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:

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

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
P. Pask, MEMBER
K. Farn, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	**068053404**
LOCATION ADDRESS:	**333 – 5 AV SW**
HEARING NUMBER:	**61174**
ASSESSMENT:	**$69,740,000**

This complaint was heard on 7th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Mr. C. Hartley* *Colliers International*
- *Mr. S. Cook* *Colliers International*

Appeared on behalf of the Respondent:

- *Mr. A. Czechowskyj* *Assessor, City of Calgary*

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

None

Property Description:

The subject is a 1978, 16-storey "A-" Class, office and retail complex on a .6 acres site and known as "BP House" in the downtown core (DT-1) of Calgary. The property has 122 parking spaces assessed at $475 per stall; 223,649 square feet (SF) of office space assessed at $22 per SF; 15,574 SF of 2nd level retail assessed at $30 per SF; 2,357 SF of main level retail also assessed at $30 per SF; and 4,053 SF of storage space assessed at $10 per SF. The subject is assessed using the Income Approach to Value at $69,740,000 or $283 per SF – including $1,042,683 of exempt space (University of Alberta).

Issues:

The Classification of the subject as an "A-" office/retail building is incorrect because in the Income Approach to Value calculation by the City:

1. The typical rent rate of $22 per SF should be $18 per SF
2. The typical office vacancy allowance should be 15% instead of the assessed 7%.

Complainant's Requested Value: $51,050,000 or $207.83 per SF.

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

Issue #1: "The typical rent rate of $22 per SF should be $18 per SF"

The Complainant argued that the subject is effectively operating as a "B" quality building in an "A" location in the downtown Calgary core (i.e. DT-1). He suggested that Colliers accepts the methodology used by the City to establish the "A" Class in DT-1, but when one looks at the subject, it does not seem to fit the Class. For example, he suggested that the vacancy in the subject is not typical for an "A" Class building in DT-1. In addition, he noted that a substantial portion of the "Retail" area of the subject is leased to the University of Alberta for general office-type use which demonstrates the subject does not operate in a "conventional fashion" similar to other "A" Class buildings in DT-1. He argued that the subject is of lesser quality than an "A" building due to its exterior finish and alleged lack of interior finish in selected locations – e.g. second floor coffee shop. The Complainant provided several interior and exterior coloured photos of the subject, and the exterior of other "A" quality buildings to which he wished to compare the subject. Therefore, he argued, the rent rate attributed to the subject in the City's Income Approach to Value calculation used to generate the assessment, is too high at $22 per SF and should be $18 per SF.

The Complainant provided clarification and argument on page 10 of his Brief C-1 that in reviewing the subject's tenant roster, it shows that existing leases in the building range from $17 to $38 per SF. He also noted that "there has been no recent leasing (January 2009 – July 2010) within the subject." Therefore, he indicated that it was necessary to examine the nearby DT-1 market for comparable leases with at least a 3-year term and commencing in 2010, to find current value.

On page 12 of C-1 the Complainant provided a matrix of five sample leases from buildings deemed to be "superior or slightly superior" to the subject, and said to be sourced from the "downtown leasing team of Colliers". The Complainant clarified that one of his matrix columns labelled "Completion Date" meant that either this was "the date a deal is done or the date the brokerage group found out that the deal was done". He noted that the five leases demonstrate an average value of $17.88 per SF and a weighted average of $17.81 per SF. He argued therefore, that this data demonstrates that $18 per SF is the correct rent value and not the assessed $22 per SF. Furthermore, he referenced selected portions of Calgary Composite Assessment Review Board Decision CARB – 2058/2010-P in which the assessed rent rate for the subject was questioned last year in 2010.

The Complainant provided a reconstituted tenant roll (as of December 31, 2009) for the subject on page 36 of C-1 in which it was noted that of all the current leases in the subject, the Mean rental value was $26.23 per SF and the Median was $24.50 per SF. On pages 37 to 50 he provided two additional rent rolls from the subject – one dated as of July 1, 2008 and the other as of July 1, 2010.

The Complainant referenced his Rebuttal Document C-2 and opted on pages 6 and 7 to refute a selected number of the City's lease comparables first presented on page 40 of R-1. On page 6 he entered a matrix of building details and limited to five "A" class buildings (plus the subject). On page 7 he entered a matrix containing details of eleven "A" and "A-" buildings, (plus the subject). The 2010 "Median" lease values in the page 6 matrix ranged from $15 to $28 per SF, with 4 of 5 sites over $20 per SF. The "Mean" lease values for 11 sites in the page 7 matrix ranged from $15 to $31 per SF, with only two values less than $20 per SF.

The Respondent commenced his presentation by referencing the Complainant's Brief C-1 and argued that only two of the buildings in the Complainant's page 12 lease comparables matrix were deemed by the City to be comparable to the subject – that being Sun Life Plaza – North, and Bow Valley Square IV. He clarified that a July 1, 2010 lease for Intact Place was a post facto lease and is invalid in this analysis because it would not have been used by the City to calculate lease values in the current assessment cycle. He also argued that the Complainant's

BP Canada lease for $20 per SF appears to be a non-arms length lease, and he referenced a matrix and Rent Roll for the BP site on pages 80 to 83 of R-1 to demonstrate this point.

In addition, the Respondent clarified that certain of the Complainant's data in the matrix was erroneous. For example, on pages 89 to 93 and page 113 of R-1 he referenced a copy of the City's Assessment Request for Information (ARFI) for the Complainant's Shell Centre leases and noted that the lease should indicate $25 per SF and not $16 to $18 per SF. He also noted that a BP lease actually commenced on December 15, 2009 and not January 1, 2010. Therefore he argued, the Complainant's lease analysis is not only extremely limited in number of valid leases analyzed, but the data and hence the results are also flawed and unreliable.

The Respondent noted that several Assessment Review Boards both last year and this year have confirmed that only the "commencement" dates of leases and not the "date deal is done" dates, are relevant in lease analyses. On this point the Respondent provided complete copies of Calgary Composite Assessment Review Board (CARB) Decisions 1455/2011-P (Scotia Place); 1571/2011-P (Bankers Hall); and 1331/2011-P (Esso Plaza). Therefore, he argued, the Complainant's arguments on this point are flawed.

The Respondent provided his own matrix of valid and current lease examples on page 40 of his Brief R-1. He provided 25 leases from seven "A" Class buildings in DT-1. Every lease was a 2010 lease, although the Board noted that six were 30 days post facto. The Respondent noted that according to the City's analysis of these current leases the weighted Mean – including Penn West Petroleum (8 office spaces in Bow Valley Square 3) was $41 per SF; the weighted Mean excluding Penn West was $25.12 per SF; and the weighted mean of spaces 10,000 SF or more was $26.16. The Respondent clarified that while the Penn West (Bow Valley 3) lease was current, he considered it an outlier and not necessarily representative of the broader market and therefore it should be ignored for the purposes of this analysis. Nevertheless, the Respondent argued that this data supports the assessed rate of $23 per SF for all "A" Quality buildings, although the subject is classed as an "A-" building and is assessed at $22 per SF.

In addition, the Respondent noted that both CRESA Partners (page 37 of R-1) and Colliers International themselves identify the subject as an "A" Class building it its published materials regarding the Calgary Market, although he conceded that in some respects it currently isn't quite performing as such. Therefore, while others have identified the subject as an "A" Class building, the City has recognized certain of its shortcomings in its assessment process, and classified it as an "A-" building. On this point, he referenced a City-generated matrix on page 191 of R-1.

Therefore the Respondent provided an additional lease matrix on page 41 of R-1 consisting of twenty-six 2009 and 2010 leases from four DT-1 "A-" Class office buildings – one of the four buildings is the subject. He argued that the three comparable buildings were like the subject in appearance, function, and economic performance. He noted that many of the exteriors of these 3 buildings were of glass and metal, similar to the subject. He noted that analysis of the 26 leases – all of which were current and from 2009 and 2010 and predominantly 5-year terms, indicated that with respect to <u>all</u> of the leases, the Mean was $27.17 per SF; the Median was $28 per SF; and the Weighted Mean was $27.75. The Respondent also noted that the mean for <u>only</u> the <u>2010</u> leases was $24.88 per SF; the Median was $24 per SF; and the Weighted Mean was $26.65 per SF. He argued that this data supports the $22 per SF used in the assessment.

The Respondent also provided on pages 42 to 46 of R-1, excerpts of market-survey Rental Data from independent Third Party sources such as Avison Young; CB Richard Ellis; and Barclay Street which he argued, supported the City's position on this issue. He also referenced an additional matrix on page 190 of R-1 demonstrating that the City has equitably assessed the subject and properties similar to it in DT-1 in a similar fashion using the $22 per SF rental rate. He identified nine properties in DT-1, and referencing each one for the Board, clarified that one suffered poor maintenance; another had no tenant improvements for 25 years; and others were performing poorly in the market despite their prime DT-1 locations, due to the recent market downturn. Nevertheless, he argued, they and the subject have all been assessed equitably.

Board's Analysis and Conclusions - Issue #1 – Reasons

The Board is satisfied that the detailed market evidence provided by the Respondent appears to support the $22 per SF used to assess the subject. Indeed, the evidence appears to suggest that Median and Mean lease values in the $24 per SF range are evident in most newer and current 2010 leases in the subject itself.

Moreover, the Board is satisfied from the evidence that the "typical" $22 per SF rate as applied to "A-" buildings has been identified in analysis by the City, from generally reliable sources such as rent rolls and ARFI documents supplied independently by building owners and operators in the downtown core (DT-1). In addition, this data appears to be supported by reputable independent Third Party sources – one of which is a Branch of the Complainant's own company.

The Board is also satisfied that the market evidence provided by the Complainant – particularly on page 12 of C-1, which was used to pursue an $18 per SF rent rate, is significantly flawed and unreliable – all as demonstrated by the Respondent in his various ARFI documents as returned by the building owners, to the City. In fact, the Board considers that certain of the evidence supplied by the Complainant – some in rebuttal and used to refute the City's data, after closer analysis also appears to support the $22 per SF value.

And finally, while the Complainant argues that the subject is a lesser quality building based on economic performance vis-a-vis leasing, the current and valid lease data from the subject – as of June 30, 2010, and presented by both parties, appears to suggest otherwise.

Therefore, on balance, the Board is satisfied that the rent rate of $22 per SF is appropriate to the subject.

Issue #2: "The typical office vacancy allowance should be 15% instead of the assessed 7%."

The Complainant argued that the record of "historical vacancy in the subject is most consistent with class "B" building vacancies, and the subject should be considered to have a chronic vacancy problem. He suggested that the vacancy in the subject is three times higher than comparable buildings in the core. On page 33 of his Brief C-1 he provided a Colliers-devised matrix to demonstrate vacancy in the subject over time from Quarter 1 (Q-1) of 2008 to Q-4 of

2010. The matrix purported to identify a headlease vacancy rate in the subject increasing over time from 3.01% in Q-1 of 2008 to 12.61% in Q-4 of 2010, with a high in Q3 of 2010 of 17.47%. On the basis of this analysis, the Complainant argued that a chronic vacancy situation exists in the subject and therefore the vacancy allowance should be 15% and not the assessed 7%.

On page 34 of C-1 the Complainant provided an additional matrix prepared by his firm, identifying reported vacancy in the entire downtown (DT-1; DT-2; DT-3) for all building classes for the four quarters of each of 2008, 2009, and 2010, He focused in particular on the reported vacancy differences in Classes "A" and "B" office buildings, noting that the vacancies appeared to be greater in "B" Class buildings.

On pages 37 to 42 of C-1 the Complainant provided the 2008 rent roll (as of July 1) for the subject and declared a 5.51% vacancy. The Complainant again referenced page 36 of C-1 of his reconstituted rent roll for the subject and argued that his calculations indicate that as of December 31, 2009 the subject suffered from a 13.87% vacancy.

On pages 43 to 50 of C-1 the Complainant provided the July 1, 2010 rent roll for the subject and declared a 13.80% vacancy. However, it was noted that the 13.87% value appeared to conflict with the Colliers calculation on page 33 of C-1 where a 14.58% vacancy was reported for the same time frame. It was also noted that both of these values conflicted with the 11% vacancy reported by the building owners in the subject's ARFI on page 25 of R-1.

The Respondent argued that the data reported to the City via the subject's ARFI by the building's owners indicates that the recorded vacancy for 2008 was 3%; in 2009 it was 7%; and in 2010 it was 11%. Therefore, he noted, the subject had been assessed using generally as an average, the 7% value. He also noted that the vacancy as reported by the Complainant on page 34 of C-1 was for the entire downtown without regard to zone – i.e. DT-1 or DT-2 or DT-3, therefore the typical value for DT-1 – the location of the subject, was not verifiable from this information.

The Respondent argued that the Complainant has not established that the subject suffers chronic vacancy, but instead merely confirms that generally, vacancies have increased to various degrees across the downtown office market as a whole – all of which is coincidental with the recent market downturn and the supply of new "product" coming onto the market. He argued that the City has recognized this shift by increasing vacancy allowances and reducing rents in its Income Approach to Value calculations for all downtown buildings, including the subject. He noted that as a result of the City's adjustments, the subject – assessed at $75,760,000 in 2010, was now assessed at $69,740,000 in 2011.

Board's Analysis and Conclusions - Issue #2 – Reasons

The Board was presented at various points in the hearing, with several vacancy rates, each one as provided by one or other of the parties and purporting to represent an "actual" vacancy in the subject. The Board was provided, with an 11%; a 13.87%; a 13.80%; and a 14.58% vacancy rate – all purporting to have been derived at various times from essentially the same data source - the subject, and none of which appeared to support the requested 15% or the assessed 7%.

The Board expended great effort to carefully, and in particular detail, examine the various tenant rolls and ARFI documents supplied by both parties. Those documents have been catalogued above. The Board painstakingly conducted its own investigations and calculations of the data contained in each of those documents in an attempt to verify and reconcile the several vacancy values as noted above. In so doing, the Board found the documents to be seriously lacking in important detail due to what appeared to be errors, and in some cases omissions, and therefore extremely difficult to reconcile.

This left the Board with the impression that the errors and omissions created variances that were not reconcilable. Therefore, the Board was not only unable to make a decisive determination as to just what in fact the correct vacancy rate was that should be applied in the assessment calculation, but also whether or not the vacancy was as severe, or of as chronic a nature as alleged.

On the surface, and from the arguments advanced, it may appear to some that the subject may be atypical and may have had a vacancy problem of some nature before and during the current assessment cycle. However, with the evidence presented in this hearing, the Board cannot make that determination with any certainty at all. Therefore, given the lack of clear evidence to the contrary, the Board has no alternative in this matter but to default to the assessed vacancy value of 7%.

Nevertheless, the Board notes that in assessing the subject for this assessment cycle, the City appears to have addressed certain issues relating to an apparent declining market in downtown Calgary during this period. The City has in general, reduced typical rent values and increased vacancy and cap rate allowances in recognition of these issues – and in the case of the subject, by amounts greater than the actual values in the subject. As a result, the assessment was reduced from $75,760,000 in 2010 to $69,740,000 in 2011.

Therefore the Board considers that, on balance, and on the basis of the evidence presented at this hearing, the subject's assessment appears to be fair and equitable.

Board's Decision:

The Board confirms the Assessment at $69,740,000.

DATED AT THE CITY OF CALGARY THIS 6 DAY OF October 2011.

K. D. Kelly,
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure
3. R-1	Respondent Disclosure
4. Exhibit #1	Respondent Disclosure
5. Exhibit #2	Respondent Disclosure
6. Exhibit #3	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.

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Downtown Office	Office Tower	Income Approach	Rent; lease; vacancy; Rates Site leases, Third Party market