



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:

605 - 11TH AVENUE SW INC.

(as represented by Avison Young Property Tax Services), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

J. Kerrison, BOARD MEMBER

D. Pollard, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board (the 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:	200112084
LOCATION ADDRESS:	605 11 Ave SW
FILE NUMBER:	75945
ASSESSMENT:	\$15,110,000

This complaint was heard on the 28th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *C. Hartley, Agent, Avison Young Property Tax Services*
- *A. Farley, Agent, Avison Young Property Tax Services*

Appeared on behalf of the Respondent:

- *L. Wong, Assessor, the City of Calgary*
- *V. LaValley, Assessor, the City of Calgary*

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

[1] The subject property was one of five B class office buildings in the Beltline area of Calgary under complaint by the Complainant's representative. All five complaints had the same issue, evidence and argument to be considered. Upon agreement between the Complainant and Respondent, it was agreed that one of the properties be considered in detail but that the presentations be carried forward to the other complaints with small modifications to the submissions based on site specific details. The Board agreed to proceed on that basis, and the detailed presentations decided in CARB75957P-2014 were carried forward to the subject.

Property Description:

[2] The subject property is a three storey office building located in the Non Res BL3 Sub Market Zone of the Beltline. It was constructed in 1912 and 1958 on a 19,525 square foot (sf) parcel of land and renovated in 1990. It is assessed on the income approach to value using the City's 2014 parameters for B class buildings in BL3: 21967 sf office at a market net rental rate of \$17.50/sf, 5,459 sf office storage at \$5.50/sf, 9,999 sf restaurant at 24/sf, 13,749 sf restaurant space +6000 at \$28/sf and 3 surface parking stalls at \$3,540/annum for a potential net income of \$1,050,015. Vacancy of 8% for office, office storage and restaurant and 2% for parking is deducted. Vacant space shortfall based on operating costs of \$10/sf for office storage, \$13/sf for office and \$12/sf for restaurant as well as 1% non-recoverables are applied and the resulting net operating income (NOI) of \$906,974 is capitalized at 6.0% to arrive at the total property assessment of \$15,116,233 truncated to arrive at the assessment under complaint.

Issues:

[3] The Complaint form listed a number of issues under Reason(s) for Complaint, but at the hearing the only issue argued was whether the capitalization rate should be 6.5% and not 6.0%.

Complainant's Requested Value: \$13,950,000

Board's Decision:

[4] The assessment is reduced to \$13,950,000

Legislative Authority, Requirements and Considerations:

[5] The composite assessment review board (CARB) derives its authority from Part 11 of the 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 (1)(a).

[6] For purposes of the hearing, the CARB will consider the Act Section 293(1):

In preparing the 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.*

[7] The regulation referred to in the Act section 293(1)(b) is Alberta Regulation 220/2004, Matters Relating to Assessment and Taxation Regulation (MRAT). Part 1 sets out the Standards of Assessment - section 4 specifies the valuation standard and section 2 describes the requirement for mass appraisal:

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.*

4(1) The valuation standard for a parcel of land is

- a) market value, ...*

Position of the Parties

Complainant's Position:

[8] The Complainant stated that Respondent's method of calculating capitalization rates utilizes backward looking estimates of market rent and typical income for transactions occurring in the latter half of a given year. Two of the sales in the Respondent's cap rate study occurred in December 2011. The Respondent analyzed the sales using 2011 income parameters, which were based on information collected from July 2010 to July 2011. The Complainant contends that sales should be analyzed using income parameters that are relevant to the time period in which the sale occurred. If the 2012 income parameters were applied to the December 2011 sales, they would have been derived using information from July 2011 to July 2012, which encompasses conditions at the time of sale. This provides a better estimate of income for calculating the cap rate for a sale that occurred within that period. The Complainant presented a number of CARB decisions in support of this position.

[9] Due to this "backward looking" methodology, the cap rates listed in the Respondent's study are wrong. The two sales in December, 2011 were analyzed using NOI based on the 2011 office rental rate of \$13/sf. The 2012 office rental rate was \$15/sf. As both of the properties had a very large rentable office area, the difference in the office rental rates applied results in a very substantial difference in the cap rate. The Complainant recreated the Beltline office B class 2014 cap rate analysis using income parameters from the time of sale instead of the year of sale:

Address	NRZ	AYOC	Rentable Area sf	Sale Date	Sale Price	NOI (Resp)	Cap Rate	NOI (Compl)	Cap Rate
625 11 Av SW	BL3	1974/1980	34,418	19-Mar-13	11,522,394	735,776	6.39%	735,776	6.39%
301 10 Av SW	BL4	1910	9,705	17-Dec-13	2,500,000	116,722	4.67%	Not comparable	
1451 14 St SW	BL5	1962	11,146	23-May-12	2,600,000	169,293	6.51%	169,293	6.51%
1207 11 Av SW	BL4	1980	83,880	18-Jan-12	29,850,000	1,442,159	4.83%	1,442,159	4.83%
906 12 Av SW	BL4	1980	137,801	29-Dec-11	30,000,000	2,046,257	6.82%	2,307,364	7.69%
1520 4 St SW	BL3	1973	106,707	1-Dec-11	28,800,000	1,637,086	5.68%	1,855,639	6.44%
Mean						(Resp)	5.82%	(Compl)	6.37%
Median							6.03%		6.44%

One of the sales occurred on Dec 29, 2011. If it had transferred three days later, it would have been analyzed as a cap rate of 7.69% instead of 6.82%.

[10] The sale at 301 10 Ave SW should not be included in the cap rate analysis. If assessed as vacant land, the value is 80% of the assessment based on the income approach. The risk in

purchasing an income-producing property where the land value is 80% of the value of the income stream is substantially different from the other properties, where the underlying land value represents 15% to 40% of the assessed value based on income. The cap rate for such a sale would not reflect typical cap rates for income producing properties.

[11] Further, the reported NOI in the RealNet report for 301 10 Ave SW stated that the actual NOI at the time of sale was \$183,600 – substantially more than the typical NOI of \$116,772 the Respondent used to determine the cap rate for that sale was 4.67%. Similarly, the sale at 1207 11 Ave SW had a reported NOI of \$2,300,000 – again substantially more than the typical \$1,442,159 used in calculating the cap rate of that sale at 4.83%. These sales do not reflect the fee simple interest and should be given less weight. In the BC Supreme Court decision *Bentall Retail Services Inc. et al v. Assessor of Area 09 – Vancouver* (2006 BCSC 424) the Court quoted from the Property Assessment Appeal Board decision in upholding it:

[7] The Board made findings of fact which are reiterated in the Stated Case. I set out some of the more relevant facts here. The paragraph numbers correspond to numbers in the Stated Case:

...

19. In determining the capitalization rate from an analysis of comparable sales, the Board found that it is not appropriate to adjust the sale prices for excess rent. The Board found that the best comparable sales evidence demonstrates contract rent closely equated to market rent. The Board found the capitalization rates derived from such comparables provide the best evidence.

[12] With the sale at 301 10 Ave SW removed, and the proper income parameters used, the mean and median cap rates for B class office buildings in the Beltline are 6.37% and 6.44% respectively and supports the requested 6.5% cap rate.

Respondent's Position:

[13] The Respondent presented the 2014 Capitalization Rate Analysis for Beltline Office along with RealNet reports, Transfer of Land affidavits and corporate searches for the purchasers and vendors of the sales that were used in the analysis. Nine sales between December 1, 2011 and March 28, 2013 were analyzed and cap rates for A, B and C class buildings were generated. For B class buildings, the mean and median were 5.82% and 6.03% resulting in the 6.0% cap rate used for the 2014 assessment of B class buildings. The Respondent stated that transactions that did not occur close to the valuation date cannot be analyzed without error, but the income parameters from the year of sale are used, as it is the valuation date closest to the sale date, including sales in December. This is based on direction provided by the MGB in DL019/10, which stated:

The MGB finds that the 2007 assessment year factors should be used for the 2007 sales and that the 2008 assessment year factors should be used for the 2008 sale.

[14] The Respondent presented an analysis comparing their cap rate analysis with the Complainant's. For the period between July 1, 2012 and July 13, 2012 if a straight line increase in rent from \$15/sf to \$17.50/sf is used, the Respondent's cap rates have a smaller cumulative error than the Complainant's. This supports the Respondent's methodology.

[15] The Respondent also disputed the removal of the sale at 301 10 Ave SW stating that there was no basis for excluding a sale with a substantial land value. It was a valid arms length sale between unrelated parties. Even if contract rents were higher than typical, it should not affect market value - these are valid sales and should be used.

Board's Reasons for Decision:

[16] The Board agrees that the best evidence of the market value of the fee simple estate of

a property is sales where the contract rent and market rent are similar. All sales of buildings with tenants in place include contractual obligations, and are sales of the leased fee interest. When the income generated is close to typical, the sale price would be expected to be a reasonable approximation of the fee simple interest that the legislation requires to be assessed. For two of the sales, the reported NOI and typical NOI used in the cap rate analysis were significantly different. For 1301 10 Ave SW, the typical NOI results in a cap rate of 4.67% while the reported NOI at the time of sale suggests a cap rate of 7.34% on the sale. Similarly, the sale at 1207 11 Ave SW, where both Complainant and Respondent applied the typical 2013 income parameters, the cap rate is 4.83% while based on the reported NOI at the time of sale the cap rate would be 7.71%. The Board is of the opinion that such sales are a less reliable indicator of the market value of the fee simple estate, and should be given less weight.

[17] The Board also considered the difference in opinion between the Respondent and Complainant as to whether "forward looking" or "backward looking" parameters are a better indication of typical parameters to be applied to a sale in December to generate a cap rate. The evidence suggests that neither may be appropriate. The 2012, 2013 and 2014 rental rates for office were \$13, \$15 and \$17.50 respectively. Both the Respondent's and Complainant's methodologies presume the rates changed precipitously on a specific date – in the case of the Respondent, on January 1 of the year of the sale, in the case of the Complainant, on July 1 of the year prior to the sale. The Board considers both scenarios to be highly unlikely. It would be preferable to generate parameters based on information available for the period immediately prior to the sale, which would likely more accurately reflect typical conditions. Such an analysis was not done, but the Board is of the opinion that the typical cap rate indicated by the two December sales would lie somewhere between the two rates suggested by the parties.

[18] Assuming a linear change in the parameters, the Board pro-rated the Complainant's and Respondent's cap rates for the two December sales (average of the two for the Dec 29 sale and 5/12 of the difference for the Dec 1 sale). Eliminating the sales at 1301 10 Ave SW and 1207 11 Ave SW due to the large discrepancy between reported and typical NOI, the four remaining sales have an average cap rate of 6.54% and a median of 6.45%:

Address	NRZ	AYOC	Rentable Area sf	Sale Date	Sale Price	Respondent Cap rate	Complainant Cap rate	Average Cap rate
625 11 Av SW	BL3	1974/1980	34,418	19-Mar-13	11,522,394	6.39%	6.39%	6.39%
1451 14 St SW	BL5	1962	11,146	23-May-12	2,600,000	6.51%	6.51%	6.51%
906 12 Av SW	BL4	1980	137,801	29-Dec-11	30,000,000	6.82%	7.69%	7.26%
1520 4 St SW	BL3	1973	106,707	1-Dec-11	28,800,000	5.68%	6.44%	6.00%
Mean						5.82%	6.37%	6.54%
Median						6.03%	6.44%	6.45%

Based on this analysis, the Board agrees that 6.5% is a more appropriate cap rate for the subject property than the 6.0% applied in the 2014 assessment.

[19] The assessment is reduced by applying a 6.5% cap rate to the typical NOI, truncated.

DATED AT THE CITY OF CALGARY THIS 11 DAY OF August 2014.


H. Kim

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.*

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Property Type	Property Sub-Type	Issue	Sub-Issues
(3) Office	Low Rise	Income Approach	Capitalization Rate