



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:

Deerfoot 17 Corp. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Petry, PRESIDING OFFICER

H. Ang, BOARD MEMBER

R. Deschaine, 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: 071042196

LOCATION ADDRESS: 2710 17 Avenue SE

FILE NUMBER: 70624

ASSESSMENT: \$10,890,000

This complaint was heard on 10th day of June 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:

- *G. Worsley and W. Van Bruggen, MNP LLP*

Appeared on behalf of the Respondent:

- *M. Ryan and L. Dunbar-Proctor, City of Calgary*

Property Description:

[1] The subject building is a class C office building located at 2710 17 Avenue S.E. and has good exposure to Deerfoot Trail. The land area is 35,775 sq. ft. which is improved with a seven floor office complex consisting of 67,917 sq. ft. of rentable area.

Issues:

[2] This primary issue in this dispute centres on the capitalization rate (cap rate) and the methodology used in its derivation.

Complainant's Requested Value:

[3] The Complainant requests that the cap rate be changed to 7.25% which results in a proposed value of \$10,140,000.

Board's Decision:

[4] The CARB found that the Complainant's method used to derive and apply the cap rate is preferred, however, there is no real improvement to the assessment to sales ratio and the assessment is confirmed at a value of \$10,890,000.

Legislative Authority, Requirements and Considerations:

[5] 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).

For purposes of the hearing, the CARB will consider MGA Section 293(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*

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*

Summary of the Party's Positions

Complainant

[6] The Complainant argued that the City is inconsistent in the manner in which it derives the cap rate as compared to the manner in which it applies the cap rate. The City uses the parameters derived for the valuation date of July 1, 2011 when it develops the net operating income (NOI) to produce the cap rate for sales occurring between July 1, 2011 and December 31, 2011. The date on which the July, 2011 valuations were made, dates back as far as June 30, 2010 and perhaps further back. The correct approach is to use the value of factors set for the July 1, 2012 valuation date for all sales occurring in the period July 1, 2011 through June 30, 2012 to derive the cap rate and then apply that cap rate along with the same values for other factors to arrive at assessments for 2013. This means that the values applied in developing the NOI used to produce the July 1, 2012 cap rate should be the identical values applied when arriving at assessments as of July 1, 2012.

[7] The Complainant pointed out that the typical lease rate used for the sale at 11500 – 29th Street for July 1, 2011 was \$13 per sq. ft. (2011 rate) but the Respondent increased this number to \$16 per sq. ft. for the July 1, 2012 valuation. Understating the income of a property when developing the cap rate, results in a lower cap rate and a rate that is incorrect. The Complainant argues that the same rental rate should be used to develop the cap rate as the rate used when applying it to produce the assessment. In the case of this sold property the rental rate used in the Respondent's cap rate study, should have been \$16 per sq. ft. not the \$13 per sq. ft. actually used. The Complainant argued that a consistent approach has been applied in the Complainant's cap rate study.

[8] The Complainant relies on board order MGB 145/07 wherein it makes reference to two British Columbia cases, Bental and West Coast Transmissions. These decisions stand for the principle that there must be consistency in the derivation and application of cap rates.

[9] The Complainant has also used two additional sales in its study which were not used by the Respondent. When applying the 2012 values for all factors used in reaching the 2012 assessments, to the six available sales, the average cap rate is 7.23% and the median rate is 7.22. Based on this review the Complainant argues that a cap rate of 7.25% is the correct rate for the subject.

[10] The Complainant provided a table of data showing that the Respondent's average assessment to sale ratios (ASR) is .887 and the median is .823 and argued that these values are not reflective of market value.

[11] The Complainant then completes its analysis by calculating new ASR's for the sold properties, showing an average of .995 and also a median at .995. The Complainant argues that these ratios prove that its methodology is correct and that it produces values very close to the market values reflected by the sales .

Respondent's Position:

[12] The Respondent indicated that it uses the NOI parameters for the year closest to the date of the sale. Therefore sales occurring between July 1, 2011 and December 31, 2011 would be analyzed using the parameters developed for July 1, 2011. The July 1, 2012 parameters would be applied to sales occurring after January 1, 2012. In each case the data used is typical data but for the period closest to the sale date.

[13] The Complainant has incorrectly calculated the resulting ASRs and when this correction is made the Respondent's ASRs average to 1.039 and have a median of .998 compared to the Complainant's average ASR for the same four sales of .967 and a median of .930.

[14] The Respondent argues that the two additional sales brought in by the Complainant are not valid for a cap rate study as in both cases the properties were substantially renovated and therefore the purchasers were not buying these properties for their current and future income. There were other motivations at play and these sales should not be accepted by the CARB.

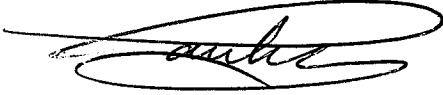
Board's Reasons for Decision:

[15] The CARB has carefully considered both court decisions and the decisions of the ARB and MGB with respect to the cap rate methodology question and agrees with the Complainant that the preferred approach would be to apply the same factor values when developing the cap rate as those used to produce the assessment. When this is done in this case there is no significant improvement to the resulting ASRs. The Respondent's ASRs result in an average of 1.039 and a median of .998 while the Complainant's ASRs are .995 on average and .995 at the median. The CARB concludes that the use of six sales and the consistent methodology as applied by the Complainant in this case does not improve the overall ASR from that developed by the Respondent. Even when the two additional cap rates arising from the new sales are added to the Respondent's data, the overall cap rate is very close to 1.00. No other studies were done by the Complainant respecting other income parameters and the CARB finds little reason to disturb the current assessment.

[16] The CARB found that the Respondent was correct in its claim that the Complainant had applied an incorrect value when it calculated the ASRs resulting from the assessments that are in place for the four sales used by the City. The improvement in ASRs claimed by the Complainant is not correct and therefore there is no compelling reason to alter the assessment. The current assessment is within an acceptable range of market value. The assessment is confirmed at \$10,890,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 9th DAY OF July 2013.



Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C-2	Complainant's Rebuttal
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
Commercial	Office	Suburban	CAP Rate	Methodology