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 *MGA*).

between:

First Street Equities Inc.
(represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Ms. V. Higham, PRESIDING OFFICER
Mr. J. Mathias, BOARD MEMBER
Mr. P. Pask, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER:	**068165794**
LOCATION ADDRESS:	**1313 1st Street SE Calgary, Alberta**
FILE NUMBER:	**72333**
ASSESSMENT:	**$12,130,000**

This complaint was heard on 17th day of October, 2013 at the office of the Calgary Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- **Ms. Danielle Chabot** **Agent, Altus Group Limited (Altus)**

Appeared on behalf of the Respondent:

- **Mr. Lawrence Wong** **Assessor, City of Calgary**
- **Mr. Robert Ford** **Assessor, City of Calgary**

Procedural or Jurisdictional Matters:

[1] Neither party objected to the composition of the Board as introduced at the hearing.

[2] All disclosure materials were received in a timely fashion, as legislated under the Act.

[3] The Board notes a duly-executed Agent Authorization Form present in the file.

[4] The parties requested and the Board agreed to carry forward the capitalization rate (cap rate) arguments and evidence advanced by both parties from *"lead file"* CARB 72324/P-2013, common to the subject complaint heard by the Board during the same week.

Preliminary Issue:

[5] The Respondent raised the following preliminary matter prior to the commencement of the merit portion of the hearing:

a) Pursuant to s.295(1) and (4) of the MGA, should the Board summarily dismiss the Complainant's complaint for failing to submit the Assessment Request for Information (ARFI) form requested by the City?

Complainant's Position on the Preliminary Issue:

[6] The Complainant submitted that acting on behalf the subject owner, Altus responded to the first ARFI letter received from the City dated August 31, 2013, by forwarding the requested assessment information in a package representing numerous roll numbers. On September 5, 2012, Altus emailed the assessment department to inquire whether all the ARFI information sent by their office was received by the City. The City emailed back the same day noting that information for three roll numbers had not yet been received, one of which was the subject property.

[7] On September 7, 2013 at 8:41 a.m., Altus emailed what was believed to be the missing ARFI information for those three roll numbers, following which the City confirmed by email at 8:48 a.m. that all the requested ARFI information for those three roll numbers was now in their possession.

[8] The Complainant submitted that neither Altus nor the City realized at that time, however, that one of the rent rolls was attached twice, resulting in the subject property's rent roll being omitted altogether in error. As of the hearing date, the requested information for the subject property had not actually been sent to the city.

[9] Ms. Chabot submitted that when she received the second ARFI notice dated September 20, 2013, she believed it was sent in error and disregarded it, since she had received confirmation from the City's assessment department that the requested ARFI information had been received on September 7, 2013.

[10] In response to the Respondent's request to dismiss the complaint, the Complainant relied upon several of the conclusions in the case of *Boardwalk Reit v. Edmonton (City),* 2008 ABCA 220 (*Boardwalk*), wherein the Court of Appeal found that the appellant taxpayer should not be denied the right to make a complaint.

[11] In *Boardwalk*, the Court found that the assessor owed the taxpayer a "duty of fairness" *which included contacting the taxpayer if the information requested was lacking or not sufficient.* Further, the Court found that the standard for response in that case was "substantial compliance" which applies to all taxpayers regardless of sophistication. Finally, the Court found that the word "necessary" in s.295 of the MGA is to be interpreted literally as "*indispensable"* not merely "*expedient, nor useful, nor convenient."*

[12] In the subject complaint, the Complainant submitted that the City breached this duty of fairness owed to the subject owner by failing to contact the Complainant to advise that one of the rent rolls was actually sent twice, and that the subject's rent roll was still missing. The Complainant argued that "had the Respondent contacted the Complainant in a timely manner, the information truly sought by the Respondent could have been provided within the original 30 day period" (Exhibit C4-A, p.9), then quoted from *Boardwalk* as follows:

> So the assessor's decision to lie in the weeds and reveal nothing to the taxpayer petrified any flaw or omission by either of them, even one formerly easy to correct. ... All this violated the rules of natural justice and procedural fairness (Exhibit C4-A, p. 9).

[13] The Complainant also argued that the Respondent in this case further breached the City's duty of fairness by bringing forward the request to dismiss, notwithstanding the City having received "a fulsome response from the Complainant" in respect of the matter – once more quoting from *Boardwalk* as follows:

> The appellant taxpayer lost all because the assessor made two decisions here. First, not to tell the appellant the perceived flaws in its answers, and instead to wait until after assessment. Second, to move to quash all the appeals (Exhibit C4-A, p.11).

[14] The Complainant added that the court in *Boardwalk* coupled the City's duty of fairness with the concept of reasonableness, arguing that the Complainant's actions in respect of the subject matter were entirely reasonable at every stage, in light of the following (Exhibit C4-A, p.12):

a) "The timely response of the Complainant to the first request with a confirmation from the City indicating they had what was required;

b) The fact that the second request was made at such a late date that the purpose of the request could not be for information to be used in preparation of the assessment; and

c) The full and complete response by the Complainant within 60 days of the second request."

[15] In light of all the foregoing, the Complainant asked the Board to deny the Respondent's application to dismiss the subject complaint.

Respondent's Position on the Preliminary Issue:

[16] The Respondent submitted that the City had sent out the first ARFI request by letter dated August 31, 2012 to the subject property owner First Street Equities Inc. Having not received the requested information after the first ARFI letter, the City sent out a second and final request by letter dated September 20, 2012.

[17] The Respondent also submitted CARB decision 2609/2011-P wherein that Board found that the filed assessment complaint breached of s.295 of the MGA by failing to comply with the city's ARFI request.

[18] Having not received, as of the hearing date, the requested ARFI information from the Complainant, the Respondent asked the Board to dismiss the subject complaint as contemplated under s.295 of the MGA.

Board's Findings and Reasons for Decision on the Preliminary Issue:

[19] With respect to the Respondent's application to dismiss the subject complaint, the Board finds as follows:

a) The Complainant and its agent made reasonable, even proactive, attempts to comply with the City's ARFI request;

b) The Complainant and its agent believed they had complied with the City's request, having received confirmation by email on September 7, 2013 from the assessment department that the City had received the requested rent rolls;

c) A substantial email trail exists verifying the reasonable efforts made by the Complainant and its agent to comply with the City's request; and finally,

d) The Complainant and its agent evidenced a pattern of willing compliance, having submitted ARFI information in 2011 and 2013.

[20] The Board considered the *intent* of the subject's non-compliance and finds no evidence to suggest that the taxpayer in the subject complaint intended to withhold compliance, had a history of non-compliance, or reflected a hidden agenda or ulterior motive relative to the City's ARFI request.

[21] The Board further accepts that while the Complainant might reasonably have contacted the City upon receipt of the second letter dated September 20, 2013 to ensure full compliance, the City's confirmation of receipt on September 7, 2013 led the Complainant's agent to assume (in error) that all was in order relative to the subject roll.

[22] Thus, the Board finds the oversight (of the omitted subject ARFI rent roll) is attributable in part to both parties, and similarly, could have been remedied in whole by either party, had one or the other followed up with greater attention to detail.

[23] Finally, the Board expresses disappointment that the City brought forward the application to dismiss given the facts and circumstances of this case – in particular, given the detailed and thorough response from the Complainant, both with respect to the chronology of facts and events, and to the jurisprudence quoted by the Complainant in *Boardwalk*, which the Board finds to be squarely on point.

[24] The better part of an entire morning was dedicated to this preliminary matter, which, considering the substantial defence raised by the Complainant (a copy of which the Respondent received prior to the hearing), might reasonably have laid the matter to rest. While the City is

entirely within its rights to request an application for dismissal on a rigid, technical read of s.295 of the MGA, the decision to proceed in this case lacked prudence given the time, resources, and effort expended by both parties and the Board to adjudicate the application.

[25] The implied intent of s.295 is to preclude taxpayers from benefitting from the recourse of complaint if they knowingly and purposefully fail to comply with that section's requirement to provide requested information necessary for the preparation of an assessment.

[26] The consequences of this Board denying a Complainant the opportunity of presenting a case are grave, since the right to be heard is a fundamental tenet of natural justice which undergirds the entire complaint process. Consequently, the Board is of the opinion that an application for dismissal should not casually be requested by any party in the absence of some evidence of *intent* to disregard or circumvent s.295 of the MGA.

Property Description:

[27] The subject, known as the Bernard Callebaut building, is a multi-tenanted low rise office building constructed in 1995 and located at 1313 1st Street SE in zone BL2 of the city's Beltline commercial district. The parcel is improved with one building comprising 49,557 square feet (sf) of space (19,995 sf office space above grade, 10,100 sf office space below grade, 13,256 sf retail, 4,947 sf retail below grade, and 1,259 sf restaurant) on 0.80 acres of land. Only the office space above grade is under complaint. The subject is currently assessed at $12,130,000 using the income approach to value, with an applied rental rate for the above ground office space of $15 per square foot (psf), and an applied capitalization rate (cap rate) of 5.25%.

Issues:

[28] The Complainant identified two matters on the Complaint Form as under complaint: the assessment amount and assessment class. During the hearing, the Complainant's agent indicated she would advance submissions on the first matter only (assessment amount), and also indicated that she was requesting a different assessment amount ($8,050,000) than originally noted on the Complaint Form ($10,430,000). The Complainant then raised the following issues for the Board's consideration:

a) What is the correct rental rate to apply to the above ground office space of the subject property: the assessed $15 psf or the requested $11 psf?

b) What is the correct cap rate to apply to the subject property: the assessed 5.25% or the requested 7%?

    i. What is the correct methodology to use when analysing the lease data of comparables sold in the last six months of 2011: the Complainant's forward-looking method, or the Respondent's retrospective one?

Complainant's Requested Value: $8,050,000

Board's Decision: For the reasons outlined herein, the Board reduces the current assessment of the subject property from $12,130,000 down to **$9,390,000.**

Legislative Authority, Requirements and Considerations:

[29] A Composite Assessment Review Board (CARB) derives its authority from the *MGA*, Revised Statutes of Alberta 2000, Section 460.1, which reads as follows:

> (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

Section 293 of the *MGA* 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 regulations.

Section 2 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT)* states:

> (2) 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.
>
> 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.

[30] **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. ...

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. ...I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently.

Position of the Parties

Issue 1: What is the correct rental rate to apply to the above ground office space of the subject property: the assessed $15 psf or the requested $14 psf?

Complainant's Position on Issue #1:

[31] The Complainant began by noting that the subject property experienced an increase in assessed value over last year's assessment of $4,850,000 dollars or 67%, which the Complainant argued is attributable to incorrect rental and cap rates applied by the City in this year's assessment.

[32] The Complainant submitted a City-generated map entitled "2013 Beltline Non Residential Land Rates" (Exhibit C1, p.40) identifying delineated economic zones throughout the commercial Beltline, which the City has designated as: BL1, BL2, BL3, BL4, BL5, BL6, BL7, BL8, and FS1. This map reflects different psf land rates for various zones throughout the region.

[33] The Complainant argued that the City erred in applying a single $15 psf rental rate to all zones across the entire Beltline, arguing that several sub-markets exist within the various economic zones identified by the City which actually achieve different rental rates, owing to unique factors within each zone.

[34] The Complainant argued that the City recognized the fact that different economic zones in the Beltline are capable of garnering different rates for land value, but then failed to transfer these distinct differences across the various zones in the context of its rental rate analysis.

[35] The Complainant further argued that the City recognizes that differences exist in the downtown core as well to warrant the application of different office rental rates across the various economic zones in the downtown (DT1, DT2, DT3, DT8, DT9) for both the 2011 and current 2012 assessment years (Exhibit C1, pp.58-60), but then failed to acknowledge these differences in the Beltline. The Complainant argued that this failure is inherently inequitable to the subject zone and property.

[36] The Complainant submitted a 2013 rental rate analysis which isolated office lease activity in the BL2 zone only during the valuation period July 1, 2011 to July 1, 2012 (Exhibit C1, p.39) – showing median/mean/weighted mean rates of $11.00, $11.55, and $11.35 psf respectively.

[37] The Complainant also challenged the fact that the City analysed a full year's worth of lease activity (July 1, 2011 to July 1, 2012) in its 2013 rental rate study (Exhibit R1, pp.39-42), but chose to rely on only six months of lease activity in 2012 (January to July) to derive the typical rental rate applied to the entire Beltline.

[38] Finally, the Complainant provided several recent CARB and Local Assessment Review Board (LARB) decisions in support of the request to reduce the applied rental rate in the subject BL2 zone from the assessed $15 psf to the requested $11 psf.

Respondent's Position on Issue #1:

[39] The Respondent argued that the City had in the past applied different rental rates across the various economic zones of the Beltline, but received pushback from complainants at the time to analyse the region entirely as a whole, which the City did this year.

[40] The Respondent submitted the City's 2013 Beltline Office Rental Analysis for "B" class properties (Exhibit R1, pp.39-42), which analysed 155 leases in total (July 1, 2011 to July 1, 2012), with median/mean/weighted mean rates of $14.00, $14.74, and $14.45 psf respectively.

[41] The City also isolated only 2012 leases (January to July), which analysed 77 leases in total, with median/mean/weighted mean rates of $14.00, $15.03, and $14.91 psf respectively.

[42] With respect to the City's reliance upon the most recent six months of lease activity in 2012 from which to derive a typical rental rate, the Respondent argued that the City believed this sample set better reflects actual market activity in the region as of the July 1, 2012 valuation date mandated by legislation.

[43] The Respondent further noted that had the City utilized the full one year valuation period, the typical rental rate would have been reduced to $14.45 psf, which would have further lowered the cap rate for the Beltline region.

[44] The Respondent concluded that the City's methodology and analysis produces the most accurate typical rental rate for the subject region and property at $15 psf, having consideration of all factors noted above.

Board's Findings and Reasons for Decision on Issue #1:

[45] The Board finds that the correct rental rate to apply to the subject property is the $11 psf rate requested by the Complainant, owing to a number of reasons.

[46] Firstly, the Board concludes that the city's Beltline is a diverse, expansive region comprised of unique, distinctive geographic and economic characteristics. The Board accepts that these differences are reflected in the evidence presented by the Complainant showing a lower rental rate for the BL2 zone (median $14 psf) than for the collective Beltline region (applied $15 psf) in the subject assessment year.

[47] The Board also gave its mind to the CARB decisions proffered by the Complainant, including CARB 70518/P-2013, CARB 71546P-2013, CARB 1160/2012-P, and CARB 73296P/2013.

[48] The conclusions drawn in CARB 70518/P-2013 for example (which addressed an office property the Beltline's BL4 zone), are squarely on point as follows:

> The Respondent's change to consider the Beltline as one overall stratum appears not to produce fair and reasonable estimates of market value for some segments of the Beltline. From the data available to the CARB it is clear that the BL-4 area is not achieving typical leases rates in the range of $15 per sq. ft. The Complainant's rental comparables show the rate of $14 per sq. ft. is more supportable.

[49] The leasing data before this Board likewise evidenced that the BL2 zone did not achieve the City's applied typical lease rate of $15 psf for the subject assessment year. Thus, the Board accepts the Complainant's 2013 rental rate study (Exhibit C1, p.39) which analysed 11 leases in the BL2 zone (commencing August 1, 2011 through July 1, 2012), with a median rate of $11 psf.

[50] The Board is satisfied that this sample set is similar enough to the subject property, and sufficiently large under the circumstances, to be representative of typical leasing activity in that zone for the subject assessment year. The Board, therefore, accepts the requested $11 psf as a supportable typical rental rate to apply to the subject.

Issue #2: What is the correct cap rate to apply to the subject property: the assessed 5.25% or the requested 7%?

i. What is the correct methodology to use when analysing the lease data of comparables sold in the last six months of 2011: the Complainant's forward-looking method, or the Respondent's retrospective one?

Complainant's Position on Issue #2:

[51] The Complainant argued that the City used an incorrect, dated valuation parameter to calculate the Net Operating Income (NOI) of certain sales comparables in its cap rate study for Beltline office properties in the subject assessment year.

[52] The Complainant submitted and the Respondent concurred that the City's accepted practice is to use the following valuation parameters to derive its typical cap rate for all Beltline properties:

i. For sales occurring in 2012, the City uses a **July 1, 2012** valuation date parameter, gathering and analysing data between July 2011 and July 2012;

ii. For sales occurring in the first six months of 2011, the City uses a **July 1, 2011** valuation date parameter, gathering and analysing data between July 2010 and July 2011; and

iii. For sales occurring in the last six months of 2011, the City also uses a **July 1, 2011** valuation date parameter, gathering and analysing data between July 2010 and July 2011.

[53] The Complainant objected to the City's use of this "retrospective" valuation parameter for the last six months of 2011, arguing that it produced incorrect and significantly lower typical cap rates for those affected sales, thus lowering the overall Beltline typical cap rate applied to the subject. The Complainant objected to this methodology on essentially two grounds:

(1) Dated Lease Data: the Complainant submitted that for those affected 2011 sales, the City calculated typical NOIs using *dated lease data* that was in some cases up to 24 months old (relative to the standard July 1, 2012 valuation date), producing significantly lower cap rate values.

(2) Inconsistency: the Complainant noted that the City's rental rate study (Exhibit R1, pp.39-42) is based on the standard "base valuation year" (July 1, 2011 to June 30, 2012) – a common appraisal standard that should be applied consistently throughout the assessment process.

[54] The Complainant submitted evidence (Exhibit C2, p.41) that the City itself employed the forward-looking valuation parameter to derive a typical cap rate for identified retail properties in the downtown (DT8 - Stephen Avenue) for the current assessment year, and that the use of a retrospective parameter in the subject complaint is *incongruent with the City's methodology in the DT8 economic zone*, and inconsistent with sound appraisal principles.

[55] The Complainant also submitted third party reports (Exhibit C2, pp.23-29), noting ranges of cap rate values for second quarter 2012 "B" class suburban office buildings in the Calgary market between 6.5% and 7% in the Colliers report, and between 6.75% and 7.25% in the CB Richard Ellis report.

[56] The Complainant noted that the City's 5.25% Beltline "B" class typical cap rate doesn't even fall within any downtown "A" class industry reporting which ranges between 5.5% and 6.0% in the Colliers report and between 5.75% and 6.25% in the CB Richard Ellis report. The Complainant argued that perception in the market place is critical and that the market does not behave irrationally to perceive less risk in "B" class properties than in "A" class as the City has concluded for the Beltline this year.

[57] The Complainant also submitted excerpts from an Assessment Brief prepared by the City for another complaint in the current assessment year, which speaks to the importance of using "current economic factors" in the development of typical cap rate values, quoted as follows:

> It therefore follows that, in the analysis of capitalization rates, it is imperative that the sales analysis process includes not only timely (valuation year) sales of truly similar properties, but also an analysis predicated on the same Net Operating Income parameters as applied in the NOI that is to be capitalized; That is to say, based on current economic factors, rather than "actual" or historical contract rents, vacancies, etc. (Exhibit C2, p.39).

[58] The Complainant argued that the City's practice of retrospective analysis for those

affected sales is incongruent with its own stated policy of utilizing NOI parameters based on *"current economic factors"* rather than dated *"historical contract rents."* The Complainant argued that dated historical rents were used to calculate the NOIs of the affected sales in the City's cap rate study, which incorrectly skewed the final typical cap applied to the subject property.

[59] The Complainant submitted CARB Decisions 71066/P-2013, 70518/P-2013 and Revised CARB 71546P-2013 in support of her argument favouring the consistent application of the same *forward-looking* valuation parameter to all aspects of the assessment process.

[60] The Complainant also submitted a cap rate study (Exhibit C1, p.104), which analysed four comparable sales of Beltline "B" class office properties (including three common to the City's cap rate study: Alberta Place, Dominion Place, and Connaught Centre) – showing median/mean values of 6.84% and 6.92%, and a median assessment-to-sales (ASR) ratio of 0.98.

[61] In rebuttal, the Complainant objected to two of the comparable sales in the City's cap rate study, arguing that the Keg building wasn't exposed to the open market, was more retail-oriented, and was an extraordinarily motivated sale to buy up most of the north block of a Beltline street; and that the Cooper Block building was part of a series of Allied REIT portfolio purchases targeting specific heritage or class "I" properties across the country.

[62] Finally, the Complainant submitted a new pro-forma analysis (Exhibit C1, p.106) utilizing the requested $11 psf rental rate and 7% cap rate to generate a proposed assessment value of $8,056,972 truncated to $8,050,000.

Respondent's Position on Issue #2:

[63] The Respondent submitted the City's cap rate study (Exhibit R1, p.44), which analysed five Beltline "B" class office properties (including three common to the Complainant's study), showing median/mean values of 5.25% and 5.18% respectively, and a median assessment-to-sales (ASR) ratio of 1.01.

[64] In response to the Complainant's argument to exclude the portfolio sales as being unreliable indicators of typical market value, the Respondent asserted that there was categorically no evidence proffered by the Complainant to prove that the portfolio sales included in the City's study were anything but valid market transactions, reflecting typical market activity for Beltline "B" class office properties in the current assessment year.

[65] The Respondent submitted into evidence the following documents in support of each of the portfolio sales relied upon: RealNet and Commercial Edge Transaction Summaries, a Land Titles Transfer of Land document, a sworn Affidavit of Value document, and a Corporate Registration Search summary to support the validity of these transactions as reliable sales comparables.

[66] The Respondent further submitted the following CARB decisions in support either of the City's retrospective methodology or of its inclusion of portfolio sales: CARB 72726P/2013, CARB 72045P/2013, and CARB 72752P/2013.

[67] In response to Complainant's objection to the City's use of a retrospective valuation parameter for sales occurring in the last six months of 2011, the Respondent indicated that the City's policy is to use NOI inputs and parameters closest to the sale dates of those comparables. Thus, *all sales* occurring in 2011 would be analysed using input parameters developed for the July 1, 2011 valuation date because that's the parameter closest in time to the sale of those comparable properties.

[68] Similarly, *all sales* occurring in 2012 would be analysed using input parameters developed for the July 1, 2012 valuation date. The Respondent asserted that the input data utilized in each case is typical data applied to the valuation period *closest to the sale date* of each respective comparable.

[69] The Respondent further submitted that the City has consistently applied these valuation parameters since 2007, which in the City's estimation produces more accurate results than merely applying one valuation parameter to all sales.

[70] When asked why the City chose to use a forward-looking methodology to assess properties in the DT8 economic zone this year, the Respondent stated he didn't know why since it's not his direct area of responsibility.

[71] The Respondent objected to the Complainant's inclusion of the Duff building in its cap rate study, because this property was purchased for $8,300,000 in August 2011, renovated, and then resold in January 2013 for $18,430,000 – more than double the original sale price.

[72] Finally, the Respondent submitted that the subject property was listed for sale early in 2013 for a list price of $13,500,000 which tends to support the City's assessed value of $12,130,000.

Board's Findings and Reasons for Decision on Issue #2:

[73] The Board finds that a 6.0% cap rate, derived using the Complainant's requested forward-looking methodology, best reflects typical market inputs for the subject property, given the evidence presented by both parties at the hearing.

[74] Of the total nine sales comparables submitted by both parties (four from the Complainant and five from the Respondent), three sales were shared in common by both parties: Alberta Place, Dominion Place, and Connaught Centre. The other three sales (Duff, Keg, and Cooper Block) were challenged as being unreliable comparables.

[75] Noting that recent 2013 CARB decisions have both accepted and rejected these three sales for various reasons, the Board carefully examined the suitability of each sale relative to the derivation of a typical cap rate applied to the subject.

[76] The Complainant objected to the Keg sale on three grounds:

a) It wasn't exposed to the open market;
b) The purchaser was extraordinarily motivated to acquire this property as part of a "land assembly" strategy of purchases on the entire north block of that street; and
c) The assessable space of that building is predominantly restaurant and not office.

[77] The Board places no weight on the listing price of the subject, since listings are a subjective reflection of *perceived* and not necessarily *actual* market realities. The Board places little weight on the fact that the property wasn't exposed to the open market in a traditional sense, noting that certain commercial transactions are commonly exchanged between vendors and purchasers brokered as "pocket listings" for example – which fact alone does not render them "non-market" sales. The Board places some weight on the fact that in the past two years the vendor of this sale, Allied REIT, has acquired every property within an identified geographic north-block on the south side of 11th Avenue immediately west of 5th Street. The Board places the most weight on the fact that the assessable space of this property is predominantly restaurant and not office.

[78] Breaking down this property's NOI components, the Board finds that 66% of the

building's NOI is attributable to the restaurant portion of the business, notwithstanding the fact that the respective size of the office and restaurant components are relatively similar at approximately 20,000 sf each.

[79] In the subject property, combined office spaces (above and below grade) account for 30,095 sf of the total square footage of the building (49,557 sf), while combined retail spaces account for 19,462 sf of the total square footage. Breaking down the subject's NOI components, however, the Board finds that 51% of the building's NOI ($389,847) is attributable to the retail portion of the subject's business, while 49% ($380,725) is attributable to the office portion.

[80] Given the significant retail component of the subject property, the Board finds the Keg sale to be sufficiently comparable in this case to warrant inclusion in a typical cap rate analysis.

[81] The Complainant objected to the Cooper sale (part of an Allied REIT portfolio package worth 53.56 million dollars for the purchase of four office and retail properties) because the structure of financing was "unusual," making it difficult to determine how the individual properties were separately valued. Also, the Complainant noted on RealNet transaction reports an attributable cap rate for each of these properties of 7%, though the City assessed the Cooper building at a 5.25% cap rate.

[82] The Board examined the four portfolio sales and observed a large retail component to the entire package at 55% retail and 45% office (Exhibit C4, p.71). Of the 45% office component (combined portfolio sales), more than half the total space (60,921 sf) is attributable to the Cooper building alone (35,000 sf). The Board further notes that this is an older building built in 1912, with no retail component, and an actual vacancy of 44% at the time of sale.

[83] Notwithstanding the significant retail component of the subject property, the Board is not inclined to accept this sale as a reliable indicator of typical market activity for office Beltline properties in the current assessment year, given the irregular nature of the financing structure of this portfolio package as noted on the RealNet reports (Exhibit C4, pp.72-79).

[84] With respect to the Duff sale, the Board finds that while there was no evidence to indicate the 2011 sale for $8,300,000 dollars was not a valid market sale, there is some question in the minds of the Board as to how *typical* this sale is given the fact that merely eighteen months later, it sold for more than double the value at $18,430,000 dollars, with development permits valued at approximately $2.5 million. The Complainant's own evidence results in an ASR of 1.34 on the 2011 sale. Thus, the Board finds that while this transaction may have been a valid market transaction in 2011 (similar to the Keg sale), it does not properly belong in a cap rate study of *typical* market transactions, since the Board views this sale as an outlier.

[85] The Board, therefore, accepts the Keg sale as well as the three sales common to both parties (Alberta Place, Dominion Place, and Connaught Centre), with a noted reservation relative to the Connaught sale. The three common sales transacted at relatively the same time (within six weeks of each other), for essentially the same price (approximately $30,000,000 dollars), notwithstanding the fact that the Connaught building is *significantly* smaller in size than the other two properties, nearly half the size of the Dominion building. The Board has insufficient evidence to comment on the precise reason for this, but is in any event not persuaded that this sale is a particularly strong typical comparable, and thus places less weight on the Connaught transaction.

Valuation Methodology:

[86] The Board finds that the City erred in using a dated valuation parameter to calculate the NOIs of the affected sales comparables, which produced an incorrect overall cap rate applied to all "B" class office buildings in the Beltline, including the subject property.

[87] The sales in question transacted between July 1 and December 31, 2011, and the issue before the Board is whether these sales should have been analysed using the forward-looking **July 1, 2012** valuation parameter advocated by the Complainant, or the retrospective **July 1, 2011** parameter used by the City.

[88] The Board is persuaded that the City erred in using the retrospective valuation parameter, analysing the affected sales using data gathered between **July 1, 2010 and June 30, 2011.** This dated valuation analysis produced incorrect NOI values, and artificially low typical cap rates for those individual sales.

[89] This factor also contributed to the intuitively illogical outcome for Beltline office buildings this year wherein "B" class properties reflect a lower cap rate at 5.25% than "A" class buildings at 6%. Given that four of the City's five cap rate sales comparables transacted in the last six months of 2011 (Keg, Cooper Block, Alberta Place and Dominion Place), the City's use of the retrospective valuation parameter materially affected the outcome of its cap rate study.

[90] Looking at the three common sales before the Board, two of these transacted in the last six months of 2011 (Alberta Place and Dominion Place). The Board notes that applying the forward-looking parameter to these two sales produces cap rates of **6.29% and 7.39%** respectively (Exhibit C1, p.104), while the retrospective parameter results in cap rates of **5.68% and 6.53%** respectively (Exhibit R1, p.44) – for the same two sales.

[91] The Board is satisfied that the City's cap rates for these two sales are artificially low, owing to the retrospective valuation parameter. The difference lies in the City's use of ***dated lease data*** (going as far back as mid-2010 notwithstanding the legislated valuation date of July 1, 2012), which ultimately resulted in an unfair assessment of the subject property.

[92] The Board further notes in Exhibit R1 at pp.39-42, that the City itself used the standard "base valuation period" of July 1, 2011 to June 30, 2012 to analyse typical rental rates for "B" class properties in the Beltline, but elected to rely **only upon the 2012 lease data** results to derive its typical rental rate of $15 psf for that category of buildings.

[93] This typical rental rate, based on data gathered over the immediate **six months prior to** the 2012 valuation date, was applied to the subject; a typical cap rate of 5.25% was also applied to the subject, derived using the affected sales noted in paragraph 88 above – analysed from data gathered over a period commencing **24 months prior to** the valuation date.

[94] Thus, the Board finds the City's use of different and dated valuation parameters for the typical inputs applied to the subject (in this case, rental and cap rates) to be inconsistent with the spirit and intent of the *Westcoast* decision, which stands firmly for the proposition that all valuation parameters and inputs used in the derivation of typical factors must be *consistently derived* and applied in like manner to the subject property.

[95] The Justice in *Westcoast* was eminently clear:

> 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. ... I stated above that the concepts used, in developing capitalisation rates for application to the subject, **should be used consistently** [emphasis added].

[96] The City's methodology is also in direct conflict with three recent CARB decisions which support the Complainant's requested forward-looking methodology: CARB 71066/P-2013, CARB 70517/P-2013 and Revised CARB 71535P-2013.

[97] Quoting from CARB 71066/P-2013 (Exhibit C4, pp.7-8):

> The basis of the income approach is that income producing real property is purchased for the right to receive future income flow. In the direct capitalization process, it is the net operating income for a one year period commencing on the valuation date that is capitalized. When an investor is deciding how much to pay for a property, **it is a forward looking exercise.** That investor, while cognizant of the recent past, is primarily concerned with the property's ability to produce income in the future [emphasis added].

[98] Quoting from Revised CARB Decision 71535P-2013 (Exhibit C4, p.38):

a) "A sale in November 2011 (being in the 2012 analysis period) should use typical NOI data for the 2012 analysis period;

b) A sale in August, 2011 (being in the 2012 analysis period) should use typical NOI data for the 2012 analysis period;

c) A sale in May 2011 (being in the 2011 analysis period) should use typical NOI data for the 2011 analysis period; and

d) 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 [for the 2011 analysis period] includes dated leases, in this case from 2010."

[99] The Board is persuaded that sales which transacted in the base valuation period (whether in 2011 or 2012) ought to be analysed using the same consistent valuation parameter: forward-looking, being *closest to* the legislated valuation date to better reflect typical market activity at that snapshot in time.

[100] There certainly may be exceptions to this practice where insufficient data exists, or where a Board finds reasonable grounds upon which to accept dated or post-facto data, but for the purpose of the subject complaint, the base valuation period should have been used in the City's cap rate analysis for those affected sales.

[101] Thus, the Board accepts the Complainant's cap rate calculations, excluding the Duff sale (Exhibit C1, p.104), as well as the Respondent's cap rate for the Keg sale (the only evidence before the Board for that sale), which generated median/mean values of 5.77% and 5.89% respectively. Given the identified limitations of the Connaught sale, as well as the retrospective methodology used for the Keg sale, the Board places less weight on these comparables, and finds a reasonable rounding up to the nearest quarter point to be 6.0%.

Board's Decision:

[102] Varying the subject's current assessed typical inputs of rental rate to $11 psf and cap rate to 6.0%, results in a revised assessed value of $9,399,800 truncated to $9,390,000.

[103] For the reasons outlined herein, the Board reduces the current assessment of the subject property from $12,130,000 down to **$9,390,000.**

DATED AT THE CITY OF CALGARY THIS 28th **DAY OF** November **2013.**

V. Higham, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Disclosure (from lead file CARB 72324/P2013)
3. C3	Complainant's Disclosure (from lead file CARB 72324/P2013)
4. C4-A	Complainant's Rebuttal
5. C4-B	Complainant's 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.

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Municipal Government Board Use Only: Decision Identifier Codes				
Municipality/Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	Office	Low Rise	Income Approach	Capitalization Rate Net Market Rent/Lease Rates