

**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:

***CPP INVESTMENT BOARD REAL ESTATE HOLDINGS INC., COMPLAINANT
OXFORD PROPERTIES GROUP INC., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member J. RANKIN
Board Member E. BRUTON***

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: 067235101

LOCATION ADDRESS: 400 3 AVENUE SW

FILE NUMBER: 66932

ASSESSMENT: \$360,490,000.00

This complaint was heard on 19th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta in Boardroom 10.

Appeared on behalf of the Complainant:

- D. Hamilton, Altus Group Ltd. – Representing CPP Investment Board Real Estate Holdings Inc. and Oxford Properties Group Inc.
- M. Cameron, Altus Group Ltd. – Representing CPP Investment Board Real Estate Holdings Inc. and Oxford Properties Group Inc.
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Appeared on behalf of the Respondent:

- A. Czechowskyj – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] A joint request, put forward by the Complainant and the Respondent, for the cross-referencing of the evidence presented with respect to the capitalization rate argument was presented to the Board. It was submitted that the evidence presented would be essentially the same for each of the hearings before this Board.

[3] The Board accepted the request and will review the evidence submitted by both parties when making the decisions on File Number 66932 - Roll Number 067235101, File Number 67952 - Roll Number 067238402, File Number 67913 - Roll Number 068032895, File Number 67969 - Roll Number 068051705 and File Number 66668 - Roll Number 201027760.

[4] The Complainant withdrew its issue under Section 299 & 300 of the Municipal Government Act.

Property Description:

[5] The subject property is located at 400 3 Avenue SW, in DT1, a Downtown district of the City of Calgary. The site is improved with an AA - Old Class office building, known as the Devon Tower (formerly Canterra Tower), constructed in 1987. The assessment record indicates the subject has a total of 842,737 square feet of net rentable area consisting of 804,560 square feet of office space, 6,888 square feet of 2nd level retail space, 7367 square feet of main level retail space, 23,922 square feet of storage space and 419 parking stalls.

The subject property was assessed by the Income Approach for a 2012 assessment of \$360,490,000 or \$427.76 per square foot.

[6] The assessment record indicated the subject was assessed at the following rates:

<u>Space</u>	<u>Assessment Rate</u>
Office Space	\$25.00 per sq.ft.
Parking stalls	\$6,000 per annum per stall

2 nd Level Retail	\$35.00 per sq.ft.
Retail Main Level	\$35.00 per sq.ft.
Storage Space	\$12.00 per sq.ft.

Issues:

The Assessment Review Board Complaint form contained a list of reasons and grounds for the complaint. The issue the Complainant presented at the hearing was: Is the capitalization rate appropriate?

The complainant withdrew the issues on vacancy and rental rate for office space at the commencement of the hearing.

Complainant's requested Value: \$321,870,000 or \$381.94 per square foot (revised at hearing).

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

[7] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[8] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[9] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue: Is the capitalization rate appropriate?**Complainant's Evidence:**

[10] The Complainant argued that the capitalization rate, based on a sale of the Scotia Centre, should be 7.00%, not the currently assessed capitalization rate of 6.25%.

[11] Two sales of AA Class properties were presented, but it was noted that the sales were non-arms length as they represented transfers between associated parties of Brookfield Properties. (C1, Pg. 84, C1A, Pg.58-64)

[12] In support of the Complainant's position that the capitalization rate is incorrect, the Complainant presented the two sales for the Scotia Centre, a Class A property in the DT1 zone of Downtown Calgary. The two sales represented a purchase of a 50% interest in the building:

Scotia Centre sale dated 04/21/2011 for 190,000,000.00 (100% interest equivalent)

Scotia Centre sale dated 04/21/2011 for 232,000,000.00 (100% interest equivalent)

[13] Based upon the Complainant's Net Operating Income (NOI), capitalization rates for the two sales of Scotia Centre were calculated:

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	14,253,300	7.5
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	14,253,000	6.14

(C1, Pg. 86)

[14] It was argued by the Complainant that Sale 2 was not a sale to be relied on due to a number of factors affecting the negotiations, such as the Scotia Capital Real Estate being a broker in the transaction and Scotia Mortgage Corporation providing the mortgage for the purchase. The Bank of Nova Scotia Properties Inc. was the vendor of the property.

[15] The Complainant argued that Sale 1, with a capitalization rate of 7.5%, was the only sale on which to base the capitalization rate of the subject property.

[16] The Complainant supported the request for a 7.0% capitalization rate by referring the Board to the difference in capitalization rates in Downtown Market Zone 1 (DT1) with those located along Stephen Avenue mall. Properties on the Stephen Avenue 'Retail Spine' are assessed using a capitalization rate which is .25% lower than the balance of DT1. When this differential of .25% is added to the capitalization rate for Scotia Centre Sale 1 (7.5%) and then a negative 0.50% for the differential between class A and Class AA buildings. Based upon the Respondent's recalculation of the capitalization rates a 'corrected' table of assessment parameters was submitted with a capitalization rate of 7.0% for Class AA – Old. (C1, Pg 36)

Respondent's Evidence:

The Respondent introduced the same two Scotia Centre sales as the Complainant, plus a third sale for Gulf Canada Square, also a Class A structure. The Respondent stated the third sale was not used in the determination of the capitalization rate as it was post facto to the July 1, 2011 valuation date. It was stated by the Respondent that the Gulf Canada Square sale was only used as an indicator or reference to validate the capitalization rate used by the City of Calgary Assessment Business Unit (ABU) was correct.

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	13,975,247	7.36
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02
					Mean for 2 Sales	6.69
					2012 Capitalization Rate for AA	6.25

Sale Number	Name	Address	Sale Date	Sale Price	NOI	Capitalization Rate (%)
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39
					Mean for 3 Sales	6.59

(R1, Pg. 64)

[18] The Respondent provided the 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 produced a 6.39% capitalization rate.

[19] The Respondent argued that Sale 2 should be included as the sale was on the open market, as shown in the RealNet document (R1, Pg. 68) which showed the sale type as 'Market'. Further, the RealNet documents indicated the transaction was brokered by two different brokers – CB Richard Ellis Canada representing the purchaser, Homburg Canada REIT GP Inc. and Scotia Capital Real Estate representing the vendor, The Bank of Nova Scotia Properties Inc.

[20] In rebuttal to the Complainant's assertion that the sale was not valid as the Bank of Nova Scotia provided the mortgage for the purchase, the Respondent showed the Board how the financing was not preferential. The financing for the Scotia Centre 50% purchase was for \$69,900,000.00 at an interest rate of 4.6% for a period of 7 years. (R1, Pg. 69) A sale for a 50% interest in Gulf Canada Square was for \$150,000,000.00 at an interest rate of 4.606% for a period of 5 years. (R1, Pg. 151)

[21] The Respondent introduced evidence the original purchase for 50% of the property by The Bank of Nova Scotia was for \$94,900,000.00 on September 29, 2006 of the Scotia Centre. (R1, Pg. 88-100)

Findings of the Board:

The Board notes the following transactions for an interest in the Scotia Centre:

Vendor	Purchaser	Sale Date	Interest	Consideration (\$)
Oxford Properties Group Ltd.	The Bank of Nova Scotia	September, 2006	50%	94,900,000
Aspen Properties	The Bank of Nova Scotia	April, 2011	50%	95,000,000
The Bank of Nova Scotia	Homburg Canada REIT GP Inc.	April, 2011	50%	116,000,000

[22] In verbal testimony, the Respondent indicated that the Aspen Properties – Bank of Nova Scotia sale was completed in October 2010, but not registered until April of 2011.

[23] To coin the expression, the Board finds that both of the sales for an interest in the Scotia Centre "have some hair on them". It was suggested that Sale 1 was possibly tainted by prior

agreements to purchase or first right of refusal being granted to the Bank of Nova Scotia, but no evidence was presented to support this contention.

[24] The Board did note, from the evidence submitted, that the consideration paid for a 50% interest increased from \$94,900,000.00 in September of 2006 to \$95,000,000.00 in April of 2011 - an increase of only \$100,000.00 over a period of four and a half years.

[25] The Board noted that Aspen Properties Ltd., the vendor in Sale 1, has remained associated with the property as the property Manager, as shown on the Assessment Request for Information. (C2, Pg. 121)

[26] The Board considered the Respondent's argument that one sale of the Scotia Centre for \$190,000,000.00 (100% interest) may not be market value, as one 50% owner was selling to the other 50% owner. The Board is of the opinion that a sale of this nature may occur with predetermined factors such as the right of first refusal or other mechanisms. Additionally, the small increase in value over four years does not appear to the Board to be a true market value, given that in a period of only months a 50% share in the property sold for \$116,000,000.00, an increase of \$21,000,000.00. For these reasons the Board placed no weight on Sale 1 for \$95,000,000.00.

[27] The Board found the Complainant's argument against Sale 2 was without support and therefore accepts the sale as an indicator of market value and a capitalization rate. The Board did not find it unreasonable for the owner of the building, The Bank of Nova Scotia, to use an in-house broker to handle the negotiations for the sale of an interest in the property. Further, the Board did not find it unreasonable for The Bank of Nova Scotia to be a party to the financing of the property, given that they were intimately involved with the transaction and in a position to offer financing during the negotiations. The Board noted the arrangement did not provide the Purchaser with a preferred interest rate.

[28] The Board reviewed the details of the Gulf Canada Square sale as presented. The sale was post facto, occurring in September of 2011, but both the Complainant and the Respondent during their testimony states that sales of this type occur in advance of the actual registration date. This was clearly shown in the two sales for Scotia Centre when both sales were registered on April 21, 2011. The Board therefore accepts the Gulf Canada sale as an indicator of market value and the resulting capitalization rate is used by the Board in its decision.

[29] The Board analyzed the two sales to determine a capitalization rate based upon Sale 2 for the Scotia Centre and the Gulf Canada Square, using typical NOI as submitted by the Respondent:

Sale Number	Name	Address	Sale Date	Sale Price (\$)	NOI	Capitalization Rate (%)	Capitalization Rate (%) Adjusted .25%
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02	6.27
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39	6.39
					Mean	6.21	6.33

(1) .25% adjustment to reflect a negative adjustment in capitalization rates for properties on the Stephen Avenue 'Spine' and those located elsewhere in DT1.

[30] Based upon the Board's determination of a capitalization rate of 6.33% for Class A properties, and adjusting for the 0.50% lower capitalization rate for Class AA properties, the result would be a capitalization rate less than 6.0%.

[31] The Board accepts the Respondent's capitalization rate of 6.25% to be applied to the subject property, although the Board's analysis suggested a lower capitalization rate. The Board finds insufficient evidence in support for the 7.0% requested by the Complainant.

[32] The Board found further support for the Capitalization rate from CARB 1282/2012-P, for Bankers Hall East and West, which confirmed the capitalization rate for an AA Class office complex at 6.0%. The properties in the noted decision were located on Stephen Avenue Mall which had a -0.25% adjustment on the capitalization rate. When the adjustment is added the capitalization rate would be 6.25%, as applied to the subject.

[33] A second recent decision, CARB 1281/2012-P, confirmed the capitalization rate for Fifth Avenue Place at 6.75% for a Class A office complex. When the difference between Class A and Class AA structures is adjusted, at a rate of -0.50%, the resulting capitalization rate of 6.25% again supports the rate applied to the subject property.

Board's Decision:

[34] Based upon the reasons given, the Board confirms the assessment at \$360,490,000.00.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF NOVEMBER 2012.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure – Pat 1
2. C1A	Complainant Disclosure – Part 2
3. C2	Complainant Rebuttal
4. R1	Respondent Disclosure
5.	Numerous MGB and CARB Decisions

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	-Capitalization Rate