



**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:**

***Telus Communications Inc. (as represented by Avison Young Property Tax Services),  
COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

<b><i>K. Thompson,</i></b>	<b><i>PRESIDING OFFICER</i></b>
<b><i>P. Grace,</i></b>	<b><i>BOARD MEMBER</i></b>
<b><i>P. Pask,</i></b>	<b><i>BOARD MEMBER</i></b>

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: 068076207**

**LOCATION ADDRESS: 130 7 Av SW**

**FILE NUMBER: 76902**

**ASSESSMENT: \$55,320,000**

This complaint was heard on 18 day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *C. Hartley*                      *Agent, Avison Young Property Tax Services*
- *A. Farley*                        *Agent, Avison Young Property Tax Services*

Appeared on behalf of the Respondent:

- *D. Zhao*                        *Assessor, City of Calgary*

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

[1] The Complainant and Respondent both requested that all evidence, testimony, summaries and argument on the capitalization rate be carried forward from file 76915. The Board had no issue with this and continued to hear the merits of the complaint.

**Property Description:**

[2] The subject property is a Class B- office high-rise constructed in 1973. It is known as Telus' Downtown Toll Building (the Len Weary Building) and is located at 130 7 Av SW in the DT1 market area. The building is designed to give the appearance of an office building but is in fact an equipment building with some office space. The exterior glazing is mostly faux fenestration for the purpose of regulating the environment for the equipment contained within. The equipment space is assessed as storage. The property is assessed as having :

- 1) Office -                      101,976 square feet (sf) @ \$23.00 per square foot (psf)
- 2) Storage -                    107, 750 sf @ \$8.00 psf

[3] The subject property is assessed using the income method of valuation and has a capitalization rate of 5.00%.

**Issues:**

[4] Issue 1: The value of the subject property would better reflect market if it were based on a capitalization rate of 5.75%.

[5] Issue 2: The rental rate for the office space in this building would better reflect market at a rate of \$19.00 psf

**Complainant's Requested Value: \$39,240,000**

**Board's Decision:**

[6] Assessment is reduced to \$48,340,000.

**Legislative Authority, Requirements and Considerations:**

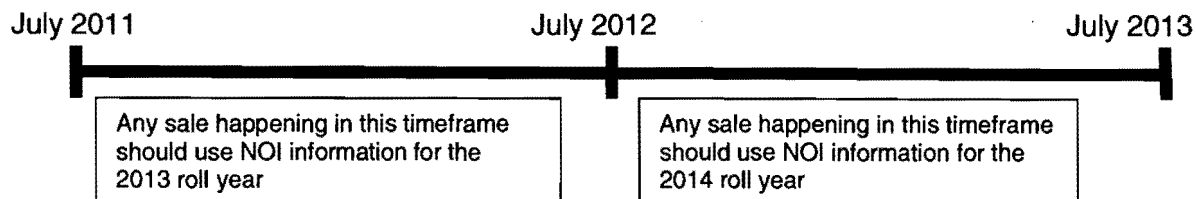
[1] By the Act, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in Subsection (1)(a).

**Position of the Parties****Complainant's Position:****Issue 1 Capitalization Rate**

[2] The Complainant states that the Class B office buildings in the downtown core should have a capitalization rate of 5.75%. The way the City calculated its capitalization rate is flawed and produces flawed results. This can be seen by the mere fact that the Class A capitalization rate for downtown properties is at 5.75% which is higher than the Class B capitalization rate at 5.0%. The Complainant stated capitalization rates are, in part, a function of risk, and superior properties have less risk and therefore should have lower capitalization rates.

[3] The Complainant contends that the lower Class B capitalization rate of 5.0% occurred because the City used the incorrect rental rates for the three sales that occurred after July 2012 to arrive at a capitalization rate (estimated rent is low as a result). The City used the 2013 typical rental information and should have used the 2014 typical rents [C1, pg 77-78]. In fact for the Standard Life and 520 5<sup>th</sup> Av SW sales, both of which sold in the fall of 2012, all leases after July 2012 were for rates in excess of the City's typical market rent estimates. The City needs to have a bearing on economic reality of the asset that transacted. If the forward going rents are looked at, a 5.50% capitalization rate is produced [C1, pg 76] in Complainant's summary of testimony].

[4] The Complainant presented a diagram of this method [C1, pg 77] and showed the results of using the correct rental rates (along with the individual calculations for each of the six sale properties) [C1, pg 78-87]. This produced a mean of 5.15% and median of 5.13%.



[5] The Complainant went further to show that the leases in the three sales that occurred after July 2012 were increasing through to the sale date [C1, pg 88-89]. Using the February 15,

2013 sale of Century Park Place as one example, the City's estimate of market rent to calculate the capitalization rate was \$22.00 psf and the current leases up to the sale date were:

Commencement	Term	Size	Rate psf
June 13	5	8,007	\$25.00
May 13	5	8,007	\$25.00
April 2013	5	8,007	\$25.00
March 2013	5	8,007	\$25.00
February 2013	5	8,007	\$25.00
January 2013	5	8,007	\$25.00
July 2012	1	1,282	\$17.00

[6] For the November 15, 2012 sale of the Standard Life Tower the City used \$19.00 psf when the lease median rent goes from \$20.00 psf in July of 2012 through to \$27.57 psf in March of 2013. For the sale at 520 5 Av SW, sold in November of 2012, the City used typical rates of \$22.00 psf and the actual leases from May 2012 start at \$26.00 psf through to June 2013 with leases at \$33.20 psf. Note: The Complainant stated that median rents were used if there was a step up lease involved.

[7] The Complainant then presented a rework of the capitalization calculation using the median of the actual leases to calculate the NOI's of the three sale properties that occurred after July 2012 and the City's calculations for the remaining three sales. The result was a median of 5.40% and a mean of 5.41% [C1, pg 91]. All calculations, pictures and leasing information were provided for the three sales that occurred after July 2012 [C1, pg 92-106].

[8] The Complainant submitted that the City was inconsistent with how it rounded its results in the entire capitalization study.

[9] All information received from the City was submitted into evidence. [C1, pg 109-161].

[10] Calculation of the proposed assessment was provided [C1, pg 273].

[11] A number of CARB Board decisions and one Queens Bench Decision were presented [C1, pg 163-271].

## **Issue 2: Rental Rate for the Office space**

[12] The Complainant stated that this building was built in the 1970's with the purpose of housing telecommunication equipment. At the time it was constructed the equipment was much larger and took up considerably more space. Some of that space over the years has been retrofitted into office space. This building has 13 floors and three mechanical floors on top. A small portion of the main floor is exempt. The Complainant stated that this building, in spite of its outward appearance, has only seven individual window panes per floor. A large number of pictures were provided of the building's interior and exterior [C1, pg 16-42]. The Complainant further stated that the location of this property is poor. As this property is owner occupied there

are no subject leases to support the request.

[13] Leases from three Class B- comparables were presented [C1, pg 44]; the Complainant noted that all would be considered superior to the subject property. The Complainant included photographs [C1, pg 61-70]. The analysis of the leases indicated a range of \$13.00 psf to \$22.00 psf and a median of \$18.20 psf and a mean of \$18.65 psf.

[14] The City's B- rental summary was also provided [C1, pg 45-46] showing all the B- leases for the 2014 roll preparation. The range was from \$13.00 psf to \$30.00 psf with a median of \$22.00 psf and a mean of \$22.38 psf.

[15] The subject property's 2013 CARB decision 70232P-2013 was included for the Boards consideration.

### **Respondent's Position:**

#### **Issue 1: Capitalization Rate**

### **Respondent's Position:**

[16] The Respondent provided the assessment information, calculation details, maps and photographs for the subject property including information on the calculation of the exempt portion of the property [R1, pg 5-14].

[17] The Respondent stated that they look to take the closest valuation parameter for any given sale date. They were directed to do so by a previous CARB decision. They are legislated to prepare the assessments using mass appraisal techniques and the income calculation is a multiplicative formula so one input of the formula cannot be changed without reviewing the impact on the other inputs.

[18] The Respondent prepared and presented a chart to show the methodology used by the Complainant vs. Respondent:

	<b>Complainant</b>		<b>Respondent</b>	
<b>Sale Date</b>	<b>Valuation Date</b>	<b>Time Difference</b>	<b>Valuation date</b>	<b>Time Difference</b>
<b>2013 July</b>	<b>2013/07/01 (2014 Roll)</b>	<b>0 month</b>	<b>2013/07/01 (2014 Roll)</b>	<b>0 month</b>
<b>2013 February</b>	<b>2013/07/01 (2014 Roll)</b>	<b>5 months</b>	<b>2013/07/01 (2014 Roll)</b>	<b>5 months</b>
<b>2012 November</b>	<b>2013/07/01 (2014 Roll)</b>	<b>8 months</b>	<b>2012/07/01 (2013 Roll)</b>	<b>4 months</b>
<b>2012 August</b>	<b>2013/07/01 (2014 Roll)</b>	<b>11 months</b>	<b>2012/07/01 (2013 Roll)</b>	<b>1 month</b>
<b>2012 July</b>	<b>2012/07/01 (2013 Roll)</b>	<b>0 months</b>	<b>2012/07/01 (2013 Roll)</b>	<b>0 months</b>

[19] The Respondent submitted the City Office Capitalization Rate Summary and the Capitalization rate analysis for the Downtown B offices. [R1, pg 19-21]. The capitalization rate study contained six sales and produced a median of 4.91% and a mean of 4.91% for a typical Class B capitalization rate of 5.00%.

[20] The Respondent included an example of the effects of the percentage of error in a rising and declining market using a sample of sales [R1, pg 22-23]. The percentage of error increased using the Complainant's method.

[21] The Respondent presented a chart with the time adjusted assessment to sale ratios (ASR) based on their method and the Complainant's method [R1, pg 24]. The Complainant made a point to state that this had been calculated incorrectly. If they were using the current NOI's, instead of the assessed value, their ASR's are much closer than the Respondent's with a median ASR value of 1.01.

[22] The ASR's for the Respondent's method were between 0.88 and 1.07 with a median of 0.95 and a mean of 0.97. The Complainant's method resulted in a range of 0.77 to 0.93 with a median of 0.83 and a mean of 0.84. The Respondent concluded that the Complainant's method produced values well below the market value.

[23] Trend line graphs were included to show time adjustments [R1, pg 25-27].

[24] The Respondent provided nine equity comparables in the DT1, 8 market areas [R1, pg 29].

[25] Finally the Respondent provided a graph to show the final value results for Class AA to C downtown offices measured by assessment per square foot [R1, pg 30]. This graph shows that no matter what the components were that went into the formulas, the final results do show the logical progression expected between the better class properties and lower classed properties. The Respondent went on to state that the capitalization rate is but one part of the multiplicative formula and the final assessed value is what is really important. This shows that the final assessed value is where it should be.

[26] The Respondent included the Assessment Range of Key Factors, Components & Variables- 2014 Office [R1, pg 33].

[27] At the request of the Complainant the Respondent submitted the calculation of the six sale properties using a 5.75% capitalization rate [R1, pg 28-33].

[28] Decisions DL019/10, CARB 1331P-2011 and CARB 70153P-2013 were also submitted for the Boards consideration [R1, pg 36-41].

## **Issue 2: Rental Rate of the Office Space**

[29] The Respondent provided the City's rental analysis for the subject property [R1, pg 16] and stated that the subject building is owner built and occupied. The use of the building is the choice of Telus; this doesn't mean there is a negative stigma. The Respondent noted that from the pictures presented in C1, the office space looks nice, in particular the office space on page 18 and 20.

## **Complainants Rebuttal:**

### **Issue 1: Capitalization Rate:**

[30] The Complainant contends that the downtown office real estate market behaves in a rational manner and this is not evident in the City's capitalization study.

[31] From file 76915 carry over, W. Mannas, Vice President of Investment Sales for Avison Young spoke to the commercial real estate market in Calgary making these observations:

- 1) Typically all leases, reports and surveys pertaining to the asset are provided to the purchaser by the vendor prior to any sale. This includes any offer/agreement for lease of space in the future. Mannas also stated that capitalization rates are higher as the quality of the building decreases. This correlates directly with the degree of risk involved in the investment. The purchaser looks at everything that is in place (even if it is for leases that will occur in the future) at the time of closing.
- 2) From a national standpoint this also applies to asset investments across the country.
- 3) Mannas stated he has never seen a B class building sell in Calgary with a 5.00% capitalization rate in the six years he has been with this firm.

[32] The Complainant included CBRE and Colliers capitalization rate reports.

[33] The Complainant commented that the Respondent's ASR study wasn't accurate, that actual NOIs for the sales should be used, and not the assessed income. The ASRs would have a median of 1.01 which is closer than that of the Respondent at 0.94.

#### **Board's Reasons for Decision:**

##### **Issue 1: Capitalization Rate**

#### **Board's Reasons for Decision:**

[34] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

[35] Both the Complainant and the Respondent used the income approach to value this property and both used the same set of six sales to derive the capitalization rate. The two parties differed when it came to which typical rental rate should be used to calculate the NOI, to derive the capitalization rate. The Complainant stated that the forward looking rental rates should be used for those properties that sold after the July 1, 2012 date. The Respondent stated that the closest rental rate to the date of the sale should be used. Three of the six sales took place after July of 2012; the other three sale calculations were not in contention.

[36] The Board reviewed the evidence provided by both parties and in particular, consideration was given to the two capitalization studies provided by the Complainant and compared that to the study used by the Respondent. The Board finds that nothing in either of the Complainant's two studies support the 5.75% capitalization rate request. The Complainant's first study showed a median capitalization rate of 5.13% and a mean of 5.15%. The second study produced a median of 5.40% and mean of 5.41%; however the Board didn't accept the method used to calculate this capitalization rate. The three sale properties in the study that occurred after July 2012 had a typical capitalization rate calculated using a sample size that was reduced to only the leases from the sale property. This was not consistent with the method used to calculate capitalization rates for the three sales that occurred before July in the analysis. The Board is not convinced that these results would show typical capitalization rates.

[37] Historical information regarding capitalization rates was given little weight by the Board as capitalization rates are a function of market transactions relating to any given assessment year. While the Board agrees that it isn't common to see the current hierarchy of capitalization

rates for A and B Class buildings, the move in this direction netted resulting values that (expressed on a per sq. ft. basis) did satisfy the Board that a reasonable relationship and market value was maintained. Ultimately, this is what is important, more so than the process and components of the process.

[38] The Board notes that while it is not bound by previous Board Orders, it did consider those that were submitted but its decision is based on the evidence before it. The Board finds insufficient evidence to alter the capitalization rate applied to this property.

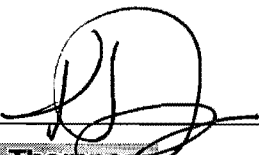
## **Issue 2: Rental Rate of the Office Space**

[39] The Board reviewed the documents and found the evidence provided by the Complainant compelling, especially the visual information and the lack of windows. This building is unique. The subject's interior space does seem to be atypical for this class of properties, there does seem to be deficiencies in building characteristics compared to other B- buildings. Little evidence was brought forward by the Respondent to refute these claims. When compared to leases of similar buildings the rental rate of \$19.00 seems reasonable. The rental rate for the office space is reduced to \$19.00 psf.

## **Board's Conclusion**

[40] The Board therefore confirmed the capitalization of 5.00%, but reduced the rental rate from \$23.00 psf to \$19.00 psf on the office portion. The storage rate was unchallenged. All other variables used in the income approach calculation were accepted as assessed. The exempt portion of this property was not challenged and was removed from all calculations; its value was not changed. The value was reduced to \$48,340,000.

DATED AT THE CITY OF CALGARY THIS 14<sup>th</sup> DAY OF July 2014.

  
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**K. Thompson**

**Presiding Officer**



## **APPENDIX "A"**

### **DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainants Rebuttal

*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.*

Property Type	Property Sub-Type	Issue	Sub issue
office	High rise	Income Approach	Net Market Rent/lease rates
			Cap rate