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:

Estancia Investments Inc. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
Y. Nesry, BOARD MEMBER
J. Kerrison, 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: 067086090

LOCATION ADDRESS: 1313 10 Street SW

FILE NUMBER: 70688

ASSESSMENT: $15,070,000

This complaint was heard on the 9th of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *G. Worsley*
- *W. Van Bruggen*

Appeared on behalf of the Respondent:

- *R. Ford*

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

No procedural or jurisdictional matters were brought before the Board.

Property Description:

The two-story building on the subject property at 1313 10th Avenue SW was constructed in 1978 and contains 52,338 square feet ("sq. ft.") of floor space. The total area of the land parcel is 55,192 sq. ft. The Respondent has classified the building as a "B" class building. The subject property is bounded by 13th Street SW and 10th Avenue SW. The subject property is located in the "BL4" submarket area of Calgary's Beltline.

Issues:

The Board found the issues to be as follows:

1. What is the correct rental rate for the subject property, $14 per sq. ft. or $15 per sq. ft.?

2. What is the typical vacancy rate for the subject property?

3. What is the appropriate cap rate for the subject property?

4. What is the correct assessed value for the subject property?

Complainant's Requested Value: $10,200,000

Summary of the Complainant's Submission

[1] The assessment amount is not reflective of the correct application of the assessment range of key factors and variables. These include location, parcel size, improvement size, land use, and influences. The assessment amount is also not reflective of the correct application of either

the comparison or income approach, and the Respondent has failed to recognize the negative influences that affect the subject property.

[2] The valuation model does not indicate the correct relationship between the subject property's characteristics as at December 31 of the assessment year, and their value in the real estate market. The assessment is neither fair nor equitable in relation to similar properties.

[3] The assessment does not properly consider the location, zoning, building area, physical condition or parking of the subject property. Sale comparables on the Respondent's website are not a comprehensive list of properties that sold between July 1, 2010 and July 1, 2012. Sales do not support the Respondent's overall rate per square foot for office space. The classification of the subject property is unfair, inequitable, and incorrect, and the assessment does not properly account for atypical deficiencies in the subject property as of the condition date.

[4] The rental rate applied to the subject property should be no more than $13 per sq. ft. The capitalization rate should be no lower than 6%. The current assessment does not adjust for the negative impact to the subject property's market value due to the owner's loss of recoverable expenses. Some leases have a cap on what they are required to pay in operating costs. The value attributed to the parking component is unfair, inequitable and incorrect (C-1, 6th page). The result is an assessment that is neither fair nor equitable.

[5] The rental rate should be $14 per sq. ft., the rate per sq. ft. $214, surface parking $200 per stall, the vacancy rate 11%, and the cap rate 6.25%. The requested value for the subject property is $11,200,000 (C-1, 8th page).

[6] In regard to rental rates, the Complainant has determined that the Respondent has used only the last three months of the valuation period to derive the office leasing activity for the entire year. When other time frames are considered, the results of this rental rate study vary greatly, and are inconsistent with the time frames analyzed for other sectors. The Complainant has included the complete list of the Respondent's entire rental rates along with the median rates calculated for each time frame, and determined that the median leasing activity is dependent on the time frame considered.

[7] The only periods when the median is $15 per sq. ft. or more, are the two month median, the four month median, and the five month median. All the other time frames indicate that the median rental rate should be between $14 to $14.50 per sq. ft. The Complainant has broken the lease rate analysis into its respective submarkets and determined that the lease rate is $14 per sq. ft. based on the full year median (C-1, pages 16 - 19).

[8] The Respondent's "B" class Beltline office rental rate study (2012 only) yields a mean of $15.03 sq. ft. and a weighted mean of $14.91 per sq. ft. (C-1, page 24). The Complainant's analysis of the aforementioned study using a valuation range from July 1, 2011 to July 1, 2012 yields a mean of $14.74, and a weighted mean of $14.45. The Complainant's analysis of "B" class Beltline leases (with 620 12th Avenue SW left out) indicates a full year median lease rate of $14 per sq. ft. (C-1, pages 16 – 19).

[9] When the Respondent was calculating the vacancy rate for Beltline properties, "AA", "A", "B", and "C" buildings were lumped together. The vacancy rate was not calculated this way for downtown or suburban properties. The Complainant has broken out each of the "AA", "A", "B",

and "C" class buildings, and has calculated the vacancy for each classification. The average for "B" class is 11.25% (C-1, page 33).

[10] Now to capitalization ("cap") rates. A re-construction of the Respondent's cap study at page 35 of C-1 includes the "Cooper Blok" building at 809 10th Avenue SW. This building should not have been included in the study because it was part of a portfolio sale of four buildings, which sold at a total cost of $142 million. Similarly, the "Keg building" at 605 11th Avenue SW was not brokered, hence not exposed to the market. Therefore, it too should not have been included.

[11] The Respondent is currently using income parameters from July 1, 2010 to July 1, 2011 to calculate the cap rate for sales that occurred between July 1, 2011 and December 31, 2011. Thus the rents used for calculating the net operating income ("NOI") are offset six months from the sales that are being used to calculate the cap rate.

[12] The correct method is to use the income parameters derived from the period of time when the sales occurred. The Complainant suggests that the income parameters from July 1, 2011 to July 1, 2012 should be used to calculate the cap rate for sales that occurred from July 1, 2011 until July 1, 2012. The Respondent will protest, and argue that sales which occurred from July 1, 2011 to December 31, 2011 have more in common with the rents derived from July 1, 2010 until July 1, 2011 than the rents that have been derived from July 1, 2011 to July 1, 2012 (C-1, page 37).

[13] The Complainant counters the Respondent's argument by noting that because the Respondent uses the median rent from July 1, 2010 to July 1, 2011, there is no guarantee that the median rent calculated will approximate the leasing activity that occurred between July 1, 2011 to December 31, 2011.

[14] By changing the rental rate parameter to $14 per sq. ft. for buildings in the BL4 zone, and to $15 per sq. ft. in the BL3 zone, and the vacancy rate to 11% for all "B" class buildings in the Beltline, the cap rate becomes 6%. Using these parameters results in an average and a median ASR of .9569 and 1.0072, respectively, with a coefficient of dispersion of 4.28 (C-1, page 39).

[15] When the *Duff* building at 525 – 11th Avenue SW and the *Grondin* building at 1451 – 14th Street SW are added into the analysis, the cap rate changes to 6.25%. The average and median ASR become 1.0296 and 09669 respectively, with a coefficient of dispersion of 6.97 (C-1, page 40 and 43).

[16] The Respondent made the mistake of using incorrect vacancy and rental rates. These were derived for the subject property because the Respondent was looking at the Beltline as one homogeneous area. The Complainant provides evidence that the Respondent's method is incorrect. The reason the Beltline was separated into different sub-markets is to account for differences between each sub-market in terms of rent and vacancy.

[17] In deriving the cap rate, the Respondent also made mistakes. Sales that should have been excluded were used. The sale of 809 10th Avenue was a portfolio sale. Due to the nature of portfolio sales it is not possible to determine the value attributed to each building that comprised the sale. Then there is 605 11th Avenue SW, which was not brokered, therefore not exposed to the market, a requirement of the definition of market value in section 1(n) of the *Act*.

[18] The Respondent used incorrect income parameters in deriving the cap rate, and failed to use all available valid sales. When the portfolio sale at 809 10th Avenue SW is excluded, the income parameters change. However, when the sales of 525 11th Avenue SW and 1451 14th Street SW are included in the analysis, the result is a derived cap rate of 6.25% (C-1, page 47).

[19] The Complainant's valuation request for the subject property is based on a rental rate of $14 per sq. ft., a typical vacancy of 11%, and a cap rate of 6.25%. The result is a valuation of $11,200,000 (C-1, page 48).

Summary of the Respondent's Submission:

[20] The Complainant is requesting an office rental rate of $14 per sq. ft. based on leasing by submarket in the Beltline. The Respondent's 2013 "B" class Beltline office rental summary with a breakdown of leases in BL4 with commencement dates from July 1, 2011 to July 1, 2012 show that the resulting weighted average, $14.92 per sq. ft., amply supports the assessed rental rate of $15 per sq. ft. (R-1, page 24). Municipal Government Order 045-09 directs the use of weighted averages to determine typical rates.

[21] The Complainant has combined all Beltline office classes, and performed an analysis to determine that the overall typical office vacancy rate is 11%. The Respondent has reviewed the Complainant's "B" class office study, and made some necessary changes. The corresponding study with corrections is provided (R-1, pages 25 and 26), and it indicates an office vacancy of 7.44%. With the corrections, even the Complainant's vacancy analysis comes in with a typical vacancy rate of less than 8%. The Respondent's own vacancy study is found at pages 54 to 58 of R-1.

[22] The Complainant requests a cap rate of 6.25%. The Complainant has excluded two sales relied on by the Respondent to arrive at this cap rate, and have looked at a different time frame than the Respondent when determining the income parameters for the cap rate. The Complainant's assessment-to-sales ratio ("ASR") studies for the cap sales have been done incorrectly (R-1, page 6).

[23] The Respondent will speak to the sales the Complainant included in its cap rate study, two of which were excluded by the Respondent. One of these sales was that of the Duff building at 525 11th Avenue SW. The Duff building was purchased in 2011 for its potential of redevelopment, and sold 2013 for more than twice the original purchase price. Another sale relied on by the Complainant is the sale of the Grondin Building at 1451 14th Street SW. The Grondin building should be considered a retail building, not an office building. Further to this, evidence of the sale of 1410 1 Street SW in the cap rate study at page 239 of the Complainant's rebuttal (C-4) must be excluded, for it is new evidence not included in the Complainant's disclosure.

Board's Findings in Respect of Each Matter or Issue:

[24] The Complainant emphasizes the fact that the Respondent has rolled the nine submarket areas in the Beltline into one area, making the Beltline a single homogeneous market. The Complainant spent a great deal of time and effort to demonstrate to the Board that

it was this newly created homogeneity that caused the assessor's typical rental rate for the subject property to be at $15 per sq. ft. instead of $14 per sq. ft.

[25] The Respondent, however, revived the BL4 submarket, and developed a B Class rental rate summary with leases that commenced from July 1st, 2011 to July 1st, 2012. The result is a weighted average of $14.92 per sq. ft. (R-1, page 24). That settled the issue of the correct rental rate as far as the Board is concerned, as it did in the decision in file #70519. The typical rental rate is $15 per square foot.

[26] In regard to typical office vacancy, the Respondent responded to the Complainant's concerns about some of the properties included in the Respondent's B class vacancy study by making corrections and updating its vacancy study. One of the properties, 301 11th Avenue SW, was deleted, and rightly so, for there was nothing to show it was 100% vacant by the valuation date. In the result, the office vacancy came out at 7.44%, supporting the Respondent's typical vacancy rate of 8%. As in file #70519, the Board finds the Respondent's revised vacancy study persuasive (R-1, page 26).

[27] When it comes to capitalization rates, the Complainant claims that the Respondent used income parameters from the period July 1, 2010 to July 1, 2011, to calculate the cap rate for sales that occurred between July 1, 2011 and December 31, 2011 (C-1, pages 37 & 38). Thus the net operating incomes are alleged to be offset six months from the dates of the sales used to calculate the cap rate. The Complainant argues that the correct method is to use the income parameters derived from the period of time when the sales occurred, and suggests that the income parameters from July 1st, 2011 to July 1st, 2012 should be used to calculate the cap rate for sales that occurred from July 1st, 2011 to July 1st, 2012. As in file #70519, the Board agrees with the Complainant's argument.

[28] The Respondent's capitalization ("cap") rate study at page 60 of R-1 includes the sales of five properties. In regard to the first two properties, the Keg building at 605 11th Avenue SW and the Cooper Blok building at 809 10th Avenue SW, the Complainant asserts that the Keg building had not been exposed to the market, and that the Cooper Blok building was part of a portfolio sale, therefore neither sale was should be relied upon for market value.

[29] In a similar vein, the Respondent advises the Board that the Duff building at 525 11th Avenue SW (from the Complainant's cap rate study) had been purchased for redevelopment, and later sold for more than twice the original purchase price. As for the Grondin building at 1451 14th Street SW, the Respondent states that it should be considered a retail building, not an office building.

[30] Yet another of the Complainant's sales, that of 1410 1st Street SW in the cap rate study at page 239 of the Complainant's Rebuttal (C-4), is rightly impugned by the Respondent on grounds that the sale was new evidence introduced in the Rebuttal instead of in the Complainant's disclosure. The Board excluded the sale.

[31] In the result, the Board is left with three undisputed sales used in both the Complainant's and the Respondent's cap rate studies, i.e., 1520 4th Street SW, 906 12th Avenue SW, and 1207 11th Avenue SW. In deriving the cap rate from the three sales, the Board turned to the Complainant's cap rate study at page 239 of C-4. The Board was reluctant to rely on the Respondent's cap rate study because the source of the NOIs could not be confirmed. The Complainant's study at page 239 relies on a typical rental rate of $15 per sq. ft. throughout, and

the NOI's are the same as those in the 2013 assessments (C-4, pages 248, 253, 258). The Board determined the cap rate to be 6.15%, resulting in a capitalized value of $12,869,512.

The Board's Decision:

[34] The assessed value is reduced to $12,800,000, rounded. It is so ordered.

DATED AT THE CITY OF CALGARY THIS 29th **DAY OF** November **2013.**

Presiding Officer

Exhibits

C-1, Complainant's Submissions & Evidence

C-2, Complainant's Evidence

C-3, Complainant's Evidence

C-4, Complainant's Rebuttal

R-1, Respondent's Assessment Brief

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Cap rate

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.