

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:

The Standard Life Assurance Company of Canada., (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

**T. B. Hudson, PRESIDING OFFICER
J. Rankin, BOARD MEMBER
J. Lam, 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 2013 Assessment Roll as follows:

ROLL NUMBER: 067094706

LOCATION ADDRESS: 1015 4 ST SW

FILE NUMBER: 70151

ASSESSMENT: \$30,960,000

This complaint was heard on the 16th day of September, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *A. Farley*
- *B. Peacock*

Appeared on behalf of the Respondent:

- *L. Wong*

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

[1] The Parties advised the Board that their evidence and argument would be very similar for most of the roll numbers under complaint this week. The properties are B class office/retail buildings located in the Beltline district, and the only issue in dispute is the capitalization rate applied in calculating the 2013 assessments.

[2] The Parties requested that in order to avoid repetitive presentations of the same material, perhaps the Board could consider hearing complete submissions in the context of complaint file #70151, (i.e. Roll 067094706), and carry the evidence and argument forward in our deliberations respecting all of remaining complaint files.

[3] The Board agreed to the Parties' request, but cautioned that the complaint files would be individually considered, and that the disclosures and any rebuttal would be entered into evidence using the normal procedures.

Property Description:

[4] The subject property is a class B office/retail building located in the BL3 area of the Beltline district. It includes 112,943 square feet (sf.) of office space, 1,271 sf. of retail space, 368 sf. of storage, 73 underground, and 10 surface parking stalls.

[5] The value parameters used to prepare the assessment include \$15 per square foot (psf.), for office space, \$22 psf. for retail space, \$3 psf. for storage, \$2,700 per stall for underground parking and \$2,400 per stall for surface parking.

[6] After deductions for vacancy and non-recoverables, net operating income of \$1,655,298 has been capitalized at a rate of 5.25%, yielding the assessed value estimate of \$31,529,486. The estimate includes \$561,500 of tax exempt value, leaving the taxable assessment at \$30,967,986, or \$30,960,000 (rounded).

Issues:

[7] The dispute between the Parties was focused on the capitalization (cap), rate that should be applied in order to calculate an assessment estimate that best reflects the market value of the subject property.

[8] The Complainant requested a cap rate of 7.00% be applied, rather than the 5.25% used in the current assessment. None of the other value parameters used in the 2013 assessment estimate were in dispute.

Complainant's Requested Value: \$23,647,117, less the tax exempt value of \$421,100, leaving the taxable assessment at \$23,226,017 or \$23,220,000 (rounded).

Board Decision: The 2013 taxable assessment of the subject property is reduced to \$25,923,268 or \$25,920,000 (rounded), based on application of a 6.25% cap rate to the 2012 assessed net operating income (NOI); less the tax exempt portion valued at \$561,500. The CARB has no jurisdiction to disturb the tax exempt portion of the assessment, as it is not under complaint.

Legislative Authority, Requirements and Considerations:

[9] The Composite Assessment Review Board(CARB), derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(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).

[10] For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing the 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.

[11] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1)(b). The CARB consideration will be guided by MRAT Part 1 Standards of Assessment, Mass appraisal section 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.

Complainant's Position:

[12] The Complainant developed their proposed 7.00% cap rate for July 1, 2012, by analyzing the cap rates generated by the sale of four B Class Beltline office/retail properties during the period from December 1, 2011 to January 18, 2012, (Exhibit C1 Page 21).

[13] The Complainant explained that the cap rate for each sale was calculated by dividing the assessed net operating income (NOI), for the analysis period in which all of the sales occurred, (i.e. July 1, 2011 to June 30, 2012), by the sale price. Cap rates ranged from a high of 9.39% to a low of 4.83%. The average was 7.05% while the median was 6.99%.

[14] The Complainant noted that three of the sale properties in their cap rate analysis were also included in the Respondent's analysis.

[15] However, two of the three common sales yielded different July 1, 2012 cap rates. The Complainant's cap rate for the Dec. 11, 2011 sale of the Alberta Place building located at 1520 4 ST SW sale is 6.29%, while the Respondent reported 5.68%. The Complainant's cap rate for the Dec. 29, 2011 sale of the Dominion Place building located at 906 12 AV SW is 7.69%, while the Respondent reported 6.53%.

[16] The Jan. 18, 2012 sale of the Connaught building located at 1207 11 AV SW was the third sale common to the submissions of the Parties, who also agreed on the 4.83% cap rate.

[17] The August 2, 2011 sale of the Duff Building located at 525 11 AV SW which produced a cap rate of 9.39% was the fourth sale included in the Complainant's analysis.

[18] The Complainant argued that the method used to develop the Respondent's cap rate is inconsistent, in that the assessed net operating income, (NOI), used to derive the 2012 cap rate, is not the same assessed NOI capitalized to calculate the 2013 assessments.

[19] The Respondent used the assessed net operating income, (NOI) derived for the July 1, 2011 valuation date, to derive cap rates from the sales which occurred between July 1, 2011 and December 31, 2011.

[20] The Complainant argued that the July 1, 2011, assessed NOI, was developed from values dating back to at least June 30, 2010.

[21] The Complainant noted that Board decisions CARB 70517/P-2013, and CARB 71535P-2013, support their position, that there must be consistency in the derivation and application of cap rates.

[22] The Complainant also objected to the inclusion of two "portfolio" sales in the Respondent's cap rate analysis, because the actual sale price of one of the properties was not adequately verified, and because the other sale price involved a motivated purchaser.

Respondent's Position:

[23] The Respondent advised that their cap rate methodology uses the assessed NOI from the analysis period closest to the date of the sale being analyzed.(Exhibit R1 page 34).

[24] The Alberta Place, Dominion Place, Keg Building and Cooper Block Building sales, which occurred between July 1, 2011 and December 31, 2011, were analyzed using the July 2011 assessed NOI to derive cap rates. The July 1, 2012 assessed NOI was used to derive the cap rate for the Connaught Building sale which occurred January 18, 2012.

[25] The Respondent submitted Board Order: MGB 145/07, MGB DL019/10, and Board Order MGB 123/10 in support of this methodology.

[26] The Respondent objected to the inclusion of the 2011 sale of the Duff Building for \$8,300,000 in the cap rate analysis of the Complainant.

[27] The Respondent argued that the Duff building was purchased for its potential as a redevelopment project rather than its income stream. In support, the Respondent provided evidence of the 2013 sale of the building for \$18,430,000 following redevelopment.

[28] The Respondent argued that there was no real evidence to conclude that the "portfolio" sales should be excluded from their cap rate analysis. The sales included the August 10, 2011 sale of the Keg Building located at 605 11 AV SW, that yielded a cap rate of 5.25%, and the September 8, 2011 sale of the Cooper Block Building, located at 809 10 AV SW that yielded a 3.63% cap rate.

[29] Both are B class office/retail buildings located in the Beltline. The RealNet sale reports indicate both buildings were purchased by the Allied Properties Real Estate Investment Trust in separate transactions brokered by CB Richard Ellis Canada.

Board Findings and Reasons for Decision:

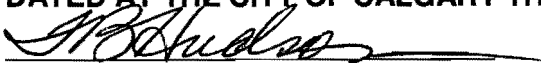
[30] The Board concurs with the findings of the CARB 70517/P-2013, and CARB 71535P-2013, on the topic of the need for consistency in the derivation and application of a typical cap rate to a class of properties.

[31] The definitive case law in this regard is the Supreme Court of British Columbia decision *Westcoast Transmission Co. v. Vancouver Assessor*, Area No. 9 B.C.J. No. 1273(Westcoast), which says in part *"it makes no sense to develop a capitalisation rate on one set of assumptions about long term vacancy rates, long term rents, and long term expenses, and then apply that rate to the income of the subject property if it is not derived in the same way"*.

[32] The Board determined that the three property sales common to the cap rate studies of the Parties(i.e. the Dominion Place, Alberta Place and Connaught buildings), are also the most similar properties to the subject property. Including the cap rate derived from the Duff building sale was questioned by the Respondent, and the Complainant questioned including the cap rates derived from the "portfolio" sales of the Keg and Cooper Block buildings.

[33] Based on the Complainant's more consistent methodology, the median cap rate derived from the three common sales is 6.29% and the mean is 6.27%. The Board has determined that a cap rate of 6.25% should therefore be applied to the July 1, 2012 assessed NOI, to calculate the market value assessment of the subject property.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF October 2013.



T. B. Hudson

Presiding Officer

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

NO.	ITEM
1. C1	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.*

For MGB Administrative Use Only

<i>Decision No. 70151P-2013</i>			<i>Roll No.067094706</i>	
<u><i>Subject</i></u>	<u><i>Type</i></u>	<u><i>Sub-Type</i></u>	<u><i>Issue</i></u>	<u><i>Sub-Issue</i></u>
CARB	Commercial	Office/Retail	Market Value	Cap rate