



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:

Ivag Investments Ltd., (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***R. Fegan, PRESIDING OFFICER
E. Bruton, BOARD MEMBER
R. Kodak, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	068053206
LOCATION ADDRESS:	404 6 AV SW
FILE NUMBER:	74888
ASSESSMENT:	\$37,150,000 (amended notice)

This complaint was heard on 24th day of June, 2014 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:

- G. Worsley (MNP LLP)

Appeared on behalf of the Respondent:

- K. Gardiner (City of Calgary)
- J. Young (City of Calgary)

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

No procedural or jurisdictional matters were raised.

Property Description:

[1] The subject property is a seven story downtown office building, built in 1970. It has an assessed area of 93,461 square feet and has been classified as a "B-" building for property assessment purposes. The assessed area is made up of 76,595 square feet of office space and 7,499 square feet of retail space and 9,367 square feet of storage space.

Issues:

- [2] The assessed area is incorrect.
- [3] The rental rates applied to the subject areas are too high.
- [4] The vacancy rate is too low.
- [5] The capitalization rate is too low.
- [6] The subject building should be classified as a Class "C" rather than Class "B-" building.

Complainant's Requested Value: \$20,020,000.

Board's Decision: The complaint is allowed in part and the assessment is revised to \$30,150,000.

Position of the Parties

Complainant's Position:

AREA OF THE SUBJECT BUILDING;

[7] The Complainant provided a copy of the Assessment Request for Information that was provided to the City of Calgary by the property manager on April 12, 2013. The total rentable area indicated on this document was 83,833 square feet (exhibit C-1, page 30). The Complainant also provided a copy of a document produced by a company known as "Measure Masters" which had been retained to re-measure the building using "Building Owners and Managers Association" (BOMA) 1996 measurement standards. On that document the column titled "Rentable Area per Landlord" indicated a rentable area of 83,833 square feet. There were no figures provided in the column titled "Building Rentable Area"

[8] A rent roll document with a number of columns was provided which indicated an area of 83,833 square feet in a column titled "Marketable Measurement Rentable" and an area of

84,414 square feet in a column titled "As per Leases". The Complainant argued that regardless of any re-measurement that had taken place, the size of the building had not changed and the income had not changed. The leases in place were at fixed rental amounts for the duration of the lease term.

[9] The Complainant pointed out that the Respondent had used the rental rates stated on the rent roll in their analysis but these rental rates were for the original areas and it would be an error to apply rates based on smaller areas to the larger areas that resulted from the re-measurement.

Rental Rate;

[10] The Complainant argued that the rents being achieved by the subject property were further proof that the subject property should be classified as a "C" building. The rental analysis for "B-" buildings had a median of \$22.00 and a weighted average of \$22.95 (exhibit C-1, page 47). This analysis included five leases from the subject property. The rents in the subject property ranged from \$13.00 to \$22.00 with a weighted average of \$16.09 and a median of \$18.00. The Complainant also pointed out that if the revised areas were used in the analysis, the weighted average dropped to \$14.58 (exhibit C-1, page 267)

[11] The Complainant provided a rental analysis for retail space in Class "B" and "B-" buildings which indicated that there was a difference in the rents being achieved between these two classes of buildings (exhibit C-1, page 49).

VACANCY;

[12] The Complainant provided a retail vacancy study for class "B-" retail space in DT-1, (exhibit C-1, page 208). This analysis indicated a vacancy rate of 6.98%. A vacancy allowance of 8% was used in the assessment calculation.

CAPITALIZATION RATE;

[13] The Complainant provided a capitalization rate analysis using six sales of Class "B", "B-" and "C" buildings (exhibit C-1, page 52). The sales used in the Complainant's analysis were the same sales used by the Respondent. The Complainant suggested to the Board that the last three sales in the analysis were the most reliable indicators for two reasons. They were the most recent sales and two of the three earlier sales involved buildings that were classified at something less than class "B".

Complainant's Cap Rate Analysis;

Address	Sale Date	Sale Price	N.O.I.	Source of N.O.I.	Cap Rate
639 5 th AV SW	Nov 2012	\$114,200,000	\$5,987,197	2014 asmt.	5.24%
520 5 th AV SW	Nov 2012	\$98,200,000	\$5,354,325	Rental analysis	5.45%
855 8 AV SW	Feb 2013	\$30,400,000	\$1,673,836	2014 asmt.	5.51%

Classification:

[14] The Complainant argued that the subject should be classified as a "C" building and not a "B-". The Complainant provided a number of pictures in support of his opinion that the building was inferior to typical "B-" buildings. The Complainant argued that the fact the subject property did not have underground parking was a further indication that it should be classified as a "C" building. The Complainant also pointed out that recent leasing in the subject was well below the

market rent applied to the subject property to calculate the assessment.

Respondent's Position:

[15] The Respondent made the Board aware that an amended assessment notice had been issued increasing the assessment from \$36,380,000 to \$37,150,000. The amended assessment notice was issued on February 26, 2014, the same day that the Complaint was lodged. The Board was of the opinion that based on Section 305(5) of the Act, the amended assessment should not have been issued, however it would not have changed the outcome of the Board's decision.

ASSESSED AREA;

[16] The Respondent provided a copy of a rent roll received from the owner's property manager in November 2013. There were a number of columns on the rent roll but the two which dealt with the area were titled "Actual Certified Measured Area" and "AS PER LEASES, (based on former building area)". The total of the column titled "Actual Certified Measured Area" was 92,181 square feet (exhibit R-1, page 19). The assessed area is 95,537 square feet, (exhibit R-1, page 12)

[17] The Respondent provided a number of e-mails that had been exchanged between the Respondent and the Complainant as well as the Property Manager regarding the correct area of the subject building and pointed out that some of the questions asked by the Respondent had not been replied to (exhibit R-1, page 28).

RENTAL RATE;

[18] The Respondent presented a rental analysis for the "B-" buildings which had been provided by the Complainant in exhibit C-1, page 47. This analysis indicated a weighted average rent for "B-" buildings of \$22.95. A rate of \$23.00 was used in the assessment calculation.

VACANCY;

[19] The Respondent presented a retail vacancy analysis for "B-" buildings which had been provided by the Complainant in exhibit C-1, page 51. This analysis indicated a vacancy rate of 6.98% for "B-" retail space in DT-1. A rate of 8% had been used in the assessment calculation.

CAPITALIZATION RATE;

[20] The Respondent provided a capitalization rate analysis using six sales (R-1, page 53). The net operating income used in the calculation was taken from the assessed net operating income in the year in which the sale took place. The rental analysis period is typically based on the twelve month period prior to the effective date for assessment purposes (July 01 to June 30) (R-1, page 36).

CLASSIFICATION;

[21] The Respondent argued that based on the subject property's physical attributes it was properly classified as a "B-" building.

BOARD'S REASONS FOR DECISION:**ASSESSED AREA;**

[22] Exhibit R-1, page 28 indicated that the Respondent had revised the area of the subject building based on the areas on the rent roll provided to them "prior to December 31, 2013". This document provided both the original measurements and the revised areas after the re-measurement had been completed. This document is found on pages 15 – 19 of exhibit R-1. The rent roll clearly indicates that the stated rates which were used in the rental analysis were based on the original leased areas. For example the lease renewal for "First Executive Centre" dated October 01, 2012 was for 5,977 square feet at a stated rate of \$18.00. The total rent is given as \$107,586 ($\$18.00 \times 5,977 = \$107,586$). If the re-measured area of 7,286 square feet was to be used in the rental analysis, the rental rate would decrease to \$14.77 (exhibit C-1 page 267), but this is not what was done. This is the same situation for the other two spaces (4,096 and 12,437 square feet) leased by "First Executive Centre" in July and October of 2012 as well as the 1,467 square feet leased on August 01, 2012 by Pembroke Investments (C-1, page 267). The Board found that is wrong to use one set of figures to analyze rental data and apply the results of that analysis to another set of figures. In other words if the larger area is to be used a lower rate should be applied. The Board found that until such time as the "new" areas are impacting on the income being received that the subject should be assessed based on a total area of 83,833 square feet.

RETAIL RENTAL ANALYSIS;

[23] The Board found that separating the "B" retail space from the "B-" retail space resulted in a sample size for "B-" space that was too small to be relied upon and did not make a change to the retail rental or vacancy rates.

CAPITALIZATION RATE;**OFFICE CAPITALIZATION RATE SUMMARY (exhibit C-1, page 247)**

Quality Class	Capitalization Rate
AA	5.75%
A	5.75%
B	5.00%
C	5.75%

[24] The Board noted that the capitalization rate hierarchy for downtown Calgary contained what might be described as an outlier or an anomaly. Typically, one would expect the higher class properties to have lower capitalization rates than the lower class properties. For the Class "B" capitalization rate to be 13% lower than the capitalization rate for the Class "AA" is unusual.

[25] The Board noted that by using the effective date of the year in which the sale occurred, the Respondent implicitly acknowledges that the income should be relevant to the time frame in which the sale took place but the Respondent stopped short of estimating the market rent as of the sale date.

[26] The Board noted that by using a twelve month period prior to the effective date for assessment purposes, assuming the data is evenly distributed throughout the period, the midpoint of the analysis period would be January 01 of each year not July 01. This results in market rent estimates that are six months prior to the valuation date. In a stable market this may not be significant but in a rising market the use of outdated market rents would result in a lower cap rate estimate and in a decreasing rental market the time gap would result in a higher cap rate. The Board noted that in the Respondent's assessment to sale ratio study (exhibit R-1, page 59), a time adjustment of approximately 1.5% per month had been utilized indicating an annual price increase of 18%.

Address	Sale Date	Sale Price	T.A.S.P.	% Diff.	# Mths	% per mth
855 8 AV SW	Feb 15 2013	\$30,400,000	32,588,424	7.20%	4.5	1.60%
639 5 AV SW	Nov 15 2012	\$114,200,000	127,634,989	11.76%	7.5	1.57%
520 5 AV SW	Nov 01 2012	\$98,200,000	109,752,678	11.76%	8	1.47%
833 4 AV SW	June 15 2012	\$63,725,000	76,348,983	19.81%	12.5	1.58%
635 6 AV SW	June 13 2012	\$69,125,000	82,818,729	19.81%	12.5	1.58%
521 3 AV SW	June 13 2013	\$52,150,000	62,480,965	19.81%	12.5	1.58%

[27] The issue of post facto evidence was dealt with in the decision of Justice Lutz in the judicial review of MGB 145/07. The Judge agreed with the Respondent that information which became available during the assessment year as defined in the Matters Relating to Assessment and Taxation Regulation was not "post facto" evidence. Justice Lutz stated that provided the information was time adjusted to the effective date of valuation, it was proper to use information gleaned from the entire year (page 111 of the decision). The Board took particular note of the time frame used by the Respondent to estimate typical market rents for assessment purposes (analysis and application). The Board also took note of the time adjustment analysis provided by the Respondent. The Board found that the rental data used by the Respondent had not been taken from the full assessment year nor had it been adjusted to the effective date of valuation.

[28] The Board noted that the Hanover building had been analyzed with the class "A" stratification (exhibit C-1, pages 218 – 221). This could only serve to increase the market rent estimate for class "A" buildings while lowering the market rent estimates for class "B" buildings with a corresponding impact on the capitalization rate study completed by the Respondent.

[29] The Board found that it made sense to use sales as close as possible to the effective date of valuation. In his analysis the Complainant had taken the net operating income from the 2014 assessment explanation data for two of the sales but not for 520 5th AV SW. For that sale the Complainant had provided the Board with a separate rental analysis for class "B" buildings in DT-1 (exhibit, C-1, page 200). The Board noted that three of the twenty leases were taken from 520 5th AV SW and the Board also noted that the analysis included five leases from the

Hanover Building which the Board felt was appropriate and that a class "B" rental analysis without the Hanover leases did not properly represent the class "B" rental market.

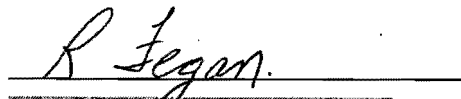
[30] The Board placed a higher reliance on the Complainant's analysis and revised the capitalization rate for the subject property to 5.5%.

CLASSIFICATION;

[31] The Board noted that a number of variables were involved in the classification process and to some extent the process was a subjective one, the Board found that there was insufficient evidence to warrant a change to the building classification.

[32] In summary the Board agreed with the Complainant's area as being correct and the Board accepted the Complainant's capitalization rate of 5.5% and as a result the complaint is allowed in part and the assessment is revised to \$30,150,000.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF July 2014.


R. Fegan

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R-1	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.*

CARB Identifier Codes

Decision No.		Roll No.		
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office	Market Value	Classification

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