



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:

***Frank Cairo Enterprises Ltd. (as represented by Colliers International Realty),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. Thompson, Presiding Officer
J. Massey, 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 2013 Assessment Roll as follows:

ROLL NUMBER: 067067801

LOCATION ADDRESS: 1023 7 Av SW

FILE NUMBER: 70317

ASSESSMENT: \$5,710,000

This complaint was heard on the 28th day of August, 2013 at the office of the Assessment Review Board located at Floor # 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- A. Farley Agent, Colliers International
- B. Peacock Agent, Colliers International

Appeared on behalf of the Respondent:

- K. Gardiner Assessor, City Of Calgary

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

[1] The Complainant and Respondent requested that all evidence, argument, questions and summations be carried over from file #71106. The Board accepts this request.

Property Description:

[2] The subject property, known as the Sutton Hall, is a Class C high-rise office building located in the downtown core. The building was constructed in 1982 and is assessed as having 21,993 square feet (sf) of office with 16 parking stalls. The property is sited on a parcel size of 6,159 sf located in the DT2 sub market area.

[3] The subject property is assessed based on the Income Approach to Value with a capitalization rate of 5.5%, the 18,400 sf of office space at \$13.00 per square foot (psf), 3,593 sf of retail main at \$16.00 psf and has an assessed value of \$5,710,000.

Issues:

[4] The capitalization rate should be no lower than 6.00 %, preferably 6.50%

Complainant's Requested Value: \$4,830,000

Board's Decision:

[5] Assessment is confirmed at \$5,710,000

Legislative Authority, Requirements and Considerations:

[6] The *Municipal Government Act*, 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 460 (1)(a).

Position of the Parties

Complainant's Position:

[7] The Complainant stated that the downtown offices in Calgary should use a consistent hierarchy for capitalization rates, with the best class of property the A Class office buildings always having a lower capitalization rate than the B and C Classes. The 2013 City capitalization rates were listed as [pg.18, C1]:

- 1) Class A properties – 6.00% (base)
- 2) Class B properties – 5.00% (base)
- 3) Class C properties – 5.50% (base)

[8] The Complainant contends that the City of Calgary erred in developing their typical capitalization rates for 2013 in that superior class of properties have been given the highest capitalization rates.

[9] Historical information was provided on typical capitalization rates for the Class A and B properties located in downtown Calgary. This shows that from 2008 to 2011 the Class A typical office capitalization rates were always lower than the Class B office capitalization rates. Historically there has been a .50% to 1.50% spread [pg.21, C-1]. The Complainant contends that although not shown, the Class C office buildings in the downtown core should be at least equal to, but ideally higher than the Class B capitalization rates. Municipal Government Board Order 140/01 was cited [pgs. 81-106, C-1] in support of a hierarchy in capitalization rates.

[10] To show the effects of the reversed capitalization rate hierarchy the Complainant recalculated five B Class office buildings using the City of Calgary's rates for A- office buildings [pg. 40, C-1]. In every instance the A- rates applied to the B Class building resulted in a lower assessed value. Supporting calculations were provided.

[11] The Complainant further stated that the methodology the City used in determining the capitalization rates is incorrect. The Complainant agreed with the City that:

- 1) The typical assessed income should be used to determine the net operating income (NOI) in determining the capitalization rate for assessment purposes.
- 2) Typical income for sales from January to July 1 of a given year should have an NOI using income from the following valuation year's assessment.

[12] The Complainant claims that where the City fails in its analysis is when a sale occurs between July 1 and December 31. For these sales the Complainant takes the position that typical incomes should be from the year of the sales transaction to calculate the typical NOI, looking forward includes the event date. The City uses the income closest to the sales date and therefore calculates, in the Complainant's opinion an incorrect typical NOI with which to calculate the capitalization rate.

[13] To demonstrate that the City has in fact used the typical NOI from the year of the sale, for properties that sold between July 1 and December 31, the Complainant submitted the 2011 City of Calgary's Neighbourhood, Community Centre Capitalization Rate Summary which shows this is exactly how the Complainant calculated the typical capitalization rates for those

properties, [pg.117, C-2].

[14] The Complainant offered three alternatives to derive a capitalization rate for the subject property:

[15] **Option One** - The first option is to use the City's analysis and remove all Class C sales as the Complainant contends they are not valid. The Complainant would also remove one of the Class B sales, the Telephone Building. While this is a B Class building, it was purchased by Allied Real Estate Income Trust, which specializes in acquiring older repurposed light industrial buildings. This property would not trade in the same market as the subject. Information on this Real Estate Investment Trust (REIT) was included.

[16] Finally the Complainant would recalculate the NOI using the July 1, 2012 typical rents for the three sales used in the City's capitalization rates analysis that occurred between July 1 and December 31st of 2011. These were Gulf Canada Square, Rocky Mountain Plaza and Five Ten Fifth.

[17] The Complainant's calculation of the capitalization rate based on this method result in a median of 5.39% for B Class office buildings, based on 2011 and 2012 sales. If only looking at the 2012 sales the analysis produces a median capitalization rate of 5.02%. The Complainant stated that the capitalization rate should be rounded to 6.00% and in fact, considering the long standing hierarchy of capitalization rates, where Class A's are .50% to 1.50% lower than the Class B's, the typical capitalization rate should be 6.50% [pg. 20, C-1]. The Class C properties should receive the same capitalization rate as the Class B's, that is, 6.50%.

[18] **Option Two** - The second alternative the Complainant offered is to remove all Class B and Class C sales transactions and only analyse the Class A sales [pg. 20, C-1].

[19] The Complainant contends that really there are no valid Class B sales as all are portfolio sales. The only sales that should be used in a capitalization rate study should be the Class A sales which result in a 6% capitalization rate, the subject property, a Class C property, should have a higher capitalization rate and therefore a capitalization rate of 6.5% is reasonable.

[20] **Option Three** - The Complainant offered that if either of the above options were not amenable to the Board, then the Class A office sales should be combined with the Class B office sales and analyzed together. The resulting capitalization rate would be a median of 5.83% overall and 5.63% for the 2012 sale year. Again these rates should be rounded to 6.00% for all A and B Class office buildings [pg. 20, C-1]. Class C properties should then receive a higher capitalization rate of 6.50%. The Complainant stated that ultimately this approach would be much better than the inverse relationship of capitalization rates seen between Class A, B and C offices, as currently provided by the City.

[21] The Complainant stated with regard to rounding, the City was not consistent with how they round their analysis results, some are rounded up and some down, they should be consistent in order to be equitable. For the downtown offices study it appears the City rounded up so it would be reasonable to round the results to 6.00%.

[22] A number of Board Decisions were included for the Board to consider.

[23] No supporting documentation was provided for the sales.

Respondent's Position:

[24] The 2013 Downtown Office Capitalization Rate Summary and supporting documents were submitted [pg. 37, 38-375, R1], showing a median capitalization rate of 5.61% for C Class

office buildings in 2012, and a 4.92% median for the 2011 and 2012 period.

[25] The Respondent stated that to calculate the typical NOI that is used to determine a typical capitalization rate, the City always uses the typical NOI closest to the sale date. That way, it is always within 6 months of the sale. This is what it has been directed to do through previous Board Decisions. If the current NOI was used there might be as much as 11 months from the sale date. The Respondent provided a hypothetical example showing what would happen if it used the Complainant's method for typical NOI's and compared that to the City's method. Two scenarios were presented, one with the rents in the market going up and then one with the rents going down [pg 377-379, R-1].

[26] The Respondent submitted a chart showing the mean, median and weighted mean assessed value per square foot for all classes of downtown office building [pg.385, R-1]. The resulting rates show that there is a hierarchy in final values between the downtown office building classes.

[27] In addition, 35 C Class office buildings in the downtown core were produced as equity comparables to show that all the C Class buildings were valued the same way [pg. 386, R-1].

[28] The Respondent stated that the portfolio sales may well be the market value for properties in this high dollar value category. It offered that there are very few investors for this calibre of property other than REIT's, and given their expertise, these transactions should in fact be a good indication of true market value. Without evidence, portfolio sales may be above, below or at market and therefore the Respondent stated that it does fully examine each of these portfolio transactions, reviews the details and compares them to other true sales to determine their validity as a true market transaction for its analysis.

[29] With respect to the sale of the Telephone Building, the Respondent admitted it may not be the best comparable, but that it was the only B Class building sale in DT1, so was used to test the market value. This property had a .99 Assessment to Sale Ratio (ASR) (non-time adjusted 2011 sale).

[30] The Respondent provided the two C sales transactions calculated using the Complainant's requested capitalization rate of 6.50% and compared the results to the City's values using the 5.5% capitalization rate. Resulting assessment to sale ratios were a median of 1.025 for the City and 0.865 for the Complainant's request based on unadjusted sale prices [pg. 381-383, R-1]. The Respondent stated that this illustrates the process the City used does arrive at the market value for this class of property.

[31] A number of Board Decisions were provided by the Respondent to support its position.

Board's Reasons for Decision:

[32] The Board reviewed the evidence provided by both parties and in particular, consideration was given to the capitalization study provided by the Complainant. The Board finds that nothing in this study supports the Complainant's 6.50% capitalization rate request. The Complainant's evidence showed a median capitalization rate of 5.39% for the Class B properties. The only Class C sales provided were from the Respondent and these showed some market evidence that a capitalization rate of 5.50% was at least reasonable and the resulting assessment to sale ratios were in line with this.

[33] The Board reviewed the Respondent's test against the market evidence for Class C properties and noted that the resulting values moved further away from market value.

[34] The Board considered but rejected the premise of the Complainant's request to combine the A and B Class office buildings in this economic zone to calculate a combined capitalization rate and then use hierarchy to determine the Class C capitalization rate. The Complainant's own arguments regarding capitalization rate hierarchy make this counterintuitive.

[35] Historical information regarding capitalization rates was given little weight by the Board as capitalization rates are a function of market transactions relating to any given assessment year. While the Board agrees that it isn't common to see the current hierarchy of capitalization rates for A, B and C Class buildings, the move in this direction netted resulting values that (expressed on an assessment per sq. ft. basis) did satisfy the Board that a reasonable relationship and market value was maintained. Ultimately, this is what is important, more so than the process and components of the process.

[36] The Board gave regard to the evidence presented by the Complainant on the recalculation of five B Class properties to the A- Class, resulting in lower values. The Board determine that the subject is a C Class building and therefore only the C Class building rents and capitalization rates were considered. Further the Board gave heed to the Complainant's statement that this anomaly wouldn't be seen with the Class C buildings.

[37] With regard to the portfolio sales used in the capitalization rate study, the Board found that no conclusive evidence was presented to show that these sales were anything but actual market value transactions. The Complainant stated that, in its opinion, they were above market value transactions and in response the Respondent indicated that these sales were carefully reviewed and tested against other transactions in the downtown area. Both parties included these sales in their respective capitalization rate studies. Given that there was no actual evidence to the contrary the Board accepts these three sales as part of the capitalization study.


[38] The Board placed little weight on the Respondent's hypothetical testing of the use of different NOI's based on the market rents going up or down. The difference in the rents, as pointed out by the Complainant, may well account to the changes in the numbers.

[39] The Board notes that it is not bound by previous Board's Decisions, but did consider all those that were submitted but based its decision on the evidence before it.

[40] The Board has two tests to meet, that of equity and that of market value: The Board finds that the evidence shows there is equity within the C Class downtown office buildings and the subject property is assessed similar to other C Class office buildings in the downtown core. The Complainant did not meet the burden of proof. The Board saw no cause to change the value based on equity. This leaves market value and the Board found that market value was not improved when the capitalization rate was changed and tested.

[41] The assessment is confirmed at \$5,710,000.

DATED AT THE CITY OF CALGARY THIS 26 DAY OF September 2013.



K. Thompson

Presiding Officer

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

| NO. | ITEM |
|------------|------------------------|
| 1. C1 | Complainant Disclosure |
| 2. R1 | Respondent Disclosure |
| 3. C-2 | Complainants 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.*

| Property Type | Property Sub-Type | Issue | Sub issue |
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