



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the amended property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

B. STUART ENTERPRISES LTD., COMPLAINANT
(represented by Colliers International Realty Advisors Inc.)

and

The City Of Calgary, RESPONDENT

before:

BOARD CHAIR: P. COLGATE
BOARD MEMBER: P. PASK
BOARD MEMBER: J. MASSEY

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: 068117803
LOCATION ADDRESS: 435 10 AVENUE SE
FILE NUMBER: 73786
ASSESSMENT: \$2,690,000.00

This complaint was heard on 24th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 8.

Appeared on behalf of the Complainant:

- *Chris Hartley, Colliers International Realty Advisors Inc.*
- *Adam Farley, Colliers International realty Advisors Inc.*
- *Donna Darling, Accounting Department, B. Stuart Enterprises Ltd.*
- *Meike Wielebski, CFO, B. Stuart Enterprises Ltd.*

Appeared on behalf of the Respondent:

- *Erin Currie, City of Calgary*

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.

Preliminary Matter:

[2] There being no preliminary matters raised the Board proceeded with the merit hearing.

Property Description:

[3] The subject property contains a class B office building located in the Beltline market area, circa 1989. The structure has an assessable office area of 11,031 square feet, designated as 5,787 square feet of office recreational space and 5,244 square feet of office space. There are 10 surface parking stalls. The property is assessed on an income approach to valuation.

Issues:

[4] The Complainant placed two issues before the Board in the complaint:

Issue 1. Rental rate should be \$2.00 for office recreational space, instead of the current rate of \$11.00. Rental rate should be \$20.00 for the office space, instead of the current rate of \$15.00.

Issue 2. Capitalization rate should be 7.0%, instead of the current capitalization rate of 5.25%.

Complainant's Requested Value: \$1,684,604.00

Board's Decision:

[5] Based on the Board's decision for each of the issues stated, the Board found sufficient information to support in part the changes requested by the Complainant.

[6] The Board revised the assessment to \$1,650,000.00

Legislative Authority, Requirements and Considerations:

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

[8] 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.

Position of the Parties

Issue 1. Rental Rate for Office Recreational Space and Rental Rate for Office Space

Complainant's Position:

[9] The Complainant argued the office recreational rate should be at \$2.00 per square foot, as opposed to the current rate of \$11.00 per square foot and the office rate be at \$20.00 per square foot.

[10] The Complainant's basis for the revised rental rates was the submitted Assessment Request for Information (ARFI), dated February 26, 2013, which shows the rental rate for the two spaces. The office recreation space was leased for \$2.07 per square foot on a lease commencing December 1, 2011 for a 1 year term. The office area was leased for \$20.00 per square foot on a lease commencing August 1, 2012 for a 5 year term. No lease information was provided on the parking stalls. (C1, Pg. 26)

[11] The Complainant stated that based on the actual lease rate it was requesting a rental rate for the office recreational space of \$2.00 per square foot. Based upon the request for the recreational space, the Complainant felt it was appropriate to request the actual lease rate for the office space at \$20.00 per square foot.

[12] Comments made by Donna Darling and Meike Wielebski described the recreational space in the basement as having no finish – concrete walls and floor, open joist ceiling and minimal sanitary facilities. The tenant in the basement space is operating a boxing club.

Respondent's Position:

[13] The Respondent submitted a 2013 Recreational Lease comparables table, which showed how the rental rate had been determined. In total eight (8) leases produced a rental value with a mean of \$11.31 and median of \$11.50 per square foot. The leases ranged in value from \$2.07 (subject property) to \$16.67 per square foot. Lease terms ranged from 1 year (subject property) to 6 years. The City of Calgary applied a rental rate of \$11.00 per square foot. (R1, Pg. 17)

[14] When questioned the Respondent stated quality of finish was not a factor, that only the space classification was considered when determining the rental rate.

[15] The Respondent submitted the "2013 Beltline Office Rental Analysis B Class" table which based on the leases to arrive at the following statistical results:

2012 ONLY	MEDIAN	\$14.00
	MEAN	\$15.03
	WEIGHTED AVERAGE	\$14.91
TOTAL 2011 AND 2012	MEDIAN	\$14.00
	MEAN	\$14.74
	WEIGHTED AVERAGE	\$14.45
2012:(MAY, JUNE, JULY ONLY)	MEDIAN	\$15.00
	MEAN	\$15.60
	WEIGHTED AVERAGE	\$15.19

(R1, Pg. 29-32)

[16] The Respondent argued that the typical rental rate must be used when determining the market value as set out in Matters Relating to Assessment and Taxation (MRAT), Section 2:

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

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.

Board's Reasons for Decision:

[17] The Board, when reviewing the submissions, found the argument for the use of the typical office rental rate was most compelling. The Board was unable to find justification for using a single lease to establish the typical rental rate to be applied to the subject property. Section 2 of MRAT is very specific in the direction for establishing the rates. The Complainant provided no evidence to show the space was atypical from similar space. No market evidence or comparable property evidence was submitted in support the change to the rental rate for office space

[18] The Board therefore confirmed the office rental rate at \$15.00 per square foot.

[19] The Board on review of the recreational space again looked at Section 2 of MRAT, specifically Section 2(c) which states "*must reflect typical market conditions for properties similar to that property*". During the presentations the Board received a detailed description of

the recreation space in the subject property as being an unfinished basement area with minimal amenities, only a washroom and showers. When the Respondent was asked how this space compared to the other recreational spaces, the reply was "it is classified as recreational and therefore receives the same rental rate".

[20] The Board was not swayed by the response and found little comparison between the subject space, the basement of a converted warehouse, and other presented spaces, such as the School for Alberta Ballet or a third floor fitness club.

[21] On review of the leases presented by the Respondent, the Board noted the subject recreational space leased for 3.6 to 8.2 times less than the comparables.

[22] The decision of Board was the recreational space is not similar to the other properties in either finish or lease rate. The decision of the Board was to reduce this space to the storage rate applicable to the area at \$3.00 per square foot.

Issue 2. Capitalization Rate

Complainant's Position:

[23] The Complainant argued the capitalization rate should be at 7.0%, as opposed to the current rate of 5.25% for the B Class office buildings.

[24] The Complainant submitted that sales occurring in the period July 2010 to July 2011 should use the Net Operating Income (NOI) for roll year 2012, which is based on the July 1, 2011 valuation date. Similarly sales occurring between July 2011 and July 2012 should use the NOI for roll year 2013, based upon the July 2012 valuation date.

[25] The Complainant submitted three sales, located in the Beltline market zone. and supporting documentation for analysis as support for the requested capitalization rate.

Address	Building Name	Quality	Sale Date	Sale Price	Assessed Area (Sq. Ft.)	2013 Roll Year NOI	Capitalization Rate
1520 4 St. SW	Alberta Place	B	1-Dec-2011	\$28,800,000	106,107	\$1,812,376	6.29%
906 12 Ave SW	Dominion Place	B	29-Dec-2011	\$30,000,000	137,807	\$2,306,708	7.69%
1207 11 Ave SW	Connaught Centre	B	18-Jan-2012	\$29,850,000	83,880	\$1,442,159	4.83%

(C1, Pg. 29)

[26] Although the Complainant submitted three sales, the requested capitalization rate of 7.0% was based on only two of the sales, Alberta Place and Dominion Place. The Complainant argued the difference between the typical rental rates and the actual lease income was significantly different and therefore should be excluded.

Respondent's Position:

[27] The Respondent submitted a table of five sales, located in the Beltline market zone, and supporting documentation for analysis as support for the requested capitalization rate.

Address	Building Name	Quality	Sale Date	Sale Price	Assessed Area (Sq. Ft.)	2013 Roll Year NOI	Capitalization Rate
605 11 Ave SW	The Keg Building/Ingersol Building	B	2011/08/10	\$14,175,000	51,173	\$743,589	5.25%
809 10 Ave SW	Cooper Blok Building	B	2011/09/08	\$12,060,000	35,793	\$438,039	3.63%
1520 4 St. SW	Alberta Place	B	2011/12/01	\$28,800,000	106,707	\$1,637,086	5.68%
906 12 Ave SW	Dominion Place	B	2011/12/29	\$30,000,000	137,801	\$1,957,775	6.53%
1207 11 Ave SW	Connaught Centre	B	2012/01/18	\$29,850,000	83,880	\$1,431,526	4.80%
						Median	5.25%
						Average	5.18%
						Assessment Rate	5.25%

(R1, Pg. 34)

[28] It was the Respondent's position that all sales were valid, arms-length transactions and should be used for the establishment of the capitalization rate

Board's Decision:

[29] The Board was not prepared to exclude the sale on Connaught Centre on the basis of the difference between the typical NOI and actual lease rates. The two properties accepted by the Complainant were based upon the typical NOI, which the Complainant did not dispute. The accepting of typical rates, but excluding based on actual income, is an unaccepted approach. There must be consistent application in the approach to determine a capitalization rate to be a valid argument. The request would be contrary to the guidance provided from the West Coast Transmission legal decision which confirmed the need for consistency. The Board used all three sales to determine the revised average requested capitalization rate would be 6.25%, less than the request of 7.0%.

[30] The Board was disappointed to find the capitalization rate table submitted by the Respondent was lacking in supporting documentation. The submission failed to provide the source of the NOI's submitted in the table. The documents presented did not support the NOI's used, except for the Cooper Blok sale.

[31] The Board found it was presented with two similar approaches to determining the capitalization rate, but with significantly different results. The Board found there was significant merit in the approach presented by the Complainant as the results were more representative of the market at the time of sale, using a more recent valuation date and more current NOI. The Respondent's methodology offers a consistent approach in the determination, with the resulting capitalization rate being applied to all similar properties in a like manner.

[32] In reaching its decision, the Board looked to the Municipal Government Act, Section 467 for some guidance.

Division 2

Decisions of Assessment Review Boards

Decisions of assessment review board

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(3) An assessment review board must not alter any assessment that is **fair and equitable**, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

RSA 2000 cM-26 s467;2009 c29 s24

[33] The Board found that the changing of the capitalization rate, based upon an alternative analysis, would create an inequity when compared with similar properties. The Board decision was not to change the capitalization rate based upon the Complainant's analysis, but strongly suggests the City of Calgary Assessment Business Unit explore the approach for future years.

[34] The decision on the methodology to establish the capitalization rate did not stop the Board from reviewing the capitalization rate as applied to the subject property. The Board found a number of dissimilarities between the subject property and those properties used to establish the capitalization rate. The sales used are located in the heart of the Beltline market area, whereas the subject is located in the southeast peripheral area of the former Victoria Park community. The subject property at 5,787 square feet is significantly smaller than the capitalization rate sales. The subject property is a converted warehouse, whereas the sales provided are multi-storey office buildings. The sale properties are located with better access, whereas the subject is located at the end of a cul-de-sac, facing onto the train tracks.

[35] The Board finds the subject property is faced with a higher risk in the market place in comparison to the capitalization rate sales. After consideration of the increased risk, the Board adjusts the capitalization rate to 6.0%

[36] On review of the evidence submitted by both parties on the issues stated and the decisions rendered by the Board, the Board found sufficient evidence to justify a change to the assessment.

[37] The Decision of the Board was to revise the assessment to **\$1,650,000.00**

DATED AT THE CITY OF CALGARY THIS 12 DAY OF Sept 2013.



PHILIP COLGATE

Presiding Officer

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

NO.	ITEM
1. C1A	Complainant Disclosure
2. C1B	Complainant Disclosure
3. C1C	Complainant Disclosure
4. C2	Complainant Rebuttal
5. 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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Office – Low Rise	Income Approach	-Market Rental Rates -Capitalization Rate

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.