



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:

Westpen Properties LTD. Les Proprietes Westpen Ltee. (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:	031023500
LOCATION ADDRESS:	2618 Hopewell PL NE
FILE NUMBER:	76933
ASSESSMENT:	\$21,260,000

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, 5-storey, 76,812 square foot (SF) suburban office building located in the NE quadrant of the city at 2618 Hopewell PL NE. The subject is located on 3.67 AC of land and was constructed in 2006 with 52 underground parking stalls. The office space is assessed at a typical NW value of \$19 per SF; vacancy rate of 9%; operating costs of \$13.50 per SF; 1% non-recoverables; and a capitalization rate of 6%. The 2014 assessment is \$21,260,000.

Issues:

[4] What is the correct capitalization rate to be applied when valuing the subject?

Complainant's Requested Value:

[5] The Complainant requested that the assessment be reduced to \$20,410,000.

Board's Decision:

[6] The Board confirmed the assessment at \$21,260,000.

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 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 – July1, 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.

[9] 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. The Complainant 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.

[10] 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.

[11] On page 6 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.

[12] On page 8 of C-1 the Complainant provided a "revised version" of the subject's assessment calculation. He substituted a 6.25% cap rate for the assessed 6% and calculated that by using this new variable, the assessment should be reduced to \$20,410,000.

Respondent's Position:

[13] The Respondent clarified that the Complainant has referenced CARB 70162P-2013 and CARB 70517P-2013 regarding the City's 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 just south of the airport, an entirely different market.

[14] 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 18 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."

[15] 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.

[16] 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. The Respondent argued that CARB 2047-P-2012 supports the City's position in the use of portfolio sales of this nature.

[17] 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 58 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:

[18] 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.


[19] 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.

[20] 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.

[21] The Board finds that 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. Moreover, the Complainant was unable to satisfactorily verify the source of the revised NOI data which he substituted for City NOI data in his cap rate calculations. Therefore the Board finds the Complainant's data on this point to be unreliable.

[22] The Board finds that the assessment of the subject at \$21,260,000 as prepared by the Respondent is correct, fair, and equitable.

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

A handwritten signature in black ink, appearing to read 'K. D. Kelly', is written over a horizontal line.

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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	Suburban office	market value	Cap Rate