COMPOSITE 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 (MGA).

between:

First Real Properties Limited (as represented by Colliers International), **COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, Presiding Officer
J. Joseph, MEMBER
P. McKenna, MEMBER

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

ROLL NUMBER:	**068053404**
LOCATION ADDRESS:	**333 – 5th Avenue SW**
HEARING NUMBER:	**66004**
ASSESSMENT:	**$74,410,000.**

This complaint was heard on 15th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- C. Hartley

Appeared on behalf of the Respondent:

- H. Neumann

Property Description:

[1] A detailed description of the property was not provided by either party; however, the CARB was able to discern, largely from the Summary of Testimonial Evidence (Exhibit R1 pg. 4) and the Income Approach Valuation (Exhibit R1 pgs. 8 & 9) that the subject is a class 'A-' office building located within the downtown core area. The building contains a total of 245,633 assessed Sq. Ft. of which 226,365 Sq. Ft. is the office component, 13,313 Sq. Ft. is the 2nd level retail component, 2,357 Sq. Ft. is the main floor retail component and 3,598 Sq. Ft. is the storage component. There are 122 parking stalls.

[2] The property has been valued, for assessment purposes, through application of the Income Approach with the following inputs:

Category	Rentable Area	Rental Rate	Typical Vacancy
Office	226,365 Sq. Ft.	$20.00/Sq. Ft.	5.00%
Retail 2nd Level	13,313 Sq. Ft.	$32.00/Sq. Ft.	5.00%
Retail Main	2,357 Sq. Ft.	$32.00/Sq. Ft.	5.00%
Storage Space	3,598 Sq. Ft.	$10.00/Sq. Ft.	5.00%
Parking	122 Stalls	$5,700/Stall	2.00%

Vacant Space Shortfall	@	$18.00/Sq. Ft. office
	@	$20.00/Sq. Ft. retail
	@	$ 5.00/Sq. Ft. storage
Non-Recoverable Allowance	@	2.00%
Capitalization Rate	@	6.75%

Issues:

[3] There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The applied typical office rent rate is incorrect at $20/Sq. Ft. and would be more accurate at $18/Sq. Ft.
2. The assessed capitalization rate of 6.75% is too low and would be a more accurate indication of market value at 7.00%.

Complainant's Requested Value: **$65,950,000.** (Exhibit C1 pg. 18)

Party Positions:
Complainant's Position

[4] The Complainant contends that a more appropriate office rental rate for the subject property would be $18/Sq. Ft. In support of their requested rental rate the Complainant introduced (Exhibit C1 pg. 20) a list of twenty-nine (29) leases signed between July 1/10 and July 1/11. All leases are from 'A-' Class buildings, are triple net and all are of a term of three (3) years or greater in length. The leases are for spaces ranging from 1,239 Sq. Ft. to 57,956 Sq. Ft. and the indicated lease rates range from a low of $14.00/Sq. Ft. to a high of $23.00/Sq. Ft. with an indicated weighted mean for all the leases of $17.85/Sq. Ft. and an indicated median for

those leases of $19.00/Sq. Ft. The weighted mean for just the 2011 signed leases is $17.41/Sq. Ft. and the median of those leases is $18.00/Sq. Ft. This information forms the basis for the Complainant's request for $18.00/Sq. Ft.

[5] The Complainant contends that the assessed capitalization rate of 6.75% is too low for the subject property and that a more realistic indication of market value would be derived using a capitalization rate of 7.00%. The Complainant indicates (Exhibit C1 pgs. 34 & 35) that there were only two sales of 'A-' downtown office buildings to be analysed for establishing a capitalization rate and in both cases the sale involved a 50% interest. The sales referred to are:

Scotia Centre -	April 2011	-	$232,000,000 (100% interest equivalent)
Gulf Canada Sq. -	Sept. 2011	-	$356,000,000 (100% interest equivalent)

[6] The Scotia Centre transaction was completed with a 7.67% capitalization rate based upon actual income in place at the time of sale. The Complainant maintains that this sale represents an atypical situation in that a significant portion of the property was leased at rental rates over $40/Sq. Ft. which is greater than market rates at the time. According to the Complainant, the actual *Net Operating Income* (NOI) at the time of sale equated to $25.91/Sq. Ft. which means the average NOI was also above market rates. The Complainant continues (Exhibit C1 pg. 34) to suggest that there was a perceived risk that income levels in Scotia Centre would decline as contract rental rates were above market rates at the time of the sale and this would infer that a capitalization rate indicative of a stable and sustainable income stream would be no higher for an 'A-' than 7.36% (corrected at the Hearing to account for parking) as suggested by the Gulf Canada Square sale.

[7] The Complainant maintains that the Gulf Canada Sq. sale was completed with a 5.90% capitalization rate based upon actual income in place at the time of the sale. The NOI equated to $18.59/Sq. Ft. with significant potential for growth of income as existing leases expire. The Complainant suggests that, with investor expectations of income growth potential, the capitalization rate based upon actual income would establish the lowest potential 'A-' class capitalization rate, as there would be no downside perceived risk to the income stream.

[8] The Complainant provided (Exhibit C1 pg. 53) an analysis of the Gulf Canada Sq. sale utilizing the Assessor's parameters for market rent, vacancy, non-recovery allowance and parking rates and derived a capitalization rate of 7.36% (corrected to account for an error in calculating the parking income). Applying the Assessor's parameters to the Scotia Centre sale results in (Exhibit C1 pg. 45) a capitalization rate of 5.07% (corrected to account for an error in calculating the parking income). It is the opinion of the Complainant that a capitalization rate at this level is inconsistent with market expectations for stable returns and is primarily indicative of the perceived risk in the marketplace that existing income levels were unsustainable. The Complainant concludes their capitalization rate argument (Exhibit C1 pg.35) by indicating their estimate for a Class 'A' property in downtown Calgary is 7%. Further, with no market evidence to suggest otherwise, the Complainant accepts the City's (Respondent) position that Class 'AA' capitalization rates should be 0.5% lower than Class 'A' or 'A-'.

Respondent's Position

[9] The Respondent/Assessor made the CARB aware that the request of the Complainant, if granted, would result in an assessed value that would equate to approximately $268/Sq. Ft. of building area versus the current assessed value of approximately $302/Sq. Ft. While the Respondent acknowledged that there are many factors to be considered, the value per Sq. Ft. does serve as a good general guide. The Respondent referred the Board to (Exhibit R1 pg. 93)

a summary of sales of 'A' and 'B' class office buildings which were recorded in 2011 and 2012 and suggested that the indicated sales prices per Sq. Ft. show very little, if any, support for the Complainant's requested value in the range of $268/Sq. Ft. for an 'A-' class office building. The sales summary for each of the sales is also provided (Exhibit R1 pgs. 94 – 135). The Respondent acknowledged that some of the sales are post-facto to the valuation date but pointed out that if the Complainant's requested rental rate were applied to any of the sales, with no other adjustments, in no case would the indicated sales price be achieved.

[10] The Respondent/Assessor introduced (Exhibit R1 pg. 50) a copy of the 2012 Downtown Office A- Class Rent Equity Comparables which contains some 48 examples of leases signed between July 01/10 and July 01/11. These leases relate to areas from as small as 968 Sq. ft. to as large as 57,956 Sq. Ft. and the lease terms range from 1 to 10 years in length. The median of all these leases is indicated to be $20.00/Sq. Ft. and the weighted mean is $20.35/Sq. Ft. The weighted mean of the 2011 signed leases is $19.83 while the mean for these same leases is indicated to be $19.00/Sq. Ft. The weighted mean of the 2011 leases for spaces greater than 10,000 Sq. Ft. is $20.84/Sq. Ft. while the median for these leases is $20.62/Sq. Ft. It should be noted that the data includes three leases from the subject property. The Assessor stressed that it is their practice to incorporate any and all leases, except extensions, of 1 year or greater in term in their analyses.

[11] The Respondent/Assessor introduced (Exhibit R1 pg. 60) their analysis of both the Scotia Centre and Gulf Canada Sq. sales, noting that the Scotia Centre was actually transferred twice at different prices, albeit on the same transfer date. In that the sales prices of these two transactions differed the Assessor maintains that a separate analysis of each sale is warranted. The Assessor explained that their analyses of these sales are based upon the use of typical assessment rental rates at the time of the sale being applied. The results of their analyses are:

<u>Scotia Centre Sale #1</u>		
Sale Price $190,000,000 (100% equivalent)	NOI $13,975,247	Cap Rate 7.36%
<u>Scotia Centre Sale #2</u>		
Sale Price $232,000,000 (100% equivalent)	NOI $13,975,247	Cap Rate 6.02%
<u>Gulf Canada Sq.</u>		
Sale Price $356,000,000 (100% equivalent)	NOI $22,745,869	Cap Rate 6.39%

[12] Having analyzed all three sales, the Respondent/Assessor suggests that the average capitalization rate of 6.59% provides good support for the applied 6.75% after making the adjustment for building classification.

[13] The Assessor maintains that the parameters applied to both the Scotia Centre and Gulf Canada Sq. sales produce a value result that is very close to the indicated sales price which is an indication as to the accuracy of their analyses. Conversely, the Assessor indicated that application of the Complainant's requested capitalization rate, all other factors remaining unchanged, does not result in a value indication that is close to the selling price.

[14] The Assessor introduced (Exhibit R1 pg. 91) an equity chart indicating the same parameters, including the 6.75% capitalization rate, has been applied universally to all the 'A-' class office buildings in the downtown core area.

Complainant's Rebuttal:

[15] The Complainant explained to the CARB that the thrust of his Rebuttal deals with why the Complainant only considers leases with terms of 3 years or greater. The Complainant provided examples (Exhibit C2 pg. 9) of short term leases in the subject property that relate to relocations within the building (suites 0440 & 0700). The Complainant provided (Exhibit C2 pg. 6) a copy of the lease comparables chart provided by the Respondent which the Complainant modified to exclude leases of less than 3 years in term. The Median of all these leases is indicated to be $19.75/Sq. Ft. and the Median of just the 2011 leases is indicated to be $19.00/Sq. Ft.

Board's Decision:

[16] The assessment is **confirmed** at **$74,410,000**.

Decision Reasons:

[17] The Assessor provided some forty-eight lease comparables that were used to establish the basic rental rate to be applied in the valuation of 'A-' class downtown located office buildings. The Complainant contended that this list needed to be refined to exclude lease terms of less than three years as same may not be truly indicative of market rent; however, the Complainant did not provide any substantive evidence to support this contention. The CARB has been presented with examples of previous decisions of both this Board and the *Municipal Government Board* where the matter of which leases should be given consideration and which should not, appear, over time, to be inconsistent causing confusion to both parties. The CARB is of the judgment that all new leases, including renewals, should be included in an analysis to determine market rent. If a particular lease should, for whatever reason, not be included in such an analysis, then the Complainant can rebut same by providing a copy of the lease in their rebuttal evidence. Accordingly the CARB accepts the Assessor's analysis for market rent as being the more accurate indicator and the office rental rate appropriate for the subject property is accepted as being $20/Sq. Ft. The CARB also notes that the Complainant's own evidence (Exhibit C2 pg. 6) where the Complainant has edited the Respondent's list of lease comparables to exclude leases of less than 3 years in term still provides strong support for the Assessor's applied rate of $20/Sq. Ft.

[18] In terms of the capitalization rate issue, the CARB find the analysis provided by the Assessor to be more convincing as it included the analysis of all three sales (Gulf Canada Sq. plus Scotia Centre twice) as opposed to the Complainant's analysis of just one of the Scotia Centre sales. The CARB does not find any satisfactory reason to eliminate one of the sales from the analysis. The CARB is further convinced by the Assessor's capitalization rate analysis as their conclusions are well supported by the sales prices of the various buildings and this is not the case with the conclusion of the Complainant's capitalization rate analysis. In the final analysis the CARB is concerned with the final assessed number and the relationship of that number to market value. In this case the CARB is of the judgment that the assessed value requested by the Complainant is not representative of the market value for that property as it is considerably lower than the sales evidence would indicate.

DATED AT THE CITY OF CALGARY THIS 20 **DAY OF** September **2012.**

C. J. Griffin, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant's Rebuttal
2. R1	Respondent Disclosure

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 MGB Administrative Use Only

Decision No. 1451-2012-P			*Roll No.* **068053404**	
Subject	*Type*	*Issue*	*Detail*	*Issue*
CARB	Office Building	Cap. Rate	Office Rent	Typical Rent