument seems to be more about the rounding of numbers and the Respondent was able to demonstrate that the rounding exercise was reasonable and no inequity exists. The cap rate equity argument was weak as the cap rate was rounded in each case. Six statistical calculations reveal a range of rates of between 4.8% to 5.07% and a 5% cap rate was adopted for B class buildings. The same calculation for A class buildings had rates of between 5.43% and 5.87% and the rate of 6% was adopted.

[39] The third point regarding the application of the proper income data to the various sales, may have merit however the Board notes that three sales used in the calculation are within a period of time where there is no dispute over the method used. These sales have an average cap rate of 5.15%, supporting the Respondent's cap rate. The Board was satisfied that the cap rate request is not supported and the discussion of the application of the NOI was not warranted.

Board's Decision on Issue 4: The overall assessment of the subject property is correct.

Position of the Parties

Complainant's Position

[40] The Complainant used the requested factors in an income calculation and developed the requested assessment on pg. 33 of C-1. In the Complainant's opinion the Board could just

accept a change to the rent rate lower the assessment without having to accept changes to the cap rate.

Respondent's Position

[41] The Respondent tested the Complainant's requested inputs in an ASR analysis using three similar buildings. The resultant ASR's were between .64 and .74 being far below the accepted range.

Board's Reasons for Decision on Issue 4

[42] In the end it is the task of the Board to determine market value of the property in this decision the Board has rejected the arguments of the Complainant regarding the inputs to the income calculation. However when the requested changes are made the Respondent's ASR test of the request further demonstrates that the assessment is correct. The ASR results indicate the property would be considerably under-assessed. As a result, the assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 28th DAY OF November 2013.



Tom Golden

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.*

Roll	Address	Subject	Issue	Detail	Sub Detail
067080291	815 8 AV SW	office	income	Rent rate cap rate	