# 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(4).

**between:**

***Colliers International Realty Advisors, COMPLAINANT***

**and**

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

**before:**

***T. Helgeson, PRESIDING OFFICER***
***R. Clark, MEMBER***
***A. Wong, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

**ROLL NUMBER:** 068101591

**LOCATION ADDRESS:** 237 8th Avenue S.E.

**HEARING NUMBER:** 57765

**ASSESSMENT:** $15,480,000

This complaint was heard on the 2nd day of July, 2010 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:

- C. Hartley and A. Farley

Appeared on behalf of the Respondent:

- D. Lindgren and C. Keough

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

No procedural or jurisdictional matters were raised.

**Property Description:**

The subject property is the "Burns Building", a seven storey office building located at 237 8th Avenue S.E. in downtown Calgary. Constructed in 1914, the Burns Building has an average floor plate of 10,680 square feet, and a total floor area of approximately 74,000 square feet. There is no on-site underground or surface parking. The subject has been categorized as a Class C building. The total assessment is $15,480,000.

**Issues:**

1. Do the typical rents for spaces in the subject property accurately reflect the uses of those spaces, and their leasable value?

2. Is the Respondent's capitalization rate, as derived from typical net operating income, too low?

**Complainant's Requested Value:** $9,460,000

**Board's Decision in Respect of Each Matter or Issue:**

**Issue 1**. The Complainant and Respondent are in agreement that the office space in the subject property totals 60,395 square feet. This space has been assessed at $22.00 per square foot, for a total market rent of $1,328,690. The Complainant submits that there are two classes of office space in the building: class 1, comprising 57,462 square feet, and class 2, comprising 2,933 square feet, the latter commanding a lesser rent due to an obstructed view. According to the Complainant, a reasonable rental rate for class 1 space would be $14.00 per square foot, and for class 2 space, $11.00 per square foot.

The total amount of assessed retail space in the subject property is 12,638 square feet, some 11,378 square feet of which has been assessed as "retail space lower" at $20 per square foot. The remaining 1,260 square feet has been assessed as "retail space upper" at $26 per square foot. The

Complainant submitted that there is only 9,968 square feet of retail space in the subject, all of which which should be assessed at $20.00 per square foot. According to the Respondent, there are also 2,050 square feet of storage space in the building, assessed at $8.00 per square foot. The Complainant's submission does not mention storage space, but does cite 3,280 square feet of "charitable space" on the second floor, used as a Muslim prayer room. The Complainant also suggested that a portion of the Muslim prayer room is in fact the 1,260 square feet the Respondent has assessed as "Retail space Upper" at $26 per square foot. The Complainant requested that the Muslim prayer room be assessed at $12.50 per square foot, its actual lease value. Inexplicably, the Complainant's total of office, retail and "charitable space" is 73,643 square feet, while the Respondent's office, retail, and storage space total 75,083 square feet, a difference of 1,440 square feet.

The Complainant submitted that the lack of on-site parking was a significant negative influence on the leasing and value of the subject, and provided evidence from five leases to demonstrate that the declining demand for office space arising from the economic downturn and over-building in the downtown core had resulted in significantly lower rents in the assessment year.

The Complainant's first office space comparable was a lease in One Palliser Square at 125 9th Avenue S.E., a superior building to the subject. This lease, for 31,132 square feet at a rate of $12 per square foot, was signed on October 1st, 2009. The second comparable was a lease in the Leeson Lineham building at 209 8th Avenue S.W., signed on September 1st, 2009, for 3,190 square feet, at a rate of $12 per square foot. The third comparable, a lease in the Lancaster building at 304 8th Avenue S.W. for 2,214 square feet at $17 per square foot, was signed on the 18th of August, 2009, and commenced on September 1st, 2009. The Complainant's fourth comparable was at 101 6th Avenue S.W., the Hanover building, a superior building to the subject. The leased area was 2,781 square feet, at $20 per square foot, and the lease was signed on the 24th of February, 2009, and commenced on April 1st, 2009.

The Complainant informed the Board that from a review of the subject property's leasing, it is difficult to estimate market rent for the subject. The Complainant noted an office lease in the subject which commenced on June 1st, 2009, at $18.90 per square foot, as compared to the assessed rent of $22.00 per square foot. The Complainant also produced a letter dated May 18th, 2010, from the owner of the subject building, stating that one of the current tenants had, since January, 2010, renewed their lease of 21,720 square feet at $10 per square foot for the first two years, and another tenant had, during the same period, renewed a lease of 2,618 square feet, at $14.00 for the first two years.

The Respondent submitted 24 comparable building leases in 12 buildings in the southwest quadrant of the downtown core. These leases showed a median rent of $25 per square foot, and a weighted mean of $23.75 per square foot. Thirteen of the leases commenced in 2008, the remainder in 2009. Three of the 2009 leases commenced in April, one commenced in May, and one in June. Values per square foot ranged from $13.79 to $28.00. The Board found it difficult to determine whether the Respondent's southwest comparables were appropriate to the subject property due to lack of information. The Respondent also submitted evidence from a rental rate report from *Altus Insite* indicating that average rental rates per square foot for class C buildings in the downtown core in the second quarter of 2009 were in the range of $27 to $28 per square foot.

**Decision on Issue 1:** The Board accepts that due to the economic downturn of 2008, combined with over-building of downtown office space, leasing rates have declined in the downtown core. The Board also accepts the actual lease value of $12.50 per square foot as a reasonable value for the

Muslim prayer room, which, from the evidence of the Complainant, is nothing more than a large, bleak, empty room. Because the Respondent did not dispute the Complainant's submission that the Muslim prayer room subsumed the space described as "retail space upper" in the Respondent's income approach valuation, the Board accepted the Complainant's figure of a total of 9,968 square feet of retail space over the Respondent's tally of 1,260 square feet of "retail space upper" and 11,378 square feet of "retail space lower". The Board also accepted the Respondent's evidence with respect to the inferior quality of the 2,933 square feet of office space with an obstructed view.

With respect to valuation of space in the subject other than the Muslim prayer space, the Board found that the lease of 2,214 square feet of office space in the Lancaster building, at 304 8th Avenue S.W., for $17 per square foot, is a reasonable comparable, although the Lancaster building is slightly superior to the subject property, and the lease commenced on September 9th, 2009, subsequent to the valuation date of July 1st, 2009. Also, the lease that commenced June 1st, 2009, in the subject building for 2,618 square feet of office space, at $18.90 per square foot, is, in the view of the Board, a reasonable comparable. In the middle of these two values is $17.95, or, rounded up, $18.00 per square foot. The Board accepts that figure as a reasonable value for the office space in the building, other than the view-obstructed space.

With respect to the view-obstructed space, the Board accepts the ratio of 0.8, as derived from the per square foot value difference between "retail space upper" and "retail space lower" in the Respondent's Income Approach Valuation, as an appropriate ratio for differentiating the value of the view-obstructed space from the rest of the office space. Therefore, the view-obstructed space is assigned a value of $14.00 per square foot.

**Decision on Issue 2:** According to the Complainant, capitalization ("CAP") rates have not improved since 2008 due to absence of sales. Further, submits the Complainant, the Respondent derived the CAP rate it uses by dividing its estimate of market income by sale price. The Respondent then valued office buildings "in a circular manner" by applying the CAP rate as derived to its estimate of market income, ignoring leases in place. If market rental rate is under-estimated, says the Complainant, it will produce an under-estimation of the CAP rate, and this under-estimated CAP rate, when applied to a reasonable estimate of another building's income, will produce an over-estimation of value. In support of its argument, the Complainant cited Municipal Government Board ("MGB") Order 140/01.

MGB Order 140/01 was superseded in November, 2007 by MGB Order 145/07, which dealt with the same issue as in the present case. In MGB 145/07, the Municipal Government Board found that net operating incomes to which a CAP rate is to be applied must be calculated using "typical" values, that an assessment must reflect both the owner's and the tenant's interest, and that actual net operating income which reflects both current and non-current leases will not reflect market value of the fee simple estate, but leasehold value instead. The Municipal Government Board concluded that the assessment methodology of the Respondent City of Calgary in calculating a CAP rate based on typical rent provided consistency in the analysis of available sales, and that using the CAP rate so derived applied to a typical net operating income provided a consistent approach.

In the present case, the Board did not find fault in the Respondent's overall assessment methodology used in valuing the subject property, and noted that "C" class office buildings had received a ¾ point increase in CAP rate as a result of market indicators, an adjustment which the Board found to be reasonable. In the result, the Board found no reason to adjust the CAP rate for the subject property, which remains at 8.50.

**Board's Decision:** For the reasons set forth above, and based on the findings of the Board, the assessment of the subject property is hereby adjusted to 12,581,000.

**DATED AT THE CITY OF CALGARY THIS 11th DAY OF AUGUST 2010.**

**T. HELGESON**
**Presiding Officer**

CC: Owner

*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.*