

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:

AD Sparrow Holding Corporation, (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***R. Fegan, PRESIDING OFFICER
D. Julien, BOARD MEMBER
G. Milne, 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:	067098509
LOCATION ADDRESS:	628 12 AV SW
FILE NUMBER:	71019
ASSESSMENT:	\$12,370,000

This complaint was heard on the 30th day of September, 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:

- B. Peacock, (Colliers International Realty Advisors Inc.)

Appeared on behalf of the Respondent:

- L. Wong, (City of Calgary)

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

- [2] The subject property is a 5 storey "B" class office building of 38,844 square feet, with 70 underground parking stalls located in the Beltline area of Calgary and is assessed using the income approach to value (exhibit R-1, pages 8 & 9)

Issues:

- [3] The vacancy allowance applied to the subject property is too low.
[4] The method used to calculate the capitalization rate is wrong.
[5] The capitalization rate used to calculate the assessment is too low.

Requested Value: \$6,160,000 (exhibit C-1, page 1)

Board's Decision: The complaint is denied and the assessment is confirmed at \$12,370,000.

Position of the Parties

Complainant's Position:

- [6] With respect to the vacancy issue, the Complainant provided evidence that the subject property had been experiencing abnormal vacancy over the past three years. Rent rolls for the years 2010, 2011 and 2012 were provided (C-1, pages 52 – 57). The Complainant suggested that because the majority of space in the subject building was occupied by medical tenants the

remaining space was not attractive to non-medical tenants.

[7] With respect to the capitalization rate issue, the Complainant provided a capitalization rate analysis using the sales of four buildings, three from 2011 and one from 2012 which indicated mean and median capitalization rates of 7.05% and 6.99% (exhibit C-1, page 10). The Complainant had used the net operating income taken from the 2013 "Non-Residential Properties – Income Approach Valuation" sheets. The net operating income provided on these sheets represents the NOI on the effective date for assessment purposes of July 01, 2012

[8] The Complainant argued that two of the sales used in the Respondent's capitalization rate analysis should be discarded, one because of non-typical motivation on behalf of the purchaser and one because it was part of a portfolio transaction.

[9] The Complainant argued that the sale of 605 11 AV SW to Allied REIT should be discarded because Allied REIT had an acquisition strategy of targeting areas such as the Beltline in Calgary, Byward Market in Ottawa, Yaletown and Gastown in Vancouver and the Warehouse District in Kitchener (exhibit C-1 pages 36 – 43). The Complainant argued that Allied REIT would likely be willing to pay a premium for buildings in these areas.

[10] The Complainant also argued that because the sale of 809 10 AV SW was part of a portfolio transaction, sold to Allied REIT, it was not suitable for use in a capitalization rate analysis.

[11] The Complainant made reference to CARB70517P-2013, saying that this decision supported the method used in his capitalization rate analysis and that the City's method of calculating net operating income was inconsistent.

Respondent's Position:

[12] With respect to the vacancy issue, the Respondent provided a copy of the 2009 rent roll for the subject property showing that 8,900 square feet on the fifth floor had been leased to Equinox Engineering from June 15, 2008 to July 31, 2012 at a rate of \$25.00 per square foot. The Respondent argued that while this space may not have been occupied during that time frame, it was leased. The Respondent pointed out that there was no evidence that this lease had been terminated prior to the expiry date.

[13] With respect to the capitalization rate, the Respondent provided a capitalization rate study using five sales, four from 2011 and one from 2012 (exhibit R-1, page 57). The Respondent's analysis supported the 5.25% capitalization rate used to calculate the assessment of the subject property. The Respondent had used net operating income taken from the effective date of assessment for the year in which the sale occurred, July 01, 2012 for the 2012 sale and July 01, 2011 for the 2011 sales.

[14] The Respondent requested that the Board discard the use of the sale at 525 11 AV SW because it had not been purchased based on the income in place at the time of sale but had been purchased for the purpose of renovation and resale. In addition to the 2011 sale of this building for \$8,300,000 the Respondent provided information regarding the 2013 resale of this property for a price of \$18,430,000 (exhibit R-1, page 40).

[15] The Respondent made reference to seven different 2013 CARB decisions that dealt with the issue of Portfolio and REIT sales, (CARB 72597P-2013, CARB 72598P-2013, CARB 72752P-2013, CARB 72990P-2013, CARB 70282P-2013, CARB 72586P-2013, CARB 72593P-2013) essentially these decisions said that a sale should not be discarded solely because it involved a Real Estate Investment Trust (REIT) or solely because it involved multiple properties.

Board's Reasons for Decision:

[16] With respect to the vacancy issue, the Board found that this issue was primarily related to the occupancy status of the fifth floor. The Board was provided with conflicting evidence regarding the occupancy status of the 8,932 square feet located on the fifth floor of the subject building. Both parties agreed that Equinox Engineering had been the tenant of the fifth floor. Page 18 of exhibit R-1 indicated that a lease for this space was in place from June 15, 2008 to July 31, 2012 at a rental rate of \$25.00 per square foot. Pages 53, 55, and 57 of exhibit C-1 indicated that the fifth floor was vacant from 2010 to 2012. The Board did not have any information about the current status of the lease for the fifth floor. Without knowing the current status of this lease the Board was not prepared to make a reduction to the assessment based on abnormal vacancy.

[17] With respect to the capitalization rate, there was disagreement between the parties as to which sales were suitable for use in the capitalization rate analysis. The Board found that the test for whether or not a sale was appropriate for use in any market value analysis should be based on the definition of market value contained in MGA 1 (1) (n).

"market value" means the amount that a property, as described in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer".

[19] The Board noted that both parties had used the sales reporting service known as Real Net. Real Net had reported that all of the sales used by both parties were "market" transactions.

[20] Also with respect to the capitalization rate, the Board found that typical market rent should be used to calculate the capitalization rates for property assessment purposes. The Board found that the typical market rents should be taken from a time frame as close as practical to the sale date of each sale used in the analysis.

[21] The Board found that the net income used by the Complainant had been taken from the 2013 assessment information reflecting an effective date of July 01, 2012 regardless of whether the sale took place in 2011 or 2012.

[22] The Board found that the net income used by the Respondent had been taken from the 2013 assessment information reflecting an effective date of July 01, 2012 for the 2012 sales and the net income had been taken from the 2012 assessment information reflecting an effective date of July 01, 2011 for the 2011 sales.

[23] While neither of these two approaches captures the typical net income as of the sale date the Board found that the Respondent's approach was reasonable given the requirement for mass appraisal and the fact that it tried to capture the net income as of the midpoint of each year and apply that to any sales that occurred during that year. Both parties acknowledged that there had been a trend towards increasing rental rates in the period between 2011 and 2012. Given that rental rates had been increasing, the Board found that it was reasonable to use typical market rents taken from the midpoint of the year in which the sale occurred.

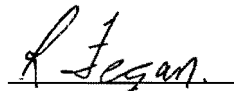
[24] No evidence was provided by either party outlining the time frame from which data was taken for the purpose of establishing the typical market rent as of the midpoint of each year.

[25] No evidence was provided by either party outlining assessment to sale price ratios (ASR) that would result from the application of the capitalization rates used by either party.

[26] The Board noted that the requested capitalization rate in CARB 70517P-2013 for Class B office buildings in the Beltline was 6.25% and not the 7.0% being requested in this case.

[27] The Board found that the capitalization rate used by the Respondent did not result in an assessed value that exceeded the market value of the subject property and therefore accepts the rate of 5.25% as the preferred capitalization rate.

DATED AT THE CITY OF CALGARY THIS ^{30th} DAY OF October 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.		Roll No.		
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office	Capitalization Rate	Vacancy Rate

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