

Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Dundee Properties (GP) Inc., COMPLAINANT
(as represented by Altus Group)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
P. Cross, BOARD MEMBER
A. Maciag, 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:	148060908
LOCATION ADDRESS:	14505 Bannister Rd SE
FILE NUMBER:	75705
ASSESSMENT:	\$22,400,000

This complaint was heard on 18th day of August, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *B. Neeson, Agent – Altus Group*

Appeared on behalf of the Respondent:

- *M. Ryan, Assessor – City of Calgary*

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Board as constituted to hear and decide on this matter.

[2] Both parties requested that the all the evidence, questions and answers and closing statements be carried forward from File No. 74284 (heard immediately prior to this hearing) to this file, as the issue and the evidence are exactly the same for both files. The only comments that the parties will make is to describe the subject property. The Board agreed to carry forward the entirety of the hearing from File No. 74284 to this file, including Board questions.

Property Description:

[3] The subject property is a three storey low-rise office building located at 14505 Bannister Rd. SE, in the Midnapore District. The subject area consists of a number of office buildings. The property is 2.15 acre in size, with a total of 61,685 square feet (SF) of assessable area. There are also 51 enclosed parking stalls on the property. The building was constructed in 1999 and is assigned an A+ Quality rating for assessment purposes. The property is zoned Commercial-Corridor 3 (C-COR 3).

[4] The 2014 property assessment is calculated using the Income Approach. The net operating income (NOI) of \$1,344,197 is divided by the capitalization rate of 6.00%, resulting in an assessment of \$22,400,000 (truncated). The specific factors used to prepare the assessment for this A+ Quality low-rise SE office property are presented in the table below.

Sub-components	Area	Rental Rate (\$)	Vacancy Rate %	Operating Cost (\$/SF)	Non-Recoverable %
Office (southwest)	61,224 SF	24.00/SF	8.00	13.50	1.00
Storage	460 SF	3.00/SF	8.00	13.50	1.00
Parking	51 stalls	1,440/stall	2.00	0.00	1.00

Issues:

- [5] The Complainant stated that the 2014 Assessment is incorrect for the following reasons:
- The office rental rate of \$24.00/SF is not correct. The correct office rental rate for this property is \$22.00/SF.

Complainant's Requested Value: **\$20,540,000**

Board's Decision:

- [6] The 2014 Property Assessment is reduced to \$21,470,000, based on changing the office rental rate to \$23.00/SF.

Legislative Authority, Requirements and Considerations:

[7] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[8] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: What is the correct office rental rate for the subject A+ Quality SE property?**Complainant's Position:**

[9] The Complainant presented its 2014 Suburban Office Rental Analysis (page 31, Exhibit C1) consisting of four leases located in three buildings within a few kilometres of the subject and proximal to Macleod Trail South. The leases were signed between November 2011 and December 2012 ranging in value from \$19.00/SF to \$22.50/SF. The weighted average indicates a rental rate of \$22/SF.

[10] One of the lease comparables is a December 2012 lease signed by the owner of the subject building, for a 60,023 SF office property located at 60 Sunpark Plaza SE. The Complainant argued that this is the best indicator of the rental rate for the subject building, in that the two buildings are in the same immediate area, and of the same vintage and design. Furthermore, the owner of the subject building is leasing the entire 60 Sunpark Plaza SE property, and the lease is current. The Complainant presented evidence that the lease is for a 60 month term (5 years) at a face value of \$25/SF, but that the lease includes the first six months are "free rent" (December 2012 to June 2013 inclusive). As a result, the effective lease is at a rate of \$22.50/SF for the life of the lease.

[11] The Complainant presented definitions from various appraisal documents, previous Board decisions and a court decision (Exhibit C2) to support the position that free rent periods need to be recognized in determining the face or net effective rent.

[12] With regard to the 2014 Suburban Office Rental Analysis: A+ Quality SW analysis presented by the Respondent (page 24, Exhibit R1) the Complainant noted that a number of the leases are from properties that are located a considerable distance from the subject and in locations with characteristics quite different than the subject, therefore not good comparables. The Complainant argued that the leases it used in its analysis were more comparable.

[13] The Complainant noted that the City's analysis is based on only twelve months of lease data, which is an arbitrary decision by the City. The Complainant argued that typically the City uses a two year period prior to the assessment date to derive its typical rates, and in some situations even a larger period. The Complainant presented evidence in Exhibit C2 to support this position.

[14] The Complainant presented a table of five Suburban A Class Office Properties used in the A Class Office capitalization rate study (page 76, Exhibit C1) to show the value of these buildings on a per square foot basis. The most recent is the sale of the subject A+ office in April 2013 at a rate of \$358/SF. Another A+ office sale located at 110 Country Hills LD NW occurred in September 2012 at a value of \$335/SF. The Complainant argued that the 2014 Assessment for the subject is at about \$363/SF, demonstrating that the assessment is outside the range of expected value and therefore incorrect.

Respondent's Position:

[15] The Respondent presented its 2014 Suburban Office Rental Analysis: A+ Quality SW analysis (page 24, Exhibit R1) consisting of six leases from five properties located in the SE and SW quadrants. The Respondent stated that office properties located adjacent or proximal to Macleod Trail South are considered as part of the SW quadrant for assessment purposes, as they compete for the same tenants. This analysis includes two leases used by the Complainant in its analysis, including the 60 Sunpark Plaza SE lease, and results in a rental rate of \$24/SF.

[16] With regard to the 60 Sunpark Plaza SE lease, the Respondent argued that the property was occupied by Fluor prior to the new lease being signed, and that it was unusual to sign a new lease for the same space with the same occupant and include a rent free period. The Respondent suggested that this may in fact be the way tenant improvements were allocated, in which case the \$25/SF rental rate reflects the fee simple rental rate for the property. Furthermore, as of the assessment date of July 1, 2013, Fluor was paying \$25/SF for the space.

[17] The Respondent stated that they look at the data available and decide on how far back they need to go for each rate analysis. The desire is to use the most current information, but if insufficient data exists, the analytical period may be extended to two years or more. In this case, the Respondent believes that they have sufficient data to use only a one year period to derive the rental rate.

Findings of the Board on this Issue:

[18] The Board notes that its decision on the correct rental rate is highly influenced by how the 60 Sunpark Plaza SE lease is valued, as it is a large space which impacts the calculation of the weighted mean of the leases presented. Both parties referred to the six month period as a "free rent" period, and there was no evidence presented that this was not so. There was no evidence to indicate that this "free rent" was in lieu of a tenant improvement allowance or other allowance that resulted in improvements to the subject property. The Board relies on the discussion presented by J. McIntyre in *Calgary (City) v. Canadian Natural Resources Ltd. [2010] A.J. No. 1584* (page 51-73, Exhibit C2) Clauses 121 to 128. This is a discussion about how tenant inducements, including tenant improvement allowances, etc., should be handled when calculating face or effective rent. The Board notes that J. McIntyre relied on the definitions of the Real Property Association of Canada and Appraisal Institute of Canada which net out the value of inducements paid by a landlord to a tenant in deriving the net or true value of a lease. The Board concurs and adopts this position in the matter before us. This "free rent" period is provided by the landlord to the tenant apparently only to secure the new lease, therefore must be recognized and netted out to derive the face or true rent. The Board finds that the lease rate that applies to the 60 Sunpark Plaza SE lease is \$22.50/SF.

[19] The Board reviewed the lease comparables presented by both parties, and finds a number of the leases are much smaller spaces than the subject, but such leases are used by both parties given the paucity of data. Using a rate of \$22.50/SF for the 60 Sunpark Plaza SE property and all the leases presented by both parties, the weighted average of the data is \$22.69/SF, indicating that the market rate for this type of office space is \$23/SF. This analysis is set out below.

Address	Start Date	Leased Space SF	Rate \$/SF	Lease Value \$
5 Richard Way SW	13-Jul	3,845	27.00	103815
7370 Sierra Morena Bv SW	13-May	1,943	22.00	42746
4838 Richard Road SW	13-Jan	8,240	24.50	201880
4838 Richard Road SW	Jan-13	26,795	24.50	656478
60 Sunpark Plaza SE	12-Dec	60,023	22.50	1350518
14505 Bannister Rd SE	12-Oct	1,445	21.00	30345
14505 Bannister Rd SE	May-12	10,235	19.00	194465
23 Sunpark Dr SE	1-Nov	39,203	22.00	862466
Total		151,729		3442712
Weighted average \$/SF				22.69

[20] The Board finds that the market rental rate for SW Suburban Office space is \$23/SF.

[21] The Board notes that the subject property sold in April 2013, but was part of a portfolio sale. Both parties agreed that this was a market transaction, but the Complainant suggested that the allocation of value between the subject property and an adjacent bare land property that was part of the portfolio sale may have been somewhat arbitrary. Therefore the Complainant did not rely on sale price as the sole indicator of the market value of this property. The Respondent did not rely on the sale price either, although noted that the sale price of \$22,071,768 supports the 2014 Assessment of \$22,400,000. The Board concurs that the transaction is at market, but finds that the allocation of value between the two properties raises some questions, making the sale price in and of itself, not a reliable indicator of value.

Board's Reasons for Decision:

[22] The 2014 Property Assessment is reduced to \$21,470,000 (truncated) based on the Board finding that the rental rate for office space for the subject property is \$23/SF. No other factors used to derive the 2014 Assessment using the Income Approach were in dispute. The calculation of the assessed value using a rental rate of \$23/SF is shown below.

	Office	Storage	Parking	
Assessed Area/Stalls	61,224.00	460.00	51.00	
Rental Rate	23.00	3.00	1,440.00	
Potential Net Income	1,408,152.00	1,380.00	73,440.00	1,482,972.00

Vacancy Allowance (rate)	0.08	0.08	0.02	
Vacancy Allowance	112,652.16	110.40	1,468.80	114,231.36
Effective Net Income	1,295,499.84	1,269.60	71,971.20	1,368,740.64

Operating Cost (rate)	13.50	13.50	0.00	
Operating Cost Shortfall	66,121.92	496.80	0.00	66,618.72

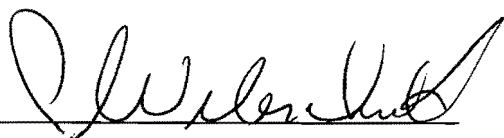
Non-Recoverables (rate)	0.01	0.01	0.01	
Non-Recoverables	12,955.00	12.70	719.71	13,687.41

Net Operating Income				1,288,434.51
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Capitalization Rate				0.06
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Calculated Assessed Value				21,473,909
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DATED AT THE CITY OF CALGARY THIS 3rd DAY OF September 2014.



I. Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure - Methodology
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 MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Suburban Office	A+ Class	Office Rental Rate	