



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:

***Harvest Hills Office Park Ltd. (as represented by Avison Young Property Tax Services),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
B. Jerchel, 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:	201622354
LOCATION ADDRESS:	5000 – 333 – 96 AV NE
FILE NUMBER:	76793
ASSESSMENT:	\$27,950,000

This complaint was heard on 25th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *J. Mayer – Avison young Property Tax Services*

Appeared on behalf of the Respondent:

- *C. Neal – 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] None

Property Description:

[3] The subject is an A+ quality, 3-storey, 70,708 square foot (SF) suburban office building located in the NW quadrant of the city at 5000 – 333 – 96 AV NE, just west of Deerfoot Trail. The subject is located on 4.41 AC of land and was constructed in 2009 with 73 underground parking stalls. The office space is assessed at a typical NW value of \$24 per SF; vacancy rate of 3%; operating costs of \$13.50 per SF; 1% non-recoverables; and a capitalization rate of 6%. The 2014 assessment is \$27,950,000.

Issues:

[4] What is the subject's correct market zone for assessment purposes, and hence the correct capitalization rate; vacancy rate; and office rent rate to be applied to the subject?

Complainant's Requested Value:

[5] The Complainant requested that the assessment be reduced to \$19,214,000.

Board's Decision:

[6] The Board confirmed the assessment at \$27,950,000.

Legislative Authority, Requirements and Considerations:

[7] The parties did not reference any provincial legislation during the hearing. However, certain selected CARB decisions were referenced, as well as the so-called "Westcoast Transmission" legal decision, being (*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:**

[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 the City's assessment boundary for NE and NW suburban offices using Deerfoot Trail, is arbitrary and dysfunctional. He noted the subject has a northeast Calgary address but is assessed as if it is in NW Calgary, simply because it is west of Deerfoot Trail. He argued that in the marketplace, because of its geographic location, the subject competes for tenants, with properties located east of Deerfoot Trail. He argued that CARB decision 70230P-2013 speaks to the issue of properties being influenced by arbitrary boundaries set by Assessment Officials.

[9] The Complainant argued that the assessment parameters used to assess northeast suburban offices are significantly lower than those used to assess northwest suburban office buildings. For example, he noted that office rents for such properties in NE Calgary are typically assessed at \$19 per SF. However, because the subject is considered, for assessment purposes, to be in NW Calgary (west of Deerfoot Trail) the typical office rent value is \$24 per SF. The Complainant also noted that typical vacancy rates (3% vs 9%) and capitalization rates (6% vs 6.25%) are also higher in the NE. He also suggested that because the subject is in NE Calgary, it should have been assessed using only those valuation parameters unique to NE Calgary which would have produced a lower assessment for the subject.

[10] The Complainant provided a map showing the location of the subject in relationship to the Calgary International Airport, and three property comparables located east of Deerfoot Trail. He noted that a total of 14 lease samples were used from these three buildings in the City's study to determine that \$19 per SF is a typical rent value for NE properties. The map also showed the location of three property comparables and six lease samples west of Deerfoot Trail in NW Calgary, also used by the City to determine that \$24 per SF is a typical rent value for NW Calgary suburban offices. The Complainant provided copies of the City's rent rate studies used to derive these values.

[11] The Complainant also presented the "City's Capitalization Rate Analysis – Class A Office" study containing five market sales, and argued that the 6% Cap Rate derived from the study is incorrect. The Complainant disagreed with the Net Operating Income (NOI) value for three of the sales, which, he argued, skews the results of the study. The Complainant argued 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 previous Boards have supported his methodology. He provided copies of CARB 70162P-2013 and CARB 70517P-2013 to support his position on this point.

[12] The Complainant also took issue with a sale at 14505 Bannister RD SE which was one of the five sales used by the City in its study. He argued that this was a portfolio sale and hence the value ascribed to the Bannister Road site is invalid. He provided the RealNet information sheet for the sale, noting that two properties in the portfolio were in Saskatoon, and two in Calgary, one of which was a vacant land parcel. He argued that the City should not have used this sale in its analysis and therefore its results are unreliable.

[13] The Complainant argued therefore, that taken together, the 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]*). He also suggested it is contrary to certain Board decisions such as CARB 70162P-2013 and CARB 70517P-2013.

[14] On page 10 of C-1 the Complainant provided a matrix containing four of the City's five market sales that it used (in part) to calculate the 6% cap rate for the subject. He excluded the Bannister Road property from his calculations. He also revised and increased the NOI values for three of the City's sales before calculating that the capitalization rate should be 6.25% and not the 6% assessed.

[15] On page 12 of C-1 the Complainant provided a "revised version" of the subject's assessment calculation. He substituted several City valuation parameters (rent; vacancy; cap rate) that were used primarily to calculate assessments for suburban office buildings in NE Calgary. He substituted a \$19 per SF rent for the assessed \$24; a 9% vacancy rate for the assessed 3%; and a 6.25% cap rate for the assessed 6%. The Complainant calculated that by using these new variables, the assessment should be reduced to \$19,214,000.

Respondent's Position:

[16] The Respondent argued that the Complainant is incorrect because for several years the City has, based on the analysis of data returned to it by property owners, created various market areas displaying similar characteristics. She noted that, pursuant to legislation governing assessments in Alberta, the city has annually used the results of these analyses for assessment purposes. It did so again for the 2014 assessment year. In addition, she suggested that the boundaries between market zones can essentially be drawn anywhere, depending on the annual analysis of the City's dynamic market. The Respondent referenced CARB 1290/2010-P in support of her position.

[17] The Respondent 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 is a significant difference between the suburban office leasing activity west of Deerfoot Trail versus east of Deerfoot in this locale. She also noted that the Complainant had provided elements of the City's leasing activity study for NW and NE "A+" Class suburban office buildings. Therefore, the Respondent provided the City's studies on pages 28 and 29 of R-1.

[18] The Respondent noted however that for unknown reasons, the Complainant had excluded two leases from the subject for \$24 per SF and \$22 per SF that the City had used in these studies. She argued that the Complainant's calculation of value would therefore be unreliable without consideration of these two lease values that support the \$24 per SF assessed. She argued that it was the Complainant who was therefore using inconsistent methodology.

[19] The Respondent noted therefore, that despite the Complainant's assertions to the contrary, the NE Calgary address of the subject is largely irrelevant to its success in the marketplace. She asserted that given the greater values being experienced in the subject's leasing activity, the subject clearly functions like a NW Calgary property and not a NE Calgary property as the Complainant alleges. She provided the ARFI for the subject which was submitted by the owner to the City April 12, 2013. The Respondent noted that of the eight leases in the subject, seven ranged between \$20 per SF and \$24.50 per SF, with the lowest at \$19.50 per SF. She noted that the subject had been assessed using \$24 per SF, the typical suburban office rent for locations in NW Calgary.

[20] The Respondent argued that as a result of the forgoing leasing information, the Complainant is seeking a rent value that is lower than what the subject is actually achieving. She again referenced the two City studies on pages 28 and 29 of R-1. She argued that these analyses support the \$24 per SF used to assess suburban offices in NW Calgary. She argued that this practice demonstrates the City is being consistent in its methodologies and not the reverse as alleged by the Complainant.

[21] The Respondent clarified that the Complainant has referenced CARB 70162P-2013 and CARB 70517P-2013 regarding the City's "grouping" methodology to calculate the subject's cap rate. She noted that these two CARB decisions are irrelevant to this hearing because they are for "B" Class offices in the Beltline district of downtown Calgary. She reiterated that the subject is an "A+" Class suburban office building close to the airport, an entirely different market.

[22] The Respondent noted that as a result of the City's ARFI process, it has access to a considerable number of good data samples to analyze in its quest for "market value". She clarified that in using Mass Appraisal, the City consistently uses typical" values to do so.

[23] The Respondent argued that nowhere does it say in 'Westcoast' as alleged by the Complainant, that the City must use July 1 to July 1 sales, and in fact, the Complainant through CARB 70517/P-2013 has taken "the meaning of what Justice Cumming said out of context". On page 32 of R-1 the Respondent argued that:

"The CARB references the West Coast Transmissions decision administered by the Supreme Court of B.C. however, takes the meaning of what Justice Cumming said out of context. Note that the quote from the decision the CARB highlighted, refers to comments made by Justice Cumming earlier in the decision. These comments were regarding the derivation of the NOI – that it should be based on economic, or typical market, rents and vacancy rather than actual, site-specific numbers. The decision does not refer to using the same income parameters for all sales in deriving a cap rate, but rather be consistent in calculating the NOI and cap rate by applying typical income parameters to each sale. This is tied directly into the issue before the Court in the Westcoast Transmission decision which involved using the actual vacancy rate to derive that subject's assessment and taking into consideration the circumstances peculiar to the current owner.

The City's methodology follows this concept of applied typical income parameters to the sales used in derivation of the cap rate, and does so in a manner that yields a more consistent result than the method that the Complainant is contesting – which is to use the current roll year typical income parameters to calculate the NOI for all sales."

[24] The Respondent provided a matrix containing the City's five market sales that were analyzed to calculate the 6% cap rate used to assess the subject. She argued that the Complainant excluded one of those sales at 14505 Bannister Road SE because it was a portfolio sale, which was erroneous, given the City's analysis of it. She noted however that the City thoroughly investigated the sale and learned that a separate independent Market Appraisal had been conducted for the site to confirm its market value.

[25] The Respondent noted that the values of each of the four portfolio properties were separated on transfer of the Titles. She provided a copy of the "Affidavit of Value" for the subject demonstrating this point. Therefore, she argued, the sale was considered a valid market sale and used in the City's analysis. She argued that CARB 2047-P-2012 supports the City's position in the use of portfolio sales of this nature.

[26] The Respondent argued that when analyzing cap rates, the Complainant is mixing 2013 and 2012 variables (e.g. rents) whereas the City uses July 2013 variables, which is a more reliable methodology. On page 60 of R-1 she provided a "test" of the Complainant's cap rate study by time-adjusting each of the sale values, and calculating the respective assessment to sale ratios (ASR's) using the Complainant's requested 6.25% cap rate. The Respondent noted that the median ASR of 0.92 compares poorly with accepted assessment standards which range from 0.95 to 1.05. Therefore, she reiterated, the Complainant's request for a 6.25% cap rate is unsupported.

Board's Reasons for Decision:

[27] 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. Moreover, the Board considers from the evidence that the Respondent utilizes procedures and methodologies which are mandated and/or authorized by provincial legislation, and has done so for several assessment cycles, contrary to the arguments of the Complainant.

[28] 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 assigning "typical" assessment values from the NW Calgary suburban office zone to the subject. On the contrary, the evidence from the subject's rent roll as outlined in the subject's ARFI, confirms that the subject attracts rents which are typical of the NW suburban office market.

[29] 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 assigning NE Calgary market rents, vacancies, and a 6.25% cap rate to the subject. Indeed, the evidence adduced at this hearing confirms that the subject is correctly assessed using typical NW Calgary market inputs in its assessment calculation.

[30] The Board finds that the Complainant failed to demonstrate to the Board and to the Respondent precisely how the "Westcoast" Court decision defines specific procedures for assessment purposes. Moreover, the Board accepts the Respondent's assertions that the Complainant's reliance on CARB 70517/P-2013 is misplaced since that decision relates to "B" Class downtown Beltline office buildings, whereas the subject is an entirely different "A+" Class suburban office building near to the Calgary International Airport.

[31] 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 6.25% 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, a valid property sale used by the Respondent in their broader study. Therefore the Board finds the Complainant's data on this point to be unreliable.

[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 rent rate of \$24.00 per SF used by the Respondent in the assessment of the subject is incorrect and that the Complainant's proposed \$19.00 per SF rate is correct. Having examined the Respondent's study matrices on this point, and the ARFI document for the subject, the Board notes that the values adduced therefrom support the \$24.00 per SF rent rate assessed.

[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 vacancy rate of 3% used by the Respondent in the assessment of the subject is incorrect and that the Complainant's proposed 9% rate is correct. Having examined the Complainant's evidence matrices 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 value used. Conversely, data used by the Respondent supports the 3% assessed.

[34] The Board finds that the assessment of the subject at \$27,950,000 as prepared by the Respondent is correct, fair, and equitable.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF July 2014


K. D. Kelly
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure - Rebuttal
3. R-1	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 Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	suburban office	market value	Assessment zone and parameters