



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:

Balboa Land Investments Inc. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Golden, Board Chair, PRESIDING OFFICER

D. Julien, BOARD MEMBER

T. Livermore, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 068082908

LOCATION ADDRESS: 102 8 AV SW

FILE NUMBER: 74046

ASSESSMENT: \$10,990,000

This complaint was heard on the 28th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *B. Neeson, Agent*

Appeared on behalf of the Respondent:

- *E. Borisenko, Assessor, City of Calgary*

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

[1] The parties discussed the process of hearing the nine files before the Board. It was agreed that there are only two main issues in the complaint and these apply to all the properties in question. File 74194 has an additional issue related to parking which will be determined in that decision. Most of the discussion in each file will occur around the issues of rent rate and capitalization rate (cap rate). It was agreed that this file, 74046, would be the lead or master file and the detailed information, questions and argument heard would be carried forward to files 74056, 74193, 74194, 74195, 75348, 75349, 76174, and 76271. The Respondent will have some site specific statements on each file. Since files will have small differences and there is more than one owner involved, each file will have a separate decision. Both the Respondent and the Complainant have the same package for each file and the subject properties are all in close proximity to each other and in the same district.

Property Description:

[2] The subject property is a 28,423 square foot (sf) building, of mostly office uses located in the Stephen Ave Mall area (DT8). The A2 quality building was constructed in 1971. An assessment was prepared using the Income Approach to valuation. The DT8 district is a small area which is the portion of the downtown known as the Stephen Ave Mall and the subject property is a registered historic site. Because of the special nature of the area the main floor areas are given one rental rate regardless of the use. The other factors used in the income calculation are also the same for all the buildings in the district.

[3] There is no dispute with the method used in calculating the assessment, nor the data used to calculate the cap rate. The Complainant is also in agreement with the lease data used by the Respondent with the addition of one lease.

Issues:

[4] **Issue 1;** Is the rental rate of \$38.00 psf applied to all main floor areas in DT8 the appropriate rental rate for the subject parcel?

[5] **Issue 2;** Is the cap rate of 5.75% appropriate to be used in the income calculation?

[6] **Complainant's Requested Value: \$9,730,000**

[7] **Board's Decision On Issue 1;** The rental rate of \$38.00 psf applied to all main floor areas in the DT8 is the appropriate rental rate for the subject parcel.

Position of the Parties

Complainant's Position:

[8] The Complainant stated that there was largely agreement with the Respondent regarding the data used to develop the rental rate in the DT8 area. The table of leases in C-1 pg 44 is the same as the leases used by the Respondent with the exception of a 2013 lease. Eleven recent leases were found in the area and available to be used to calculate the rate. Four leases were determined by both the Respondent and Complainant to be high and not typical and were removed from the calculation. The difference is that the Complainant had an additional, recent lease (Winners) for \$19.45 psf and when this is added to the remaining seven valid leases, results in a median of \$33.00 psf and a weighted mean of 32.97 psf (C-1 pg 43). Based on this calculation a rental rate of \$33.00 psf. was used in the Complainant's income calculation.

[9] The Winners lease is valid and should have been used by the Respondent as the recently negotiated rate is for a higher amount and the extended term of the lease is for ten years.

Respondent's Position:

[10] The Respondent explained that the DT8 area was the Stephen Ave Mall portion of the downtown. Studies of the area indicated that all main floor street level areas should be given the same rental rate regardless of use. The typical rent rate was based on an analysis of area leases shown in exhibit R-1 pg 147. It was noted that a series of leases in the structure known as Fashion Central seemed high and outside the range of typical leases. This is likely because the structure had undergone extensive and high quality renovations. Although these leases were considered they were removed from the final rental calculation. Using the remaining seven leases the result was a median of \$38.50 psf, a mean of \$37.13 psf and a weighted mean of \$39.39 p/sf. The rate of \$38.00 /sf. was determined to be the typical rental rate for the DT8 district.

[11] With respect to the Winners lease considered by Complainant, the lease was not used in the Respondent's calculation as it was considered to be a lease extension as opposed to a new lease or lease renewal. The \$19.45 psf. also appears to be significantly lower than the other recent leases, likely because the lease is for the entire building indicating that this is a blended rate for all the spaces.

Board's Reasons for Decision on Issue 1:

[12] Upon a review of the evidence the Board finds that the key determination is the validity

of the Winners lease for the value of \$19.45 psf for use in the calculation of a typical rental rate. All other leases used in the calculation are agreed to. The Board places little weight on the Winners lease as there are a series of weaknesses and questions. Firstly, there is a concern that the lease is a blended rate. The Board agrees with the Respondent that the rate of \$19.45 psf is likely a lower rate as it includes, in addition to the main floor, the rental of upper floor and basement storage space. As a result the Complainant is using a lease that contains the lower basement areas and upper floor space to calculate a typical rental rate for main floor areas

[13] A reading of a portion of the Winners lease also indicates that \$19.45 psf may not represent the total rent to be paid, as there appears to be an additional payment of a percentage of the gross income, after a certain floor level of income is reached. The Board notes that even if the lease was accepted, the value is on the extremely low end of the rental rates. Given there was agreement to remove four very high lease rates on the upper end of the range it would be reasonable to remove this lease at the lower end of the lease data range. The Respondent is correct not to use the lease in question in the rental analysis.

[14] A review of the rental data indicates that all the most recent leases from 2012 and 2013 are at a rent higher than the assessed rate thus supporting the assessment and the rental rate of \$38.00 psf. The assessment is not amended by the Board based on the rental rates.

[15] **Board's Decision Issue on Issue 2:** The cap rate of 5.75% is appropriate to be used in the income calculation.

Position of the Parties

Complainant's Position:

[16] A cap rate study was presented by the Complainant and is shown in C-1 pg 22. It is the same study as used by the Respondent and contains only one sale. A cap rate for the sale is the agreed value of 5.88%. The Complainant suggests that the Respondent simply rounded the cap rate for the sale downward to get the current assessment rate of 5.75%. This is an error as the 5.88% is closer to the requested rate of 6.00% and should have been rounded upward. This request was supported by two arguments; firstly two sales comparables and secondly examples of where the Respondent has rounded upwards in other districts.

[17] Two sales of two story retail/office, free standing, buildings were presented to the Board supporting the requested cap rate. A property at 100 7 AV SW sold at a reported 7.00% cap rate. As well a structure at 511 10 ST SW that sold for a 7.50% cap rate. The Complainant noted that in both the comparable properties the Respondent used a 6.00% cap rate for the assessment. These two sales demonstrate that the requested cap rate of 6.00% is very reasonable for the subject property. Although not located in the DT8 area these sales are valid comparables for support of the requested cap rate.

[18] Cap rates for Downtown A, B and C properties were presented indicating that cap rates are rounded to the closest numbers. This practice should be continued in the DT8 district.

Respondent's Position:

[19] The Respondent presented some background to the cap rates in the DT8 district in R-1

pg 150. In the previous assessment year the cap rate was based on six sales and resulted in a 5.50% cap rate. For this year five of those sales became dated and were not used to calculate the current assessment. This leaves only one sale to be considered in the cap rate determination. The Leeson and Lineham Building at 209 8AV SW was sold in 2012 at a cap rate of 5.88%. This structure is on the Stephen Ave Mall and has main floor retail and five stories of office space above the main floor.

[20] The typical cap rate to be used in the income calculation was determined by considering the one sale cap rate together with consideration of the trends in the economy, the previous cap rate and the comparability of the one sale to other properties in the district. The rate of 5.75% represents an increase in the cap rate and recognizes that the Leeson and Lineham Building is indicative of, but not entirely a typical building in the DT8 district.

[21] In response to the evidence of the Complainant the Respondent pointed out several weaknesses. Firstly the sales comparisons presented by the Complainant are not applicable as they are not part of the special commercial area of the Stephen Ave Mall. Specifically the structure at 511 10 ST SW is in the far west portion of the downtown subject to different influences and accordingly not comparable. The property at 100 7 AV SW is not a valid comparable as it is part of a portfolio sale intended for redevelopment. Lastly the cap rates for the other downtown districts are subject to different inputs such as rent rates and vacancies making the comparison not useful.

[22] The Respondent concluded with a third party report indicating that in general Calgary retail properties are reporting a trend to lower cap rates across the City rather than the increase being requested by the Complainant.

Board's Reasons for Decision on Issue 2:

[23] The Board finds that the Complainant's sales comparables are weak as they are properties outside the DT8 district and the special circumstances of the Stephen Ave Mall. As well the property at 511 10 St SW is far removed from the subject and of limited value as a comparison or support of the cap rate. With respect to the 100 7 AV SW comparable the sale is questionable as it was part of a portfolio sale and the land is not considered comparable because of location. It is noted that neither comparable has a sale cap rate near the 6.00% requested cap rate. Regardless of how the Respondent assesses these properties they offer little support to the requested cap rate.

[24] The remaining main argument of the Complainant is that the Respondent made an error in the mathematical rounding of the cap rate of the one sale available to both parties. The Board accepts the position of the Respondent that the preparation of a typical cap rate in the mass appraisal system is more than a mathematical process and includes a judgement. The Board notes that there is only one sale and therefore the 5.88% cap rate of the one sale may be indicative of a typical cap rate but find it is not necessarily the rate applicable to the area. To create a typical cap rate there should be other considerations and judgements. The Board is not in agreement with the Complainant that in a situation of limited data the calculation of a cap rate is simply mathematical. A detailed discussion of the entire process used to determine the typical cap rate did not occur at the hearing, the Complainant did not provide sufficient evidence to support the contention that the process was a simple mathematical calculation.

Board's Decision

[25] The Board confirms the assessment at \$10,990,000

DATED AT THE CITY OF CALGARY THIS 26 DAY OF August 2014.

A handwritten signature in cursive script, appearing to read "Tom Golden", is written over a horizontal line.

Tom Golden

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant 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 ADMINISTRATIVE USE

Decision Identifier: 102 8 AV SW

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Carb	Non Res	Office\retail	Income	Cap and rental