

**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:**

**Estancia Investments Inc  
(as represented by MNP LLP), COMPLAINANT**

**and**

**The City Of Calgary, RESPONDENT**

**before:**

**J. Krysa, PRESIDING OFFICER  
J. Massey, MEMBER  
A. Wong, MEMBER**

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

|                          |                        |
|--------------------------|------------------------|
| <b>ROLL NUMBER:</b>      | <b>067072009</b>       |
| <b>LOCATION ADDRESS:</b> | <b>704 7 Street SW</b> |
| <b>HEARING NUMBER:</b>   | <b>65784</b>           |
| <b>ASSESSMENT:</b>       | <b>\$66,120,000</b>    |

The complaint was heard on July 23, 2012, in Boardroom 9 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- G. Worsley; L. Mulholland (Counsel)

Appeared on behalf of the Respondent:

- A. Czechowskyj

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

**Property Description**

The subject property is a 64,992 sq.ft. (square foot) parcel of land, located in the DT2 market area of the downtown core. The land is improved with three, "B" quality high-rise office structures that were constructed in 1961 and contain a total rentable area of 448,706 sq.ft.; comprised of 416,159 sq.ft. (office) and 32,547 sq.ft. (retail) space, plus 145 vehicle parking stalls. The structures have the following attributes:

| <b>Tower Name</b> | <b>Floors</b> | <b>Total Floor Area (Sq.Ft.)</b> |
|-------------------|---------------|----------------------------------|
| Elveden House     | 20            | 172,131                          |
| Iveagh House      | 14            | 147,879                          |
| Guinness House    | 15            | 128,697                          |

**Issues**

The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount

The Complainant set out eight grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$56,500,000; however, only the following issues were in dispute at the hearing:

**Issue 1:** What is the market rent rate for the office space within the subject property?

**Issue 2:** What is the market rent rate for the retail space within the subject property?

**Issue 3:** What is the market rent rate applicable to retail space occupied by an office tenant?

**Complainant's Requested Assessment**

At the hearing, the Complainant requested an assessment of \$58,940,000, reflecting a calculation related to the three issues set out above.

The Complainant provided an alternate requested assessment of \$61,350,000, reflecting a calculation in respect only of issues 1 and 3.

**Board's Decision in Respect of the Issues****Issue 1: What is the market rent rate for the office space within the subject property?**

The Complainant argued that the subject property is negatively impacted by several functional factors which make it unique amongst other, typical properties, resulting in inferior market rents and vacancy rates. The specific functional factors are:

1. Asbestos – negative stigma impacts marketability
2. Structural design – inefficient utility core location
3. Washrooms – one per floor; located midway between floors; non-handicap accessible
4. One freight elevator
5. Absence of a loading dock
6. Absence of a food court
7. Plus 15 (pedway) terminates at the subject

In support of the argument, the Complainant provided a summary of 26 office leases within the subject property, with commencement dates between February 2010 and July 2011. The rent rates range from \$10.00 to \$17.00 per sq.ft., with average and median rent rates of \$12.64 and \$12.50 per sq.ft., respectively, in contrast to the subject's \$14.00 per sq.ft. net rent co-efficient.

To further demonstrate that the assessment exceeds market value, the Complainant provided a December 2010 sale of two properties located at 808 - 4<sup>th</sup> Ave SW and 395 7<sup>th</sup> St SW, for \$17,650 000. The Complainant conceded that the sale included a multi residential structure, but argued that the value of the office building component could be established by applying the Respondent's assigned non-residential assessment class proportion of 67% to the total sale price. In doing so, the indicated market value of the office component would be \$11,825,500, or \$141.61 per sq.ft.

The Respondent submitted that the assessed value of \$66,120,000, equating to a unit rate of \$147.36 per sq.ft. is at issue, and argued that the Complainant failed to provide relevant sales evidence to refute the assessment. The Respondent further argued that the capitalization rate coefficient is reflective of a \$14.00 per sq.ft. market rent; therefore, changes to the market rent coefficient would be inappropriate without a corresponding change to the capitalization rate.

In support of the subject's \$147.36 per sq.ft. unit rate, the Respondent provided seven sales of office buildings located in market areas DT1, DT2 and DT3, that transferred between July 2010 and August 2011 at unit rates ranging from \$162 to \$391 per sq.ft.

In support of the \$14.00 market rent coefficient, the Respondent provided a summary of 40 market area DT1, "B" quality office leases commencing between July 2010 and July 2011, exhibiting rent rates ranging from \$12.00 to \$27.63 per sq.ft., with average and median rent rates of \$19.57 and \$20.00 per sq.ft., respectively. The Respondent further provided the subject's ARFI (Assessment Request For Information) response, and argued that the average rent rate of the 21 leases signed in 2010 to 2011 is \$13.31; and the three leases commencing in 2011 exhibit an average lease rate of \$13.54.

**Decision: Issue 1**

The Board finds that the market rent rate for the office space within the subject property is \$13.00 per sq.ft.

The Board was persuaded by the Complainant's office rent roll study of leases within the subject property, and primarily the two leases commencing on the valuation date for this assessment at a net rent rate of \$13.00 per sq.ft. The Board notes that the Respondent's analysis of leases in the subject property illustrates a range from \$13.13 to \$13.54 per sq.ft. Although the leases from both parties are site specific to the subject property, there was no relevant market evidence of typical "B" quality office rents in market area DT2, to demonstrate that the subject's leases are not typical. The Board also rejects the Respondent's argument that only "full floor" leases should be considered in an analysis, as the Respondent's own evidence of DT1 leases illustrates that the Respondent does not rely on only leases of "full floor" spaces, as only two of the forty leases in the summary were for "full floor" spaces.

The Board applied little weight to the Respondent's DT1 market rent summary, as the sample of properties in the summary are not located in the same market area as the subject property, and are therefore of little relevance in determining the market rent rate of the subject property.

The Board also applies little weight to the sales evidence presented by both parties. The Complainant's sale is dissimilar to the subject property as it includes a multi-residential component. Further, the Board rejects the Complainant's allocation of market value to the individual components, as the assigned 67% non-residential assessment class is not supported by any market evidence. The Respondent's sales are also rejected by the Board, as they included non arms length sales, court ordered sales, and three post-facto sales of which only one was located in market area DT2.

The Board further rejects the Respondent's argument, that the subject's \$14.00 market rent rate should not be disturbed because the 7.5% capitalization rate is founded upon a \$14.00 market rent rate. The Board finds this testimony somewhat misleading, as the Respondent also testified that there were no relevant sales of office buildings; consequently, there would be no sale prices from which to derive a capitalization rate, at any market rent rate. Moreover, the Respondent's evidence at R1, p.41, illustrates that "B" quality office buildings are assessed with market rent rates of \$12.00, \$14.00, \$15.00 or \$19.00 (depending on location); however, the resultant net operating incomes are each capitalized at an identical 7.5% rate (R1. p.52).

**Issue 2: What is the market rent rate for the retail space within the subject property?**

The Complainant argued that the market rent rate of the subject's retail space is \$9.00 per sq.ft. in contrast to the subject's assessed market rent coefficient of \$16.00. In support of the argument and the \$9.00 per sq.ft. retail rent rate, the Complainant provided a summary of two leases within the subject property, with commencement dates of June 2010. The rent rates range from \$6.50 to \$11.00 per sq.ft., with average and median rent rates of \$8.75 per sq.ft.

**Decision: Issue 2**

The Board finds that there is insufficient relevant evidence to disturb the assessed retail market rent coefficient.

The Board did not find the Complainant's summary of two retail leases to be compelling evidence of market rent rates for retail space, as one of the Complainant's leases (915 sq.ft.) could not be confirmed on the subject's ARFI response raising uncertainty as to its existence. The Board was not persuaded that the Complainant's one remaining lease, at a rate of \$6.50 per sq.ft. in respect of a 552 sq.ft. space occupied by a barber shop, reflects a typical rental rate for the subject's entire 32,547 sq.ft. retail area, which includes various tenancies such as restaurants, a pharmacy, and a bank, with recent leases signed at rates up to \$20.00 per sq.ft., as set out in the subject's ARFI response.

**Issue 3: What is the market rent rate applicable to retail space occupied by an office tenant?**

The Complainant argued that 2,690 sq.ft. of the subject's second floor area is currently occupied by a tenant who uses the space for predominantly office purposes, therefore the market rent of the space is \$13.00 per sq.ft. rather than the \$16.00 per sq.ft. assessed (retail) rent coefficient. In support of the argument the Complainant provided a copy of the tenant's website, indicating the type of business conducted by the tenant.

**Decision: Issue 3**

The Board finds that the market rent rate applicable to the retail space occupied by an office tenant is \$16.00 per sq.ft.


There was no evidence before the Board to suggest the highest and best use of the 2,690 sq.ft. premises is not retail space, and no evidence that the net rent paid by tenant to occupy the premises is less than typical retail market rates. The Board is not persuaded that the value of a space, is founded on the type of business operations conducted by a current tenant in a space.

The assessment is **REVISED** from: \$66,120,000 to: **\$61,440,000.**

DATED AT THE CITY OF CALGARY THIS

18

DAY OF SEPTEMBER, 2012.

  
\_\_\_\_\_  
J. Krysa,  
Presiding Officer

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

| <b>NO.</b> | <b>ITEM</b>                                  |
|------------|--|
| 1. C1      | Complainant's Submission (108 pages)         |
| 2. R1      | Respondent's Submission (113 pages)          |
| 3. C2      | Complainant's Rebuttal Submission (85 pages) |
| 4.         | Municipal Government Board Order MGB 045/09  |
| 5. C3      | C1 Replacement Pages 12, 13, 14, 15.         |

*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.*

**FOR ADMINISTRATIVE USE**

| <b>Subject</b> | <b>Property Type</b> | <b>Property Sub-Type</b> | <b>Issue</b>    | <b>Sub-Issue</b>                              |
|----------------|----------------------|--------------------------|-----------------|---|
| CARB           | Office               | High Rise                | Income Approach | Net Market Rent<br>Occupant / Space Valuation |