



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:

IMC 8059, 1623703 Alberta Inc.(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: 067103507

LOCATION ADDRESS: 906 - 12 Avenue S.W.

FILE NUMBER: 70762

ASSESSMENT: \$39,950,000

This complaint was heard on the 13th 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*

Appeared on behalf of the Respondent:

- *R. Ford*

Property Description:

- [1] The subject is a class B office building located in the BL-4 area of the Beltline district. The building was constructed in 1980 and has 137,801 sq. ft. of rentable space, 98,872 sq. ft. of which is office space.

Issues:

- [2] The dispute in this case stems from the Complainant's view that the Respondent has insufficiently stratified properties in the Beltline and has also adopted an incorrect method in the development of its capitalization rate (cap rate). The specific issues are:
- [3] What is the correct cap rate methodology and the correct cap rate?
- [4] What is the appropriate rental rate for the subject?
- [5] What is the correct vacancy allowance for the subject property?
- [6] Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB). The only issues, however, that the parties sought to have the Composite Assessment Review Board (CARB) address in this hearing are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised in the Complaint.
- [7] Both parties to this dispute requested that the preceding complaint before the CARB concerning File number 70521/Roll number 068111806, be considered the "lead" case for this complaint and several other similar complaints. The parties indicated that much of their evidence, presentations, arguments and explanations would simply be carried forward for consideration in this case. Most of the evidence is the same as are most of the CARBs findings and decisions. Therefore much of the Board's order respecting Roll number 068111806 will be repeated here except where the evidence, argument and property details differ.

Complainant's Requested Value:

- [8] The Complainant requests that their changes to the above parameters be adopted which would result in a proposed value of \$30,850,000.

Board's Decision:

- [9] The CARB found that the Complainant's method used to derive and apply the cap rate is preferred, the complainant's cap rate is correct and its vacancy study produces a more accurate typical allowance. The proposed lease rate based on the BL-4 segment of the Beltline has also been accepted. The application of these changes results in the CARB's decision to reduce the subject assessment to \$30,850,000.

Summary of the Party's Positions**Complainant**

- [10] The Complainant argues that for this year the Respondent has moved away from numerous stratifications previously used in the Beltline and this has resulted in general values for the parameters required by the capitalized income approach. These parameters are not applicable to certain areas of the Beltline and produce values that are not at market value. The 2013 assessment for the subject property has increased 71% over the previous year.
- [11] One such parameter is the rental rate assigned to the subject property in BL-4 at \$15 per sq. ft. The Complainant argued that the lease rate study done by the Respondent is far too broad and covers the entire Beltline. Even so, their 2012 median rate for the Beltline is \$14 per sq. ft. The Complainant brought forward lease comparables from within the BL-4 area to demonstrate that given four methods of analyzing the data the rate should clearly be \$14 per sq. ft.
- [12] The Complainant suggested that the Respondent's vacancy rate study was too broad including space in retail, automotive, medical and condominiums. The study also included all classes of space from AA through C. The Complainant presented its own study of B class office showing vacancy experienced in this class to be 11.25% and requested that the CARB adjust the vacancy allowance for the subject to 11% from the 8% used in the assessment. In contrast the Complainant also presented a similar break outs for the AA and C class office space which shows vacancy for the AA class at 2.21% and C class at 23.42%.
- [13] With respect to the cap rate the Complainant argued that the City is inconsistent with 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 July 1, 2011 when it develops the net operating income (NOI) to produce the cap rates for sales occurring between July 1, 2011 and December 31, 2011. The data on which the July 1, 2011 valuations were made dates back to June 30, 2010 and perhaps even further back. The correct approach is to use the value of all factors set for the July 1, 2012 valuation date. These parameters should then be used to develop the cap rates for all sales and also to

arrive at the 2013 assessments. This means that the values used to develop the NOI used to produce the July 1, 2012 cap rate should be the identical values used when applying that cap rate for the assessments as of July 1, 2012.

- [14] The Complainant relies on the board order MGB 145/07 wherein it makes reference to British Columbia cases, Bentall and West Coast Transmissions. These decisions stand for the principle that there must be consistency in the development and derivation of cap rates.
- [15] Of the five sales used by the Respondent in its cap rate analysis, the Complainant has removed two sales which it claims are invalid. First, the sale located at 809 – 10 Avenue SW known as the Cooper Blok Building. This is a historical building and was purchased within a portfolio of other properties by Allied Properties Real Estate Investment Trust. The Complainant indicated that this organization has a mandate to purchase historical buildings and provided some published evidence to support this notion. In addition to the potential of significant motivation on part of the purchaser, this is a portfolio sale and the Respondent typically will not include such a sale. The second sale is located at 605 – 11 Avenue SW and is referred to as the Keg Building. The Complainant brought forward evidence to show that this building was not exposed to the open market and asked that this sale be rejected on that basis.
- [16] The Complainant has also used two additional sales in its study which were not used by the Respondent. One of these sales was located at 525 – 11 Avenue SW and is referred to as the Duff Building. The other sale is located at 1451 – 14 Street SW and is known as the Grondon Building. When applying the 2012 values for all factors used for the 2012 assessments to these five sales which the Complainant argues are the most reliable sales, the average cap rate is 6.43% and the median rate is 6.04%. Based on this review the Complainant proposes that a cap rate of 6.25% is the correct rate for the subject located in BL-4.
- [17] The Complainant provided a table of data showing that the Respondent's average ASR is .733 and the median is .728, suggesting that these values are not reflective of market value.
- [18] The Complainant then completes its analysis by calculating new assessment to sales (ASR) ratios showing an average of 1.029 and also a median at 0.967. The Complainant argues that these values prove that its methodology is correct and produces values very close the market value reflected by the sales.
- [19] The Complainant also provided documentation respecting the sale of the subject property on December 16, 2011 for a sum of \$30,000,000. It was argued that the courts and assessment review boards have accepted that the sale of the subject property is very strong evidence as to the market value for that property. This sale occurred only six month prior to the valuation date of July 1, 2012 and the sale price is somewhat lower than the value change sought by the Complainant.
- [20] The Complainant then has created a new pro-forma showing that changing the vacancy allowance to 11%, the rental rate for office space to \$14 per sq. ft. and the cap rate to 6.25% results in a proposed assessment of \$30,850,000.

Respondent

- [21] 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.

- [22] The Respondent did not show the ASRs for its sales, however, stated that the Complainant has incorrectly calculated the resulting ASRs for these sales. The Respondent also introduced a time adjustment table of 8 sales including the five sales used in its cap rate study. The sales to assessment ratios (SARs) were plotted on a time/ratio chart which indicated some upward slope to the line of central tendency. The Respondent argued that the sales used by the Complainant in its cap rate table showing ASRs have not been time adjusted and therefore they do not represent a correct relationship to market value.
- [23] The Respondent argues that the two additional sales brought in by the Complainant are not valid for a cap rate study. The sale at 525 – 11 Avenue SW was purchased for its redevelopment potential and later sold for more than twice the original purchase price. Therefore the purchasers were not buying this property for its current or future income. The Grondon Building at 1451 – 14 Street SW should be considered as a retail building and not an office building.
- [24] The Respondent argued that the portfolio sale located at 809 – 10 Avenue SW and known as the Cooper Blok Building should be considered to be a valid sale despite the fact that it is a portfolio sale. The appraisal commissioned by the purchasers shows that the appraised value is very close to the sale price, thus validating that this sale was at market value. The second sale removed by the Complainant, located at 605 – 11 Avenue SW was not known to the City as a sale that was not exposed to the market and the Complainant should have brought that information forward at an earlier date.
- [25] The Respondent argued that based on the cap rate analysis of its five sales the cap rate should be confirmed at 5.25%.
- [26] With respect to the sale of the subject, the Respondent argued that this sale is only one market indicator and should not be given significant weight.
- [27] The Respondent in its determination of the rental rate for the current assessment has studied the Beltline as a whole. This data shows median values for 2012 and for 2011 together with 2012 at \$14 per sq. ft. The median value for the last 3 months of the valuation period shows a median of \$15. per sq. ft., a weighted mean of \$15.19 per sq. ft. and a mean of 15.60 per sq. ft. The Respondent used this information to support the assessed rate of \$15.00 per sq. ft.
- [28] The Respondent also reviewed vacancy levels across the whole of the Beltline including the full range of property types and classes. This data shows the overall vacancy level to be 8.17%. The Respondent also presented a form of the Complainant evidence with certain corrections claiming that this data if corrected would yield a vacancy level for Class B office of 7.44%.

Findings and Reasons for the Board's Decision:

- [29] The CARB has carefully consider both court decisions and decisions of the ARB and MGB with respect to cap rate methodology 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.

[30] A frequently quoted passage from the West Coast Transmissions case is as follows:

"I stated above that the concepts used, in developing capitalization rate for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalization 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 that is not derived in the same way".

[31] The Complainant has applied a consistent approach to determining the cap rate in this case and the resulting ASRs show that a reasonable reflection of market value is achieved.

[32] The CARB accepts the two additional sales brought forward by the Complainant. While it is shown that the purchasers of the Duff Building had intentions to redevelop the building, the CARB concludes that that would have little impact in a competitive market place. This conclusion is not unlike the decision in the Mountain View (County) v. Alberta (Municipal Government Board) case, wherein, the court finds that a July 18th sale should not have been excluded on the basis that the purchasers were anticipating that significant capital investments would be made post sale. The second sale at 1451 – 14th Street SW is shown by the City's own documents to be an office/retail building with over two thirds of the space assessed as office space at the \$15 per sq. ft. rate, the same rate that the Respondent has applied to other office space in the Beltline.

[33] The CARB also has eliminated from its consideration the portfolio sale on the basis that the splitting of values may not result in market value and there can also be special motivation on part of both the buyer and seller in this type of transaction. While the Respondent brought forward an appraisal to support its belief that the sale was at market, the appraisal was incomplete and the extract provide no basis for the value reached. The second sale had not been exposed to the market and this is a requirement under section 1 (n) definition of "market value" in the Municipal Government Act (Act).

[34] The sales that remain as valid, produce an average cap rate of 6.43% and a median of 6.04% which supports the proposed cap rate of 6.25%. The CARB has adopted this rate in its decision on the market value for the subject.

[35] The CARB found that the Respondent was correct in its claim that the Complainant had incorrectly calculated the ASRs resulting from the assessment that are in place for the five sales used by the City. However this did not assist the Board in reaching its conclusions. While the Respondent argued that the Complainant did not time adjust the sales relied upon to determine its ASRs the Respondent did not lead evidence to show if or how such an adjustment was made in its analysis. The CARB has placed little weight on the Respondent's time adjustment data observing that the average SAR is 1.595 and the data has an extremely wide disbursement of values with no explanation.

[36] The Complainant argued that vacancy should be considered by class sub-groups and provided convincing data to show large discrepancies between AA, A, B and C classes. The CARB found that this approach is compelling and has adopted the 11% vacancy level shown by the Complainant's review of B class office space. The Board reviewed the Respondent's B class data but realizing that a significant space that was almost 100% vacancy had not been include, placed little weight on this information.

[37] The Respondent's change to consider the Beltline as one overall stratum appears not to

produce fair and reasonable estimates of market value for some segments of the Beltline. From the data available to the CARB it is clear that the BL-4 area is not achieving typical lease rates in the range of \$15 per sq. ft. The Complainant's rental comparables show the rate of \$14 per sq. ft. is more supportable. This is the rate that the CARB has used in its determination of final value for the subject.

- [38] The CARB has reviewed the documents dealing with the sale of the subject property on December 16, 2011. This appears to be a very relevant arm's length sale and should be given considerable weight by the CARB. The Complainant's disclosure C 6, provides a decision of CARB – 0203-0014/2012 (Lethbridge) wherein the relevant excerpt is as follows:

"The sale of the subject property July 11, 2011 has been determined to by the CARB to be reflective of market value for the subject property.

Reasons

The Complainant referred the CARB to a Court of Queen's Bench of Alberta decision, 697604 Alberta Ltd. v. the City of Calgary and the Municipal Government Board. In this case the Municipal Government Board (MGB) did not accord significant weight to the sale of the subject property which had occurred just 18 days post the valuation date of July 1. The judgment at paragraph 24 states:

"In my view, the MGB's failure to rely on the evidence of the value provided by the recent sale of the property fails to meet the test of reasonableness"

The CARB accepts the decision of the court in the case brought forward by the Complainant. The fact scenario is very close to the facts in the complaint before the Board and there was no compelling evidence brought forward by the Respondent which would dissuade the CARB from placing significant weight on the court's direction in this case."

- [39] The CARB in this case adopts the same reasoning as the fact here are very similar. The sale of the subject property at a price of \$30,000,000 six months prior to the valuation date must be given significant weight.
- [40] The sale of the subject and the ASRs resulting from the implementation of the changes review above support the proposed value as being a reasonable estimate of the subject's market value. **The 2013 taxable assessment is therefore reduced to \$30,850,000.** This value represents an increase of 32% above the assessment for the previous year. This value does not include the \$3,290,000 in value which is attributable to the exempt portion of the property.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 4 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 C2 – A	Complainant Disclosure
3 C2 – B	Complainant Disclosure
4 C3	Complainant Rebuttal
5 C4	Complainant Disclosure
6 C5	Complainant Disclosure
7 C6	Complainant Disclosure
8. 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	Beltline	CAP Rate, Time, Income and Vacancy	Methodology

