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:

Concert Real Estate Corporation
(as represented by Altus Group Ltd.), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
P. McKenna, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board [*CARB*] 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:	**068134394**
LOCATION ADDRESS:	**340 12 AV SW**
LEGAL DESCRIPTION:	**Plan C; Block 84; Lots 44-48**
FILE NUMBER:	**71551**
ASSESSMENT:	**$ 34,510,000**

This complaint was heard on the 9th day of July, 2013 at the office of the Assessment Review Board [*ARB*] located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4

Appeared on behalf of the Complainant:

- *D. Hamilton* — *Agent, Altus Group Ltd.*
- *S. Meiklejohn* — *Agent, Altus Group Ltd.*
- *M. Cameron* — *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *M. Byrne* — *Assessor, City of Calgary*

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

[1] The Complainant and Respondent requested that all evidence, discussion, questions and answers heard during decision numbers CARB 71535P-2013 and CARB 71549P-2013 on the capitalisation rate, and parking rate equity issues be incorporated into this hearing.

[2] There are no additional preliminary, procedural, or jurisdictional issues.

Property Description:

[3] The subject property, built in 1981 is comprised of a fourteen storey grade B office structure with surface and underground parking located between 3rd Street and 4th Street along 12th Avenue SW. The Respondent assessed the building with 122,785 square feet of office use, ten surface parking stalls and 95 underground parking stalls. The Respondent utilised the Income Approach to Value to arrive at the assessment using a capitalisation rate of 5.25%.

Issues:

[4] Numerous issues have been raised by the Complainant during the complaint process. At the time of hearing two issues are outstanding; the capitalisation rate utilised within the Income Approach to valuation and Beltline office parking equity.

Complainant's Requested Value: $28,240,000

Board's Decision:

[5] The Board found the correct assessment of the subject to be $30,200,000 changing the capitalisation rate to 6%.

Legislative Authority, Requirements and Considerations:

Supreme Court of British Columbia

Westcoast Transmission Co. v. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273 [*Westcoast*]

THE ASSESSMENT PROCESS

It is common ground that the income approach is an appropriate and, except in unusual circumstances, the most appropriate method of assessing the actual value of commercial property such as that under consideration here.

It will perhaps remove some of the mystique in the assessment process to lay out the principles applicable to this method of valuation. I take them, with some minor editorialising, on my part, from the written submission filed by Mr. Greenwood. There are various approaches to an income valuation. A standard one is known as the capitalisation approach. This approach is really a form of the "market approach". Statistics are gathered on the sales of buildings which are considered comparable to the subject property from a point of view of quality, amenities, location, and state of repair. The price at which each building sells in the relevant time period is compared with the income reasonably generated by the building. Income divided by sale price generates a factor called the "capitalisation rate". The various capitalisation rates for comparable buildings are analysed with a view to developing a "typical" capitalisation rate for that class of property.

The subject building, (which one assumes has not itself sold in the time frame under consideration), can then have its value estimated on the assumption that it also would sell at the same capitalisation rate as have others. The appraiser therefore estimates the income generated by the subject building, and divides it by the typical capitalisation rate to derive an estimate of value.

For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently. "Income", for example, can mean a number of different things. It may mean a gross or a net income, or a "triple net" income. The appraiser normally will select a net income, recognising a standard list of expenses to be deducted from the gross.

The appraiser could also use an actual net income, or a calculated income generated on certain standard expectations about the use of the building over time. Actual incomes from any building will vary over short time frames, as tenants move in and out, or as unusual expenses occur. Buildings are not typically bought for short time frames, and thus appraisers attempt to deduce what a typical income would be over a long term (in current dollars), before they calculate a capitalisation rate from any sale. They call this, variously, a stabilised net income, or an economic net income, as opposed to an actual net income at the snapshot date of valuation.

Actual incomes are also affected by the abilities of the management of the day. A better manager might reduce expenses, or raise rents successfully, and realise a greater return from the building. When estimating what a building would sell for to a new owner and manager, the qualities of the existing, management are eliminated from the analysis.

In valuation theory, the value of an income producing property is merely the present value of future expected Income to be generated by the property, The future being looked at is the long term future, and when the appraiser capitalises an existing or present income, he does so on the premise that the figure being capitalised is representative (in current dollars) of the long-term stabilised situation, not of some temporary or short term situation. Appraisers explain this by saying that they are "capitalising the income in perpetuity."

For these various reasons, economic net incomes are universally used by appraisers in arriving at a capitalisation rate for the building which has sold. This is so even though there are occasions when an appraiser testifies that *the actual net income should be used, because it is the best estimate in fact of the economic income of the particular property.*

I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalisation rate on one set of assumptions about long-term vacancy rates, long term rents, and long term expenses, and then apply that rate to the income of the subject property if it is not derived in the same way.

The choice of a vacancy rate goes directly into the calculation of gross income, from which the appraiser then deducts expenses to arrive at an estimate of net income. All of these factors, for consistency, should be used in the same manner as they were used in the study of comparables which resulted in the development of the capitalisation rate. To do otherwise is to offend appraisal theory, and is likely to produce a mistaken result.

Position of the Parties

Complainant's Position:

[6] The Complainant provided an excerpt from a previous decision on a comparable property where the Board found that, in order to be equitable with condominium parking assessments that, the assessment for the subject must drop to a similar value (71535P-2013 C1 p. 9).

[7] The Complainant provided a map and lists of assessment rolls showing parking assessments at $25,000 per stall versus the subject assessment at approximately $44,000 per stall for surface and $49,000 per stall for underground (71535P-2013 C1 pp. 38-41 and 71549P-2013).

[8] The testimony from the Complainant is that the rental rate per parking stall must drop to $1352 and $1,482 per stall versus the assessed $2,400 and $2,700 per stall in order to calculate an equitable assessment at $25,000 per stall.

[9] The Complainant disclosed, within the Disclosure Document, 58 pages of textbook excerpts and decisions to convince the Board that the sale price of comparables need to be adjusted to remove the value associated with leased fee interest versus the fee simple interest. The argument is that purchasers are valuing the leases and opportunity as exists versus the typical market lease value at time of sale (71535P-2013 C1 pp. 154-211). The Complainant testified briefly on the materials, making specific note of pages 160 and 180.

[10] The Complainant testified and produced evidence to show how the Respondent calculated the capitalisation rate inconsistently (71535P-2013 C1 pp. 70-81). The Complainant explained that the Respondent used, for sales transacted in 2011, typical *NOI* calculated in July 2011 using leasing data from July 1, 2010 through June 30, 2011. Meanwhile the Respondent used, for sales transacted in 2012, typical *NOI* calculated in July 2012 using leasing data from July 1, 2011 through June 30, 2012. The Complainant disapproved of the Respondent's methodology for two reasons; 1) July 1, 2011 typical *NOI* is using data, in some cases, 18 months old, and 2) it is not a consistent methodology.

[11] The Complainant provided a decision that refuted the position taken within *MGB* decision DL 019/10. The Board Order MGB 002/11 cast some doubt in the findings of DL 019/10 and affirmed the approach taken by the Complainant in this hearing (71535P-2013 C2 pp. 18-27).

[12] The Complainant created their capitalisation rate study with the five sales used by the

Respondent and added one additional sale – the Duff Building. The Complainant testified that the Duff Building sold in August 2011 with all indications that it is a market sale, had occupancy of 85%, and should be included within the capitalisation rate study (71535P-2013 C1 p. 93-100). The Complainant corrected an error with the Connaught Building – the '2013 Assessed NOI' should be $1,431,526 and the '2013 Income Cap Rate' should be 4.80%. With this correction the Median remains at 5.81%, the Average (mean) changes to 6.18%, and the weighted mean is 5.96%.

[13] The Complainant disclosed their original capitalisation rate study within their Disclosure Document with the five sales used by the Respondent and added one additional sale – the Duff Building. The Complainant in their Rebuttal Document testified that The Keg Building and the Cooper Blok Building must be removed because they are "character buildings" and therefore are not typical (71535P-2013 C2 p. 42).

[14] The Complainant produced a chart to graphically demonstrate when sales occurred and which rental rate data falls within the period the sales occurred (71535P-2013 C2 p. 28).

Respondent's Position:

[15] The Respondent testified that condominium parking assessments are calculated using the Direct Sales Comparison Approach while the subject assessment is calculated using the Income Approach. The Respondent provided their Beltline parking study to show how the $2,400 and $2,700 per stall rental rates was calculated (71535P-2013 R1 pp. 263-268).

[16] The Respondent did not specifically address the issue of adjusting for leased fee; however, argued that their methodology is consistent with previous Board decisions.

[17] The Respondent asserted that they are using the data closest to the sales date; that any sale in 2011 is closest to July 1, 2011 and any sale in 2012 is closest to July 1, 2012. The Respondent did not specifically address the issue of leased fee adjustment; however, the Respondent asserted that their methodology (i.e. no leased fee adjustment) is consistent with previous Board decisions.

[18] The Respondent cited *MGB* decision 145/07; *"CAP (capitalisation) rates for downtown office properties should be developed using typical NOI inputs if they are going to be applied to the subject properties whose NOI was developed with typical NOI inputs"* (71535P-2013 R1 p. 75, findings #2).

[19] The Respondent also cited *MGB* DL 019/10; *"The MGB has in several past decisions stated that a cap rate applied to NOI based on typical factors (inputs) must be a cap (capitalisation) rate that also has been derived using typical NOI factors. In this case the MGB finds that 2007 typical factors should be used when analysing the 2007 sales and that 2008 typical factors should be used when analysing the 2008 sales. The Appellant used 2008 typical factors for all sales and adjusted some typical rents in their cap rate analysis. The MGB finds the Appellant did not use 2007 typical factors for the 2007 sales in their cap rate analysis"* (71535P-2013 R1 p. 91, second last paragraph).

[20] The Respondent testified that they are calculating in the same manner the previous Boards have directed.

[21] The Respondent excluded the Duff Building in the Respondent's capitalisation rate study, because the Duff Building was not purchased for the income it produced, citing a passage from the RealNet report found in the Complainant's package; *"It is our understanding that the Purchaser would complete renovations to the building prior to re-leasing the property at*

rates reflective of market values. Renovations will include office spaces, lobbies, elevator cabs, washrooms and the facade." (71535P-2013 C1 p. 119, centre of page under heading PROPERTY LOCATION).

[22] The Respondent also indicated that the building sold again in 2013 at more than twice the value purchased in 2011, giving credibility to their decision to dismiss the original sale.

[23] The Respondent argued that the five sales within their capitalisation rate study have been analysed and are appropriately included within the study. The Respondent again expressed concern for the new calculation within Rebuttal Document and the addition of new evidence which amounts to case splitting.

Board's Reasons for Decision:

[24] The Board confirms the parking rate derived by the Respondent ($2,400 and $2,700 per stall). The evidence in this case is different from previous hearings. Put simply, the Complainant argued the subject should be given the benefit of lower assessments in the same area. The *onus* is on the Complainant to indicate the correct assessment amount. The Complainant did not dispute the Respondent's revenue analysis ($2,400 and $2,700 per stall); the Complainant did not demonstrate how parking in condominium office buildings is comparable with the subject.

[25] The Board found the presentation from the Complainant to pique the interest of the Board regarding the equitable treatment of office parking stalls in the Beltline. The Board accepts that, generally speaking, fairness and equity are at the core of tax assessment; the Board encourages the Respondent to reconsider their approach to assessing condominium office building parking at an arbitrary flat rate of $25,000 per stall.

[26] The Board found the concept of making adjustments to the sale price (by way of a leased fee adjustment) should not be condoned. In previous hearings, attempts have been made to use actual Net Operating Income [*NOI*] versus typical *NOI*. The result of granting the Complainant's request (i.e.: the leased fee adjustment) would be using actual *NOI*. This issue has been decided at the highest levels wherein Justice Cummings of the Supreme Court of British Columbia writes in *Westcoast*; *"economic net incomes (typical NOI) are universally used by appraisers in arriving at a capitalisation rate for the building which has sold"*.

[27] The Board understood the rationale employed by the Respondent; it is consistent with the position taken by the MGB DL 019/10. The Board is not privy to the evidence and situation involved with DL 019/10 and cannot comment on their decision; however, the Board finds that concept is contrary to the principals espoused in MGB 145/07 and more importantly contrary to *Westcoast*.

[28] The *Westcoast* decision is clear; *"it makes no sense to develop a capitalisation rate on one set of assumptions about long-term vacancy rates, long-term rents, and long-term expenses, and then apply that rate to the income of the subject property if it is not derived in the same way."*

[29] The Board finds that *Westcoast* clearly indicates that the assumptions (i.e.: valuation parameters) must be consistent – consistency is the key principal. The Board finds that the correct capitalisation rate is that derived using consistent typical *NOI*. The typical *NOI* period should match the period for sales within the study (i.e.: sales in the 2012 analysis period – July 1, 2011 through June 30, 2012 – should use the typical *NOI* for the 2012 analysis period – July 1, 2011 through June 30, 2012. Sales in the 2012 analysis period should not use typical NOI for

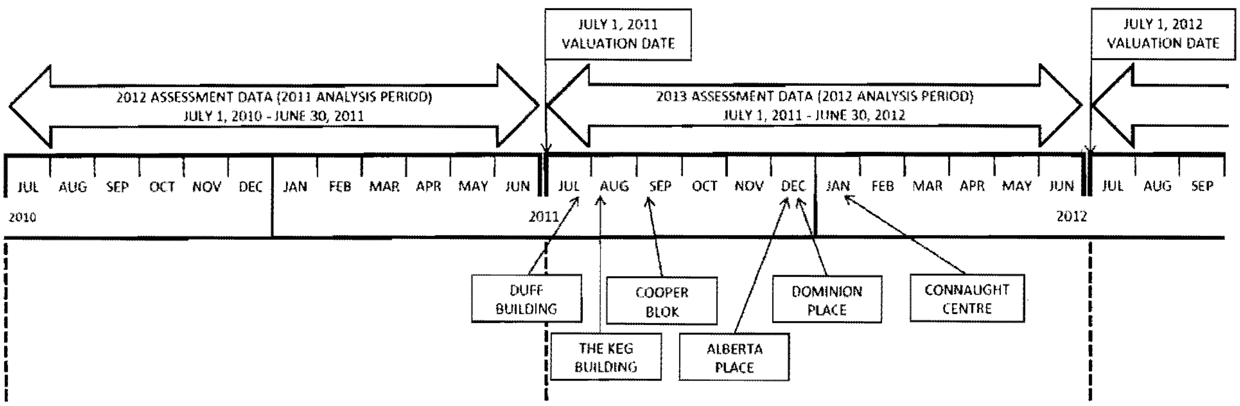
the 2011 analysis period – July 1, 2010 through June 30, 2011). For example:

I. A sale in November 2011 (being in the 2012 analysis period) should use typical *NOI* data for the 2012 analysis period,

II. A sale in August 2011 (being in the 2012 analysis period) should use typical *NOI* data for the 2012 analysis period,

III. A sale in May 2011 (being in the 2011 analysis period) should use typical *NOI* data for the 2011 analysis period, and

IV. A sale in November 2011 (being the 2012 analysis period) should not use typical NOI data for the 2011 analysis period, because the typical NOI data includes dated leases, in this case from 2010.



All sales occurring during the period for which the assessment data is created must be evaluated with a typical *NOI* calculated for the same period. The resultant capitalisation rate is used to determine the assessment - consistency is key.

[30] The Board finds the Duff Building is a market sale and is to be included in the creation of the capitalisation rate study. The Respondent's argument is that a building which is purchased with 85% occupancy should not be considered as income producing. The fact the purchaser intended to improve their investment does not make the transaction a non-market sale. The building was exposed to the market and the purchaser saw value (where others may not have). Testimony that the building resold in 2013 – information not available to the Respondent at the time the assessment was prepared – does not take away from the fact the original sale is a market sale.

[31] The Board accepted the results of the Complainant's capitalisation rate study, wherein a 5.96% weighted mean is calculated. The Board finds that the correct capitalisation rate for this assessment is 6.00%.

[32] The Board finds the inclusion of new information within the Rebuttal Document to be contrary to the intent with legislation and regulation. As stated within the recent *GSL* decision; *"The only error of law in this circumstance would have been to include this evidence, when that statutory regime clearly prohibited it."* The labelling of certain comparables as "character buildings" is new information (which the Board must not hear); different arguments are permitted as long as those arguments are not based on new information. In any event the Board has provided zero weight on this evidence (because the Complainant did not establish compelling evidence to explain why "character buildings" are not typical). With the exclusion of the evidence mentioned above, the Board finds no reason to exclude comparables (The Keg Building and Cooper Blok Building) as requested by the Complainant but used by the Respondent within the Respondent's Capitalisation Rate study.

Board's Reasons for Revision:

[33] The Board found a technical error and has corrected it as permitted within *the Act* section 471(2).

The Municipal Government Act [the Act]
Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Technical irregularities

471(2) *An assessment review board may correct any error or omission in its decision.*

[34] The Board inadvertently used the term *'assessment ye*ar' in a manner inconsistent with the definition found within *the Act* and has replaced the term with *'analysis period'* throughout the decision and within the chart above.

DATED AT THE CITY OF CALGARY THIS 2nd **DAY OF** October **2013.**

Jeffrey Dawson

Jeffrey Dawson
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.	71535P-2013 C1	Additional Complainant Disclosure – *via cross-reference*
4.	71535P-2013 R1	Additional Respondent Disclosure – *via cross-reference*
5.	71535P-2013 C2	Rebuttal Disclosure – *via cross-reference*

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.

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Capitalisation Rate
				Equity