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:

1652371 Alberta Ltd. & 1652427 Alberta Ltd. (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
J. Joseph, 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**201824414**
LOCATION ADDRESS:	**231 – 6 Avenue SW, Calgary AB**
FILE NUMBER:	**70258**
ASSESSMENT:	**$83,920,000**

This complaint was heard on the 9th day of July, 2013 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:

- *A. Farley & C. Hartley*

Appeared on behalf of the Respondent:

- *H. Neumann*

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

[1] There were no preliminary procedural or jurisdictional matters to be decided.

Property Description:

[2] The property that is the subject of this assessment complaint is a multi-level 1,010 stall concrete parking structure with 22,108 square feet of ground level retail space along the street and avenue frontages. This property comprises 58,630 square feet of the west portion of the block between 1 and 2 Streets between 6 and 7 Avenues SW in downtown Calgary. 6 Avenue is a busy westbound route through downtown. 7 Avenue is the public transit corridor through downtown. There are no private vehicles permitted on 7 Avenue at any time. Calgary's light rail transit (LRT) system runs through this corridor. The property is connected to the downtown +15 elevated, enclosed walkway system. There are +15 bridge connections over 7 Avenue SW to The Bay/Scotia Centre and over 2 Street SW to the Energy Plaza office complex. The parkade was constructed in 1956 and 1962.

[3] The 2013 assessment was prepared using an income approach. For this "A2" quality parkade, revenue of $475 per month per stall was projected and then reduced by 40 percent for operating expenses. The 22,108 square feet of retail space was assigned a rent of $25.00 per square foot. Vacancy and non-recoverable expense allowances were made to retail space income. The resulting net operating income of $3,864,856 was converted to a value estimate by use of a 4.5 percent capitalization rate. There is a tax exempt tenant in one of the retail units so an adjustment of $1,960,000 was made to the final indicated assessment value to arrive at the $83,920,000 taxable assessment.

Issues:

[4] In the Assessment Review Board Complaint form, filed February 27, 2013, Section 4 – Complaint Information had a check mark in the box for #3 "Assessment amount".

[5] In Section 5 – Reason(s) for Complaint, the Complainant stated that the assessment amount was incorrect and it set out a number of reasons.

[6] At the hearing, the Complainant pursued the following issues: the net operating income amount should be adjusted to reflect actual operations of the property and the capitalization rate

should be increased from 4.5 to 6.25 percent. There was no issue with the assessment of the retail store portion of the property.

Complainant's Requested Value: $66,940,000 based on a net operating income of $4,271,941.66 and a capitalization rate of 6.25 percent.

Board's Decision:

[7] The CARB accepts the Complainant's capitalization rate and reduces the taxable assessment from $83,920,000 to $60,420,000. It does not accept the Complainant's use of actual parking revenue.

Position of the Parties

Complainant's Position:

[8] This parkade's revenue is reliant on patrons who use the facility for hourly, daily or monthly vehicle parking. For a parkade operation where there are only short term "market" agreements, actual performance is synonymous with typical performance. The property owner has provided detailed operating records for the two months that the current owner had owned the property and from those records, the net operating income extended to a one year period ending on the valuation date was $4,032,432. When the property sold in April 2012, one of the sales reporting services (Realnet) reported net operating income of $4,500,000. The Complainant arrived at a net operating income of $4,271,941.66.

[9] The capitalization rate used in the current assessment valuation is 4.5 percent which is 2.5 percent lower than the rate used in 2012. The 4.5 percent rate has been derived by an incorrect analysis of an April 2012 sale of the subject property which was the only downtown parkade sale that occurred over the past five years.

[10] The subject property sale was a transaction between Synergy Properties Group and Brookfield Office Properties Inc. Brookfield, the owner of the remainder of the block, had a "right of first offer" on the parkade property which actually gave an advantage to the vendor because Brookfield had to make its offer attractive enough to persuade the vendor to make a deal. There was no pressure on the vendor because if the Brookfield offer was unsatisfactory, other potential buyers could be sought out. Title to the property transferred to Brookfield on April 30, 2012 and the price paid was $90,000,000. Brookfield, as the owner of the remainder of the full block between 6 and 7 Avenues and 1 and 2 Streets SW had obtained permits and preparations had started for a new office building development on the eastern portion of the block. Once this property was acquired, it substantially increased the land holding and gave Brookfield more options and flexibility in the redevelopment of the entire block. Subsequent to making this acquisition, Brookfield applied to the City of Calgary for an amended development permit that would encompass two office towers containing more than 2.6 million square feet of office and retail space.

[11] When deciding how much to pay for the Bow Parkade property, Brookfield considered a number of factors including the market value of the property as a parkade, the value it would add to the full redevelopment block and the price that Synergy had paid in 2007 ($86,000,000). The 2007 price had been based on very high revenue projections (over $5,000,000) that were considered reasonable during the rapidly expanding real estate market at that time. 2012

projections were much lower – in fact, the Respondent's 2012 typical income was only $3,864,856. Nevertheless, Brookfield felt that any offer for the property would have to exceed $86,000,000. As part of its due diligence process, Brookfield had estimated a market value of the property if it continued to operate as a parkade. A 12 year cash flow projection was made and the net annual cash flows were discounted at a 6.75 percent rate to yield a parkade value of $65,805,019. When related to the $4,106,825 cash flow for the first year, this value estimate indicated a capitalization rate of 6.24 percent. With consideration to the parkade market value, the 2007 price paid by the vendor and the enhanced redevelopment opportunities, Brookfield offered to pay $90,000,000 ($24,194,981 more than parkade market value) and was successful in acquiring the property at that price. No other developer could have afforded to pay that amount because this property could not be added to any other contiguous land that was already being held for redevelopment. Brookfield has the advantage of a significant revenue stream pending redevelopment and the available parking will enhance the marketing and leasing of the first phase of development on the east portion of the block.

[12] For the 2012 assessment (July 2011 effective valuation date), the Respondent assessed parkades using a 7.0 percent capitalization rate. A part of their analysis leading to the 7.0 percent rate was the 2007 sale of the subject Bow Parkade and a 2004 sale of another downtown parkade. Some very dated sales had been used for determining the 2012 tax year capitalization rate but for 2013 the Respondent relied completely on just one questionable sale.

[13] The 2012 sale of the subject might have been at arms-length between a willing buyer and seller but the purchaser was motivated as can be seen by the market value of the parkade versus the price paid for the property. For this reason, this sale cannot be reliably used in determining a typical capitalization rate unless it is adjusted for motivation. In this instance, the motivation factor can be measured against the market value of the property as a parkade.

[14] In support of its position on the use of motivation impacted sales in assessment valuations, the Complainant referenced a number of Edmonton CARB decisions (103/11, 602/10, 742/11) and some Alberta Municipal Government Board decisions (109/10, 065/00, 168/02) where the respective boards had found that sales where one party was atypically motivated were not good indicators of value.

Respondent's Position:

[15] The Respondent argued that mass appraisal is one of the conditions set out in the regulations for assessing property at market value. A step in the valuation process is using mass appraisal techniques to determine typical rents or income for a property. Using responses to Assessment Requests For Information (ARFIs), the Respondent accurately estimated typical revenues and expense ratios for downtown Calgary parkades. The net income amount used in the assessment is the typical income that the subject parking property could achieve in the valuation year. Actual income is not a replacement for typical income simply because some of that income comes from hourly or daily parking stall rentals. The Complainant's net income estimate which is based on actual property performance should be rejected by the CARB even though it is, in this case, significantly higher than the Respondent's typical income. The Respondent referenced the 2012 ARFI response for the subject property. Projected parkade revenue for the period from July 2011 to June 2012 would be $5,866,632 based on the two months of operations that were reported. If the typical operating expense allowance of 40 percent is deducted, the net operating income is about $3,520,000, an amount that supports the $3,454,200 typical net income used in making the assessment.

[16] The capitalization rate used in the assessment valuation was derived from the April 2012 sale of the subject Bow Parkade. The property sold in an arms-length, open market transaction at a price of $90,000,000. Using the typical income estimate as at July 1, 2012, the Respondent calculated a 4.29 percent capitalization rate. Sale summary and legal registration documents were included in the evidence to support the Respondent's position that the sale could be relied upon as an indicator of a capitalization rate. The Respondent rejected the Complainant's argument that the property purchase was made for the purpose of assembling a full block redevelopment site. There were no permits in place at the time of sale for any redevelopment and it might be many years before any redevelopment actually commences. In the meantime, the property has the ability to generate a significant revenue flow to the owner. It sold as a parkade and is still used as a parkade and it is assessed as a parkade.

[17] The Respondent provided a chart and graph showing the progression in prices paid for downtown parking structures over the years from 1986 to 2012. The data shows that prices have consistently increased from $8,043 per stall in 1986 to $89,109 per stall in 2012. The graph shows that the 2012 Bow Parkade sale is right in line with the trend.

Complainant's Rebuttal:

[18] In its rebuttal, the Complainant included copies of Alberta CARB, LARB and Queen's Bench decisions and judgements that support its position on mass appraisal and the use of actual and typical incomes.

[19] Also in its rebuttal, the Complainant presented several pages from Canadian real estate appraisal text materials describing valuation principles including the use and consideration of typical and atypical sales data. It was concluded that while the Bow Parkade sale might have been an arms-length sale, the purchaser was highly motivated and paid a premium price which must be adjusted downwards before the sale can be used to determine a typical capitalization rate. One passage from the textbook that precisely applies to the Bow Parkade sale was highlighted:

> *"Adjustments for conditions of sale usually reflect the motivations of the buyer and the seller. In many situations, the conditions of sale significantly affect the transaction prices. For example, a developer may pay more than market value for lots needed in a site assemblage because of the anticipated incremental value, or plottage value, resulting from the greater utility of a larger site."*

Board's Reasons for Decision:

[20] The CARB finds that typical income must be used in valuing downtown parking properties and that the Complainant's capitalization rate of 6.25 percent is most indicative of market actions and expectations.

[21] There is no reason to not use typical income when valuing a parking property using an income approach. An analysis of such properties over a period of time can produce a reliable income estimate even if portions of the income are derived from hourly and daily parkers. The two month income statement in the Complainant's disclosure document (Exhibit C1) shows that parkade expenses for the subject property were 31.26 percent of parking revenue. The Respondent has undertaken a thorough analysis of these types of properties. A review of the analysis by this CARB indicates that the Respondent's operating expense ratio of 40 percent is high for 2012 which at least partially explains why typical net operating income is lower than the

actual income by a significant amount. In the analysis results, the 2012 median expense ratio for "A" quality parkades was 35 percent. For 2011, it had been 41 percent for those same properties. The Respondent has consistently applied the 40 percent ratio in all of its 2012 assessments and the CARB will not adjust that application for this one complaint. The net operating income for this property for the 2013 assessment calculation is set at $3,864,856 (including the net income from the retail store spaces at ground level).

[22] The CARB does not accept that there was such a significant change in the capitalization rate from 7.0 percent in the last assessment to 4.5 percent in the current assessment when there was no evidence before the CARB to explain such a decrease. If market conditions had changed that dramatically, there would have been evidence to explain the reasons for the change. Reliance on one sale, even if that sale is at arms-length does not justify such a significant change in the capitalization rate without some other market support.

[23] The Respondent relied upon a single sale that was documented as an arms-length sale between a willing seller and a willing buyer. It is clear to the CARB however that the buyer, Brookfield Office Properties was motivated to pay the price it paid. The enhanced development potential of the block was a factor that impacted the purchase decision at the $90,000,000 price.

[24] The discounted cash flow analysis undertaken by Brookfield at the time of purchase established a "parkade" value of $65,805,019. It is unlikely that the valuation was simply a value based on Brookfield's desired rate of return as alleged by the Respondent. The rates used appear to the CARB to be indicative of market expectations. There was no evidence put forward to show that they were simply an expression of Brookfield's desires.

[25] The CARB does not understand why the Respondent relied upon sales as old as 2004 when attempting to find a capitalization rate for the 2012 assessment but used only one questionable sale in finding a significantly lower rate for the current assessment. The Respondent attempted to show that the 2012 sale price for the Bow Parkade was in line with the trend established in other parkade sales. The graph line is obviously tilted upwards by just two sales – the 2007 and 2012 sales of the Bow Parkade. Without those two sales of $85,149 and $89,109 per parking stall, the next highest price was $32,012 per stall paid in a 2004 sale and the graphical projection to 2011-2012 would have been at a significantly lower price per stall. It is noted that prices changed little (about three percent per year) from 1999 ($27,525 per stall) to 2004 ($32,012 per stall). Capitalizing the subject property's typical net income of $3,864,856 at a rate of 6.25 percent yields a value of $61,837,696 or $61,225 per stall. This unit rate fits within the parkade sales trend if the two sales of the Bow Parkade are discounted.

[26] The CARB sets the 2013 taxable assessment of the subject property at **$60,420,000.** This is after the deduction of $1,410,000 for the tax exempt area of the ground floor retail stores. This assessment is lower than the Complainant's requested value but it is a result of using the typical net operating income as determined by the Respondent. It is 9.34 percent higher than the total 2012 assessment.

DATED AT THE CITY OF CALGARY THIS 8 **DAY OF** August **2013.**

W. Kipp

W. Kipp

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.*

For Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	OTHER	PARKING	INCOME APPROACH	NET MARKET RENT CAPITALIZATION RATE