



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 *MGA*).

between:

***The Manufacturers Life Insurance Company
(represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Ms. V. Higham, PRESIDING OFFICER
Ms. A. Huskinson, BOARD MEMBER
Mr. E. Reuther, 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 (the City) and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	068134600
LOCATION ADDRESS:	1122 4th Street SW Calgary, Alberta
FILE NUMBER:	76661
ASSESSMENT:	\$35,610,000

This complaint was heard on 17th day of June, 2014 at the office of the Calgary Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- **Mr. S. Kassam** **Agent, Colliers International Realty Advisors Inc.**
- **Mr. J. Phelan** **Agent, Colliers International Realty Advisors Inc.**

Appeared on behalf of the Respondent:

- **Mr. H. Yau** **Assessor, City of Calgary**
- **Mr. R. Ford** **Assessor, City of Calgary**

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

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] The Board notes an executed Agent Authorization Form present in the file.
- [3] All disclosure materials were received in a timely fashion, as mandated by the Act.
- [4] There were no preliminary issues raised by either party.
- [5] Upon request, the Board agreed to carry forward the Capitalization Rate (cap rate) arguments and evidence presented by both parties from "lead file" #76676, common to the subject complaint heard by the Board that same day.
- [6] Upon request, the Board also agreed to carry forward the "flood effects" arguments and evidence presented by both parties from "lead file" #76617, common to the subject complaint heard by the Board that same week.

Property Description:

[7] The subject is assessed as a "B" quality commercial office property constructed in 1981 and located at 1122 4th Street SW in zone BL3 of the city's Beltline commercial district. Designated as Centre City Mixed Use District, the parcel is improved with one building comprising 125,535 square feet (sf) of space on 0.34 acres of land. The subject is currently assessed at \$35,610,000 using the Income approach to value, with an applied cap rate of 6.0%.

Issues:

- [8] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. During the hearing, the Complainant indicated he was requesting a different assessment amount (\$15,260,000) than originally noted on the Complaint Form (\$30,980,700). The Complainant then raised the following issues for the Board's consideration:
- 1) What is the correct cap rate to apply to the subject property: the assessed 6.0% or the requested 7.0%?
 - 2) Did the City err in failing to apply a quantified "flood effects" adjustment to the subject property?

Complainant's Requested Value: \$15,260,000

Board's Decision: For reasons outlined herein, the Board confirms the subject assessment.

Legislative Authority, Requirements and Considerations:

[9] A Composite Assessment Review Board (CARB) derives its authority from the *MGA*, Revised Statutes of Alberta 2000, Section 460.1, which reads as follows:

- (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).

Section 293 of the *MGA* requires that:

- (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.

Section 2 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) states:

- (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, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties

Issue 1: What is the correct cap rate to apply to the subject property: the assessed 6.0% or the requested 7.0%?

Complainant's Position on Issue #1:

[10] The Complainant submitted that the cap rate applied to the subject property is incorrect due to the flawed methodology employed by the City to derive a typical cap rate for Beltline commercial properties.

[11] The Complainant argued that the City erred by applying *typical* valuation parameters against *actual* sales to derive a typical cap rate applied to the subject, and he quoted from several CARB decisions commenting on the error of mixing actual and typical parameters in the calculation of a typical cap rate (see CARB 1302/2011-P, CARB 1340/2011-P, and CARB 1036/2012-P).

[12] The Complainant submitted Collier's cap rate study (Exhibit C1, p.71), which analysed four "B" quality properties (three of which were common to the City's study) between September 2011 and January 2012, showing median/mean cap rates of 7% and 7.15% respectively.

[13] The Complainant also included a map (Exhibit C1, p.84), highlighting the subject property and seven other comparable properties used in both the Complainant and Respondent's studies, as well as Real Net reports for the four comparable sales he relied upon (Exhibit C1, pp. 72-82).

Respondent's Position on Issue #1:

[14] The Respondent submitted the City's 2014 cap rate analysis for Beltline office buildings (Exhibit R1, p.20), which analysed nine sales between December 2011 and March 2013, showing median/mean rates of 6.03% and 5.82% respectively for the "B" quality properties.

[15] The Respondent defended the City's methodology by noting that there is no such thing as *typical* actual sales, so the use of *actual* sales is appropriate and necessary as a starting point, so long as all other parameters used in deriving a typical cap rate (rental and vacancy rates, operating costs, non-recoverables, etc.) are *consistently* typical throughout the calculation – which the Respondent argued is the case for the subject assessment.

[16] The Respondent argued that the Complainant's methodology was flawed by mixing purported *actual* sales data (erroneously drawn from and *solely* relied upon from the estimated figures in the Complainant's Real Net reports), with the City's *typical* parameters for all the other factors calculated in the Complainant's requested pro forma (Exhibit C1, p.107).

[17] The Respondent quoted excerpts from the same CARB decisions referred to by the Complainant, arguing that the flawed methodology used by the Complainant in the subject appeal (mixing *actuals* with *typicals*) is the very methodology these decisions condemn as unacceptable.

Board's Findings and Reasons for Decision on Issue #1:

[18] The Board confirms the current 6.0% cap rate applied to the subject property.

[19] The Board agrees with the conclusions of the CARB excerpts quoted in the hearing, namely, that derivation of value using the Income approach must be based on a methodology that uses consistent parameters throughout the calculation process.

[20] The Board finds the Complainant's methodology to be flawed in two fundamental respects:

- 1) The Complainant relied solely upon third party reported sales data (Real Net figures), all of which reflect *estimated* cap rate and/or NOI values; and
- 2) The Complainant then applied these unreliable "actual" cap rate figures to the City's "typical" parameters of rental rates, operating costs, and non-recoverables to calculate the requested subject valuation in the Complainant's pro forma (Exhibit C1, p. 107).

[21] The Board accepts the City's cap rate analysis as reasonably representative, preferring this analysis to the Complainant's for two reasons: it included a larger sample size and more recent sales.

[22] The Board also concurs with the Respondent's submission that there is "no such thing as *typical* actual sales." Thus, all "typical" mass appraisal cap rate studies must begin by using "actual" sales data as a fixed starting point. The caution against mixing actuals with typicals applies to every calculation made thereafter, whereby the parameters used to derive an

assessment valuation must consistently reflect typical and not actual figures.

[23] The Complainant breached this principle of consistent methodology by mixing unreliable, purported "actual" NOI and cap rate data from third party sources, with the City's "typical" parameters to derive the requested valuation for the subject property, thus failing to persuade the Board to vary the assessed cap rate.

Issue #2: Did the City err in failing to apply a quantified "flood effects" adjustment to the subject property?

Complainant's Position on Issue #2:

[24] The Complainant argued that the "crippling repercussions" (Exhibit C1, p.3) of the 2013 flood in Calgary rendered "properties within the flood zone at essentially a \$0 value" (Exhibit C1, p.3), due to the devastating economic effects of the flood.

[25] The Complainant submitted that this "market freeze as at July 1, 2013" (Exhibit C1, p.3) justifies the requested 50% reduction, since the negative economic impact of the flood affected more than just flooded properties in Calgary. The Complainant argued that the City failed to "quantify" this impact in the subject assessment, since it was one of those properties not flooded, but surely *affected by* the event.

[26] The Complainant presented several third party reports and articles (Exhibit C1, pp.85-106) in support of this argument, noting that the subject was included in a series of Calgary postal code prefixes which the Scotiabank flagged as requiring "additional inspections or appraisals before any financing gets approved" (Exhibit C1, p.95), making it more onerous and costly to property owners within those prefixes.

Respondent's Position on Issue #2:

[27] The Respondent argued that the Complainant's requested flood effects reduction is unwarranted, since the subject was not actually flooded last summer, nor does it lie within in any flood zone identified by the City.

[28] The Respondent challenged the relevance and reliability of the third party reports and articles submitted by the Complainant, noting that all of them referred to *residential*, not commercial/retail properties.

[29] The Respondent noted that sale prices for non-residential properties in the subject area have actually increased generally since the flood last summer, and that properties either flooded or in a City-identified flood zone, were appropriately adjusted in their respective assessments.

[30] The Respondent also questioned the 50% figure, noting that the Complainant submitted no data to support this or any other value, arguing that it was arbitrarily conceived in an evidentiary vacuum.

Board's Findings and Reasons for Decision on Issue #2:

[31] The Board finds that the City did not err in omitting to apply a quantified "flood effects" reduction to the subject property.

[32] The subject was neither flooded, nor in a flood zone, and the Complainant failed to proffer any evidence whatsoever of specific - even marginal - market value *impact* to the subject justifying a downward adjustment of any amount for flood effects.

[33] The Board finds that the third party reports and articles submitted by the Complainant are not relevant to the commercial subject property in any persuasive manner, since they all speak to residential properties.

[34] The Board concurs with the Respondent's submission that the requested 50% adjustment is arbitrary and wholly unsupported by the evidence submitted at the hearing.

Board's Decision:

[35] For the reasons outlined herein, the Board confirms the subject assessment.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF July 2014.



V. Higham, Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's 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 Only – Roll Number 068134600

Municipal Government Board Use Only: Decision Identifier Codes				
Municipality/Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	Office	Low Rise	Income Approach	Capitalization Rate