



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:

Starke Dominion LTD (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
K. Farn, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	067103507
LOCATION ADDRESS:	906 – 12 AV SW
FILE NUMBER:	75236
ASSESSMENT:	\$40,410,000

This complaint was heard on 10th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *W. Van Bruggen – MNP LLP*

Appeared on behalf of the Respondent:

- *R. Ford – Assessor, City of Calgary*

Regarding Brevity

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] The Complainant clarified that he wished to carry forward his main arguments regarding the two issues (see [4] below) in this hearing from file 75138.

Property Description:

[3] The subject is a 42,211 square foot (SF) land parcel, improved with a total 137,801 SF multi-storey commercial building in the Beltline 4 (BL 4) district of downtown Calgary. It contains 8,708 SF of retail; 4,478 SF of restaurant space; 5,378 SF of bank space; 20,365 SF of office/recreation space; 98,872 SF of office space. It also contains 22,865 SF of exempt space valued at \$4,050,000. The subject is a "B" class building, and is located at 906 – 12 AV SW. The subject was assessed using the Income Approach to Value methodology, for an assessment of \$40,410,000.

Issues:

[4] The Complainant raised the following issues;

- a) Has the City erred by calculating the subject's value in an inconsistent manner by using certain valuation inputs from the entire Beltline area, including combining BL3 and BL4, instead of those exclusively from the subject's specific BL4 zone?
- b) What are the correct rent; operating costs; and capitalization rates to be applied to an income approach to value calculation to assess the subject, and/or should the sale value of the subject in February 2011 be considered as a valid transaction for assessment purposes instead?

Complainant's Requested Value:

[5] The Complainant requested that the assessment be reduced to \$33,950,000 based on a revised income approach to value. He also requested the Board to consider a December 2011 sale of the subject for \$30,000,000 as the revised assessment.

Board's Decision:

[6] The Board confirmed the assessment at \$40,410,000.

Legislative Authority, Requirements and Considerations:

[7] The Complainant provided reference to the "Westcoast Transmission" case. (*Supreme Court of British Columbia – Westcoast Transmission Co. V. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273 [Westcoast]*)

Positions of the Parties

Complainant's Position: {Issue [4] (a)}

[8] The Complainant argued that the Respondent had erred and was inconsistent in the methodology used to assess the subject and similar properties. He suggested that in previous years the City had focused more closely on various valuation parameters derived from each of the nine Beltline (BL) zones it had previously established for analysis purposes. The values derived were then used to assess individual properties within their particular zone.

[9] The Complainant argued that for the assessment year 2014, the Assessor grouped and analyzed certain beltline zones together – and in particular, Beltline 3 and Beltline 4. The resulting values were used to assess properties such as the subject, which is in BL4. He posed that this is inconsistent. He also suggested that because the subject is in BL4, it should have been assessed using only those valuation parameters unique to BL4. He also argued that the areal boundaries of the two zones are too large, and should be re-defined to relatively smaller units.

[10] The Complainant provided several matrices throughout his Brief C-1 (note pages 256 – 264) purporting to demonstrate that rental values (as an example) for Class "B" properties in BL3 and BL4 are significantly different. He also presented similar evidence and argument to demonstrate that the Cap Rates ascribed to valid market sales in the two zones are significantly different. Therefore, he argued, the Respondent City has been inconsistent in its methodologies and this is contrary to certain legal precedents such as the so called "Westcoast Transmission" case. (*Supreme Court of British Columbia – Westcoast Transmission Co. V. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273 [Westcoast]*)

[11] The Complainant also argued that the Respondent is inconsistent in its calculation of certain input values. He noted for example that the City uses previous year's income (e.g. 2011 for 2012) to establish Capitalization Rates (cap rate) whereas he uses a "fiscal" year (e.g. July 1, 2012 – July 1, 2013). He argued that other similar procedural "flaws" apply to other municipal calculations when calculating values such as operation costs (op costs), and this leads to incorrect assessments.

Respondent's Position: {Issue [4] (a)}

[12] The Respondent argued that the Complainant is incorrect, because the City has consistently grouped several of the beltline zones together for analysis for several years, successfully using the results for assessment purposes. It did so again for the 2014 assessment year. He clarified that through detailed analysis of Assessment Request For Information (ARFI) documents from property owners, and other materials for example, it was determined that there was "not much difference" between the leasing activity in BL3, and BL4. Therefore, he advised, it was decided to group the two zones together again this year. He argued that this practice demonstrates the City is being consistent in its methodologies, not the reverse.

[13] The Respondent noted that it has access to a considerable number of good data samples to analyze in its quest for "market value". Using Mass Appraisal, it consistently uses "typical" values "looking for market value". He argued that "nowhere does it say in 'Westcoast' that we must use July 1 to July 1 sales as argued by the Complainant". He referenced Municipal Government Board (MGB) decision MGB 145/07 in support of his position.

[14] The Respondent also provided several matrices containing re-creations and critique of the Complainant's matrices, to demonstrate perceived errors in the Complainant's methodology and analysis related to rental rates for BL3 and BL4. He argued that the Complainant had omitted certain current leases, which, when combined with other older leases – already supplied by the Respondent as requested, demonstrate a more correct typical rent value. He argued that the Complainant was therefore using inconsistent methodology.

[15] The Respondent used maps and municipal Assessment Equity Supplement (AES) documents to identify the physical locations of several property comparables used by both the Complainant and the City in BL3 and BL4. He noted that a map on page 33 of C-1 showed that they were generally clustered close together in proximity to 7 ST SW and 8 ST SW like the subject. He suggested that this may demonstrate why the rental values for the various sites appear to be similar when they are analyzed. In addition, he suggested that the boundaries between BL zones can essentially be drawn anywhere, depending on the annual analysis of the City's dynamic market.

Board's Reasons for Decision:

Issue [4] (a)

[16] The Board finds that on the basis of the evidence and argument at this hearing, and contrary to the assertions of the Complainant, the Respondent continues to employ analytical techniques and methodologies in a consistent manner in its annual assessment practices.

[17] The Board finds that on the basis of the evidence and argument in this hearing, that the Complainant has provided insufficient information to demonstrate to the Board that the Respondent has erred in defining "typical" assessment values by combining certain input values from BL3 and BL4 to the detriment of the subject.

[18] The Board finds that on the basis of the evidence and argument in this hearing, that the Complainant has provided insufficient information to demonstrate to the Board that the Respondent has erred by not re-defining the areal boundaries of BL3 and BL4.

[19] The Board finds that the Complainant failed to demonstrate to the Board and to the Respondent precisely where, in the "Westcoast" Court decision, that the decision appears to him to define specific procedures for assessment purposes.

Complainant's Position: {Issue [4] (b)}

[20] The Complainant argued that in the calculation of value for the subject, a rent rate of \$16.00 per SF instead of \$17.50 per SF; a Cap Rate of 6.75% instead of 6%; and op costs of \$15 per SF instead of \$13 per SF, he had calculated an alternate value for the subject of \$33,950,000.

[21] The Complainant provided a matrix containing five beltline "B" Class office market sales which he analyzed for the Board and Complainant to identify a preferred Cap Rate of 6.75% instead of the assessed 6%. The five samples were taken from the City's Beltline Cap Rate study which contained nine sales. He argued that he had omitted three of the City sales from his analysis because they were not "B" Class properties. The fourth one he considered was not a valid sale, and provided documentation and clarification as to his rationale. He concluded that the site at 1301 – 1 ST SW was a Class "C" building and not a "B"; it was smaller than the other examples; and it was 70% retail and thus not an office building.

[22] The Complainant later refined his analysis with a second matrix containing only four sales. He deleted a sale at 1207 – 11 AV SW because upon further analysis he did not consider it a valid sale for his purposes. Based on his analysis of these four sales, the Complainant identified an average cap rate of 6.81% and a median rate of 6.55%. He argued that in re-calculating the assessment, a cap rate of 6.75% should be used.

[23] The Complainant provided several matrices containing office rent rates for "B" Class buildings from each of BL3 and BL4 which he had extracted from the City's beltline rent rate study. The City's study included rent rates from several beltline zones which were analyzed by the City to identify a "typical" rent value of \$17.50 per SF. The Complainant sorted this information into their respective zones, and concluded after a review of these rates, that a rent rate of \$16.00 per SF should be used to re-calculate the assessment instead of the assessed \$17.50 per SF.

[24] The Complainant provided a chart containing twenty-four beltline properties. The chart identified the number of square feet in each property and its apparent operating costs. The Complainant asserted that his analysis of this information demonstrates that an op cost of \$15 per SF instead of the assessed \$13 per SF is the correct value to be applied to the subject.

[25] The Complainant noted that the subject sold for \$30,000,000 in December of 2011. However he noted that while the Respondent had included it in his cap rate study, the Respondent was now urging caution in its use for valuation purposes, because the site was now involved in litigation, in part related to the sale. Questions have arisen he noted, regarding the "arms length" nature of the sale. Nevertheless, the Complainant argued that several CARB and Court decisions have ruled that a market sale "is the best indicator of value".

[26] The Complainant calculated that the correct assessment for the subject, based upon his revised input variables as described heretofore, is \$33,950,000.

Respondent's Position: {Issue [4] (b)}

[27] The Respondent provided a matrix containing the City's Capitalization Rate Study which contained nine market sales – including the subject, which sold in December 2011. He noted that the City had analyzed the specific details relevant to each sale, and at the time of preparation of this chart, believed each sale to be a valid sale. However, he noted that since that time in February and April of 2014, more information has come to light about the subject property at 906 – 12 AV SW which is now, in part, the subject of ongoing litigation. Therefore, he urged caution in terms of relying on this sale. He pointed out however, that even should one choose to exclude this sale from the analysis, he was confident that the revised results still support the assessed 6% cap rate.

[28] The Respondent clarified that while the Complainant excluded a property at 1301 – 1 ST SW from his cap rate study, this was erroneous. He noted that at the time of sale, the site was an office building, and only reverted to retail by the new owners after it was sold. Therefore, he argued, the sale is a valid sale at the time of analysis, and was used by the City in its analysis of the market.

[29] The Respondent provided the City's beltline rent rate study in the form of several matrices of rental data taken from the ARFI documents returned to the City by property owners

and managers. The Respondent confirmed that while the Complainant has segregated the data for his purposes, the City's analysis used all of the rent data from each of the beltline zones to define a "typical" rent rate of \$17.50 which was then applied to the subject and other properties similar to the subject.

[30] The Respondent argued that the Complainant arbitrarily selected older rent examples from the City's study, which leads him to conclude that \$16.50 per SF is typical – which it is not. The Respondent argued that the Complainant's own rent rate evidence in his C-1 matrices demonstrate that the more recent 2013 lease rates support the assessed \$17.50 per SF.

[31] The Respondent noted that the City's OP Cost study used ARFI documents from 74 beltline property samples - 57 of which were from Class "B" buildings, to define a typical op cost value of \$13 per SF. He suggested that the Complainant's data was, in part, secured from advertising and marketing materials and was not as reliable as the City data. Therefore his request for a \$15 per SF op cost adjustment in the assessment calculation was not well supported.

Board's Reasons for Decision:

Issue [4] (b)

[32] The Board finds that on the basis of the evidence and argument in this hearing, that the Complainant has provided insufficient information to demonstrate to the Board that the Capitalization Rate of 6% used by the Respondent in the assessment of the subject is incorrect and that his proposed 6.75% cap rate is correct. The data supplied by the Complainant as gleaned from the City's cap rate study, excludes, for reasons the Board rejects, several valid property sales used by the Respondent in their broader study. Therefore the Board finds the Complainant's data on this point to be unreliable.

[33] The Board finds that on the basis of the evidence and argument in this hearing, that the Complainant has provided insufficient information to demonstrate to the Board that the Rent Rate of \$17.50 per SF used by the Respondent in the assessment of the subject is incorrect and that his proposed \$16.00 per SF rate is correct. Having examined the Complainant's matrices on this point the Board notes, as did the Respondent, that when more recent leases are included in the analysis, the values support the \$17.50 per SF assessed.

[34] The Board finds that on the basis of the evidence and argument in this hearing, that the Complainant has provided insufficient information to demonstrate to the Board that the Operation Costs (op costs) of \$13 per SF used by the Respondent in the assessment of the subject is incorrect and that his proposed \$15 per SF rate is correct. Having examined the Complainant's charts on this point the Board notes, as did the Respondent, that there is insufficient background data in the form of rent rolls or ARFI data to support or verify the values used. Conversely, data from the 74 ARFI's, of which 54 were of Class "B" buildings like the subject, as used by the Respondent in his study, support the \$13 per SF assessed.

[35] The Board finds that it accepts the Respondent's cautionary advice with respect to the sale price of the subject in December 2011 for \$30,000,000 since the sale is evidently involved in part in litigation related to the sale of the subject and other matters. For this reason the Board finds that it prefers the calculation of value posed by the Respondent who used an income approach to value methodology to conclude the subject should be assessed at \$40,410,000..

[36] The Board finds that the assessment of the subject as prepared by the Respondent is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF July 2014.



K. D. Kelly
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
3. R-1	Respondent Disclosure
4. Exhibit #1	Respondent Disclosure – corrected page 151 (R-1)
5. Exhibit #2	Respondent Disclosure – corrected page 163 (R-1)

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.*
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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	Beltline office	market value	Sub-zones/consistency/rent/cap rate/ op cost /sale