Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act (MGA)*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000.

between:

Palliser Square Properties Ltd.
(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER
J. Lam, BOARD MEMBER
Y. Nesry, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**068230507**
LOCATION ADDRESS:	**101 9 AV SW**
FILE NUMBER:	**71554**
ASSESSMENT:	**$9,550,000**

This complaint was heard over a two day period beginning on the 17th day and ending on the 18th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *S. Meiklejohn*
- *M. Cameron*

Appeared on behalf of the Respondent:

- *D. Grandbois*

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

[1] The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the *MGA*. During the course of the hearing, the Respondent raised the following jurisdictional issue which is addressed below:

Preliminary issue 1: The Complainant failed to comply with the *MGA Section 295(1).*

Legislation:

The MGA reads:

> ***Duty to provide information***
> *s 295 (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.*
> *(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.*

The Matters Relating to Assessment Complaints Regulation AR 310/2009 (MRAC) reads:

> ***Failure to disclose***
> *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.*

Respondent's Position:

[2] The Respondent requested that that the complaint be dismissed because the Complainant failed to provide the information requested by the assessor as in accordance with

Section 295(1) of the Act.

[3] Within the Respondent's 410 page disclosure document was evidence specific to this preliminary issue. Therefore, the disclosure document was now entered into the hearing as "Exhibit R1". The Respondent, along with Exhibit R1, provided the following evidence and argument with respect to this issue:

[4] A copy of the Respondent's Assessment Request For Information (ARFI) dated August 31, 2012. The letter requested financial information on the subject property and included related forms and instructions requesting they be completed and returned by October 2, 2012. The letter stated the purpose for gathering the information (for the 2013 assessment year) and referenced *Sections 295(1) and 295(4)* of the *MGA* as well as *Section 9(3)* of *MRAC.*

[5] A copy of the Respondent's "Final Reminder" notice again requesting the ARFI dated September 20, 2012. The letter again requested financial information on the subject property and referenced the August 31, 2012 letter. The property owner was reminded of the consequences of not completing and returning the requested information by October 2, 2012, again referencing the relevant sections of the *MGA* and *MRAC.*

Complainant's Position:

[6] Argument that the property owner has had a good track record of providing information requested by the Respondent under *Section 295(1)* of the *MGA,* not only with the subject property, but with neighbouring properties as well. The Complainant suggested that this was a simple oversight in 2012 and that the Respondent had possession of the 2011 ARFI with the necessary information.

[7] Argument that the 2013 assessment was done on the Cost Approach to value and therefore the information requested by the Respondent about leases and lease rates affecting the subject property are not necessary.

CARB Findings:

[8] The CARB finds the following with respect to this preliminary issue:

[9] That the 2012 ARFI request was not necessary to complete the 2013 assessment. The 2013 assessment was done on the Cost Approach. There would be no new information that could be supplied in the 2012 ARFI that would assist the Respondent in calculating the assessment using a Cost Approach.

[10] That the Respondent had possession of the 2011 ARFI. In analyzing the 2011 ARFI, the CARB determined that an updated 2012 ARFI would not change the information provided in the 2011 ARFI in any significant way.

[11] That the Complainant has been typically cooperative with requests made by the Respondent under *Section 295(1)* of the *MGA.* The CARB agrees with the Complainant that the failure to submit the 2012 ARFI was an oversight on the part of the property owner.

[12] That the Complainant will not provide any evidence or argument during the course of the merit presentation, specific to leases or lease rates of the subject property that was not provided to the Respondent in keeping with *MRAC Section 93).* With that proviso, the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

[13] The subject property is a predominantly retail building well known as the "Calgary Tower". The subject is located in the "Downtown One (DT1)" economic zone of downtown Calgary. According to the information provided, the property is a unique tower-like structure with retail spaces seemingly evenly distributed among the first two floors and a space almost 30 floors above grade level, separated from the first two floors by a long concrete tube housing an elevator. The building was constructed in 1968, has a total assessable area of 21,581 square feet (sf) and is situated on an assessable land area of 10,256 sf.

[14] The subject is assessed using the Cost Approach to value, assigning a land rate of $355 per sf to the land component reduced 15% for a negative "abutting train track influence" and a depreciated improvement value of $6,456,029.

Issues:

[15] The Complainant addressed the following issues at this hearing:

a) That the subject should be assessed using the Income Approach to value with the following parameters:

   i. The assessed net rental rate applied to the retail spaces should be:

      1. $16.00 per sf for main floor, and

      2. $18.00 per sf for spaces above main floor.

   ii. The assessed cap rate applied in the Income Approach to value should be 5.25%.

Complainant's Requested Value: $7,850,000

Board's Decision:

[16] The complaint is denied and the assessment is confirmed at $9,550,000.

Legislative Authority, Requirements and Considerations:

[17] As in accordance with the *MGA, Section 467(3),* a CARB *must not alter any assessment that is fair and equitable, taking into consideration*

a) *The valuation and other standards set out in the regulations,*

b) *The procedures set out in the regulations, and*

c) *The assessments of similar property or businesses in the same municipality.*

__**Position of the Parties**__

ISSUE 1: The subject should be assessed using the Income Approach to value using net rental rates of $16.00 per sf, applied to main floor retail space and $18.00 per sf,

applied to retail space above the main floor.

Complainant's Position:

[18] The Complainant provided a 115 page disclosure document that was entered into the hearing as "Exhibit C1". The Complainant, along with Exhibit C1, provided the following evidence and argument with respect to this issue:

[19] A City of Calgary 2013 Income Approach Valuation, watermarked "Provided for the purposes of Advance Consultation Period discussions only". The document provided information on a potential 2013 assessment of the subject using the Income Approach to value, assessing 21,581 sf of retail space at a net rental rate of $35.00 per sf for main level retail space, $25.00 per sf for upper level retail space and $30.00 per sf for upper level prime retail space. An 8% vacancy rate, operating costs of $14.00 per sf and $12.50 per sf for main level retail and upper level retail respectively, and a non-recoverable rate of 2% were used in the assessment.

[20] A City of Calgary 2010 Assessment Explanation Supplement. The document indicated that the 2010 assessment of the subject was done using the Income Approach to value, assessing 14,908 sf of retail space at a net rental rate of $40.00 per sf, with a 6% vacancy rate, operating costs of $10.00 per sf and a non-recoverable rate of 2%.

[21] A City of Calgary 2011 Income Approach Valuation. The document indicated that the 2011 assessment of the subject was done using the Income Approach to value, assessing 21,581 sf of retail space at a net rental rate of $35.00 per sf for main level retail space and $25.00 per sf for upper level retail space. An 8% vacancy rate, operating costs of $14.00 per sf and $12.50 per sf for main level retail and upper level retail respectively, and a non-recoverable rate of 2% were used in the assessment.

[22] Although no specific details of the subject's 2012 assessment were provided, it was indicated that the 2012 assessment was also done on the Income Approach.

[23] A copy of the 2011 ARFI indicating that the majority of the retail space is not leased.

[24] A City of Calgary 2013 Income Approach Valuation for the adjoining "Tower Centre" and neighbouring "Palliser Square East" buildings. The documents indicated that the 2013 assessments of both the Tower Centre and the Palliser Square East buildings were done using the Income Approach to value. The Income Approaches assessed retail space at a net rental rate of $16.00 per sf for main level retail space and $18.00 per sf for 2nd level retail space. An 7.75% vacancy rate, operating costs of $20.00 per sf and a non-recoverable rate of 2% were used in the assessment. The Complainant argued that the subject was sold as a package with both the adjoining Tower Centre and Palliser Square East buildings in 2006, 2004 and 1999, and would likely sell in the future in the same way. Therefore, the subject should be assessed in the same way (Income Approach), using similar income parameters for similar and competing spaces.

Respondent's Position:

[25] The Respondent, along with Exhibit R1, provided the following evidence and argument with respect to this issue:

[26] A copy of the 2011 ARFI dated May 13, 2011 indicating that only 9,522 sf of the retail space was leased.

[27] A 2013 DT Land Rate Chart indicting a $355.00 per sf land is applied to land in the downtown core.

[28] Argument that the subject is a very unique property unlike any in the city. That the subject is predominantly a tourist destination and is not comparable to other office buildings such as the Tower Centre or Palliser Square East assessed on the Income Approach.

CARB Findings:

[29] The CARB finds the following with respect to this issue:

[30] That the subject is not similar to the adjoining Tower Centre or neighbouring Palliser Square East buildings. Those buildings are predominantly office towers with over 166,000 sf and 351,000 sf of office space respectively. Retail spaces comprise less than 26,000 sf and 20,000 sf respectively. Further, there are no retail spaces approximately 30 floors above grade level such as the restaurant space in the Calgary Tower with relatively unobscured views of the Calgary skyline and landscape. Accordingly, there were no comparable lease rates provided for this restaurant space.

ISSUE 2: The subject should be assessed using the Income Approach to value using an assessed cap rate of 5.25%.

Complainant's Position:

[31] The Complainant requested that all evidence and argument provided on this issue from File #72691 and File #72066 be brought forward to this hearing. The Complainant, along with Exhibit C1 and Exhibit C1 from Files #72691 and #72066, provided the following evidence and argument with respect to this issue:

[32] Third party cap rate studies from Colliers International and CB Richard Ellis indicating that the cap rates for B quality downtown office buildings in the second quarter of 2012 range from 6.25% to 7.25%.

[33] A 2013 City of Calgary downtown office cap rate study comparing the sales of A, B and C class quality office buildings from April, 2011 to June, 2012. The Complainant highlighted that the median cap rate for A class quality buildings sold in 2012 was 5.63% but were assessed on the Income Approach using a cap rate of 6%. The median cap rate for B class quality buildings sold in 2012 was 5.02% but were assessed on the Income Approach using a cap rate of 5%. The Complainant argued that the roughly 0.50% upward adjustment to the cap rate of the A class buildings should be equitably applied to the B class buildings. In addition, the Complainant argued that the Respondent's higher cap rate for A class buildings is counter-intuitive to what would be expected in the market. Generally, cap rates diminish as the quality of the building goes up as a reflection of the risk of investment.

[34] A cap rate analysis involving five sales of downtown B class quality office buildings. Two of the sales occurred on August 23, 2011, two on June 13, 2012 and one on June 15, 2012. The buildings ranged in age from 1972 to 1982, in size from 110,423 sf to 200,099 sf and sold at a sales price ranging from $275.69 per sf to $407.44 per sf with a median of $345.45 per sf. The Complainant generated cap rates from Income Approach valuations of the five sales using three different approaches to market net rental rates as follows:

a) The first approach involved the application of the typical lease rates as calculated by the Respondent (see issue 1 above). The three sales that occurred in June, 2012 used a market net rental rate of $19.00 per sf, while the two sales that occurred in June, 2011 used a market rental rate of $14.00 per sf (for a DT3 economic zone sale) and $15.00 per sf respectively. The median cap rate generated under this approach was 4.83%. The Complainant rounded the cap rate upwards to 5.25% using the Class A building equity adjustment of 0.50% referenced above.

b) The second approach involved the application of the typical lease rates using a market net rental rate of $19.00 per sf, on all five sales. The median cap rate generated under this approach was 5.39%. The Complainant again rounded the cap rate upwards to 6.00% using the Class A building equity adjustment of 0.50%.

c) The third approach involved the application of the typical lease rates using a market net rental rate of $16.00 per sf, on all five sales as calculated by the Complainant (see issue 1 above). The median cap rate generated under this approach was 4.64%. The Complainant again rounded the cap rate upwards to 5.25% using the Class A building equity adjustment of 0.50%.

Respondent's Position:

[35] The Respondent, along with Exhibit R1, provided the following evidence and argument with respect to this issue:

[36] That Cost Approach is an acceptable Approach to property valuation and that the subject property is unique and unlike any other in the city. It's uniqueness, use as a tourist destination and lack of comparability to other properties make it suitable for a cost Approach valuation.

Complainant's Rebuttal:

[37] In rebuttal, the Complainant requested that all evidence and argument provided in rebuttal on this issue from File #72691 be brought forward to this hearing. The Complainant, along with Exhibit C2 from File #72691, provided the following evidence and argument with respect to this issue:

[38] An analysis of the 1.76% per month time adjustment factor proposed by the Respondent. The Complainant analysed the sales of A, B and C class office buildings in the downtown core that occurred from April, 2011 to July, 2012. The Complainant concluded that the 1.76% adjustment factor was predominantly caused by A class properties. The analysis showed that B class property sales did not require any adjustment for time.

[39] The same cap rate analysis referenced in Exhibit C1 with the additional Telephone Building sale of April 13, 2011 included in the analysis. The Telephone Building was constructed in 1929, was 62,650 sf in size and sold for a price of $462.89 per sf. The Complainant generated cap rates from Income Approach valuations of the now six B class sales using the same three approaches referenced above and determined similar outcomes supporting it's 5.25% requested cap rate.

[40] Five ASR analyses that compared the sales price of the six B class sales to their

respective assessments generated by the Income Approach, varying only the net rental rates and cap rates for each as follows:

a) A net rental rate $22.00 per sf for the Telephone Building and $19.00 per sf for the other five sales, and a cap rate of 5.00%. This mirrored the approach of the Respondent as referenced above. This method produced a median ASR of 1.04.

b) A net rental rate $21.00 per sf for the Telephone Building and $16.00 per sf for the other five sales, and a cap rate of 5.25%. This approach would be consistent with the request of the Complainant. This method produced a median ASR of 0.89.

c) A net rental rate $22.00 per sf for the Telephone Building and $19.00 per sf for the other five sales, and a cap rate of 6.00%. This approach would support the request of the Complainant as in paragraph b). This method produced a median ASR of 0.87.

d) A net rental rate $22.00 per sf for the Telephone Building and $19.00 per sf for the other five sales, and a cap rate of 5.50%. This method produced a median ASR of 0.95.

e) A net rental rate $21.00 per sf for the Telephone Building and $16.00 per sf for the other five sales, and a cap rate of 5.00%. This method produced a median ASR of 0.94.

CARB Findings:

[41] The CARB finds the following with respect to this issue:

[42] That the 0.50% cap rate equity adjustment has no justification or support. The Complainant requested the adjustment to cap rate of the Income Approach assessments of B class office buildings in the downtown core, on the basis that a similar adjustment was made by the Respondent to the cap rate of the Income Approach assessments of A class office buildings in the downtown core. The CARB cannot accept this seemingly arbitrary adjustment unless it is supported with market evidence. Moreover, the CARB does not accept this adjustment on the basis of equity. Equity should be seen as assessing similar property in a similar manner. In this case, it would mean assessing all B class properties, using similar cap rates in the Income Approach. An arbitrary adjustment to the cap rate in the assessments of B class office buildings on the basis of an adjustment perceived in the cap rates of the assessments of a different class of office buildings has no basis in equity.

[43] That the cap rate varied in direct proportion to the net rental rate used in the Income Approach assessment of the sold property. The Complainant proved in all scenarios that lower net rental rates applied to office spaces of sold properties resulted in lower cap rates. It therefore makes little sense for the Complainant to apply a $16.00 office net rental rate in its cap rate study and derive a higher cap rate (5.25%) than was derived by the Respondent (5.00% cap rate) using higher net rental rates.

[44] It is the opinion of the CARB that the most reliable cap rate is generated from an income application that is typical and closest to the time of sale of the sold property being analyzed. On that basis, it seems that the Respondent more reliably calculated cap rates by using July 1, 2011 typical net rental rates for B class properties that sold in 2011 and July 1, 2012 typical net rental rates for B class properties that sold in 2012.

Board's Reasons for Decision:

[45] The Calgary Tower is a well known and very unique tourist destination in the City of Calgary. There are unlikely any buildings in the neighbourhood or the entire city that would be suitable or helpful in assessing net rental rates or cap rates, which would allow for a proper assessment using the Income Approach to value. The Cost Approach may indeed be the most appropriate method to assess its value when consideration is given to its uniqueness and its use as a tourist attraction.

DATED AT THE CITY OF CALGARY THIS 22nd **DAY OF** November **2013.**

[redacted]

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C1 from File #72691	Complainant Disclosure
3. C1 from File #72066	Complainant Disclosure
4. C2 from File #72691	Complainant Rebuttal
5. 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 Office Only)

Column 1	Column 2	Column 3	Column 4	Column 5
CARB	Retail	Stand Alone	Cost Approach	