



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:

***Northland Properties Corporation
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Vercillo, PRESIDING OFFICER
P. McKenna, BOARD MEMBER
J. Pratt, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER: 201036035

LOCATION ADDRESS: 8001 11 ST SE

FILE NUMBER: 74280

ASSESSMENT: \$15,000,000

This complaint was heard on the 18th day of June, 2014 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:

- D. Hamilton Agent, Altus Group Limited
- V. Frangolias Agent, Altus Group Limited

Appeared on behalf of the Respondent:

- D. Grandbois Assessor, The City of Calgary
- T. Johnson Assessor, The City of Calgary
- G. Foty Assessor, The City of Calgary

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

- (1) The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under *Part 11 of the Act*. During the course of the hearing, the parties raised the following procedural or jurisdictional matters which are addressed below.

Preliminary Issue 1: The Complainant's evidence failed to meet onus.

Respondent's Position:

The Respondent requested that all evidence and argument made on this issue in hearing file #74283, be brought forward to this hearing and accordingly, the Respondent provided the following evidence and argument with respect to this issue:

- (2) After the Complainant's presentation, the Respondent stated that the Complainant had failed to provide any market evidence in support of its issue and accordingly the issue that forms the basis of the complaint was without merit. Therefore, the Respondent stated that the Complainant had not met onus and made an application for the CARB to confirm the assessment without considering the Respondent's submission.

Complainant's Position:

The Complainant requested that all evidence and argument made on this issue in hearing file #74283, be brought forward to this hearing and accordingly, the Complainant provided the following evidence and argument with respect to this issue:

- (3) The Complainant countered that in the absence of sales, there was no market evidence in the assessment year to consider and accordingly the issue that forms the basis of the complaint is appropriately addressed. The Complainant therefore contended that there was market evidence and that onus has been met, so the CARB should consider the complaint on its merits.

Board Findings:

- (4) The CARB considered the positions of the parties and determined that the Complainant had provided sufficient grounds to cast some question as to the correctness or fairness of the assessment set for the subject property. The CARB notes that the purpose of the complaint process is to provide an avenue for a taxpayer to challenge the amount of the assessment. The Complainant's assertion that the assessment lacked the market evidence necessary to change the parameters of the prior year's assessment calculation is sufficient grounds and should not deny the Complainant the legislated right to challenge the assessment. Property sales (used to generate capitalization rates and applied to generate assessments in a previous assessment year) are market evidence and may continue to be market evidence in the ensuing year, unless property sales in the ensuing assessment year support a change. A summary of capitalization (cap) rates (used in a previous assessment year) is sufficient and replication of sale details (e.g., amounts, dates) may be convenient but is superfluous. Therefore, the CARB determined that the Respondent's submission was necessary and the hearing proceeded on that basis.

Preliminary Issue 2: The Respondent failed to provide the requested information regarding the subject's assessment in accordance with Section 299 & 300 of the Act.

Legislative Authority, Requirements and Considerations:

- (5) *Access to assessment record*

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

Access to summary of assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

- (b) the size of the parcel of land;
- (c) the age and size or measurement of any improvements;
- (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;
- (e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

Complainant's Position:

The Complainant requested that all evidence and argument made on this issue in hearing file #74283, be brought forward to this hearing and accordingly, the Complainant's 25 page document entitled "Preliminary Jurisdictional Issue" that was entered into the hearing as "Exhibit C2" in hearing file #74283 was brought forward. The Complainant along with Exhibit C2 provided the following evidence and argument with respect to this issue:

- (6) Before the Respondent's presentation, the Complainant stated that the Respondent had failed to provide all the necessary documentation and information requested under *section 299 and 300 of the Act*, via a February 19, 2014 letter to the City Assessor. Specifically, the Respondent failed to provide an Assessment Request for Information (ARFI) Non-Residential Sales Questionnaire concerning a June 20, 2013 sale of the Calgary Westin Hotel. In addition, the Respondent failed to provide the three Hotel/Motel Cap Calculation Summaries of the Westin, Hotel Elan and the Clarion Airport Hotels. Therefore, the Complainant stated that the Respondent had not fully complied with the *section 299/300* request and asked that the specific pages referencing that documentation be removed from the Respondent's evidence and not be considered by the CARB.

Respondent's Position:

The Respondent requested that all evidence and argument made on this issue in hearing file #74283, be brought forward to this hearing and accordingly, the Respondent provided the following evidence and argument with respect to this issue:

- (7) The Respondent countered that it had substantially complied with the *section 299/300* request. The difficulty in this case is that much of the information pertaining to hotel sales is highly confidential in nature and although little written documentation was provided, the Complainant was given access to the information and had ample opportunity to review all the documentation in the Respondent's possession. Substantial information was shared and perused by the Complainant and therefore, the Respondent contends that it had complied with the *section 299/300* request and the CARB should consider the Respondent's evidence in its entirety.

Board Findings:

- (8) The CARB considered the positions of the parties and determined that the Respondent had substantially provided sufficient information to the Complainant's *section 299/300* request. The CARB notes that the nature of the information was highly confidential and the Complainant saw or received the disputed evidence before and during the Complaint

process. Therefore, the CARB determined that the Respondent's evidence would be heard in its entirety and the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

- (9) The subject property is a suburban limited service 201 room hotel known as the Sandman Hotel & Suites. According to the information provided, the property contains two buildings. An 8,618 square foot retail building, constructed in 2011 and the hotel that was constructed in 2010 and has an assessed total size of 114,025 square feet (sf). Both buildings are given a quality rating of B. The buildings are situated on an assessable land area of 180,947 sf.
- (10) The subject is assessed using the Income Approach to value. It is assessed by "stabilizing" or weighting the actual incomes of the hotel's last three assessment years and then further "normalizing" those incomes by adjusting any atypical variances of the expenses (e.g., departmental, undistributed and fixed expenses) to reflect "typical" expenses of comparable and competing hotels within its stratification. The resulting typical income is then further adjusted for management and reserves, furniture and equipment and intangible expenses to calculate a "net income to real estate". The resulting calculation for net income to real estate is then capitalized for assessment purposes using a 8.75% cap rate.

Issues:

- (11) The Complainant addressed the following issues at this hearing:
 - (1) The assessed income of the hotel includes revenue from the retail building that is assessed separately and should therefore be removed from the assessed income of the hotel.
 - (2) The assessed cap rate applied in the Income Approach to value should remain unchanged from the prior year's assessment cap rate of 10.0%.

Complainant's Requested Value: \$13,250,000

Board's Decision:

- (12) The complaint is accepted in part and the assessment is revised at \$14,650,000.

Legislative Authority, Requirements and Considerations:

- (13) As in accordance with *the Act Section 467(3)*, a CARB must not alter any assessment that is fair and equitable, taking into consideration
 - a) *The valuation and other standards set out in the regulations,*
 - b) *The procedures set out in the regulations, and*
 - c) *The assessments of similar property or businesses in the same municipality.*

Position of the Parties

ISSUE 1: The assessed income of the hotel includes revenue from the retail building that is assessed separately and should therefore be removed from the assessed income of the hotel.

Complainant's Position:

The Complainant provided a 76 page document entitled "2014 Assessment Review Board - Evidence Submission" that was entered into the hearing as "Exhibit C1." The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- (14) An assessment calculation that duplicated the Respondent's income to real estate calculation for the subject. The Respondent was able to show that the revenue attributable to the hotel included revenue from the neighbouring retail space known as The Shark Club which opened in 2012.
- (15) Profit and Loss (P&L) statements for the hotel for the years ending December 31, 2010, 2011 and 2012. The P&L statements showed that a substantial increase in rent revenue from 2011 to 2012 was due to The Shark Club.

Respondent's Position:

- (16) The Respondent provided a 2 page spreadsheet that was entered into the hearing as "Exhibit R2" and recalculated the assessment of the subject with The Shark Club's rent revenue removed from the hotel's revenue. The recalculation resulted in a revised hotel assessment of \$14,653,569.

Board Findings:

- (17) The CARB finds that the current assessment includes revenue from the neighbouring retail space that should be removed from the hotel's Income Approach valuation.

ISSUE 2: The assessed cap rate applied in the Income Approach to value should remain unchanged from the prior year's assessment cap rate of 10.0%.

Complainant's Position:

The Complainant requested that all evidence and argument made on this issue in hearing file #74283 be brought forward to this hearing. Therefore, the Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- (18) In its summary of testimonial evidence, the Complainant claimed "the assessed capitalization rate should be the same as 2013 because there are neither arm's-length transactions nor single hotel transactions to justify the assessed capitalization rate of 8.75%". The Complainant claimed that according to its understanding, the assessed cap rate was based off of one transaction, the Calgary Westin Hotel sale of September 27,

- 2013 for \$183,120,000. It was the Complainant's position that the Westin sale was not valid market evidence because it was "not determined in a freely competitive market," was *post-facto* (not concluded within the assessment year), was a portfolio sale and was a non-arm's-length transaction.
- (19) A Commercial Edge report that remarked that the "sale of the Westin appears to be a transfer between related parties".
 - (20) A corporate search of the parties in the Westin sale transaction showing that the vendor was FBD Calgary Property Company whose previous legal name was SCG Calgary Property Company and the purchaser was SCG Aquarius Calgary Hotel Inc. The complainant suggested that SCG stands for Starwood Corporate Group and the similarity of the corporate names containing the SCG acronym for both the purchaser and the vendor suggests a non-arm's-length transaction.
 - (21) Land Title Certificates, Transfers and Affidavits Re Value Of Land documents of both the Edmonton and Calgary Westin Hotel sale suggested that these hotels were part of a portfolio sale. Therefore, the value ascribed to the Calgary Westin may not be reflective of fair market value because of corporate or transfer tax considerations.
 - (22) A requested assessment calculation that duplicated the Respondent's income to real estate calculation for the subject but substituted the prior year's cap rate (10.0% to reflect the fact that there was not current year market evidence to the contrary).

Respondent's Position:

The Respondent provided a 269 page document entitled "Assessment Brief" that was entered into the hearing as "Exhibit R1," however, the Respondent requested that all evidence and argument made on this issue in hearing file #74283 be brought forward to this hearing. Therefore, the Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- (23) A Hotel/Motel Sales Activity Summary. The summary was provided to the Complainant during the course of the *section 299/300* request. The summary provided some information on the sales of the following hotels:
 - (1) The Hotel Nuvo, a condo hotel with a sale registration date of October 9, 2013 and a sale price of \$5,500,000.
 - (2) The Westin, a downtown full service hotel with a sale registration date of September 27, 2013 and a sale price of \$183,120,000.
 - (3) The Clarion Airport, a suburban full service hotel with a sale registration date of July 10, 2013 and a sale price of \$18,100,000.
 - (4) The Hotel Elan, a downtown limited service hotel with a sale registration date of January 14, 2013 and a sale price of \$11,422,001.

RealNet Hotel Transaction Summary reports that outlined the details of each of the above transactions. It was noted that the Clarion Airport Hotel had a sales price that differed from the Hotel/Motel Sales Activity Summary, indicating a price of \$13,500,000.

- (24) The aforementioned ARFI (see paragraph 6) concerning the sale of the Calgary Westin Hotel. According to a representative of the purchaser, the sale of the Westin was for \$183,120,000 as confirmed on the Affidavit Value on Title. The sales price was agreed to on June 20, 2013. The sale was an arms-length sale characterized by the fact that it

- was not among related parties or corporations. The sale price included furniture and fixtures worth \$9,000,000.
- (25) A corporate search of the parties in the Westin sale transaction showing that the vendor (FBD Calgary Property Company whose previous legal name was SCG Calgary Property Company) and the purchaser (SCG Aquarius Calgary Hotel Inc.) had no common shareholders.
 - (26) An Assumption Agreement of the Westin hotel property whose signatories of the vendor were different from that of the purchaser.
 - (27) A September 10, 2013 Bloomberg News article describing the portfolio sale of five Westin hotel properties located in Toronto, Ottawa, Edmonton, Calgary and Vancouver. The article went on to describe the Starwood Capital Group as separate and distinct company that is not affiliated with Starwood Hotels & Resorts, a hotel management group.
 - (28) The aforementioned three "Hotel/Motel Cap Calculation Summaries of the Westin, Hotel Elan and the Clarion Airport Hotels (see paragraph 6), provided the following information:
 - (1) The Calgary Westin Hotel sale generated a cap rate of 7.55% calculated from net income to real estate and compared to the value of the land and improvement. The value of the land and improvement was then compared to the assessed value generated with a cap rate of 7.75%, achieving an Assessment to Sales Ratio (ASR) of 97.45%.
 - (2) The Hotel Elan sale generated a cap rate of 7.61% calculated from net income to real estate and compared to the value of the land and improvement. The value of the land and improvement was then compared to the assessed value generated with a cap rate of 7.75%, achieving an ASR of 98.23%. It was noted that the hotel was sold shortly after it was converted from an apartment building. Therefore, the assessed net income to real estate was not based on actual incomes.
 - (3) The Clarion Airport Hotel sale generated a cap rate of 8.94% calculated from net income to real estate and compared to the value of the land and improvement. The value given to the land and improvement was \$16,974,000 after removing a \$1,126,000 value for a PAD site. The value of the land and improvement was then compared to the assessed value generated with a cap rate of 8.75%, achieving an ASR of 102.20%.
 - (29) A CBRE Canadian Hotel Investment Trends report for the first quarter of 2013. The report indicated that in that quarter, Calgary downtown full-service hotels achieved cap rates between 6.50% and 7.50% and Calgary suburban limited-service hotels achieved cap rates between 8.50% and 9.50%. The Hotel Elan sale was highlighted in that report.
 - (30) A CBRE Canadian Hotel Investment Trends report for the second quarter of 2013. The report indicated that in that quarter, Calgary downtown full-service hotels achieved cap rates between 6.50% and 7.50% and Calgary suburban limited-service hotels achieved cap rates between 7.50% and 8.50%. The Hotel Elan sale was again highlighted in that report.
 - (31) A CBRE Canadian Hotel Investment Trends report for the third quarter of 2013. The report indicated that in that quarter, Calgary downtown full-service hotels achieved cap rates between 6.75% and 7.75% and Calgary suburban limited-service hotels achieved

- cap rates between 7.75% and 8.75%. The Hotel Elan, Clarion Hotel and the Westin portfolio sale was highlighted in that report.
- (32) A CBRE Canadian Cap Rate survey report for the second quarter of 2012. The report indicated that in that quarter, Calgary downtown full-service hotels achieved cap rates between 6.75% and 7.75% and Calgary suburban limited-service hotels achieved cap rates between 9.00% and 10.00%.
- (33) A CBRE Canadian Cap Rate survey report for the first quarter of 2014. The report indicated that in that quarter, Calgary downtown full-service hotels achieved cap rates between 7.00% and 8.00% and Calgary suburban limited-service hotels achieved cap rates between 8.00% and 9.00%.
- (34) A Colliers International Hotels INNvestment Canada report for the third quarter of 2013. The report highlighted the following sales transactions:
- (1) The Clarion Hotel sale with a sales price of \$18,100,000 and a 7.40% cap rate.
 - (2) The Hotel Elan sale with a sales price of \$11,422,000 with no cap rate indicated.
 - (3) The Westin Calgary portfolio sale with a sales price of \$192,100,000 and a cap rate of 8.80%.

Board Findings:

The CARB finds the following with respect to this issue:

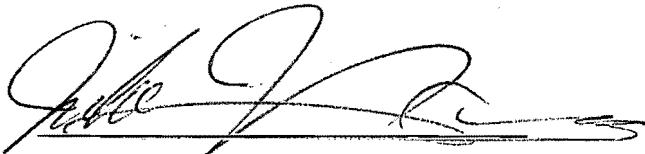
- (35) That the Complainant and the Respondent generally agree that there is typically a 1.00% cap rate differential between valuing downtown versus suburban hotels.
- (36) That the Complainant did not prove, on the balance of probabilities that the Calgary Westin Hotel sale was part of a non-arms length transaction.
- (37) That the Calgary Westin Hotel sale, although post-facto (i.e., registered on title after the valuation date), was negotiated prior to the valuation date on June 20, 2013.
- (38) That the Hotel Elan sale did not have actual income data available at the time of sale and therefore is not a valid comparable to a cap rate study.
- (39) That the Clarion Hotel sale generating a cap rate of 8.75% is accepted. The CARB agrees with the Respondent that the \$18,100,000 sale included a \$1,126,000 PAD site that should be excluded from the sales price in the valuation of the hotel. The CARB also agrees that the \$13,500,000 sales price of the Clarion Hotel as indicated in the RealNet report did not include the full price attributable to the "turnkey" operation of the hotel.
- (40) That the 2013 CBRE reports are supportive of the cap rates used by the Respondent in assessing both downtown and suburban hotels in the current year's assessment.
- (41) That the 2012 CBRE report is supportive of the downward trend in the cap rates used by the Respondent in the prior year versus current year hotel assessments.

Board's Reasons for Decision:

- (42) The CARB is satisfied that the Calgary Westin sale, although part of a portfolio sale and technically post-facto, but negotiated prior to the valuation date, is indicative of market

- value and a downward trend in the cap rates from 2012 to 2013 for downtown hotel valuations. The Respondent satisfied the CARB through its evidence that the sale was an arms-length transaction. The commonality in corporate names of the vendor and the purchaser, without more (such as common shareholders and/or directors) is not evidence of a non-arms length transaction.
- (43) The Westin (a downtown hotel) in conjunction with the sale of the Clarion Hotel (a suburban hotel) supported both cap rates used by the Respondent in the assessments of downtown and suburban hotels. Moreover, they are supportive of the 1.00% spread used by the Respondent in the valuation of downtown versus suburban hotels.
- (44) The CBRE cap rate survey reports were supportive of the cap rates used by the Respondent in the valuation of both the downtown and suburban hotels.
- (45) The Respondent argued last year's assessment is not a starting point, nor a base for the following year's assessment [Globexx Properties 2012 ABQB]. In Globexx, the question was whether the legislative standard of mass appraisal required the municipality to use as a starting point, a prior year's assessment. In Globexx, the ratepayers argument was that the city should not have been able to provide comparables (that were different from those used in the previous year); the court disagreed. Here, the Complainants argument was that there was no relevant market evidence (in the assessment year July 1, 2012 to June 30, 2013). Therefore, last year's cap rate applies this year (i.e., there is no reason to change the cap rate used in last year's assessment). The Complainant's argument in this case is different from the principles contained in Globexx.
- (46) In summary, the question before this CARB is to evaluate market evidence. The Complainant's argument (that the previous year's cap rate should apply this year) was based on the premise that the Westin sale was not a valid arms length transaction (and therefore not indicative of market value). In particular, the Westin sale should not be used as evidence to support reducing the prior year's cap rates. The CARB disagrees with this premise because there was other corroborating evidence, such as the Clarion Hotel sale and the CBRE cap rate surveys that were supportive of the cap rate generated from the Westin sale. The Complainant failed to provide any evidence based on hotel sales or industry surveys that would justify keeping cap rates the same as in the prior year's hotel assessments. In the absence of that evidence, the Respondent's evidence prevails and is supportive of a reduced cap rate from the prior year.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF August 2014.



M. Vercillo

Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Preliminary Jurisdictional Issue
3. R1	Respondent Disclosure
4. R2	Respondent Disclosure

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 MGB Office Only)

Appeal Type	Property Type	Property Sub-type	Issue	Sub issue
CARB	Other Property Type	Hotel/Motel	Income Approach	Capitalization Rate