

**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:

**4087836 Canada Inc.
Brookfield Properties (Bankers Hall) Ltd
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**P. Mowbrey, PRESIDING OFFICER
D. Morice, MEMBER
R. Roy, 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:

ROLL NUMBER:	068108794
LOCATION ADDRESS:	855 – 2 Street SW
HEARING NUMBER:	65947
ASSESSMENT:	\$823,470,000

The complaint was heard on August 03, 2012, in Boardroom 10 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Hartley; A. Farley

Appeared on behalf of the Respondent:

- H. Neumann; A. Czechowskyj; M. Ma

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

[1] At the commencement of the hearing there was a Preliminary Matter brought forward by the Respondent, that under the Matters Relating To Assessment Complaints Regulation (MRAC) 8(2)(C), 9(3) and the Municipal Government Act (MGA) s294 and 295, that the Rebuttal evidence presented by the Complainant was not admissible as it was not true rebuttal and included new evidence. The Respondent expressed that pages 1 to 12 were acceptable, that pages 13 to 18 included the new evidence in the form of emails to and from property owners including the subject, and was not acceptable, and pages 19 to 94 was a complete City of Calgary 2011 CARB evidence package regarding an industrial property which was inappropriate as it was unrelated to the subject. Pages 95 to 134 were 2 MGB Board Orders and a 2011 CARB Decision which the Respondent stated were on public record. The Respondent explained that a Request for Information had been sent to all property owners and the information collected is relied on to prepare assessments. The Respondent indicated that the information the Complainant introduced had come after the ARFI and thus cannot be allowed. As well, the information introduced by the Complainant in Rebuttal was different to the ARFIs for those properties, with no supporting documentation. The Respondent suggested it is difficult if the information given to the assessor was different to the information given to the Complainant and that the City suffers the hardship if the information is not reliable.

[2] The Complainant explained that the Rebuttal document was in response to the Respondent's evidence and in particular the referenced emails were clarification of several recent lease rate comparables presented by the Respondent. The complete 2011 CARB evidence package was included to highlight the disclaimer of third party reports for the use of a particular purpose other than marketability. The Board Orders and CARB Decision speak to increases of assessment.

Decision

[3] The Decision of the Board is to accept into evidence the Complainant's Rebuttal in its entirety.

Reasons

[4] The Board found the Rebuttal document was filed in a manner compliant with the time requirements and in sufficient detail as stated in MRAC s8(2)(c)

the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

[5] The Board found that according to MRAC s(9))3)
A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor

under section 294 or 295 of the Act but was not provided to the assessor.

[6] The assessor received the information it requested from rate payers in the form of ARFIs which was used for assessment purposes and the basis of its evidence. The Board noted that the Complainant requested certain information from rate payers to rebut the evidence the Respondent presented, but there is no evidence that the same information was not available to the assessor had it been requested.

[7] The Board found that MGA s294 and 295 allow the assessor to make specific requests of the property owner which states in s294(1)

*After giving reasonable notice to the owner or occupier of any property,
an assessor may at any reasonable time, for the purpose of preparing
an assessment of the property or determining if the property is to be assessed,*

*(b) request anything to be produced to assist the assessor in preparing
the assessment or determining if the property is to be assessed,*

and s295 (1)

*A person must provide, on request by the assessor, any information
necessary for the assessor to prepare an assessment or determine
if property is to be assessed.*

[8] The Board found that the Complainant has the right to argue and rebut the Respondent's evidence in a Rebuttal document and the Respondent has the opportunity to question and rebut the Complainant's rebuttal evidence and bring to the Board's attention any disputed information. The Board in its opinion will place the appropriate weight on such evidence, argument and rebuttal.

Property Description

[9] The subject property is located at 855 – 2 Street SW, in DT1, Downtown district of the City of Calgary and an improved AA Class office complex, known as Bankers Hall East and West Towers. The East Tower was completed in 1988 and the West Tower in 1998. The assessment record indicated the subject has 1,844,360 sq ft of net rentable area consisting of 1,606,377 sq ft of office space, 193,160 sq ft of retail space on floors one to four and the basement in the East Tower and storage of 44,823 sq ft with 550 parking stalls under both towers.

[10] The subject property was assessed by the income approach to value and the 2012 assessment for the subject is \$823,470,000 or \$446.48 per sq ft.

Issues

[11] The Assessment Review Board Complaint form, filed February 15, 2012, contained a lengthy list of reasons and grounds for the complaint. The issues the Complainant focused on at the hearing were:

1. Is the 2012 Assessment correct?
 - (a) Is the office rent rate appropriate?
 - (b) Is the capitalization rate appropriate?

Complainant's Requested Assessment

[12] The Complainant requested an assessment of \$724,167,673 or \$392.64 per sq ft.

Complainant's Position

[13] The Complainant's position was that the subject assessment was incorrect and argued that the assessed office rent rate of \$25.00 was inconsistent with market rate comparables that strongly suggested a correct office rent rate for the subject was \$23.50 per sq ft.

[14] The Complainant indicated that the 2011 assessment for office rent rate for the subject was \$30 per sq ft and in 2012 the assessment rate had been reduced to \$25 per sq ft which appears to have been influenced by a 2011 CARB Decision for Suncor Energy Centre, a AA Class property that had its rental rate reduced to \$25 per sq ft.

[15] The Complainant argued that the capitalization rate for a stable income stream consistent with current market rent, and based on two recent Class A sales, was 6.50%. The subject assessed capitalization rate was 6.0%.

[16] In support of the Complainant's position that the 2012 assessment rent rate was incorrect, the Complainant presented a 2012 Downtown Office AA Class Rent Equity Comparable chart. The Complainant pointed out that there were 9 comparables of AA Class old office properties with leases 3 years or greater of new leases and no renewal or expansion leases. The lease dates ranged from April 2010 to June 2011 and rent rates ranged from \$20 to \$26 per sq ft.

Mean all leases	\$23.67
Median all leases	\$24.00
Weighted mean	\$23.02

[17] The Complainant reasoned that a lease term of 3 years or less indicated that the tenant may be looking for other space, the space may be due for expiry and the tenant was looking to cotermin for larger space, but generally they fall outside the typical lease term of 5 years or greater. Renewal or expansion leases may reflect an existing relationship with the property.

[18] The Complainant stated that based on the AA Class Rent Equity comparables the appropriate rent rate for AA Class office space is \$23.50 per sq ft.

[19] In support of the Complainant's position that the capitalization rate is incorrect, and in the absence of any AA Class Office sales, the Complainant presented two 2011 sales of A Class properties in DT1 Downtown Calgary. The sales for both properties were a 50% interest:

Scotia Centre sale dated April 2011 for \$232,000,000 (100% interest equivalent)

Gulf Canada Square sale dated September 2011 for \$356,000,000 (100% interest equivalent)

[20] The Complainant explained that the Scotia Centre Sale indicated a 7.67% capitalization rate based on actual income at the time of the sale and the actual net operating income per sq ft

was \$25.91. The high NOI per sq ft was the result of higher than market rent rates at \$40 per sq ft for a significant portion of the property. The Complainant also explained the Gulf Canada Square sale indicated a 5.90% capitalization rate based on actual income at the time of the sale and the actual net operating income per sq ft was \$18.59. The indication of lower than market rent rates suggests significant future income growth potential from higher rent rates as existing leases expire.

[21] The Complainant argued that as Gulf Canada Square had a stable and sustainable income, with no perceived downside risk and potential income growth, that the capitalization rate from the sale would establish the potential lowest A Class capitalization rate of 5.90%. Further, the Scotia Centre with rent rates considered above market rent levels, there is a perceived risk that income levels may decline which suggests that the capitalization rate from the sale, with a stable and sustainable income, would be no higher for A Class properties than 7.67%.

[22] The Complainant argued that utilizing the capitalization rates based on the actual income of properties at the time of the sale, establishes a range of potential capitalization rates that could properly establish the assessment of the subject. The Complainant suggested that with a 5.90% minimum capitalization rate and a 7.67% maximum capitalization rate, with stable and sustainable incomes, that an appropriate acceptable capitalization rate for A Class office properties in Downtown Calgary is 7%. The Complainant stated that with no market evidence to suggest otherwise, the Complainant accepted the Respondents position that AA Class office properties should have a capitalization rate 0.5% lower than A Class office properties indicating a 6.5% capitalization rate for the subject.

[23] The Complainant pointed out that SunCor Energy Centre a similar downtown AA Class office property was assessed with a capitalization rate of 6.25%, whereas the subject was assessed with a 6.0% capitalization rate. The Complainant expressed that there is no evidence to support the .25% difference that was suggested the retail spine made in the capitalization rate.

Respondent's Position

[24] The Respondent's Position was the subject assessment of \$823,470,000 is fair, reflective of market value and equitable with similar properties. The Respondent stated the assessment is prepared using the mass appraisal methodology which is based on typical market data. In support of its position, the Respondent provided the ARFI for the subject that was returned by the owner, dated April 30, 2012, which detailed the pertinent lease information including the size, lease rates and terms of all the leases.

[25] The Respondent pointed out several leases noted in the ARFI as follows:

Name	Size Sq Ft	Start Date	Term	Annual Rent Rate
Encana Corporation	20,023	01/01/2011	1X4 2X5	\$25.50
RBC Dominion Securities Inc.	19,950	07/01/2010	1X5	\$25.00
RBC Dominion				

Securities Inc. 19,295 07/01/2010 1X5 \$25.00

[26] The Respondent stated the leases clearly support the 2012 assessment of \$25 per sq ft for the subject.

[27] The Respondent provided a chart of 2012 Downtown Office Net Rent Rates. The chart indicated that for the 2012 AA Class, DT1 and DT8, office space the net rent rates were respectively \$30 (New) and \$25 per sq ft. The Q2 2011 Reported By Industry rates for AA Class office space by CBRE was \$36.44 per sq ft, Barclay Street \$32 per sq ft, and Avison Young \$40 per sq ft. The Respondent indicated the industry rates were for reference only.

[28] The Respondent included a 2012 Downtown Office AA Class Rent Equity Comparable chart with reasonable supporting documentation for 9 of the 20 comparables. The Respondent indicated that all the AA Class comparables are included. The Respondent noted that 3 of the leases had a term less than 3 years, 10 leases with a term of 3 to 9 years and 7 leases with a term of 10 to 17 years. The Respondent noted the following:

Mean All Leases	\$23.03
Median All Leases	\$25.00
Weighted Mean	\$27.19

[29] The Respondent highlighted the following:

Mean 2011	\$24.90
Median 2011	\$25.00
Weighted Mean	\$24.71

[30] The Respondent suggested the weighted mean is the better measure of the leases in 2011 AA Class properties which solidly indicate support for the 2012 assessment rent rate of \$25 for the subject property.

[31] The Respondent presented a 2012 Downtown Office Vacancy chart which indicated that AA Class office space was assessed using a 1% factor and 4% for New. The City assessor's analysis of 2012 Downtown Office AA Class Vacancy Equity Comparables reflected a 2.67% factor for New, and 0.74% for AA Class. A Q2 2011 Report by Industry indicated that CRESA reported a vacancy of 1.17%, Altus Insite, 3.06%, Avison Young, 1.4% and Barclay, 2.6%. The Respondent stated the subject was assessed with a 1% vacancy factor and the subject ARFI indicates a vacancy of 1.8% which indicates the property is performing well.

[32] The Respondent stated the capitalization rate applied in the 2012 subject assessment was 6.0%.

[33] The Respondent presented an assessment chart of 2012 Downtown Office Capitalization Rates which lists the AA Class Office at 6.25%. The Respondent explained there was a further .25% adjustment to the subject resulting in the 6.0% capitalization rate. The Respondent explained the adjustment had been in effect for 3 years and reflected the significant retail component that is present in the subject compared to a typical office property. The Respondent indicated the significant retail component in the subject property provided a reliable diversified income stream and the lower capitalization rate of 6.0% was applied to recognize the lower risk.

[34] The Respondent stated there were no AA Class Office property sales and for that reason used three recent market sales of A Class properties in DT1 Downtown Calgary to derive a capitalization rate for A Class Office. The sale of the three properties were a 50% interest.

Scotia Centre sale dated April 2011 for \$190,000,000 (100% interest equivalent)

Scotia Centre sale dated April 2011 for \$232,000,000 (100% interest equivalent)

Gulf Canada Square sale dated September 2011 for \$356,000,000 (100% interest equivalent)

[35] The Respondent noted that the Gulf Canada Square sale is after the valuation date of July 1, 2011 by only 2 months, and due to the severe lack of sales of Downtown A Class office properties it was included as a comparable.

[36] The Respondent provided a 2012 Downtown Office Cap Rate Sales chart using Typical NOI at the Year of Sale, that indicated the first Scotia Centre Sale in April 2011 resulted in a 7.36% capitalization rate, the second Scotia Centre Sale in April 2011 resulted in a 6.02% capitalization rate, and the Gulf Canada Square sale in September 2011 resulted in a 6.39% capitalization rate. The Respondent stated that the range of the capitalization rates, 6.02% to 7.36% supports the capitalization rate of 6.75% applied in the assessment of A Class Downtown office properties.

[37] The Respondent explained that there is an accepted assessment practice that AA Class Office properties have a capitalization rate 0.5% lower than A Class Office properties which in this case indicated a capitalization rate of 6.25% for AA Class Office.

[38] The Respondent referred to Board Order: MGB 145/07, in the Respondent's evidence, which in turn refers to the principle of "consistency" derived from the decision referred to as the West Coast Transmission decision in which the court stated that if the rent rate is derived in one manner that the capitalization rate must be derived in the same manner. The Respondent explained that consistency is an assessment principle and the assessment rates are derived from typical data.

[39] The Respondent presented as evidence with no objection from the Complainant, a third party record of sale document indicating a 50% sale of the subject property dated April 2010 for a 100% interest equivalent of \$866,800,000. The Respondent recognized the sale is disputed but indicated that it was presented to indicate that the 100% equivalent sale price was in support of the 2012 assessment for the subject.

[40] The Respondent noted that parking was not an issue to the hearing but it was significant that the subject had 550 parking spaces whereas the Scotia Centre had 86, and Gulf Canada Square had 240 parking spaces available.

Decision

[41] The Decision of the Board is to confirm the 2012 Assessment of \$823,470,000 for the subject property.

Reasons

Rent Rate

[42] The Board reviewed and carefully considered the evidence of the Complainant and Respondent.

[43] In regard to the issue, is the rent rate appropriate, the Board is of the opinion and supports the Respondent, that all of the 2012 AA Class Rent Equity comparable leases reflect the market, including new leases, renewal leases and those leases less than 3 years. The Board refers to the Supreme Court of British Columbia Bentall Decision provided in the Complainant's evidence, which states

[113] The Board appropriately disregarded sublease information in determining economic rent. It did not fail to consider evidence before it, did not ignore the experts, and did not invent a methodology to determine economic rent. It also did not err in considering that new and renewal leases provide appropriate lease data for the determination of economic rents.

[44] The Board noted the Complainant's nine AA Class Office lease comparables with no leases less than 3 years, indicated a weighted mean of \$23.02 per sq ft. Whereas, the Respondent's chart of twenty AA Class Office lease comparables, which included leases less than 3 years, indicated a weighted mean of \$27.19 per sq ft and supported the 2012 assessment rate of \$25 for the subject .

[45] The Board placed greatest weight on the Respondent's 2011 lease comparables that indicated a weighted mean of \$24.71, which supported the 2012 assessment rate for the subject of \$25 per sq ft.

[46] The Board noted that the subject had reported in the ARFI a recent lease dated January 2011 of 20,023 sq ft for a term of 4 years at \$25.50 which was undisputed and further offered support of the 2012 assessment of \$25 per sq ft.

[47] The Board finds that the 2012 assessment lease rate of \$25 per sq ft for the subject is appropriate.

Capitalization Rate

[48] In regard to the issue, is the capitalization rate appropriate, the Board considered the A Class Office sales comparables presented by the Complainant and the Respondent and noted that the comparables were the same. The Complainant presented one sale of the Scotia Centre and the Gulf Canada Square sale and the Respondent presented two sales of the Scotia Centre and the Gulf Canada Square Sale.

[49] Since both the Complainant and the Respondent agreed there were no AA Class Office sales and also the lack of sales comparables for A Class Downtown office property and both made use of the Gulf Canada Square sale dated September 2011 as a comparable, the Board accepts the Gulf Canada Square sale as a comparable.

[50] The Board considered the Complainant's argument that the one sale of the Scotia

Centre for \$190,000,000 may not be a market sale, as the one half owner of the property sold to the other half owner. The Board was of the opinion that sales of this nature may occur with predetermined factors such as first right of refusal, or other mechanisms and for this reason placed less weight on the sale.

[51] The Board accepts the Respondents capitalization rates derived from the typical NOI applied to each comparable sale to arrive at the 6.25% capitalization rate to be applied to the AA Class Office properties.

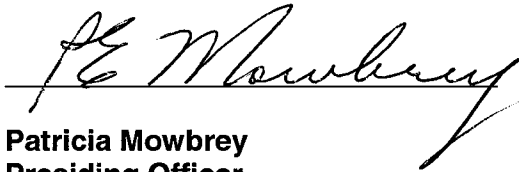
[52] The Board accepts the Respondents explanation for the adjustment of .25% to the capitalization rate of the subject to achieve the 2012 assessment capitalization rate of 6.0%. The Board accepts that it reflects a lower risk to the income stream from the significantly higher than typical retail component and the convenience of the connection to the retail spine in Downtown Calgary.

[53] The Board received the third party 2010 sales report of the subject property as information but as there was no supporting documentation, less consideration was given to it, and the Board noted it supported the 2012 assessment.

[54] The Board finds that the 2012 assessment capitalization rate of 6.0% is appropriate for the subject.

The assessment is **CONFIRMED** at: **\$823,470,000**

DATED AT THE CITY OF CALGARY THIS 18 DAY OF September, 2012.



Patricia Mowbrey
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant's Submission (173 pages)
2. R1	Respondent's Submission (199 pages)
3. C2	Complainant's Rebuttal Submission (134 pages)
4.	City of Calgary Assessment Brief Roll #031003502
5.	RealNet Canada Inc. – End-User License Agreement ("EULA")
6.	Board Order: MGB 018/10
7.	Legislative Authority for Property Assessment MGA, RSA 2000, c.M-26
8.	Board Order: MGB 125/99
9.	CARB 1967/2011-P
10.	CARB 1571/2011-P
11.	Assessor for Area 9 (Vancouver) v. Bramalea Ltd. [1990] C.A.V. 00992 Bentall Retail Services et al v. Assessor of Area #09 – Vancouver 2006 BCSC 424
12.	Board Order: MGB 140/01
13.	CARB 1944/2011-P
14.	Board Order: MGB 125/99
15.	CARB 2194/2011-P
16.	Assessor of Area #05 – Port Alberni v. GDP Investment Ltd. 2001 BCSC 1540
17.	Notice of Decision NO. DL 070/01
18.	Board Order: MGB 145/07
19.	CARB 1331/2011-P
20.	Wal-Mart Canada Inc. v. Assessor of Area #26 Prince George Assessor of Area #27 Peace River 2005 BCSC 1625

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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	Net Market Rent Capitalization Rate