

**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:**

**1688738 ALBERTA LTD., COMPLAINANT**  
**(as represented by AEC Property Tax Solutions)**

**and**

**The City Of Calgary, RESPONDENT**

**before:**

**BOARD CHAIR: P. COLGATE**  
**BOARD MEMBER: T. LIVERMORE**  
**BOARD MEMBER: J. PRATT**

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: 049012727**  
**LOCATION ADDRESS: 2583 29 STREET NE**  
**FILE NUMBER: 71078**  
**ASSESSMENT: \$5,260,000**

This complaint was heard on 7th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Brock Ryan, AEC Property Tax Solutions*
- *Michael Oh, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *Michael Ryan, City of Calgary*
- *Chelsea MacMillan, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

[2] The parties requested that all matters relating to the capitalization rate be carried forward from Hearing File 72183, Roll Number 129178505, 10101 Southport Road SW.

[3] The Complainant noted for the Board the issue on capitalization rate would be dependent upon the Board's decision on the issue for the requested assessment based upon the sale of the property.

[4] The Board noted that although the complaint form submitted had indicated Matters 1, 3, 4, 5, 6, 7, 9 and 10, the hearing would proceed with presentations on only Matter 3 – the assessment amount. All other matters were withdrawn by the Complainant.

**Property Description:**

[5] The subject property is an A- quality office building located in the community of Sunridge. The 23,296+ square foot structure is situated on a 4.05 acre/176,534 square foot direct control, land parcel. The property is assessed on an income approach at \$16.00 per square foot, 8.0% vacancy allowance, \$12.50 per square foot operating costs and 1.00% non-recoverable rate. The net operating income (NOI) is capitalized at 6.00% to determine the assessed value.

**Issues:**

[6] The primary issue placed before the Board is a request for the assessment to be based upon the actual sale price of the subject property.

[7] The secondary issue of capitalization rate was a requested rate of 6.50% for the quality 'A' office structure.

**Complainant's Requested Value: \$5,100,000.00**

**Board's Decision:**

[8] The Board, upon review of the evidence submitted by the Complainant and the Respondent, found sufficient evidence was provided to justify a change to the assessment of the property under complaint.

[9] The Decision of the Board was to amend the assessment to **\$5,100,000.00**

**Legislative Authority, Requirements and Considerations:**

[10] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[11] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

**Position of the Parties****Complainant's Position:**

[12] In the interest of efficiency the Complainant restricted its comments to the evidence particular to the sale of the subject property. All information with respect to the capitalization rate was carried forward from the hearing on File 72183.

[13] The Complainant submitted a capitalization rate analysis for the sale of the subject property using the City of Calgary parameters to determine the NOI. The Complainant then adjusted the sale price by removing what was considered to be excess land at the rate of \$950,000 per acre. After removal of the excess land value the Complainant presented a revised sale price of \$3,347,250 and a capitalization rate of 9.45% (C1A, Pg. 188)

[14] The complainant submitted the RealNet document on the sale of the subject property, noting the sale for \$5,100,000 was registered on August 1, 2012, one month after the valuation date of July 1, 2012. The Complainant noted the sale was listed as a market sale. (C1A, Pg. 189-190)

[15] Further evidence on the sale included the Commercial Edge document which also indicated the sale price and the registration date of the transfer. (C1A, Pg. 191)

[16] The Complainant submitted copies of the Land Title, the Transfer of Land document and Corporate Searches to establish the arms length nature of the sale. (C1A, Pg. 192-204) Noted in the Transfer of Land document were the dates attached to the signatures of July 18<sup>th</sup>. 2012 and July 24, 2012, indicating an earlier date than the registration date. The Complainant submitted this would indicate the actual sale was negotiated prior to the July 1, 2012 valuation date.

[17] The Complainant submitted additional information as to the future development proposed for the site after the sale, with the construction of two separate structures. (C1A, Pg. 219-238)

[18] The Complainant submitted numerous Calgary Assessment Review Board (CARB) and Court Decisions in support of its position. (C1A, Pg. 247- forward (pages not numbered)) The

Complainant made special note of the Alberta Court of Queen's Bench decision by Justice J. Acton (697604 Alberta Ltd. v. Calgary(City)) in which a decision of the Municipal Government Board (MGB) was set aside and returned to the MGB for reconsideration based upon the sale price of the property in the case, resulting in a reduction in the assessment. (C1A, Pg. 305-311)

### **Respondent's Position:**

[19] The Respondent acknowledged and accepted the carrying forward of the evidence on capitalization rate from Hearing File 72183.

[20] The Respondent put forward that the City of Calgary was legislated to prepare assessments using mass appraisal techniques further to Matter Relating to Assessment and Taxation Regulation (MRAT) under the authority of the Act.

Part 1  
Standards of Assessment  
Mass appraisal

- 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.

[21] It was the Respondent's position that the City of Calgary had no authority to assess any property on the basis of the individual property's sale price. (R1, Pg. 6-8)

[22] The Respondent took exception to the percentage amount of the requested reduction in that it amounted to only a 3.04% change to the assessed value. The Respondent argued "it has been the long standing policy of the Municipal Government Board and the CARB to not Alter Assessments below 5% unless for factual reasons as there is a 'range of what constitutes market value'". The Respondent referenced prior decisions from the MGB and CARB in support of its argument. (R1, Pg. 9)

[23] The Respondent had no dispute with the actual sale of the property or the validity of the sale as presented.

### **Board's Reasons for Decision:**

[24] The Board reviewed carefully the evidence placed before it when deliberating its decision.

[25] The Board, when making its decision, took special note of the sale of the subject property registered on August 1, 2012, just weeks after the valuation date. No evidence was submitted on the sale to lead the Board to believe this was not a valid arms-length transaction.

[26] In making its decision the Board accepted guidance from the Court of Queens's Bench of Alberta case 697604 Alberta Ltd. v. City of Calgary, 2005 ABQB512, being a decision by Honourable Madam Justice L.D. Acton in which the Justice states " ... I agree with the following comments from Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd., et al (1984),447 O.R. (2nd) 766 (Ont. H.C.J. Div. Ct) at Page 767:

*"It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980,*

*c.31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 1892), the price paid in a recent free sale of the property itself, where in the case there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that a recent free sale of the subject property is generally accepted as the best means of establishing the market value of that property .....I think that generally speaking the recent sale price, if available as it was in this case, is in law and, in common sense, the most realistic method of establishing market value."*

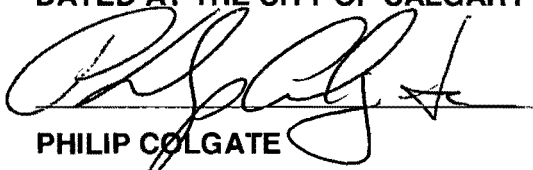
[27] While the Board appreciates the guidelines set out in MRAT, under which the City of Calgary must operate, the Board must also look to the direction given by Justice Acton in reaching its decision. The Act defines 'market value' as the amount that a property might be expected to realize if it sold on the open market by a willing seller to a willing buyer.

[28] The Board found in the case presented that market value for the subject property had been established through an arms-length transaction.

[29] The secondary issue of capitalization rate is a null argument in the present case as a result of the Board's decision on Issue 1. Accordingly the issue was not addressed.

[30] The Board revised the assessment to \$5,100,000.00.

DATED AT THE CITY OF CALGARY THIS 21<sup>st</sup> DAY OF November 2013.



PHILIP COLGATE  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C1A	Complainant Disclosure
3. 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**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Warehouse Single Tenant	Cost/Sales Approach	Equity

**LEGISLATIVE REQUIREMENTS****MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

**Division 1  
Preparation of Assessments****Preparing annual assessments**

**285** Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

**289(2)** Each assessment must reflect (a)the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

**ALBERTA REGULATION 220/2004  
Municipal Government Act  
MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

**Part 1  
Standards of Assessment  
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(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.

**Valuation date**

**3** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.