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-26.1, Section 460(4).

between:

Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER
J. Joseph, MEMBER
D. Steele, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	**067049205**
LOCATION ADDRESS:	**639 5 Ave SW**
HEARING NUMBER:	**58691**
ASSESSMENT:	**$80,470,000**

This complaint was heard on the 1st and 2nd days of November, 2010 at the office of the Assessment Review Board located on the 3rd Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Property Description:

The subject complaint is of the Standard Life Tower, a 25 storey building with 268,744 SF of office space, 9,598 SF of main floor retail and 87 parking stalls on a 26,024 SF parcel of land constructed in 1969. It is located in the DT2 district of downtown Calgary and is classified as a B building. It is assessed on the income approach based on $26/SF for the office area with an 8% vacancy allowance, along with rates and vacancy for retail and parking that are not under dispute. Operating costs and vacancy shortfall, also not under dispute, are applied and the resulting net operating income is capitalized at 8% to arrive at the assessment under complaint.

Issues:

The Complainant identified a number of issues on the Complaint form; however at the hearing the issues argued and considered by the Board were:
1. The rental rate for the offices should be decreased to $24 from $26
2. The vacancy rate should be increased to 15%.
3. The capitalization rate should be increased to 9%

Complainant's Requested Value:

$20,120,000 revised to $57,880,000 at the hearing.

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

Issue 1: Office rental rate

Complainant's position:

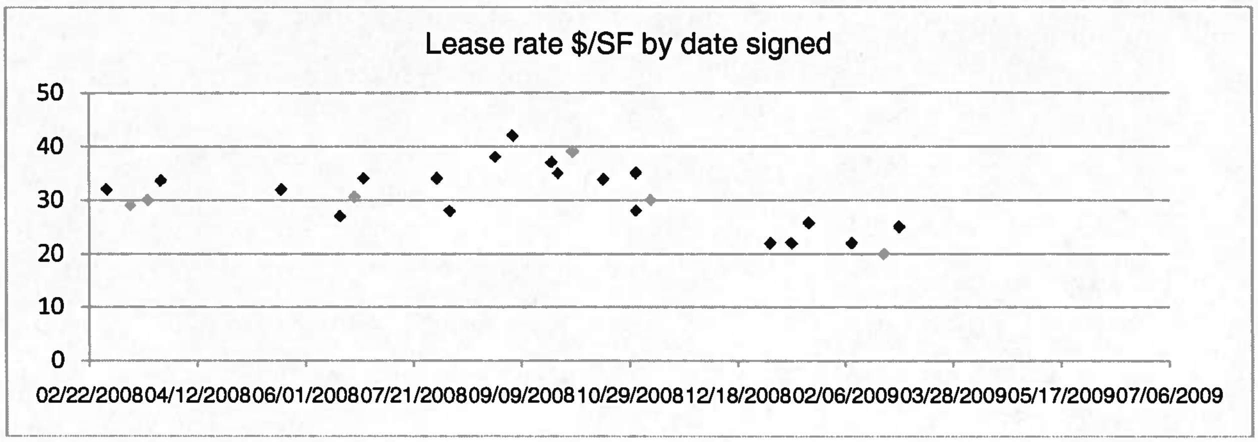
The Complainant presented an analysis of Class B market rental rates in support of his position that rental rates had experienced a sharp decline in October 2008. Rental rates for B buildings, with commencement dates of July 2008 to November 2009 were plotted on a graph to illustrate the change in the market during that period, and to extract a time adjustment factor. The Complainant also presented the dates the leases were signed, to show that the "deal done" date was generally several months before commencement date. This analysis had been presented in several previous hearings and the general direction of the Board had been to use leases from the second quarter (Q2) of 2009 as being reflective of the market as of the valuation date and not requiring time adjustment. The Complainant requested a rental rate of $24/SF be applied to the subject.

Respondent's position:

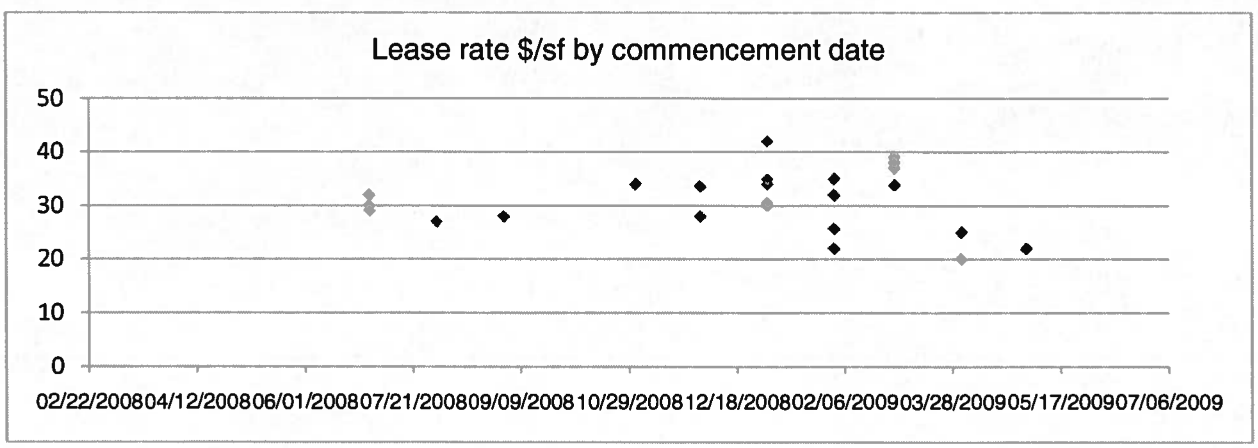
The valuation date for the 2010 assessment year is July 1, 2009. Leases starting after that date should not be considered since the market value at July 2009 would be based on activity prior to that date. The Respondent disputed the use of time adjustments for lease rates, stating that time adjustments were only relevant when applied to sale prices. The Respondent also disputed the use of the dates the leases were signed, as this information is not generally available and the lease is not in place until the space is occupied and money changes hands. The Respondent agreed that the direction of previous Board orders had been to look at Q2 2009 leases and to that end presented a table of 27 leases in DT2 that had commenced April 1 2009 to June 1 2009 with a weighted mean of $27.17 however it was determined that four of the leases were duplicates, leaving 23 leases with a weighted mean of $25.88. This supports the $26 lease rate applied to the subject.

Decision and Reasons:

The Board agrees with the Respondent that *post facto* lease rates should not be considered, as the market value at the valuation date would be based on leasing activity up to that date. The majority of the Complainant's leases were not helpful, having commencement dates in late 2009. However, the Board agrees with the Complainant that the lease rate agreed to at the time the lease was signed is more likely to be a reflection of market conditions than the rate paid on the date the space was occupied. The Board analyzed the 25 leases submitted (p58 C5).



Graphically, the lease rates based on date signed show a substantial decline between October 2008 and January 2009, a trend supported by general consensus in the industry. The same data using lease commencement dates do not display a similarly clear trend.



It is evident that in a sharply changing market the "deal done" date will more accurately reflect the condition of the market at that date, however the Board recognizes that the "deal done" date would generally only be available to the parties to the agreement. The Board accepts the Respondent's explanation that it is difficult to obtain that information, and in a mass appraisal situation it would be prudent to use a consistent date. The Board notes that while there was a wide variation in the gap between "deal done" date and the commencement date, from less than one month to up to 8 months, on average the difference was less than 3 months. Therefore the Board is of the opinion that lease rates commencing in the second quarter (Q2) of 2009 were likely signed after the decline in the market, and are a reasonable reflection of market rates at July 2009. The Board considered the Q2 leases presented by the Respondent, removing the duplicates:

Address	Leased area (SF)	Commencement date	$/PSF
715 5 Ave SW	4,818	04/01/2009	37
715 5 Ave SW	1,878	04/01/2009	20
715 5 Ave SW	3,185	04/01/2009	34
736 6 Ave SW	3,886	04/01/2009	27
704 7 St SW	10,893	04/01/2009	28
704 7 St SW	819	04/01/2009	18
704 7 St SW	1,964	04/01/2009	38
815 8 Ave SW	3,000	04/01/2009	18
800 6 Ave SW	1,008	04/01/2009	29
800 6 Ave SW	4,604	04/01/2009	18
715 5 Ave SW	3,201	05/01/2009	23
833 4 Ave SW	32,547	05/01/2009	32
704 7 St SW	4,052	05/01/2009	23
635 6 Ave SW	891	05/01/2009	15
704 7 St SW	2,690	06/01/2009	14
700 4 Ave SW	4,104	06/01/2009	16.37
700 4 Ave SW	2,776	06/01/2009	19
700 4 Ave SW	4,531	06/01/2009	18.5
700 4 Ave SW	4,269	06/01/2009	29.5
395 7 St SW	8,669	04/01/2009	26
395 7 St SW	8,572	05/01/2009	14
395 7 St SW	879	05/01/2009	15
603 7 Ave SW	2,410	06/01/2009	22
Mean			**23.23**
Median			**22.00**
Weighted mean			**25.86**

The weighted mean is substantially impacted by a single very large lease; therefore in this case the Board did not considered it to be a reliable measure of market value in view of the mean and median of $23.23 and $22.00/SF. On balance, the Board is of the opinion that $24/SF based on average Q2 leases is a better reflection of market rent in the subject building than the $26 used in the assessment.

Issue 2: Vacancy rate

Complainant's position:

The Complainant stated that the point of contention is that sublease vacancy should be included in the vacancy allowance. Industry market reports always list the total vacancy, including sublease vacancy. A standard commercial lease was presented showing that the landlord retains control over any assignments or transfers, including lease rates. There is no difference between head lease vacancy and sublease vacancy (other than payment for the space by the head lease tenant). Total vacancy in the marketplace includes sublease vacancy therefore it should be included in the vacancy allowance when calculating value based on the income approach.

Respondent's position:

The Respondent disputes this: the head lease tenant is paying rent for the vacant sublease space and is therefore generating income for the landlord. The total income, capitalized to arrive at the market value, would include income from vacant sublease space. Therefore it would be incorrect to apply a vacancy allowance that includes sublease vacancy.

Decision and Reasons:

The Board agrees that sublease vacancy, while an indicator of overall market conditions, is not a cost to the landlord and therefore should not be included in the vacancy allowance for the purposes of calculating net operating income for valuation purposes. The market conditions of a high sublease vacancy would impact the risk of the income stream and be more properly reflected in the capitalization rate applied.

Issue 3: Capitalization rate

Complainant's position:

There were no sales of office buildings in the Downtown in the valuation year. The Complainant made reference to previous Board orders ARB 0659/2010-P through ARB 0662/2010-P which increased the capitalization rate (cap rate) from 8% to 9% for the Aquitaine Tower, Life Plaza, Bantrel Tower and Calgary House, very comparable buildings to the subject.

Respondent's position:

The Respondent agreed there were no valid sales in the Downtown Office category in the relevant time frame, and relied on industry market reports, which surveys investors and real estate professionals as to their opinion of cap rates they would be prepared to pay at the time of the survey.

The cap rates used for the assessment were based on 2009 Q2 market reports, and 6% was selected for B class buildings:

Class	2009 cap rate	2010 cap rate	Q2 Colliers	Q2 CBRE	Q2 Altus Insite
Superior (AA)	6.50	7.00	7.0 - 7.5	6.75 - 7.25	7.20
Excellent (A)	7.00	7.50	7.25 - 7.75	7.50 - 8.00	
Good (B)	7.25 - 7.50	8.00	8.0 - 8.50	8.75 - 9.25	8.10
Average (C)	7.50 - 7.75	8.50	N/A	N/A	
Poor (D)	8.75	9.00	N/A	N/A	

The Respondent submitted that the reason the lower end of the range of cap rates was selected was that the industry cap rate is based on actual income, whereas the assessment is based on typical income. Generally leases in B class buildings are 3 to 5 years, and therefore the actual leases within a building would reflect the higher lease rates signed in the years leading up to the decline in the market. Therefore it is appropriate to use the lower rate in the assessment.

Decision and Reasons:

In the absence of sales, the Board agrees it is reasonable to rely on industry market reports and is generally in agreement with the conclusion of previous Board decisions that in view of the market conditions and the high level of sublease vacancy at the valuation date, the selection of a cap rate at the lowest end of the reported range is not reasonable.

However, the Board considers the subject building to be a higher end B building, due to its location in close proximity to DT1, its size, amenities and connection to the +15 system that serves the bulk of the downtown core. A cap rate at the lower end of the range for class B buildings is reasonable in view of the characteristics of the subject property, and the 8% applied is appropriate.

Board's Decision:

The complaint is allowed, in part, and the assessments are reduced to $74,410,000 based on $24/sq. ft. office rental rate and no changes to any other parameters.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF November 2010.

H. Kim
Presiding Officer

APPENDIX "A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1	Complainant Form
C2	Complainant's submission
C3	Prior CARB decisions
C4	Prior CARB decisions
C5	Typical Market Rates Class B time adjusted
C6	Typical Vacancy Analysis
C7	Downtown Office Sales Evidence
C8	Market Change Evidence
C9	Downtown Photographs CARB 2010
C10	MGB Board Orders and Judicial Reviews Part 1

C11	MGB Board Orders and Judicial Reviews Part 2
R1	Respondent's submission
R2	Respondent's additional information
R3	MGB orders 045/09 and 145/07
R4	Judicial review of MGB 145/07
R5	Photograph of Grain Exchange Building

APPENDIX 'B"
ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
Scott Meiklejohn	Colliers International Realty Advisors, Complainant
Walter Krysinski	Assessor, City of Calgary, Respondent
Harry Neumann	Assessor, City of Calgary, Respondent

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.