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:

BCIMC Realty Corporation, COMPLAINANT,
as represented by ALTUS GROUP LIMITED

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
B. Jerchel, MEMBER
J. Kerrison, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 067079285

LOCATION ADDRESS: 701 8th Avenue SW

HEARING NUMBER: 67989

ASSESSMENT: $334,650,000

This complaint was heard on the 23rd day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *M. Meiklejohn*

Appeared on behalf of the Respondent:

- *A. Czechowskyi*

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

[1] The Complainant requested that Exhibit Part I, C-3(a), originally introduced in hearing number 67824, be brought forward to the present hearing, and that evidence and argument from earlier hearings relevant to the present hearing also be carried forward. There being no objection from the Respondent, the Board agreed to the Complainant's request, with the proviso that the bringing forward of relevant evidence and argument also applies to the Respondent.

Property Description:

[3] Assessed at $334,650,000, the subject property, known as Western Canadian Place, is an office building located at 701 8th Avenue SW in the "DT2" economic zone of downtown Calgary. Constructed in 1981, the subject property has a total assessed area of 1,098,056 sq. ft. The subject property is connected by +15 to First Alberta Place and the Centennial Parkade, and has two office towers, a north tower and a south tower.

[4] The subject property has only 153 parking stalls, but across 9th Avenue from the subject property is the Yale parking lot, and the Centennial Parkade is east across 6th Street. As assessed, the subject property has been given a quality rating of class "A Old." The assessment is based on the income approach, with a capitalization rate ("cap rate") of 6.75%.

Issues:

[5] The Board found the determinant issues in this complaint to be as follows,

1. Is the cap rate used in the assessment too low?
2. Is the vacancy rate used in the assessment too low ?
3. Is the assessed rate for parking stalls too high?
4. Are rental rates as assessed for office and retail space too high?
5. What is the correct, fair and equitable assessment for the subject property?

Complainant's Requested Value: $249,240,000

Summary of the Complainant's Submission

Characteristics and Physical Condition, Municipal Government Act, s.289(2)(a)

[6] For assessment purposes, the subject property has been classified as an "A-Old" building. We do not disagree with that classification. What we disagree with is that all A class buildings are assessed the same whether they are located in DT1 or DT2. The assessment should reflect the fact that the subject property is located in DT2, the lesser economic zone, but no differential has been applied for location.

Economic Zone Differentials, and Vertical Equity

[7] In assessing A class buildings, the Respondent does not differentiate between rental rates in A class buildings in DT1, and A class buildings in DT2. Nevertheless, the Respondent does recognize a differential in rental rates between B and C class buildings in DT1, and B and C class buildings in DT2. There is proof that an actual differential exists between DT1 and DT2.

[8] At pp. 98 and 99 of Exhibit C-1, we show lease rates in B class buildings in DT1, and lease rates in B class buildings in DT2. The leases have commencement dates from July 1st, 2010 to November 11, 2011. The averages of the lease rates between DT1 and DT2 show a difference of $2.00 per sq. ft.

[9] Clearly, a differential exists between A-Old class buildings in DT1 and DT2. If the Respondent recognizes a differential in vacancy rates between DT1 and DT2 for B class buildings, why not for A-Old buildings? The fact that differentials for A buildings have not been recognized in the assessment means the subject property is inequitably assessed in comparison to B and C class properties.

Necessary Corrections, and Requested Assessment

[10] Valuation should be based on the characteristics and physical condition of the property, and its location. To reflect the differential in the assessment of office space between B buildings in DT1 and DT2, the assessed rate for office space in A-Old buildings in DT2 should be reduced. Eight full floor office tenancies in Class A-Old buildings in DT1, as shown at p. 96 of Exhibit C-1, have a weighted average of $20.28 per sq. ft. To reflect the differential for B class buildings between DT1 and DT2, the assessed rate for the subject property should be $18 per sq. ft.

[11] For the same reason, retail space, assessed at $25 per sq. ft., should be $22 per sq. ft. The office vacancy rate should be increased from 4% to 5%, and applied to all types of space except for low profile space. All A class building are assessed at $475 per stall. Parking space should be at $425 per stall due to the different rates for parking stalls between DT1 and DT2, as shown at p. 147 of Exhibit C-1.

[12] The only valid Class A sale was the first 50% sale of Scotia Centre between Aspen and Scotiabank. Based on typical rents, as per Board Order 145/07, the cap rate derived from that sale become 7.36%, which supports conservative a cap rate of 7.25% for the subject property.

[13] Based on these corrections, i.e., an office rate of $18 per sq. ft., a retail rate of $22 per sq. ft., a parking rate of $425 per month, a vacancy rate of 5.0%, and a cap rate of 7.25%, the

requested value is $249,550,000, or $227 per sq. ft.

Summary of the Respondent's Submission

Classification and Post Facto *Sales*

[14] In regard to vacancy, the subject property has a vacancy rate of less than 1.0%. At p. 31 of R-1, there is a table showing 42 office space leases in 9 downtown A class buildings, including two leases in the subject property. All lease commencements fall within the period of July 1st, 2010 to June 30th, 2011. The average for leases that commenced in 2011 is $21.03, the weighted mean is $21.65. Without the Scotia Centre leases, the average is $21.83, which supports the use of a $22 per sq. ft. rate for A class building. Furthermore, the two leases in the subject property average out at $26.50 per sq. ft.

[15] At p. 43 of Exhibit R-1 there are three sales the Respondent relied on. The sales occurred in 2011. The two sale prices for the Scotia Centre sales average out at $347 per sq. ft. If we take the Complainant's parameter of $18 per sq, ft. for office space, and apply the requested cap rate, the resulting assessment for the subject property is only $248.28 per sq. ft.

[16] The two Scotia Centre sales indicate assessment-to-sales ratios ("ASRs") of 1.01. If Scotia Centre had been assessed at $248.28, the ASR from the first sale would have been 0.79, and the ASR for both sales would have been 0.72.

Rents, Capitalization Rates, and Assessment-to-Sales Ratios

[17] The Complainant is not contesting the assessment of the subject property as a whole, but bit by bit. The Complainant is asking the Board to adopt a cap rate based on higher rents. In other words, the Complainant is asking the Board to take a cap rate developed from rental rates of $24 to $25 per sq. ft., and apply it to rates of $16 per sq. ft.

[18] Cap rates reported by the industry, i.e., CBRE and Colliers, indicate a cap rate of 6.75 for A class buildings in 2012. Similarly, seven A- class equity comparables in DT2 share this cap rate of 6.75%. The best test of whether the application of a cap rate will produce an assessment that reflects market value is found in the ASR of the property in question, and the ASRs of properties comparable to it. To determine the ASR, typical inputs must be used.

Vacancy and Parking

[19] As for vacancy, our analysis shows an average vacancy rate of 8.31% for A- buildings in DT2. With respect to parking rates, CresaPartners reports rates for A class buildings in the second quarter of 2011 at $508.43 for reserved stalls, and $472.92 for unreserved. Parking as assessed for the subject property is $475 per stall.

Summary of the Complainant's Rebuttal

Vacancies and Rents

[20] The Respondent's A- class rent survey at p. 31 of Exhibit R-1 should have reflected the Respondent's vacancy survey, i.e., the rent survey should have been divided between DT1 and

DT2. When vacancies go up, rents go down, and vacancies are higher for A- buildings in DT2 than in DT1. A necessary implication of this is that rents will be lower in DT2.

[21] In the Respondent's rent survey, there are only three A buildings located in DT2. The subject property and Fifth & Fifth at 605 5th Avenue SW are similar, but Fifth & Fifth has 591 parking stalls, and a food court. Furthermore, Fifth & Fifth is better located in the heart of the oil and gas sector.

Economic Zones and Rent Differentials

[22] The AA class office rental rate is $25 per sq. ft., indicating that an assessed rate of $22 per sq. ft. is too high for A class buildings in DT2. To make things right, you either move the office rental rate from $22 per sq. ft. to $20, or increase the cap rate.

[23] Support for our requested rate of $18 per sq. ft. can be found at p. 31 of Exhibit R-1. Take the average office rental rate for the subject property found at p. 31, i.e., $26.50 per sq. ft., and divide it by the office rental rate of $30 per sq. ft. achieved by Fifth & Fifth, also found at p. 31 of R-1. The result is .8833. If you multiply $20 per sq. by .8833, the result is $17.66 per sq. ft., very close to our requested rate.

[24] The Respondent did not use or consider leases that commenced after the valuation date of July 1st, 2011. Given the definition of market value and the valuation date of July 1st, *post facto* leases should not be used in assessing property, but using a *post facto* lease or sale to test a valuation is acceptable, provided there is an adjustment for time. The Respondent has presented no time adjustments.

Sales, Parking, and Capitalization Rates

[25] To be relied upon for assessment purposes, sales should be at arm's length. With respect to the two Scotia Centre sales that occurred in April, 2011, i.e., within the valuation period, the only valid sale is the one for the first 50% interest. It was purchased by Scotiabank from Aspen, and was a straight cash sale. The resulting cap rate is 7.50%. The other Scotia sale is unreliable; Scotiabank lent Homburg (a REIT) the money to make the purchase, and Scotiabank induced the sale. Homburg also got the lucrative management contract.

[26] The sale of Gulf Canada Square occurred on September 2nd, 2011, two months *post facto*. The general rule is that you do not use *post facto* sales other than for testing an assessment, and only when the sales are time-adjusted.

[27] Included in the Gulf Canada sale was the right to use 240 parking stalls in the adjacent City of Calgary parkade. The Respondent did not use the income from the parking stalls in the assessment of Gulf Canada Square, but had they done so, the cap rate would have been greater than 6.39%.

Scotia Centre Sale, and Risk

[28] If the income from the two smaller buildings that accommodate businesses, i.e., Mango Shiva and Riley & McCormick, is added to our income approach analysis for Scotia Centre, the resulting cap rate becomes 6.86%. If income from the two smaller buildings is not included, the cap rate becomes 6.73%. Scotia Centre is superior to the subject property, hence has less risk;

why should the cap rate for Scotia Centre be roughly the same as the cap rate of the subject property?

Assessment-to-Sales Ratios, and Inequity

[29] There is something inconsistent with respect to how downtown A and AA class buildings, and downtown B and C class buildings are assessed. An analysis of assessment-to-sales ratios for 37 AA, A, B and C class buildings produced a mean ASR of 0.654, and a median ASR of 0.586. For Class AA and A buildings, the mean ASR is 0.979, and the median is also 0.979. This indicates vertical inequity in assessment. This puts the subject property at a disadvantage with respect to all the B and C buildings in downtown Calgary. The request is to place A-buildings in line with B buildings.

Summary

[30] When you divide the A class properties by their economic zones, DT1 and DT2, the typical office rental rate for the subject property turns out to be $18 per sq. ft., not $22. Although the Respondent recognizes that there is a difference in vacancy rates between DT1 and DT2, it fails to recognize a difference in rents. During the assessment year, the vacancy in the subject property was 17%. There should also be a difference in the parking rates between DT1 and DT2. Finally, the cap rate should be 7.5%, not 6.75%. These adjustments will solve the inequity, and result in the requested assessment.

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

Sales, Cap Rates, and Vertical Inequity

[31] The Complainant submits that the cap rate of 6.75% for the assessment of the subject property does not adequately reflect its risk as a lesser property when the benchmark for AA buildings is 6.8%. It is trite to say that the cap rate must be derived from arm's-length sales, and net operating income. The evidence, however, shows that there were only two sales of an A class office building in DT1 during the agreed-upon valuation period, i.e., the period from July 1st, 2010 to June 30th, 2011. Both sales were of Scotia Centre at 225 7th Avenue SW, and both occurred on the same date, April 21st, 2011.

[32] Each sale was for a 50% interest. In one transaction, the vendor was Aspen Properties, the purchaser Scotiabank, and the sale price was $95,000,000. At the same time, Scotiabank sold a 50% interest in Scotia Centre to Homburg Canada REIT GP for $116,000,000.

[33] The Complainant submits that the sale from Scotiabank to Homburg Canada was "bad" because Scotiabank lent Homburg the money for the purchase and brokered the sale, but insists that the sale from Aspen to Scotiabank for $95,000,000 was a "straight cash" deal, hence a valid sale that supports a non-typical cap rate of 7.40%, and a cap rate (as assessed) of 6.50%.

[34] Another sale that was considered was one that occurred in September, 2011. This was the sale of Gulf Canada Square, an A class building, which has an assessed cap rate of 6.75%. In addition to being *post facto*, the Respondent's evidence was that there was right of first refusal. The Complainant submits that had the parking stalls been included in the assessed value, the cap rate would be more than it is now, thus supporting the Complainant's argument

for a higher cap rate for the subject property. This ignores the fact that the parking stalls are leased from the City of Calgary, and the question that arises is how much more the owner of Gulf Canada Square could charge for these parking stalls over and above what it is paying the City of Calgary. As it happened, there was no answer to this question.

[35] The Board finds that the above sales are hardly characteristic of what might be called a universe of sales, and concludes that none of the sales are sufficiently trustworthy to ground a valid cap rate. In the absence of substantive evidence, the cap rate used in the assessment of the subject property is confirmed at 6.75%.

Vertical Inequity

[36] Finally, with respect to the Complainant's argument that there is "vertical inequity" between A class buildings with ASRs approaching 1.00, and B class buildings whose ASRs are in the 0.5 range, the Board agrees that the inequity should be remedied, but not in the manner contemplated by the Complainant, i.e., to reduce the assessments of A buildings so their ASRs would approximate those of B buildings. That would only worsen the problem, and result in further breaches of s. 10(3) of the *Matters Relating to Assessment and Taxation Regulation* ("MRAT").

Vacancy

[37] The Complainant's argument for an increase in the assessed vacancy rate from 4.0% to 7.0% is based on the higher assessed vacancy rate for B class properties in DT2 than in DT1, i.e., a variant of the vertical inequity argument. There is, however, little evidence to support the argument. Furthermore, the vacancy of the subject property is minuscule. The vacancy rates will remain as assessed.

Parking

[38] As assessed, the parking rate for the subject is $475 per stall. The Complainant provided information from a third party, Cresa Partners, in support of a lower parking rate for A- buildings in DT-2. This information indicates median rate of $450 per stall for reserved parking, and $435 for unreserved parking. The Complainant provided no evidence with respect to the number of stalls in the subject property that are reserved and the number that are unreserved. In the result, the Board found insufficient evidence to support an adjustment in the assessed parking rate, and the assessed parking rate is confirmed at $475 per stall.

Rental Rates

[39] The Complainant submits that assessed rental rates for A buildings in DT2 should be less than assessed rental rates for A class buildings in DT1. In support of this argument, the Complainant introduced data in tabular form showing office rents of B class buildings in DT1, and in DT2. The average of the rents in DT1 is $14.77, but in DT2, the average is $12.39, a difference of $2.38 per sq. ft. According to the Complainant, a similar difference should also be found between A buildings in DT1 and DT2.

[40] Nevertheless, separating the A class buildings shown at p. 31 of R-1 into DT1 and DT2 revealed that for A class buildings in DT1, with anomalous leases removed, the average of lease rates was $20.29 per sq. ft., but for A class buildings in DT2, the average was $22.44 per

sq. ft. Furthermore, the weighted averages were $20.18 per sq. ft. in DT1, and $22.60 per sq. ft. in DT2. These findings run counter to the Complainant's argument for lower rental rates for A buildings in DT2. In connection with this, the Board notes that current office leases in the subject property show an average of $24.70 per sq. ft., and a mean of $21.79 per sq. ft., with vacant space subtracted.

[41] As for retail leases, there was a dearth of evidence that would demonstrate a difference in retail rents between A class buildings in DT1 and DT2. That said, the Board sees no reason why retail rents, like office rents, might be higher in DT2 than in DT1. The Board finds no substantial reason to adjust either the office rate or the retail rate of the subject property, as assessed. In other words, there is nothing to indicate that the assessment is not correct or fair and equitable.

Board's Decision:

[42] The Board confirms the assessment at $334,650,000.

DATED AT THE CITY OF CALGARY THIS 2nd **DAY OF** November **2012.**

[redacted]

Presiding Officer

Exhibits

C-1, Complainant's Evidence Submission

R-1, Respondent's Assessment Brief

C-2, Complainant's Realnet Reports

Part I, C3(a), Complainant's Rebuttal Submission

****

Appeal type	Property type	Property sub-type	Issue	Sub-issue
CARB	Office	High Rise	Income Approach	Land & Improvement

****

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.