



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:

Plaza 1000 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:	067062091
LOCATION ADDRESS:	1000 7 AV SW
FILE NUMBER:	75135
ASSESSMENT:	\$84,350,000

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 (Agent MNP LLP)

Appeared on behalf of the Respondent:

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

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is a ten storey office building located in the west end of Calgary's downtown area. It was built in 1982 and has an area of 160,033 square feet with 244 parking spaces. There is 153,809 square feet of office space and 6,225 square feet of retail space. The building has been classified as a "B" building for assessment purposes.

Issues:

[3] The issues in this complaint are; retail and parking rental rates, vacancy rates, and the capitalization rate applied to the subject property.

Complainant's Requested Value: \$75,040,000 (exhibit C-1, revised page 7)

Board's Decision: The complaint is allowed in part and the assessment is revised to \$75,320,000.

Position of the Parties

Complainant's Position:

[4] Retail Rental Rate; "The City of Calgary combined both "B" and "B-" retail space when calculating the Class "B" retail rate. MNP does not feel that this approach is appropriate as it is clear that retail spaces in "B-" properties lease differently than "B" properties." The Complainant provided two tables indicating the difference between retail leasing in both "B" and "B-" properties (exhibit C-1, pages 170 and 172).

[5] Retail Vacancy Rate; "The City of Calgary has assessed all retail spaces at a rate of 8%

regardless of the building class or location in the downtown core. MNP has split out the different vacancy rates and determined that there is a 14% vacancy rate in "B" class rental units in DT-2." The Complainant provided a chart with nine buildings located in DT-2, indicating a vacancy rate of 13.99% (exhibit C-1, page 22).

[6] Parking Rate; The Complainant argued that the Respondent's parking rate analysis and application did not sufficiently reflect the decline in parking rates as you go west of the downtown core. The Complainant provided a chart (exhibit C-1, page 23) showing parking rates taken from buildings that are west of 9th ST SW. The weighted average monthly rate from this study was \$320.79. The Complainant also provided a parking rate analysis for buildings located in DT-2, east of 9th ST SW; this chart indicated a weighted average monthly rental rate of \$372.25 (exhibit C-1, page 25).

[7] Capitalization Rate; It was the Complainant's position that the capitalization rate for Class "B" buildings should be 5.5% and not 5.0%. The Complainant provided a capitalization rate analysis using six sales to support his position. The Complainant had used the same six sales that were used by the Respondent. The Complainant suggested to the Board that although six sales were available for analysis, most reliance should be placed on the three most recent sales.

[8] Complainant's Cap Rate Analysis; (three most recent sales, exhibit C-1, page 26)

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%

Respondent's Position:

[9] Office Rental Rate; the Respondent provided a rental rate analysis (exhibit R-1, pages 45 and 46). The overall weighted mean (including the Hanover leases) was \$29.57.

[10] Retail Rental Rate; the Respondent provided a rental analysis (exhibit R-1, page 48). The analysis included both "B" and "B-" buildings. The analysis was for the geographic areas of DT-2, DT-3 and DT-9 and the weighted mean was \$20.02.

[11] Office Vacancy Rate; the Respondent provided an office vacancy analysis (exhibit R-1, page 50) for "B" buildings in DT-2, DT-3 and DT-9. The average vacancy rate was 3.28% and a vacancy rate of 3.5% was applied.

[12] Retail Vacancy Rate; the Respondent provided a retail vacancy analysis (exhibit R-1, pages 52, 53 and 54). The analysis included various classes of buildings throughout the downtown area with the exception of the core shopping area and Stephen Avenue Mall.

[13] Parking Rate; the Respondent provided a study of parking rates in Class "B" buildings throughout the downtown area (exhibit R-1, pages 65 and 66). Based on the study the Respondent applied a rate of \$400 in DT-1, 8 and \$350 in DT-2, 3, and 9.

[14] Capitalization Rate; The Respondent provided a capitalization rate analysis using six sales (exhibit R-1, page 56).

Address	Sale Date	Sale Price	Net Income	Cap Rate
855 8 AV SW	Feb 15 2013	\$30,400,000	\$1,675,291	5.51%
639 5 AV SW	Nov 15 2012	\$114,200,000	\$5,086,421	4.45%
520 5 AV SW	Nov 01 2012	\$98,200,000	\$4,267,577	4.35%
833 4 AV SW	June 15 2012	\$63,725,000	\$3,057,864	4.80%
635 6 AV SW	June 13 2012	\$69,125,000	\$3,468,266	5.02%
521 3 AV SW	June 13 2012	\$52,150,000	\$2,809,896	5.39%

[15] The Respondent explained that the net income was based on "typical market" rent taken from the effective date for assessment purposes in the year in which the sale took place. The time frame used in each year's rental analysis is the last six months of the year prior to the assessment year and the first six months of the assessment year.

[16] The Respondent provided a statistical analysis showing the time adjustment that would be necessary to adjust the sale prices to the effective date of valuation.

[17] Summary of the Respondent's Time Adjustment Analysis (exhibit R-1, page 63)

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 2012	\$52,150,000	62,480,965	19.81%	12.5	1.58%

Board's Reasons for Decision:

[18] Retail Rent; the Board accepted the \$22.00 rental rate for retail space in "B" class buildings based on the analysis on page 21 of exhibit C-1.

[19] Retail Vacancy; the Board noted that the retail vacancy chart provided by the Complainant (exhibit C-1, page 22) did not include the subject property. The Board was not prepared to adjust the retail vacancy rate based on data that did not include the subject property.

[20] Parking Rate; the Board accepted the Complainant's opinion and evidence that monthly parking rates continued to decline as you moved west from the downtown core (exhibit C-1, pages 23 and 25).

[21] Capitalization Rate; the Board noted that the capitalization rate hierarchy for downtown Calgary contained an unusual anomaly (exhibit C-1, page 214). 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.

[22] The Board noted that by using the effective date of the year in which the sale occurred the Respondent 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.

[23] 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 an increasing 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, a time adjustment of approximately 1.5% per month had been utilized indicating an annual price increase of 18% (exhibit R-1, pages 59 – 63)

[24] The Board noted that the Hanover building had been analyzed with the Class "A" stratification (exhibit C-1, pages 182 - 185). Removing the Hanover leases from the "A" study and including them in the "B" study could only decrease the market rent estimate for class "A" buildings while increasing the market rent estimates for class "B" buildings and have a corresponding impact on the capitalization rate study completed by the Respondent.

[25] The Complainant included the Hanover leases in the class "B" rental study used to determine the net income used in the capitalization rate analysis (exhibit C-1, page 166). This study also includes leases from 520 5th AV SW, one of the sales used in the capitalization rate study. The market rental rate produced by this study (\$27.34 rounded to \$27.50) has been used to calculate the capitalization rate for 520 5th AV SW. For some reason the Complainant did not use the same approach on the other two sales. For those two sales the Complainant used net incomes almost identical to those on the 2014 assessment explanation sheets.

[26] The Board reviewed DL019/10, (exhibit R-1, page 424). In that the case the Board stated *"Accordingly the MGB is not convinced that the assessor's assessment methodology in deriving its NOIs and cap rate is incorrect, or that it fails to capture market conditions for the 2007 and 2008 assessment years."* In this case however, the Board is convinced that the rental analysis conducted by the Respondent fails to capture the correct market rent for Class "B" buildings as it does not include the Hanover leasing and the midpoint of the analysis period is January 01, 2013 not July 01, 2013.

[27] The Respondent provided a Class "B" office rental analysis (exhibit R-1, pages 45 and 46). This analysis was completed with and without including the Hanover leasing in the Class "B" category. Without the Hanover leases the weighted average rent was \$24.97 per square foot. With the Hanover leases included the weighted average rent was \$29.57. The office rents used in the Respondent's capitalization rate study ranged from \$19.00 to \$22.00 (exhibit R-1, pages 78, 80, 84, 86, 88). The Board noted that the leases used in the analysis dated back to July 01, 2012. This is within three weeks of the most dated sale. The fact that the "typical

market rents" used to calculate the capitalization rate are so far below the market rent analysis on page 45 of exhibit R-1, (without Hanover leasing) is the reason why the Class "B" capitalization rate is lower than the Class AA capitalization rate.

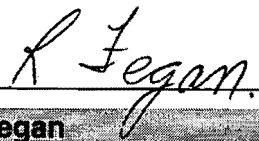
[28] Notwithstanding the fact that the Complainant appeared to use two different methods to estimate market rent for the three capitalization rate sales (2014 assessed NOI for two of the sales and a separate rental analysis for the sale of 520 5th AV SW) the Board found that the Complainant's use of typical market rents that more closely reflected the results of the rental analysis for the three most recent sales provided a more accurate result than that of the Respondent.

[29] The issue of post facto evidence was dealt with in the decision of Justice Lutz in the judicial review of MGB 145/07. In that case 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.

[30] The Board also found that the average time adjusted sale price for the six sales used in the capitalization rate analysis was \$467.20 per square foot (exhibit R-1, page 63). The assessment of the subject property is \$527.07 per square foot. Given the location of the subject property in the west end of downtown the Board could find no reason why the assessment of the subject building should be higher than the average time adjusted sale price of similar buildings and the assessment is reduced accordingly.

[31] In summary the Board agreed with the Complainant's requested parking rate of \$3,840 per stall per annum. The Board agreed with the \$22.00 retail rate. The Board did not accept the requested 14% retail vacancy rate. The Board did accept the 5.5% capitalization rate.

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
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.*

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	Capitalization Rate

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