



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:

Sundance Place II Ltd.
(represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Ms. V. Higham, PRESIDING OFFICER
Mr. J. Kerrison, BOARD MEMBER
Mr. J. Massey, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	201139383
LOCATION ADDRESS:	1000 15 Sunpark Pz SE Calgary, Alberta
FILE NUMBER:	74445
ASSESSMENT:	\$71,030,000

This complaint was heard on August 11, 2014 at the office of the Calgary Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4th Floor, Boardroom 5.

Appeared on behalf of the Complainant:

- **Mr. B. Neeson** **Agent, Altus Group**

Appeared on behalf of the Respondent:

- **Mr. M. Ryan** **Assessor, City of Calgary**
- **Mr. R. Tharakan** **Assessor, City of Calgary**

Procedural or Jurisdictional Matters:

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] The Board notes an executed Agent Authorization Form present in the file.
- [3] All disclosure materials were received in a timely fashion.
- [4] No preliminary issues were raised by either party.
- [5] Upon request, the Board carried over both parties' evidence, arguments, and questions, as well as the Complainant's rebuttal disclosure (noted on the cover sheet of Exhibit C2 of the lead file), from "lead file" 74445, heard by this panel on the same day.

Property Description:

[6] The subject is assessed as an A+ quality, four storey, low rise suburban office property (CS0302), located at 1000 15 Sunpark Plaza SE on 2.3 acres of land. The parcel is improved by one commercial office building, comprising 171,422 square feet (sf) of space. The subject is assessed on the income approach to value, with an applied rental rate of \$24 per square foot (psf), and a capitalization (cap) rate of 6%, (not under complaint). Additionally, the parcel contains 501 enclosed parking stalls, whose rate is not under complaint.

Issues:

[7] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. During the hearing, the Complainant requested a different assessment amount (\$65,820,000) than originally noted on the Complaint Form (\$62,030,000), and raised the following sole issue for the Board's consideration:

- 1) What is the appropriate rental rate psf to apply to the subject property: the assessed \$24 or the requested \$22?

Complainant's Requested Value: \$65,820,000

Board's Decision: The Board varies the subject assessment from \$71,030,000 down to **\$65,820,000.**

Legislative Authority, Requirements and Considerations:

[8] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

Section 293 of the *Act* requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 - (a) apply the valuation and other standards set out in the regulations, and
 - (b) follow the procedures set out in the regulations.

Sections 2 and 4 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) state:

- (2) An assessment of property based on market value
 - (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.
- 4(1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties

Issue: What is the appropriate rental rate psf to apply to the subject property: the assessed \$24 or the requested \$22?

Complainant's Position:

[9] The Complainant submitted a rental analysis comprising four leases of A+ properties in the proximate vicinity of the subject, with median/mean/weighted mean rates of \$21.50, \$21.13 and \$21.98 psf respectively, over a 24 month period dating back from the July 1, 2013 valuation date.

[10] The Complainant argued that proximate vicinity to the subject in this case is a more important factor than nearness in time to the valuation date with respect to the typical rental rate analysis. The Complainant's lease comparables (comps) were all within four kilometres of the subject (commencement date going back as far as 20 months), while the Respondent's leases all commenced within 12 months of the valuation date, but were geographically much further away from the subject.

[11] The Complainant argued that three of the City's five leases (5 Richard Way SW and two in 4838 Richard Road SW) are not comparable enough to be reliable, since they operated in vastly different economic zones being 20 kilometres away.

[12] Respecting one of the two leases common to both parties (60 Sunpark Plaza SE), the Complainant also argued that the City erred in utilizing the contract lease rate of \$25 psf in its study, rather than the "net effective" rate of \$22.50 psf derived by subtracting the value of a "six-month-rent-free" tenant inducement from the total lease value over the five year term.

[13] The Complainant submitted that the “net effective” rate should be used because this “free rent” inducement effectively reduces the value of the rate paid by the tenant over the entire term. The Complainant referenced CARB 1994/2011-P which describes this type of rent free period as a “signing bonus” that must be subtracted from the total value of a lease over the entire term in order to derive the “net effective” rate.

[14] In rebuttal, the Complainant argued that the Board need not revise the applied subject cap rate if it were to adjust the rental rate (argued by the Respondent). The Complainant further argued in the alternative, however, that even if the Board were to review the cap rate based on a revised rental rate and new net operating income (NOI) parameters, the typical cap rate in the City’s study would not be affected at all.

Respondent’s Position:

[15] The Respondent submitted the City’s rental study comprising six leases of A+ properties, with median/mean/weighted mean rates of \$24.50, \$24 and \$24.79 psf respectively, over a one year period dating back from the July 1, 2013 valuation date.

[16] With respect to the common lease at 60 Sunpark Plaza SE, the Respondent argued that the City correctly applied the contract \$25 psf rate, because the subject must be assessed for its full fee simple value, which in this property, includes a leasehold interest benefitting the tenant created by the free rent that must be reflected in the assessment.

[17] The Respondent referenced MGB decisions 133/02 and 048/03 in support of this position, and asked the Board not to exclude the tenant inducement amount from the value of the contract rental rate.

[18] The Respondent defended the City’s choice to prioritize nearness in time (12 month valuation period versus the Complainant’s 20 months) over proximity to the subject, arguing that this reflects a better snapshot of market activity (being closer to the valuation date), and noting that the City’s comps are all similar A+ properties that operate under similar economic influences.

[19] The Respondent further argued that the subject enjoys more parking space than other comps in the City’s study, in addition to other locational advantages (nearby Shawnessy Power Centre and a C-Train station), which justifies the subject’s slightly higher psf assessed rate.

BOARD’S FINDINGS AND REASONS:

[20] The Board finds that the appropriate rental rate to apply to the subject is the requested \$22 psf, based on the mean of the four most comparable lease rates submitted by both parties.

“Contract” versus “Net Effective” Rental Rate (60 Sunpark Plaza SE):

[21] The Board finds that the “net effective” rate of \$22.50 better reflects the typical market value a prospective tenant would attach to this comparable property, given the substantial value of the tenant inducement.

[22] The Board was persuaded by the conclusions of the Alberta Assessors’ Association, *Office Valuation Guide*, June 1998 (quoted in CARB 1994/2011-P):

Tenant Inducements

In order to establish the typical net market rent in situations where the tenants receive inducements, it is necessary to analyse the terms and conditions of these inducements.

Landlords often offer inducements to tenants in order to attract them into a building. Generally speaking, the value of inducements is higher in times of higher vacancies. Inducements can consist of one or more of the following:

- Leasehold improvements;
- Cash payments for various reasons;
- *Periods of free rent*;
- Lease buy-outs.

Inducements affect both the net income received by the owner and the effective rent paid by the tenant. For example, a five year net lease for 2,500 square feet at a rental rate of \$20 per square foot per annum is a fairly straightforward rental arrangement (total rent over five years = \$20 x 2,500 x 5 = \$250,000).

If, however, the tenant negotiates one year of free rent or a \$50,000 "signing" bonus, then the effective rent paid by the tenant is something less than the \$20 per square foot stated on the rental rolls.

Instead of paying \$250,000 over the five year lease, the tenant now pays \$200,000 or (without considering the time value of money), an average rate of \$16 per square foot. [emphasis added]

[23] With respect to the MGB decisions referenced by the Respondent (MGB Orders 133/02 and 048/03), the Board finds that the particular facts of those cases are not directly relevant to this complaint, since the inducements in those hearings were allowances and improvements not easily quantifiable (unlike the subject hearing, where the value of the rent-free period is readily established).

[24] Thus, the Board accepts the net effective rate of \$22.50 psf for this comparable sale.

Leasehold Interest (60 Sunpark Plaza SE):

[25] The Board finds no evidence to support the Respondent's claim of a leasehold interest benefitting the tenant respecting this lease.

[26] The Respondent quoted MGB 145/07, wherein that Board stated: "The leasehold interest would have value when the contract rent payable by the tenant(s) is lower than the market rent." This is not the case in the subject hearing.

[27] A leasehold interest favouring the tenant can also have value when a tenant sub-leases to a third party for higher than the contract rent. A leasehold interest favouring the landlord can have value when the contract rent payable by a tenant (locked into a fixed term) is higher than achievable market rates, as in the case of a sustained economic downturn.

[28] Respecting this particular lease, however, the free rent period does not create a leasehold interest affecting property value, because the *typical market rents* achieved by similar properties within that economic zone reflect the net effective lease rate (\$22.50 psf), rather than the face value of the contract lease rate (\$25 psf).

[29] Thus, the free rent "signing" bonus effectually lowers the market rate for that comparable over the five year term, but still reflects the full fee simple estate of the property.

Cap Rate Adjustment:

[30] The Board finds no need to consider revising the typical cap rate applied to the subject property, since the Complainant is not asking for a change to the entire category of A+ quality properties (which could affect the City's typical cap rate analysis), but rather has argued a change to the rental rate of the subject property on a site specific basis.

Conclusion:

[31] The Board finds that the City's three lease comps in Lincoln Park (two in 4838 Richard Road SW and one in 5 Richard Way SW) are geographically too far removed from the subject to be reliably comparable (given the availability of other comps in the proximate vicinity of the subject property), and the Board excluded these three leases.

[32] The remaining two leases in the City's study are common to both parties, leaving four lease comparables for the Board to consider (60 Sunpark Plaza SE, two in 14505 Bannister Road SE, and one in the subject 23 Sunpark Drive SE).

[33] The Board finds that the Complainant's oldest lease (a lease in the subject, commenced 20 months out from the valuation date) is nevertheless current enough to reflect typical market activity as of the valuation date.

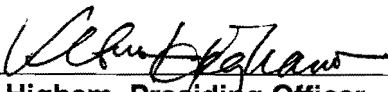
[34] The median/mean/weighted mean of the four leases accepted by the Board is \$21.50, \$21.13, and \$21.98 psf respectively, which reasonably supports the Complainant's requested rate of \$22 psf.

[35] Thus, the Board finds that the best indicator of market value for the subject property is derived by applying the \$22 psf rate to the subject's assessable area of 171,422 sf (along with the other applied income factors of 6% cap rate, 8% vacancy rate, \$13.50 operating costs, 1% non-recoverable costs, and \$1,440 parking rate), resulting in a truncated value of \$65,820,000.

Board's Decision:

[36] For reasons outlined herein, the Board varies the subject assessment from \$71,030,000 down to a truncated value of **\$65,820,000**.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF September 2014.



V. Higham, Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal

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 Only – Roll Number 201139383

Municipal Government Board Use Only: Decision Identifier Codes				
Municipality/Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	Office	Low Rise	Income	Net Market Rent/Lease Rate