



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:

Seto Keung, (as represented by Linnell Taylor Assessment Strategies), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Fegan, PRESIDING OFFICER

H. Ang, BOARD MEMBER

P. Charuk, 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:	201604675
LOCATION ADDRESS:	1109 17 AV SW
FILE NUMBER:	70211
ASSESSMENT:	\$6,820,000

This complaint was heard on the 17th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- D. Sheridan (Linnell Taylor Assessment Strategies)

Appeared on behalf of the Respondent:

- C. Fox (City of Calgary)
- T. Johnson (City of Calgary)

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

[1] The Complainant raised the issue of late disclosure. The Complainant did not receive the Respondent's evidence disclosure in accordance with the regulations. The Respondent acknowledged that the disclosure had been sent on July 2, 2013 to an incorrect e-mail address and was not sent to the correct address until the following day, July 03, 2013.

[2] After reviewing AR310/2009, 9 (1) "*A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8*", the Board did not hear any evidence from the Respondent's late disclosure.

Property Description:

[3] The subject property is a thirty-four year old, four storey, office building with 19,460 square feet (C1, page 3). The site area is 9,827 square feet (C1, page 14). The building is primarily office space with some retail space on the ground floor.

Issues:

- [4] The dramatic increase from 2012 to 2013 is not supported by market activity.
- [5] The subject property has a history of higher than typical vacancy rates.
- [6] The market rental rates used by the assessor are higher than market rent for the subject and cannot be achieved by the subject property.
- [7] The capitalization rate applied to the subject is too low.

Requested Value: \$3,300,000.

Board's Decision: The Complaint is allowed in part and the assessment is set at \$3,830,000.

Legislative Authority, Requirements and Considerations:

- [8] **MGA 289(2)(a)** *"Each assessment must reflect 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."*

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

- [9] The 2013 assessment has risen to \$6,820,000 from \$3,100,000 in 2012, with no corresponding increase in the real estate market for similar properties.
- [10] The subject property has a history of higher than typical vacancy, especially the fourth floor, which has been vacant since April 2009.
- [11] Previous decision CARB 1114/2012-P recognized the vacancy issue within the subject property and adjusted the assessment accordingly.
- [12] The Complainant provided a history of the vacancy rate in the subject property averaging close to 40% over the last three years.
- [13] The Complainant described the marketing efforts of the owner, which included changing the property manager, making physical improvements to the building, as well as retaining an experienced Real Estate Broker to actively market space within the subject property.
- [14] The Complainant provided a chart showing the actual office leasing in the subject. The median rental rate was \$12.00 per square foot. There was only one lease at \$15.00 per square foot and the Complainant suggested that this lease was higher than the others because it was for a very small space (390 square feet). The typical market rent applied to the office space by the assessor is \$15.00 per square foot. The typical vacancy rate applied to the office space by the assessor was 8%. The actual 2012 office vacancy rate within the subject property was approximately 44%.
- [15] The Complainant noted that the capitalization rate applied to the subject property was 7.75% in 2012 and is 5.25% in 2013. The Complainant noted that the vacancy situation had not improved and the risk level associated with ownership of the subject property had not improved.
- [16] The Complainant provided a capitalization rate study using five Beltline sales. The sales took place in 2011 and 2012. All sales used in the study were classified as B class buildings by the City. The year of construction of the sales ranged from 1974 to 1980. The average capitalization rate from these sales was 7.40%. The requested capitalization rate is 6.75%.

Respondent's Position:

- [17] The Respondent stated that for the 2013 assessment year, the City no longer recognizes chronic vacancy in calculating assessed values.
- [18] Through questions to the Complainant, the Respondent ascertained that the Complainant had used the NOI from the 2013 Assessment Explanation Supplement for the 2011 sales in the calculation of his capitalization rate.
- [19] The respondent asked the Board to refer to the following previous decisions when making its decision. MGB 145/07, MGB DL 019/10, CARB 1302/2011-P, CARB 1331/2011-P.

Board's Reasons for Decision:

[20] Neither party identified the cause of the ongoing vacancy issue in the subject property. The Complainant did identify activities that the owner had under taken to enable the subject property to return to a normal vacancy rate. To date these activities have not been effective. The Board was satisfied that the owner is attempting to maximize the return on his investment by trying to overcome the vacancy issue. With respect to the vacancy issue, the Board had reference to CARB 1114/2012-P. The Board found that the vacancy rate in the subject is not typical and that it should be reflected in the assessment of the subject property in order to comply with MGA 289(2)(a). The Board accepts the 35% vacancy rate request of the Complainant as being reflective of the characteristics and physical condition of the subject property.

[21] The Board found that the Complainant had attempted to replicate the assessor's method of calculating capitalization rates by using typical market rents, however the Board noted that in the case of the 2011 sales the Complainant had taken the net operating income from the 2013 assessment explanation supplements rather than the 2012 assessment explanation supplements. The Board made reference to the previous decisions referred to by the Respondent.

[22] The Board noted that the requested capitalization rate was lower than the capitalization rate produced by the sales analysis. The Board was satisfied that a 6.25% capitalization rate was appropriate for the subject property. This rate was supported by sales # 2, 3, 4, on page 92 of exhibit C-1.

[23] The Board found that because the Complainant's capitalization rate analysis had been based on typical market rents, there was no need to make any adjustment to the rents used in the calculation of the subject property's assessment.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF August, 2013.



R. Fegan

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.*

CARB Identifier Codes

Decision No. CARB 70211-P			Roll No. 201604675	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office	Market Value	Cap rate, Rental rate

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