

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:

906 8 th AVENUE CENTRE INC. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Fegan, PRESIDING OFFICER

T. Livermore, BOARD MEMBER

A. Wong, 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:	067070508
LOCATION ADDRESS:	906 8 AV SW
FILE NUMBER:	75749
ASSESSMENT:	\$23,080,000

This complaint was heard on the 9th and 10th days of June, 2014 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, (Altus Group)

Appeared on behalf of the Respondent:

- H. Neumann, (City of Calgary)

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is an office building with an attached parking facility containing a total of 324 parking stalls. 274 of those stalls are the subject of this complaint. The assessment under complaint is the residual amount of the total assessed value of the property (\$77,929,000) minus the exempt portion of the property (\$54,840,000) which consists of the building and 50 parking stalls which are held by the University of Calgary under a lease agreement with the property owner. The entire property consists of a 127,002 square foot office building and the 324 parking space garage. The building was built in 1958 and underwent significant renovations in 2011. The building and 50 parking spaces are leased by the University of Calgary and are used as the University's downtown campus. This portion of the property is classified as exempt from taxation and is assessed on a separate account. The subject of this complaint is the assessed value of the remaining 274 parking stalls.

Issues:

- [3] The physical condition, characteristics and classification of the subject property are issues in this complaint.
- [4] The rental rate used to value the parking stalls is an issue.
- [5] The allowance made to the gross income for operating expenses of the subject property is an issue.
- [6] The capitalization rate applied to the net income of the subject is an issue.
- [7] Assessment equity is an issue in this complainant.

Complainant's Requested Value: \$ 9,890,000 (C-1, pg. 38)

Board's Decision: The complaint is allowed in part and the assessment is revised to \$20,980,000.

Position of the Parties

Complainant's Position:

[8] It was the Complainant's position that the subject property was a free standing parkade and should be treated as such for the purpose of property assessment. The Complainant argued that the assessment under complaint was for 274 parking stalls that should be assessed in the same manner as other free standing parkades. The assessed income of free standing parkades is adjusted downward by 40% to account for the operating expenses which cannot be passed on to building tenants in the form of common area maintenance charges. The Complainant presented a number of parking facilities in downtown Calgary where the 40% operating expense adjustment had been made to the assessed income.

[9] It was the complainant's position that the method used to value the subject was incorrect and resulted in an assessment that was incorrect and inequitable.

[10] The Complainant argued that capitalization rate used to value free standing parkades was incorrect. The capitalization rate of 4.5% was derived from a single sale in which the adjoining land owner was motivated to acquire the abutting parcel in order to own the entire city block and enhance their development opportunities for the half of the block that they already owned. The Complainant provided six, 2013 CARB decisions where the capitalization for parking structures had been amended by the Board.

CARB 70165-P2013	cap changed from 4.5% to 6.25% (rejected Bow Parkade sale)
CARB 70249-P2013	cap changed from 4.5% to 6.25% (rejected Bow Parkade sale)
CARB 70258-P2013	cap changed from 4.5% to 6.25% (rejected Bow Parkade sale)
CARB 72144-P2013	cap changed from 4.5% to 6.0% (calculation error in Bow Parkade sale)
CARB 72146-P2013	cap changed from 4.5% to 5% (rejected Bow Parkade sale)
CARB 72289-P2013	cap changed from 4.5% to 5% (rejected Bow Parkade sale)

[11] The Complainant suggested that the 4.5% capitalization rate used for free standing parkades in 2014 was based solely on the sale of the Bow Parkade and should be disregarded in 2014 in the same manner that it had been disregarded in 2013.

[12] The Complainant argued that the monthly rental rate of \$350 per stall per month was too high and should be reduced to \$300 based on what the subject property is achieving.

[13] The Complainant made an alternative argument, to the extent that if the Board did not agree that the subject property was a free standing parkade, the assessment should still be adjusted downwards. The Complainant offered a capitalization rate analysis using five sales of Class B, B-, and C, office buildings in downtown Calgary. The Complainant had calculated the market rent at the time of each sale to derive the net income to be used in the calculation rate analysis. The market rents ranged from \$19.34 to \$22.13 per square foot depending on the sale date. The median capitalization rate calculated in this analysis was 5.51% and the Complainant requested a cap rate of 5.5%. (if the Board found that the subject property was not a free standing parkade)

Respondent's Position:

[14] The Respondent argued that the subject property was an office complex which included both office space and parking facilities. The Respondent explained that the assessment which is the subject of this complaint is assessed on a separate account because a portion of the

property (the building and 50 parking stalls) are held by the University of Calgary and as such are exempt from taxation. The exempt portion is assessed on one account and the remaining assessment (274 parking stalls) are assessed on a separate account. The Respondent argued that the fact that a separate account had been set up for the exempt portion of the property did not create a free standing parkade.

[15] The Respondent argued that because the subject property was not a free standing parkade it would be wrong and inequitable to make a 40% adjustment to the net income.

[16] The Respondent pointed out that the 50 spaces leased by the University of Calgary had been leased at a rate of \$350 per month. This information was contained on page 27 of exhibit C-1, a figure of 17,500 per month is shown on the rent roll. ($\$17,500 / 50 \text{ stalls} = \350). The Respondent argued that this proved that the \$350 per month used in the assessment calculation was correct.

[17] The Respondent provided a capitalization rate analysis (exhibit R-1, page 52) using 6 sales. The market rents used by the Respondent ranged from \$17.33 to \$22.13. The median cap rate calculated by the Respondent was 4.91% and 5% was used. The Respondent had used market rent as of the valuation date for the year in which the sale occurred to calculate the capitalization rate. The Respondent's market rent analysis uses rental data taken from the twelve months prior to the effective date of each assessment year. (July 01 – June 30)

Board's Reasons for Decision:

[18] The Board agreed with the Respondent that the subject property was not a free standing parkade. The Board agreed with the Respondent that the fact that the exempt portion of the subject property had been assessed on a separate account for the purpose of distinguishing between the taxable and exempt portions of the property did not change the physical characteristics of the property.

[19] Because the Board found that the subject was not a free standing parkade there was no need to determine the correct capitalization rate for parkades.

[20] The Board noted that the parking income being achieved from the 50 parking stalls leased to the University of Calgary was \$350 per stall per month, the same rate used by the assessor, but the remaining 274 stalls were not achieving that amount and this was the basis for the Complainant's request to reduce the assessed rate to be in line with the rent that the stalls were achieving (\$293/stall/month).

[21] On page 27 of exhibit C-1, the Board noted that the subject property was currently achieving \$24.00 per square foot and is assessed at \$22.00 per square foot for the office space. The Board is aware that the office portion of this property is not the subject of this complaint, but the assessment that is the subject of this complaint is the residual amount of the total property assessment less the exempt portion. The Board found no reason to deviate from the practice of applying market rent to the office space or the parking spaces.

[22] The capitalization rate analysis provided by the two parties was similar but resulted in capitalization rates of 5% (Respondent) and 5.5% (Complainant). There were two reasons for this difference. The Respondent included the sale of 520 Fifth AV SW and the Complainant did not, also the Complainant and Respondent had relied upon rental data for two different points in time (sale date versus effective date).

CAP RATE ANALYSIS SUMMARY

ADDRESS	SALE PRICE	S.P. / SQ. FT.	Complaint Cap	Respondent Cap
855 8 AV SW	\$30,400,000	\$401.71	5.51%	5.51%
639 5 AV SW	\$114,200,000	\$407.23	5.16%	4.45%
520 5 AV SW	\$98,200,000	\$506.69	N/A	4.35%
833 4 AV SW	\$63,725,000	\$407.44	5.26%	4.80%
635 6 AV SW	\$69,125,000	\$345.45	5.6%	5.02%
521 3 AV SW	\$52,150,000	374.82	5.91%	5.39%

[23] The Board noted that the sale price was very consistent for three of the sales but varied significantly for the other three sales. There was an explanation for two of the three sales, 635 6 AV SW has two office towers on the property one is classified as a B building and the other is classified as a C building. 521 3 AV SW is classified as a B- building.

[24] The Complainant had excluded the sale of 520 5th AV SW from his analysis because the sale price per square indicated to him that this building may be a higher class than the others. The Board noted that the 2013 assessed value (July 01, 2012 effective date) for this property was \$85,350,000 and it sold in November of 2012 for \$98,200,000.

[25] The Board noted that by using the effective date of the year in which the sale occurred the Respondent acknowledges that the income should be relevant to the time frame in which the sale took place but the Respondent stopped short of estimating the market rent as of the sale date.

[26] The Board noted that by using a twelve month period prior to the effective date of assessment, assuming the data is evenly distributed throughout the period, the midpoint of the analysis period would be January 01 of each year not July 01. This results in market rent estimates that are six months prior to the valuation date. In a stable market this may not be significant but in an increasing market the use of outdated market rents would result in a lower cap rate estimate and in a decreasing rental market the time gap would result in a higher cap rate.

[27] The Board had reference to the Court of Queen's Bench decision of the Honourable Justice Lutz dated December 11, 2008. In that decision the Judge agreed with the Respondent that evidence of any transactions that occurred within the assessment year as defined in the Matters Relating to Assessment and Taxation Regulation is not post facto evidence. (page 111 of the decision). In addition to the definition of the Assessment Year contained in M.R.A.T., the Board took note of the definition of "year" in Section 284(1)(x) of the M.G.A.

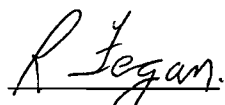
[28] The Board noted that the capitalization rate hierarchy for downtown Calgary contained an unusual anomaly. Typically, one would expect the higher Class properties to have lower capitalization rates than the lower class properties. For the Class B capitalization rate to be 15% lower than the capitalization rate for the Class AA is unusual.

OFFICE CAPITALIZATION RATE SUMMARY (exhibit R-1, page 50)

Quality Class	Capitalization Rate
AA	5.75%
A	5.75%
B	5.00%
C	5.75%

[29] The Board placed a higher reliance on the Complainant's analysis and revised the capitalization rate for the subject property to 5.5%.

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



R. Fegan

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Disclosure
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.*

CARB Identifier Codes

Decision No.		Roll No.		
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office with parking	Market Value, equity	Rental rate, cap rate

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