

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:

***CPP INVESTMENT BOARD REAL ESTATE HOLDINGS c/o OPGI MANAGEMENT GP INC
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Axworthy, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
A. Huskinson, 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: 067235101

LOCATION ADDRESS: 400 3 AV SW

FILE NUMBER: 72653

ASSESSMENT: \$467,220,000.

This complaint was heard on the 5th 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*
- *D. Hamilton*

Appeared on behalf of the Respondent:

- *D. Grandbois*
- *E. Borisenko*

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

[1] The Respondent and the Complainant asked that all evidence, argument and testimony presented in CARB 72058/P-2013 with respect to the calculation of rental rates and CAP rates be carried forward to CARB 72653/P-2013. The Board agreed with this request.

Property Description:

[2] The subject property is a class 'AA' twin tower office building constructed in 1987, known as the Devon Tower and located in the DT1 Non-Residential Zone (NRZ). The assessment record indicates that the subject is developed with 848,840 square feet (sq. ft.), consisting of 811,543 sq. ft. of office, 7,367 sq. ft. of retail on the main floor, 6,888 sq. ft. of retail on the second level, 23,042 sq. ft. of storage space and 419 parking stalls. The subject was assessed using the Income Approach yielding an assessed value of \$467,220,000.

Issues:

[3] While a number of issues were included in the Complaint Form, the Complainant argued the following issues at the hearing:

- a. The rental rate should be changed from \$32.00 per sq. ft. to \$30.00 per sq. ft.; and
- b. The cap rate should be increased from 6.00% to 6.25%.

Complainant's Requested Value: \$423,580,000.

Board's Decision:

[4] Based on the Board's decision for each of the issues as outlined, the Board found sufficient evidence to support in part, the changes requested by the Complainant. Therefore, the assessment is reduced to **\$454,230,000.**

Legislative Authority, Requirements and Considerations:

[5] The Act, Section 460.1(2), subject to Section 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 460(1)(a).

[6] Both parties submitted background information and evidence in the form of photographs, aerials site maps as well as extensive information on the issues at hand. In the interest of brevity, the Board will restrict its comments to those items the Board determines to be most relevant to these issues.

[7] The Board was presented with a number of previous decisions of Assessment Review Boards. While the Board respects the decisions made by those Boards, it is mindful 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 the issues and evidence are found to be timely, relevant and materially identical to the subject complaint.

ISSUE 1: Should the rental rates for Class 'AA Old' (Complainant's term) buildings be reduced from \$32.00 per sq. ft. to \$30.00 per sq. ft?

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

[8] As with the approach taken for Class 'A-' buildings in CARB 72058/P-2013, the Complainant argued a three phased, progressive analysis should be used to establish Downtown rental rates:

- i. First, all leases in Class 'AA Old' buildings are analyzed; 19 leases were analyzed yielding an overall weighted average of \$30.52 per sq. ft. [C1 p. 126];
- ii. Second, only full floor or more leases are analyzed; 6 leases were analyzed yielding an overall weighted average of \$30.40 per sq. ft. [C1 p. 127]; and
- iii. Third, outliers (defined as a variance of plus or minus 10%) are removed from the list; 4 leases were analyzed yielding an overall weighted average of \$29.31 per sq. ft. [C1 p. 128].

and on this basis concluded that rental rates for Class 'AA Old' buildings should be reduced to \$30.00 per sq. ft.

[9] The Complainant objected to The City's rental rate analysis [R1 p.73] which the Complainant argued relied only on 2012 leases to determine typical market rents. The Complainant stated that this approach was a significant departure from past practice of the Assessment Business Unit (ABU) and that a full year was the minimum period that should be analyzed and accords with the annual assessment cycle.

[10] The Complainant noted that using the full year's rental rates produces a weighted mean of \$30.52 per sq. ft. Using rental rates for only a six month period produces a weighted mean of \$31.99, supporting The City's assessed rental rate of \$32.00 per sq. ft.

Respondent's position

[11] The Respondent provided a 2013 Downtown Office Rental Rate Analysis for Class 'AA' buildings to support the assessed rental rate of \$32.00 per sq. ft. [R1 p. 73] and stated that it agreed with the Complainant that the weighted average was the appropriate statistical measure to be used in setting Downtown office rental rates.

[12] The Respondent stated that the rental rate study encompassed a whole year; however, in establishing the 2013 assessed rental rates, The City placed greater weight on the leases signed in 2012. The Respondent argued that there was a significant upswing in the Downtown office market in the latter half of the analysis period and that this period was more reflective of rental rates as of July 1, 2012.

[13] The Respondent drew the Board's attention to a number of 2010 CARB decisions that supported the use of a six month period in situations of significant market changes. While the 2010 cases reflected a downward trend in the market as opposed to an upswing, the approach was equally valid here.

[14] The Respondent did not support the phased approach employed by the Complainant to establish market rental rates as it deviated from the concept of mass appraisal and when applied, significantly reduced the sample size from 19 to 4 leases.

Board's Reasons for Decision:

[15] The Board agrees with the Respondent that the three phased approach to determining typical rental rates proposed by the Complainant should not be supported as it deviates from the concept of mass appraisal mandated in legislation.

[16] The Board agrees with the Complainant that a one year period should be used to establish typical market rental rates. While leases negotiated nearest the valuation date may give a better indication of market value in certain situations, the Board was not convinced that it was appropriate here. The Board did not accept the Respondent's argument that a parallel could be drawn with the 2010 assessment year which reflected the extremes that occurred in the market place as a result of the global economic crisis.

[17] In this case, The Board finds that equal weight should be placed on leases signed in a full year period and finds that a typical rental rate for Class 'AA' buildings is \$31.00 per sq.ft.

ISSUE 2: Should the cap rate be increased from 6.0 to 6.25%?**Position of the Parties****Complainant's Position:**

[18] In support of their request, the Complainant provided a cap rate study which employed a "linear", staged approach to make a number of "corrections" to The City's cap rate analysis:

- i. First, 2 sales of Scotia Centre (index 8 and 15, C1 p.179) were removed from the analysis as the Complainant argued they were not arm's length market transactions as they involved the sale of a 50% interest between partners. The sale price of Altius Centre (index 7) was also corrected to include the value of the parking [C1 p. 181],

resulting in a weighted average of 5.75% and a median of 5.83%.

- ii. Second, the Complainant applied 2013 typical assessment rates to the sales of Gulf Canada Square and Scotia Centre (index 10 and 14) instead of the 2012 rates used by The City [C1 p. 206]. The Complainant argued that The City was inconsistent in its application of typical NOI and that the typical NOI period should correlate to the period for sales in the study i.e., sales in the 2012 assessment year should use the typical NOI for the 2012 assessment year, not the 2011 assessment year. Applying the 2013 assessment year parameters to index 10 and 14 produces a weighted average of 6.32% and a median of 5.83%.
- iii. Third, the Complainant applied a leased fee adjustment to remove the value associated with the leased fee interest to arrive at the fee simple interest, producing a cap rate with a weighted average of 6.3% and a median of 5.88% [C1 p.210]. The Complainant acknowledged that recent Board decisions do not support this approach.

[19] The Complainant also provided a table suggesting that if the rental rate was changed as per their request, there was minimal impact on the cap rate [C1 p. 224].

[20] In response to questioning, the Complainant indicated that the analysis on p. 192 C1, showing a cap rate with a weighted average of 6.32%, formed the basis for their request for a 6.25% cap rate.

Respondent's Position

[21] In support of their argument, the Respondent provided The City's 2013 Downtown Office Capitalization Study demonstrating a median cap rate of 5.83% for Class A office buildings in the Downtown [R-1 p. 130].

[22] The Respondent stated that it was accepted practice to use median values to establish cap rates as opposed to the Complainant's request to use a weighted average. Further, the use of a weighted average has the effect of placing too much emphasis on the sale of Gulf Canada Square and the most recent sale of Scotia Centre.

[23] The Respondent refuted the Complainant's argument that the Scotia Centre sales (index 8 and 15 in C1 p.179) should be removed from the study, attesting that the Complainant provided no direct evidence to show that these were not arm's length market transactions.

[24] Regarding the inclusion of the parking for the Altius building, the Respondent indicated that the Net Operating Income (NOI) on p. 115 of R1 includes the parking and that this made no appreciable difference to the cap rate.

[25] The Respondent stated that it is The City's practice, supported by MGB decision 145/07 to use assessment parameters closest to the sale date and argued that using 2013 assessment parameters for sales in 2011 was flawed because at the time of the sale, typical NOIs for the following year were not known.

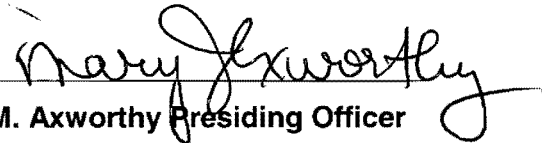
[26] The Respondent stated that the use of a leased fee adjustment to the sale price should not be supported as the fee simple interest must be used.

[27] The Respondent argued that the reduction in the rental rate requested by the Complainant would reduce the NOI and the cap rate.

Board's Reasons for Decision:

[28] The Board finds that the median is the correct value to use in establishing cap rates and confirms the cap rate of 6.00% as supported by The Respondent's 2013 Downtown Office Cap Rate Study which derived a cap rate with a median value of 5.83 % for Class 'A' office buildings.

DATED AT THE CITY OF CALGARY THIS 01st DAY OF October 2013.


M. Axworthy Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2, A,B,C	Cap Rate Supporting Evidence
3. C3 A,B,C,D	Complainant's Rebuttal
4. 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 Only

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Rental rates Capitalization rate	