



Calgary Assessment Review Board

DECISION WITH REASONS AND DISSENTING OPINION

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 *MGA*).

between:

Telus Communications Inc.
(represented by Colliers International Realty Advisors, Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

V. Higham, PRESIDING OFFICER
B. Jerchel, BOARD MEMBER
J. Pratt, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER:	068076108
LOCATION ADDRESS:	120 7th Avenue SW Calgary, Alberta
FILE NUMBER:	70231
ASSESSMENT:	\$36,000,000

This complaint was heard on 15th day of August, 2013 at the office of the Calgary Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainants:

- **C. Hartley** **Agent, Colliers International Realty Advisors, Inc.,**
- **A. Farley** **Agent, Colliers International Realty Advisors, Inc.,**

Appeared on behalf of the Respondent:

- **D. Grandbois** **Assessor, City of Calgary**

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

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] All disclosure materials were received in a timely fashion, as legislated under the Act.
- [3] No further preliminary matters were raised by either party.
- [4] A dissenting opinion by the Presiding Officer is attached.

Property Description:

[5] The subject, also known as the former AGT Switching Station, is assessed as a 9 storey, B- quality office building located at 120 7th Avenue SW in the downtown commercial core of Calgary (DT1). Owned and occupied by Telus Communications Inc. the building comprises a total of 151,675 square feet (sf) of assessable space, of which 72,019 sf has been converted to commercial office space and 79,656 sf remain as equipment/storage space. It is assessed at \$36,000,000 using the income approach to value, with an applied market rental rate of \$19 per-square-foot (psf) for the office space, \$8 psf for the storage space, and an applied capitalization rate (cap rate) of 5%.

Issues:

[6] The Complainant identified one matter on the Complaint Form as under complaint, that being the assessment amount. During the hearing the Complainant indicated he was requesting a different assessment valuation (\$23,490,000) than originally noted on the Complaint Form (\$21,600,000). The Complainant also raised the following issues for the Board's consideration:

1. What is the correct rental rate to apply to the office portion of the subject property: the assessed \$19 psf or the requested \$15 psf?
2. What is the correct cap rate to apply to the subject property: the assessed 5.0% or the requested 6.5%?

Complainants' Requested Value: \$23,490,000

Board's Decision: For the reasons outlined herein, the Board confirms the current assessment of the subject property at **\$36,000,000**.

Legislative Authority, Requirements and Considerations:

[7] A Composite Assessment Review Board (CARB) derives its authority from the *MGA*, Revised Statutes of Alberta 2000, Section 460.1, which reads as follows:

- (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).

Section 293 of the *MGA* requires that :

- (1) In preparing an 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.

Section 2 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) states:

- (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.
- 4(1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties

Issue #1: What is the correct rental rate to apply to the office portion of the subject property: the assessed \$19 psf or the requested \$15 psf?

Complainant's Position on Issue #1:

[8] The Complainant argued that the subject should be regarded as an "atypical" building, owing to several factors advanced at the hearing, including:

- a. its history as a former switching station utilized exclusively as an "equipment" facility;
- b. the fact that the property is assessed with a "Predominant Use" designation of "Warehouse" owing to the fact that slightly more than half its assessable area is utilized and assessed as "storage space";
- c. the fact that there are no windows on two sides of the building, reducing its attractiveness as a rentable office-space property;
- d. the fact that it is entirely owner-occupied; and
- e. the relatively poor building condition/quality of the property, characterized as being on the "low-end" of the B- quality properties in the downtown.

[9] The Complainant submitted nine lease comparables [Exhibit C1, p.19] drawn from three office buildings in the downtown, with mean/median rental rates of \$15.29 and \$15.00 psf respectively.

[10] The Complainant also submitted exterior photographs of all their lease comparables [Exhibit C1, pp. 21-24], and interior photographs of the one comparable the Complainant alleged is most typically a B- quality building in DT1 [Exhibit C1, pp.26-30]. The Complainant also alleged that there are "truly no good comparables" to the subject in the entire city, owing to the uniqueness of the building and the operation of the company.

[11] In rebuttal, the Complainant objected to the Respondent's use of a truncated, six month valuation period (January to July of 2012) from which to derive the City's typical rental rate value (rather than the one year base valuation period used by the Complainant – July 1, 2011 through June 30, 2012). The Complainant argued that the City's reduced sample size valuation period contains insufficient lease data from which to formulate a reliable "typical" value to apply to all B-quality properties.

[12] Based on the foregoing, the Complainant requested that the Board vary the subject assessment to reflect an applied rental rate value of \$15 psf.

Respondent's Position on Issue #1:

[13] The Respondent submitted that the subject is properly classified as a B- quality building, and that the current assessment already reflects an appropriate recognition by the City of the lower marketability and attractiveness of the building, owing to the fact that more than half of the total assessable area of the subject has been assessed as storage space, at \$8 psf.

[14] The Respondent submitted recent CARB decisions (involving the subject and a neighbouring property) which denied the subject's previous complaints for "lack of clear physical descriptors" to support the argument advanced [CARB 1644/2012-P, CARB 1641/2012-P, and CARB 2195/2011-P, Exhibit R1, pp. 31-51]. The Respondent noted that the Complainant's current submissions lack pictorial evidence of the subject's interior to support their claim of inferior condition, notwithstanding being admonished by the Board in those past decisions to provide same.

[15] The Respondent submitted a 2013 rental rate analysis for B- quality properties in the DT1 and DT8 [Exhibit R1, p.73], which included 35 leases for the base valuation period (July 1, 2011 to June 30, 2012), and 13 leases for the truncated six month period (January 1 to July 1 of 2012), from which the Respondent derived its typical rental rate for the B- quality properties at \$19 psf.

[16] This analysis produced mean/median/weighted mean rates for all 35 leases over the one year period at \$16.67, \$16.00 and \$15.27 psf respectively, and mean/median/weighted mean rates for 2012 leases only of \$19.31, \$18.00 and \$19.00 psf respectively. The Respondent pointed to a near \$4 psf increase in the weighted mean from 2011 to 2012 in defence of the City's use of a truncated six month valuation period. The Respondent further argued that given the City's mandate to value properties as of the legislated July 1, 2012 valuation date, utilizing lease values closest to that date is a more reliable reflection of typical market value as of that July 1 date.

[17] The Respondent also noted that the City took its direction for this methodology from past Board decisions which found that in a significantly rising or declining market, reliance on the most recent six months (or in some cases, even the most recent *quarter*) is acceptable, better reflecting typical market conditions [CARB 1576/2010-P, CARB 2056/2010-P, and ARB 0659/2010-P].

[18] The Respondent also submitted a table of assessment-per-square-foot values for fourteen B- quality properties in DT1, noting that the subject was already the second lowest of all these properties at \$237 psf compared to the mean/median of \$296 and \$283 psf respectively [Exhibit R1, p.416].

[19] The Respondent concluded that the Complainant has not submitted sufficient evidence to distinguish the subject as atypical in the spectrum of Class B- properties in which it has been assessed fairly and equitably.

Board's Findings and Reasons for Decision on Issue #1:

[20] The Board finds that the Complainant has not provided sufficient evidence to show that the subject is atypical in its class, and finds that the current rental rate of \$19 psf is correct.

[21] The Board has no issue with the Respondent using only 2012 information to determine a typical Rental Rate, as there was sufficient data to show a substantial increase in the market from 2011 to 2012. The Respondent's sample set consisted of thirteen (13) leases in six months compared to the Complainant's eleven (11) leases in twelve months.

[22] As to any perceived shortcomings in the subject property, the Board finds that the Respondent's assessment-per-square-foot table (par.17) shows that they have been addressed. The subject has the second lowest per-square-foot assessment in its class and both parties agree that the lowest is the worst B- building in the DT1 area.

[23] The Board tested the proposed change against the market and found that the current rate achieved the best results.

Issue #2: What is the correct cap rate to apply to the subject property: the assessed 5.0% or the requested 6.50%?

Complainant's Position on Issue #2:

[24] The Complainant presented written submissions and verbal testimony arguing that the City erred in the development of its Cap Rate for the 2012 valuation year for the various classes of downtown office properties, arguing that Cap Rates for all classes were incorrectly derived at: Class A at 6%, Class B at 5%, and Class C at 5.5%.

[25] The Complainant relied on MGB Board Order 140/01 in summarizing the proposition that *"superior properties should have lower capitalization rates than inferior properties, as capitalization rates are, in part, a function of risk. Therefore, lower risk properties should have lower capitalization rates. This is clearly not the case in how the City of Calgary has assessed properties in 2013."* [Exhibit C1, p.34]

[26] The Complainant advanced three basic arguments to support their request for the Board to increase the existing 5% cap rate in favour of their proposed 6.5% rate (no lower than 6%) for all B quality properties in the downtown core:

1. Exclude All Portfolio Sales:

The first argument was a request to exclude all portfolio sales in the City's cap

rate study. The Complainant submitted a number of Board and MGB decisions which grappled with the reliability of certain portfolio transactions – particularly those involving numerous properties sold across various cities and provinces throughout the country.

Noting that the Board has ruled both to exclude and at other times to accept portfolio sales, the Complainant left it to the Board's discretion whether or not to accept them in the subject complaint. However, the Complainant vehemently argued that the reason for the "irrational and counter-intuitive" hierarchy of Cap Rates across the three downtown office classes in this assessment year was because these portfolio sales were not truly reflective of *typical market value* for the transacted properties in their respective classes.

The Complainant also raised an argument in rebuttal that the AGT Telephone Building used in the City's Cap Rate study ought to be excluded for two reasons: it was a different classification (Class "I") historic property which would never compete in the same market as typical Class B buildings, and it was outside the base valuation period for the 2012 assessment year (sold on April 13, 2011).

2. De-stratify and Apply Historic Hierarchy Spreads:

In the alternative of excluding all portfolio sales (which would exclude all Class B properties from the study), the Complainant argued that the Board ought to "*de-stratify*" all A and B properties, evaluating them as one category for the purpose of the current assessment year.

The Complainant then proposed assigning to each classification the appropriate "*historic hierarchy spread*" between the two classes, and presented a graph depicting that historic spread – which until the current assessment year ranged from 0.5% to 1.5%, with the mode being 0.5%. [Exhibit C1, p. 37].

Based on this analysis, and given the 6% Cap Rate assigned to the Class A properties, the Complainant's requested Cap Rate for the subject was 6.5%.

3. Inconsistent Valuation Parameters:

The final argument advanced by the Complainant to support a higher requested Cap Rate for Class B properties was the inconsistent and therefore incorrect NOI parameters used by the City to derive the overall Cap Rate for that class of properties. The Complainant submitted that for sales which transacted in 2011, the City's accepted practice is to calculate typical parameters based on a "retrospective" July 1, 2011 valuation date, using data collected from July 1, 2010 through to June 30, 2011. Yet, for sales which transacted in 2012, the City's practice is to calculate typical parameters based on a "forward-looking" July 1, 2012 valuation date, using data collected from July 1, 2011 through to June 30, 2012.

The Complainant objected to the City's use of two different valuation standards (one for 2011 sales and another for 2012 sales), arguing that this inconsistent application of valuation parameters produced significantly different NOIs and Cap Rates for several 2011 comparable sales [Exhibit C1, p.36 versus Exhibit R1, p.77 – note Gulf Canada Square, Rocky Mountain Place, and Five Ten Fifth].

The Complainant objected to this retrospective methodology for two reasons:

- (1) Dated Lease Data: the Complainant submitted that for the three

above-noted 2011 sales, the City calculated typical NOIs using dated lease data that was in some cases 18 and up to 24 months old (relative to the standard July 1, 2012 valuation date).

(2) Inconsistency: applying one standard (with certain value inputs) for 2012 sales and another standard (with different value inputs) for 2011 sales results in an inaccurate overall Cap Rate being applied to the subject property, whose assessment is being estimated as of the July 1, 2012 valuation standard mandated by legislation (*not* the July 1, 2011 valuation date used by the City for certain sales).

This means that the value inputs used to develop the NOIs in deriving a typical Cap Rate for Class B properties ought to be the identical value inputs used when applying that Cap Rate against the subject assessment as of July 1, 2012. In this case, the Complainant argued that the value inputs were different, inconsistently applied, and therefore flawed.

[27] The Complainant submitted CARB Decisions 70517/P-2013 and 71535P-2013 in support of their argument in favour of consistently applying the same forward-looking July 1, 2011 to June 30, 2012 base valuation period to all aspects of the Cap Rate analysis.

[28] The Complainant also submitted evidence [Exhibit C2, pp.71-79] that the Respondent itself has in past years employed the forward-looking methodology to derive typical Cap Rates for identified retail properties in the city, and that the decision to use a retrospective methodology for the 2011 sales in the subject complaint was incongruent with their own previous policy, and inconsistent with sound appraisal principles.

[29] The Complainant submitted their own Cap Rate analysis [Exhibit C1, p.36], including all the same sale transactions as the City's study, excepting two sales: the AGT Telephone Building (Class B), and the Northland Building (Class C) which the City included but the Complainant did not.

[30] Based on using one consistent valuation period for all NOI parameters and inputs (being that of July 1, 2011 to June 30, 2012), the Complainant's Cap Rate study resulted in a mean Cap Rate value of 5.60% and a median value of 5.39%.

[31] The Complainant submitted a new pro-forma analysis [Exhibit C1, p.17] utilizing their requested \$15 psf Rental Rate and 6.5% Cap Rate to generate a proposed assessment value of \$23,490,000.

Respondent's Position on Issue #2:

[32] The Respondent submitted the City's Cap Rate study [Exhibit R1, p.77], which examined 16 downtown properties with mean/median values of 4.65% and 4.82% respectively for the base valuation period, and mean/median values of 5.07% and 5.02% respectively for 2012 comparables only (truncated six month period).

[33] In response to the Complainant's first and second arguments, to exclude all portfolio sales as being unreliable indicators of typical market value, the Respondent asserted that there was categorically no evidence proffered by the Complainant to prove that these portfolio sales were anything but valid market transactions, reflecting typical market activity in the downtown office Class B properties for the 2012 assessment year.

[34] The Respondent submitted into evidence the following documents in support of each of

the portfolio sales relied upon: a RealNet Transaction Summary, a Commercial Edge Transaction Summary, a Land Titles Transfer of Land document, a sworn Affidavit of Value document, and a Corporate Registration Search summary.

[35] The Respondent further submitted numerous CARB and MGB decisions (including a number of recent 2013 decisions) in support of their argument to include the portfolio sales.

[36] In response to the Complainant's third argument, inconsistent valuation parameters, the Respondent indicated that the City's policy is to use NOI inputs and parameters closest to the transaction dates of the sales comparables used in their Cap Rate study. Thus, sales occurring between July 1 and December 31 of 2011 would be analysed using input parameters developed for the July 1, 2011 valuation date.

[37] Similarly, sales occurring between January 1 and July 1 of 2012 would be analysed using input parameters developed for the July 1, 2012 valuation date. The Respondent asserted that the input data utilized in each case was typical data merely applied to the valuation period closest to the transaction date of each respective sale comparable, which in the City's estimation produces more accurate valuation outcomes than merely applying one standard valuation period to all sales.

[38] When asked why the City chose to use a retrospective methodology for their Capitalization Rate study, the Respondent stated that the City believes this method "produces more accurate" results.

[39] In response to the Complainant's evidence noted in par. 27 above, the Respondent asserted that those assessments were from 2011 for retail properties in a different economic zone than the downtown office property under complaint in the subject hearing.

Board's Findings and Reasons for Decision on Issue #2:

[40] The Board thoroughly reviewed each of the arguments presented by the Complainant to vary the existing Capitalization Rate. Given the fact that the entire inventory of sales transacted in the Class B category were *all* portfolio sales, it would be a weighty matter to exclude every sale in the entire class, without substantive reason to warrant such a move.

[41] In the subject hearing, the Board finds a lack of clear, compelling evidence to justify excluding these sales. While the Complainant raised some question in the minds of the Board as to how "typical" these sales actually were (given the uncharacteristic hierarchical spread between the classes), sufficient compelling evidence was lacking to justify varying the Cap Rate based on this argument alone. The Board notes that in CARB 72030P-2013 (one of the portfolio sales, 521 3 Av. SW) the purchaser's representative did not raise the issue that this transaction was in any way an atypical sale, but rather confirmed it to be a valid market transaction.

[42] With respect to the Complainant's second argument, to de-stratify the two classes, the Board finds the merit of this proposition unsupportable, since there were sales to analyse in the Class B category, which differs dramatically from the Class A category.

[43] With respect to the Complainant's third argument, inconsistent valuation parameters, restricting its comments to the capitalization rates for "A" and "B" class buildings, as the C's were only mentioned in passing and not really part of the argument, the Board finds the following:

[44] Excluding the two sales the Complainant objected to, [par. 28] since the C's are not a part of this complaint and the City did not include the AGT Telephone Building in their final

analysis, both parties used the same 11 sales to derive their cap rates [C-1, p.36 and R-1, p.77]. The only difference is the NOI used to determine the cap rate for three of the sales; Rocky Mountain Plaza, Five Ten Fifth and Gulf Canada Square, all three of which occurred in the later part of 2011. On p. 34 of C-1 the Complainant states that *"Properly prepared, the assessed income would be the assessed income for the year of the transaction. So, for sales within one year of the base year (July 1, 2011 – June 30, 2012 the appropriate income parameters would be those utilized in the calculation of the 2013 assessments"*.

[45] This is where the Board perceives some difficulty. The Assessment Year is regulated; it is the year prior to the Taxation year. The Valuation Date and the Condition Date are also regulated, July 1 and December 31 of the Assessment Year. There is no regulated "base year". July 1 to June 30 are merely the timelines most commonly employed to collect the data used to determine "typical" values as of July 1st. The Complainant is advocating using 2011 and 2012 typicals for sales that occurred in 2011, depending on whether they occurred before or after July 1st. On the other hand, all property values for the 2011 Valuation Year are determined using the typical parameters for 2011, derived from data collected up to June 30 2011. The same holds true for 2012. The Complainant is not objecting to this methodology as it pertains to the Assessments in the valuation year or the sales for capitalization rate analysis that occurred in the first half of 2011. The Board also notes that the Complainant advocates using lease data closest to the time of sale to determine cap rates but objects to the Respondent using leases closest to the valuation date to determine assessments.

[46] All typical parameters are developed from data gathered over two calendar years whether they be rents, vacancy, operating costs, etc. Why would capitalization rates be any different? The capitalization rate is merely part of a mathematical formula expressing a relationship between income (NOI) and value (Sale Price). For Assessment purposes (Mass Appraisal) the income in question is that which the property can be typically expected to attain in the year that the sale took place. This is the same process used to determine the value of the property in that year. That is consistent, unlike the Complainant's approach of using the current year's income for valuation but the following year's income to develop a capitalization rate.

[47] Even were the Board to accept the Complainants argument, the resulting changes still don't support the requested capitalization rate of 6.5%.

Board's Decision:

[48] For the reasons outlined herein, the Board confirms the current assessment of the subject property at **\$36,000,000**.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF October 2013.



B. Jerchel
Board Member

Board Member

DISSENTING OPINION

Presiding Officer V. Higham:

[49] **Legislative Authority, Requirements and Considerations:**

Supreme Court of British Columbia

Westcoast Transmission Co. v. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273 [Westcoast]

The Assessment Process

It is common ground that the income approach is an appropriate and, except in unusual circumstances, the most appropriate method of assessing the actual value of commercial property such as that under consideration here. ...

For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently. ...I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently [emphasis added].

[50] I respectfully submit that while I concur with my colleagues relative to the first two arguments of the second issue herein, I am committed to different conclusions relative to the first issue herein (Rental Rate, at pp. 3-5 of the majority decision), as well as the third argument advanced by the Complainant in their cap rate submissions, being the "Inconsistent Valuation Parameters" argument as it appears in the majority decision at p.6 herein.

[51] Thus, I would proffer the following dissenting opinion in respect of those issues as follows:

Issue #1: What is the correct rental rate to apply to the office portion of the subject property: the assessed \$19 psf or the requested \$15 psf?

[52] I find that the appropriate rental rate to apply to the subject property is the current \$19 psf, ***for lack of sufficient data to show how a potential change in the rental rate would affect accompanying cap rate calculations.***

[53] I do not accept the Respondent's reliance on the CARB decisions noted in paragraph (par.) 16 herein as reasonably applicable to the subject complaint, since those decisions were made in the wake of the 2008 economic recession which generated *exceptional* market distress and downturn.

[54] In CARB 1576/2010-P for example, lease values dropped from \$35 psf in January 2009 to \$17 psf in October 2009 – a 51.4% decline in value over the eight month period.

[55] In the subject complaint, average lease values increased *over a one year period* from July 1, 2011 to June 30, 2012 as follows:

1. Mean: from \$16.67 to \$19.31 psf – increase of 15.8%
2. Median: from \$16 to \$18 psf – increase of 12.5%
3. Weighted Mean: from \$15.27 to \$19 psf – increase of 24.4%

[56] The combined average of these increases is 17.6% over the one year period. I find that the direction provided in the 2010 decisions to truncate the base valuation period down to the nearest six or three months was *an exception* to the preferred "base valuation standard" of one year, and was applied then in exceptional circumstances to address the dramatically falling lease values.

[57] I find that the increase in market lease activity in the B- quality downtown properties from 2011 to 2012 in the subject complaint ***to be moderate and not exceptional***. Thus, the typical one year valuation period is the better standard, unless a party can provide enough lease comparables in the most recent six months to satisfy a Board that these lease rates *are truly reflective of typical market activity* for the entire classification that year.

[58] In the subject complaint, the parties agreed to remove the lowest and highest lease values in the City's rental rate analysis, leaving 34 leases in total, and 12 leases (from eight properties) in the truncated six month 2012 period. I find that in this case, 12 leases is too small a sample size from which to derive a *typical* rental rate for an entire category of buildings in Calgary's active downtown market, given the number of properties and leases across that category of office buildings.

[59] Thus, I prefer the weighted mean rate of \$15.27 derived from analysing all 35 leases over the one year period, and would be willing to accept the requested rental rate of \$15 psf *were it not for the lack of accompanying analysis to indicate how a change in the rental rate would affect the Complainant's cap rate data*.

[60] In the absence of such a cap rate analysis utilizing the Complainant's requested \$15 psf rental rate to derive resultant cap rate figures for the comparable properties, I am not prepared to vary the existing rental rate.

[61] I further find that the \$8 psf rental rate applied to more than half the total assessable area of the subject sufficiently addresses the accepted limitations and uniqueness of the building. Since the Complainant failed to submit pictorial evidence of the actual interior condition of the subject, I am not inclined to regard this property as "atypical" in its category and must deem the requested rental rate to apply across the entire strata of B- quality properties in DT1.

[62] With respect to the third argument of the second issue advanced by the Complainant, as it appears in the majority decision herein ("Inconsistent Valuation Parameters"), I respectfully differ with my colleagues as to the nature of the argument submitted by the Complainant on this issue. My view of the Complainant's objections to the "retrospective" valuation methodology is not that the parameters were *inconsistently* applied, but rather that the retrospective parameter applied by the City to certain 2011 sales used *dated lease values*, resulting in an incorrect typical cap rate applied to the subject.

[63] The Complainant repeatedly argued at the hearing, in his own words: "A fundamental flaw exists. The City is using lease data (July 2010 to July 2011) to derive NOIs which all *precede* the sale dates" [Personal hearing notes, at p.2].

[64] Thus, I would title that portion of the Complainant's argument, "Dated Valuation Parameter."

Dated Valuation Parameter:

[65] Having carefully considered the evidence and arguments advanced by both parties, I find that the City erred in using an incorrect, dated valuation parameter to calculate the NOIs of certain sales comparables in its cap rate study, which produced an incorrect overall cap rate applied to all B quality office buildings in the downtown, including the subject property.

[66] The sales in question transacted between July 1 and December 31, 2011, and the issue before the Board is whether these sales should have been analysed using the forward-looking July 1, **2012** valuation parameter advocated by the Complainant, or the retrospective July 1, **2011** parameter utilized by the City.

[67] I am persuaded that the City erred in using a retrospective valuation parameter, analysing the affected sales using data gathered between **July 1, 2010 and June 30, 2011**. This dated valuation analysis produced incorrect NOI values, and artificially low typical cap rates for those individual sales, which led to an incorrect overall cap rate for the entire category of B quality properties for the current assessment year.

[68] This factor also contributed to the intuitively illogical outcome for downtown office buildings this year wherein B quality properties reflect a lower cap rate at 5% than A quality buildings at 6%. Even C quality buildings in the downtown have a lower cap rate this year at 5.5% than the A's, owing arguably at least in part to the City's use of a retrospective valuation parameter which skewed the results. There were four affected sales used by the City in its cap rate study (one A, two Bs, and one C), affecting typical cap rates across all three quality classifications.

[69] Examining the evidence submitted by both parties (Exhibits C1, p.36 and R1, p.77), I note that for the two B quality properties which sold in the last six months of 2011, the forward-looking parameter produced cap rates of 6.21% and 6.60%, while the retrospective parameter resulted in cap rates of **3.84% and 4.83% respectively— for the same two sales**. I am satisfied that these rates are artificially low, owing to the retrospective valuation parameter.

[70] The difference lies in the City's use of **dated lease data** (going as far back as mid-2010 notwithstanding the legislated valuation date of July 1, 2012), which produced incorrect cap rates for these affected sales, resulting in an unfair assessment of the subject property.

[71] I further note in Exhibit R1 at p.73, that the City itself used the standard "base valuation period" of July 1, 2011 to June 30, 2012 to analyse typical rental rates for B- quality properties in the downtown, but elected to rely **only upon the 2012 lease data** results to derive its typical rental rate of \$19 psf for that category of buildings.

[72] This typical rental rate, based on data gathered over the immediate **six months prior to** the valuation date July 1, 2012, was applied to the subject; a typical cap rate was also applied to the subject of 5%, derived using the affected sales described in par. 68 above, analysed from data gathered over a period commencing **24 months prior to** the valuation date.

[73] Thus, I find the City's use of different and dated valuation parameters for the typical inputs applied to the subject (in this case, rental and cap rates) to be inconsistent with the spirit and intent of the *Westcoast* decision, which stands firmly for the proposition that all valuation parameters and inputs used in the derivation of typical factors must be *consistently derived* and applied in like manner to the subject property.

[74] The Justice in *Westcoast* was eminently clear:

For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently. ... I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently [emphasis added].

[75] The City's methodology is also in direct conflict with two recent CARB decisions (CARB 70517/P-2013 and Revised CARB 71535P-2013), which harmonize with *Westcoast* in support of the Complainant's requested forward-looking methodology.

[75] Thus, I am persuaded that all sales transacted in the base valuation period for the 2012 assessment year ought to be analysed using consistent valuation inputs and parameters – namely analysing data *closest to* the legislated valuation date to better reflect typical market activity at that snapshot in time.

[76] To quote from Revised CARB Decision 71535P-2013:

1. "A sale in November 2011 (being in the 2012 analysis period) should use typical NOI data for the 2012 analysis period;
2. A sale in August, 2011 (being in the 2012 analysis period) should use typical NOI data for the 2012 analysis period;
3. A sale in May 2011 (being in the 2011 analysis period) should use typical NOI data for the 2011 analysis period; and
4. A sale in November 2011 (being the 2012 analysis period) should **not** use typical NOI data for the 2011 analysis period, because the typical NOI data [for the 2011 analysis period] includes dated leases, in this case from 2010." (Revised CARB 71535P-2013, at par. 41)

[77] Therefore, I find that the correct valuation parameter to use for those affected sales challenged by the Complainant is a forward-looking one, using the standard base valuation period (July 1, 2011 to June 30, 2012) to gather and analyse comparable data used in the derivation of typical cap rates.

[78] There certainly may be exceptions to this practice where insufficient data exists, or where a Board finds reasonable grounds upon which to accept dated or post-facto data, but for the purpose of the subject complaint, the base valuation period should have been used in the City's cap rate analysis for those affected sales.

[79] I therefore accept the Complainant's cap rate calculations (Exhibit C1, p.36), which generated median/mean values of 5.39% and 5.60% respectively for B quality comparables transacted in the base year, and find that a reasonable rounding of these figures justifies an overall typical cap rate for B quality properties of 5.5%.

Dissenting Decision: For the reasons outlined herein, I would reduce the current assessment of the subject property from \$36,000,000 down to **\$32,730,000**.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF October 2013.


V. Higham
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure
2. C2	Complainant's Disclosure
3. R1	Respondent's Disclosure
4. C3	Complainant's Rebuttal

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 Only

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Rental and Cap Rates	