

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:

HIGHSTREET HOUSE GP INC.

(as represented by AVISON YOUNG PROPERTY TAX SERVICES), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

E. K. Williams, PRESIDING OFFICER

I. Fraser, 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: 080134000

LOCATION ADDRESS: 933 17 AV SW

FILE NUMBER: 76546

ASSESSMENT: \$18,560,000

This complaint was heard on 15th day of July, 2014 in Boardroom 6 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE Calgary, Alberta.

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:

- R. Ford Assessor, The City of Calgary

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

[1] The parties identified to the Board that the evidence and arguments to be presented in respect of the hearing on the subject property will be the same as presented in respect of File # 76573 for Property Roll #067102525 and requested that the arguments and discussions be carried forward to the subject property. It was accepted that the Board's findings and decision regarding the matter would therefore be common to the subject property. The Board found this to be an appropriate approach to the matters at hand.

[2] No additional procedural or Jurisdictional Matters were raised by the parties.

Property Description:

[3] The subject property at 933 17 AV SW is a 48,974 square foot (SF) office building on 0.41 acre (18,063 SF) of land with a 1979 year of construction (YOC) located in the community of Lower Mount Royal. The subject is assigned a quality classification of B, a Commercial-Corridor 1 land use designation, a Property Use: Commercial and Subproperty Use: CS1200 Office.

[4] The assessment was prepared on the Income Approach using typical assessment parameters.

Issues:

[5] The assessed value of the subject property is not reflective of the Capitalization Rate (Cap Rate) which should be increased from 6.00% to 6.50%.

Complainant's Requested Value: \$17,135,000

Board's Decision:

[6] The assessment of \$18,560,000 is confirmed as being correct.

Legislative Authority, Requirements and Considerations:

[7] The Act Section 248 Interpretation provisions for Parts 9 to 12 defines

(1)(r) "property" means

(i) a parcel of land

(ii) an improvement, or

(iii) a parcel of land and the improvements on it:

[8] The Act Section 293 Duties of Assessors 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 regulation.

[9] The Act Section 467 Decisions of assessment review board requires that:

An assessment review board must not alter any assessment that is fair and equitable taking into consideration

(a) The valuation and standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality

[10] *Matters Relating to Assessment and Taxation Regulation (MRAT) Part 1 Standards of Assessment Section 2 Mass Appraisal* requires that:

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.

and Section 4 Valuation standards for a parcel of land requires

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

[11] The Complainant and Respondent presented a wide range of evidence consisting of relevant and less relevant evidence. In the interests of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[12] The Complainant's evidence package included a Summary of Testimonial Evidence, a photograph of the subject property. In support of the Complainant's position related to vacancy rates, rental rates and determination of the Cap Rate a number of tables were presented

supported by Comparable Market Transactions including supporting documentation for each comparable. Documentation related to Cap Rate methodologies, a section on Relevant Legislation and Calgary Assessment Review Board decisions.

[13] The Respondent's evidence package included a Summary of Testimonial Evidence, a photograph of the exterior of the subject property, the Non-Residential Properties – Income Approach Valuation calculation sheets, documentation related to Retail Rent, Office Vacancy and Cap Rate including supporting documentation. Documentation related to Cap Rate methodologies, a section on Relevant Legislation and Calgary Assessment Review Board decisions.

[14] Both parties placed technical, professional and academic excerpts before the Board in support of their position. This Board finds that any specific passage or quote (i.e. excerpt) from a larger document may not capture the true intent of the document and is, therefore, seen by the Board as incomplete material and may be given limited weight.

[15] As noted above, both parties placed before this Board a number of Alberta Court of Queen's Bench, Assessment Review Board and Municipal Government Board decisions in support of their position. These decisions were made in respect of issues and evidence that may however be dissimilar to that before this Board.

Issue – Capitalization Rate

Complainant's Position:

[16] The Complainant argued that the more appropriate methodology of deriving the Cap Rate would be to use the forward looking market rent/assessed income data (2013) for sales that occur in the last six months of the calendar year (2012). To further clarify their methodology, on page 18 of Exhibit C1, the Complainant presented a timeline which showed that for any sale happening in the time frame July 1, 2011 to June 30, 2012 (the assessment period) should use the Net Operating Income information for the that same period (the 2013 roll year). The Complainant testified the Respondent's method of calculating Cap Rate for sales in the last six months of a calendar year (2012) utilizes backward looking estimates of market rent/assessed income by using parameters from the previous assessment period July 1, 2011 to June 30, 2012.

[17] It is the Complainant's position that the Respondent is using an inconsistent methodology whereas the Complainant is being consistent with their methodology. The Complainant advised the Board that their position on Cap Rate methodology is supported by findings of the Composite Assessment Review Board in 2013.

[18] The Complainant emphasized that one must use a NOI, referred to as the typical NOI, which matches the period for the sales for which the Cap Rate is being calculated. For example:

A sale in the 2014 assessment analysis period (July 1, 2012 through June 30, 2013) should use the typical NOI for the 2014 assessment period July 1, 2012 through June 30, 2013; that is as of the assessment valuation date July 1, 2013.

This approach bases the typical NOI on market leasing activities for the 12 month period in which the sale occurred.

[19] The Complainant testified that the Respondent uses the following approach:

- 1) For a sale in the period of July 01 to December 31 of the assessment year the typical NOI is based on July 01 of that year; for example a sale in the period

July thru December 2012 the typical NOI is based on July 1, 2012 which reflects the period July 1, 2011 to June 30, 2012. The NOI is at least six months out of sync with the transaction date which is not reflective of the market activity for the period when the sale transacted.

- 2) For a sale in the period of January 01 to June 30 of the assessment year the typical NOI is based on July 01 of that year; for example a sale in the period January through June 2013 the typical NOI is based on July 1, 2013 which reflects the period July 1, 2012 to June 30, 2013. The NOI is based on market activity which is reflective of the transaction date.

[20] In addition to Cap Rate methodology the Complainant differed with the Respondent on the sample of Class B Beltline Buildings to be used to determine the Cap Rate. The Complainant accepts five of the Respondent's six Class B Buildings. The property at 1310 10 Av SW is removed from the sample by the Complainant on the following basis:

- 1) the RealNet Office Transaction Summary (page 27 and 28 of Exhibit C1) reports the property was constructed in 1910, has six surface parking stalls and no elevator to service the property.
- 2) analysis of the contribution of the land as a % of the assessed value for six comparables based on the Property Assessment Summary Report and the Respondent's land value for the Beltline determined that land for 1310 10 Av SW is 80.2% of the assessed value whereas the land as a % of Assessed Value for the remaining five class B comparables range from 15.6% to 43.6%.

[21] Based on the Complainant's methodology and a sample of five Class B buildings the following table presents the support for the 6.50% Cap Rate.

Comparable	Municipal Address	Sale Date	Sale Price	Size SF	NOI	Cap Rate
1	625 11 Av SW	03/2013	\$11,522,394	34,418	\$735,776	6.39%
2	1451 14 St SW	05/2012	\$2,600,000	11,146	\$169,293	6.51%
3	1207 11 Av SW	01/2012	\$29,850,000	83,880	\$1,442,364	4.83%
4	906 12 Av SW	12/2011	\$30,000,000	137,801	\$2,307,364	7.69%
5	1520 4 St SW	12/2011	\$28,800,000	106,707	\$1,855,639	6.44%
Average (Mean) Cap Rate						6.37%
Median Cap Rate						6.44%

[22] In summary the Complainant argued that the evidence supports their methodology to derive the Cap Rate and the use of a 6.50% Cap Rate.

Respondent's Position:

[23] In respect of Cap Rate methodology the Respondent reviewed their approach which is as follows:

- 1) Sales occurring in the calendar year 2012 are analyzed using the income parameters developed for July 1, 2012 (July 1, 2011 to June 30, 2012), and
- 2) Sales occurring in calendar year 2013 are analyzed using the income parameters developed on July 1, 2013 (July 1, 2012 to June 30, 2013)

[24] The decision of *Westcoast Transmission CO. V British Columbia (Vancouver-Assessor of*

Area No. 9), [1987] BCJ No. 1273, is cited by both parties. The point frequently referenced from this decision is that there must be consistency with respect to the concepts and assumptions that are used to derive Cap rates and the concepts and assumptions that are used when applying Cap Rates.

[25] The Respondent emphasized that the difference between the approach used by the Respondent and the Complainant is whether the income parameters are based on the calendar year of a sale or assessment analysis period (July 1 through June 30 period) within which the sale date falls.

[26] The Respondent reviewed the table on page 24 of Exhibit R1 which presented the analysis of six sales from the period June 2012 to February 2013 which support the 6.00% Cap Rate for Class B buildings in the Beltline.

Comparable	Municipal Address	Sale Date	Sale Price	Size SF	NOI	Cap Rate
1	625 11 Av SW	03/2013	\$11,522,394	34,418	\$735,776	6.39%
2	1451 14 St SW	05/2012	\$2,600,000	11,146	\$169,293	6.51%
3	1207 11 Av SW	01/2012	\$29,850,000	83,880	\$1,442,364	4.83%
4	906 12 Av SW	12/2011	\$30,000,000	137,801	\$2,046,257	6.82%
5	1520 4 St SW	12/2011	\$28,800,000	106,707	\$1,637,086	5.68%
6	1310 10 Av SW	12/2012	\$2,500,000	9,750	\$116,722	4.67%
Average (Mean) Cap Rate						5.82%
Median Cap Rate						6.03%

[27] The Respondent presented on pages 156 and 157 of Exhibit R1 an analysis of the Assessment to Sale ratio (ASR) for the sample used in the determination of the Cap Rate. The analysis determined that the median ASR based on the Respondent's methodology was 1.01 (with ASR's ranging 0.73 to 1.20) compared to the Complainant's methodology which yielded a median ASR of 0.93 with ASR's ranging from 0.68 to 1.12. The Respondent argued that the Complainant's methodology does not meet the provisions of MRAT Part 1 Standards of Assessment Quality Section 10 (3) Quality Standards which requires the Median Assessment Ratio be between 0.95 -1.05.

[28] In summary the Respondent argued that the methodology used to calculate the Cap Rate is consistently applied and the calculated ASR supports the Cap Rate of 6.00%.

Board's Reasons for Decision:

[29] The central issue before the Board relates to the derivation of the NOI for comparables four and five as presented in paragraphs [21 and 26].

[30] The Complainant challenged the methodology for the derivation of the NOI relating to comparables four and five which are sales dated December 2011. The Complainant submits that the derivation of the NOI should be based on the methodology outlined in paragraph [16] which submits the NOI is derived based on July 2012. Whereas Respondent derives the NOI based on July 2011.

[31] The inclusion of the comparable six at 1310 10 AV SW was challenged by the Complainant. The Board accepts the sale of 1310 10 AV SW relative to the other sales is a contentious matter and will exclude the sale from further consideration.

[32] Based on the sample of five comparables the Respondent's average (mean) Cap Rate is

6.05% versus the Complainant's 6.37%. This difference is attributable to the difference in the methodology used to calculate the NOI for comparables four and five. The Board noted that the average (mean) for the three comparables one, two and three accepted by both parties was 5.92%.

[33] The parties, supported by numerous previous Board decisions, argued the merits of their respective methodology to select the time period for the determination of the input variables for the calculation of the NOI.

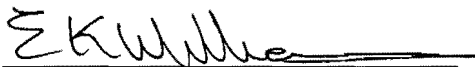
[34] In support of their methodology the Respondent provided an analysis of the ASR (page156-157 Exhibit R1) for the two methodologies. The analysis determined that the median ASR based on the Respondent's methodology was 1.01 (with ASR's ranging 0.73 to 1.20) compared to the Complainants methodology which yielded a median ASR of 0.93 (with ASR's ranging from 0.68 to 1.12). The analysis determined that the Complainant's ASR did not meet the provisions of MRAT Part 1 Standards of Assessment Quality Section 10 (3) Quality Standards which requires the Median Assessment Ratio be between 0.95 -1.05.

[35] As further support for consistency, the Respondent's methodology on page 169 Exhibit R1 is a table titled 2014 Beltline Office B Class Equity BL3, 4, 5 which showed the application of the same NOI parameters for a sample of 41 properties.

[36] In summary the Complainants methodology does not provide for a more superior result than the methodology used by the Respondent.

[37] In summary based on the evidence and the testimony the Board supports the assessment and confirms the assessment.

DATED AT THE CITY OF CALGARY THIS 2nd DAY OF September 2014.



E. K. Williams
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*

ADMINISTRATIVE USE

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	Capitalization Rate