# 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:**

***Copez Properties Ltd.***
***(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:** | **067232504** |
| **LOCATION ADDRESS:** | **999 8 ST SW** |
| **LEGAL DESCRIPTION:** | **Plan 1423LK; Block 38** |
| **FILE NUMBER:** | **71535** |
| **ASSESSMENT:** | **$ 32,370,000** |

This complaint was heard on the 8th 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*
- *K. Gardiner* *Assessor, City of Calgary*

**Board Decision in Respect of Procedural or Jurisdictional Matters:**

**Issues:**

[1] The Respondent requested the Board to redact information contained within the Rebuttal Document because that information and argument were not contained in the main disclosure document.

**Board Decision:**

[2] The Board finds that the information consists of new calculations and that different arguments are permitted provided that no new evidence is disclosed. The Board allowed the entirety of the Rebuttal Document to be placed into evidence at the appropriate time. The Board committed to place appropriate weight on information deemed to be outside the disclosure guidelines.

**Legislative Authority, Requirements and Considerations:**

**Court of Queen's Bench of Alberta**
GSL Chevrolet Cadillac Ltd. v Calgary (City), 2013 ABQB 318 [*GSL*]

*[9]* *"Among several preliminary matters was the issue whether or not to accept the complainant's rebuttal package in evidence. The CARB ruled that certain documents were excluded from evidence due to non-compliance with the Matters Relating to Assessment Complaints Regulation, Alta Reg 310/2009, s 8(2)(a)(i) ("MRAC"). Specifically, these documents could not properly be categorised as rebuttal evidence because they contained new pieces of information that should have been provided in the initial disclosure process."*

*[20]* *"GSL did not suggest that the CARB applied the wrong legal test to the characterisation of rebuttal evidence. Indeed, GSL did not even dispute that the excluded documents were new evidence, but rather tried to argue they could not have been included in their initial disclosure package because they*

*did not know on what grounds the City would defend its assessment. This is not an argument disputing a question of law. At best it is an expression of dissatisfaction with the statutory regime. At worst, it is an intentional splitting of the complainant's case, the very thing the MRAC disclosure provisions are designed to prevent. Unfortunately for GSL, the disclosure requirements under the MRAC are as clear to me as they were to the CARB."*

***[21]*** *"Regardless, under s. 460(7) of the MGA ("the Act"), the complainant bears the onus of demonstrating what information shown on the assessment is incorrect, explaining how it is incorrect, indicating what the correct information is, and identifying what assessed value the complainant requests. It was always open to GSL to provide all the documents excluded in their rebuttal package during the initial disclosure. If GSL took issue with the discount given for environmental concerns, it did not need to know how the City intended to defend this number. GSL merely needed to provide sufficient evidence to back their own number. Any failure to do so must be borne by GSL. The only error of law in this circumstance would have been to include this evidence, when that statutory regime clearly prohibited it."*

## The Municipal Government Act [the Act]

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

**Proceedings before assessment review board**

***464(1)*** *Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.*

## Matters Relating to Assessment Complaints [MRAC]

Alberta Regulation 310/2009

***8(2)*** *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

*(a) the complainant must, at least 42 days before the hearing date,*

*(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and*

*(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

**Failure to disclose**

***9(1)*** *A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*

***(2)*** *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

**Respondent's Position:**

[3] The Respondent presented the *GSL* decision; wherein, the courts found that new evidence is not permitted during the rebuttal stage of disclosure. The Respondent argues the Complainant is case splitting and providing new information (with the Respondent having no opportunity to properly address the issue and argument).

**Complainant's Position:**

[4] The Complainant insisted that there is no new evidence; the Complainant argued the information was a new calculation including the explanation for the new calculation.

**Board Reasons for Decision:**

[5] The Board is unable to determine if new evidence is provided within Rebuttal Disclosure without first hearing the Disclosure Document and accompanied testimony. The Board is versed on the legislation and regulations and can assign appropriate weight, including zero weight, to any evidence and testimony before it, as per *the Act,* s. 464(1).

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

**Property Description:**

[7] The subject is a seven storey office building constructed in 1978 with 113,871 assessable square feet. Of this 110,041 square feet are assessed as office use, 2,581 square feet are assessed as retail space and 1,249 square feet are assessed as restaurant. In addition there are 187 assessed surface parking stalls. Utilising 1.85 acres, the subject is located on the northern border of the Non-Residential Zone [*NRZ*] of BL4 – Beltline. It has been assessed using the Income Approach arriving at a total value of $316 per square foot.

[8] There is a related assessment associated with the subject property representing 15,026 square feet of the 110,041 square feet of office space. The related assessment is exempt from taxation and not before the Board; therefore, only 95,015 square feet of office space is under complaint. The assessment of the exempted space is $3,580,000 and the Board has no authority to alter it regardless of the decision contained herein.

**Issues:**

[9] Numerous issues have been raised by the Complainant during the complaint process. At the time of hearing four issues have been identified with one of the four issues having sub-issues.

1. Number of assessed parking spaces on-site,
2. Assessed rate of parking spaces in terms of equitable treatment of similar property,
3. Rental rate of office space within the specific non-residential zone, and
4. The capitalisation rate utilised within the Income Approach to valuation, including: i) leased fee adjustment request, ii) change typical rental rates used, ii) identification of additional comparable, and iv) identification of comparables to remove.

**Complainant's Requested Value: $23,380,000 net of related assessment**

**Board Decision:**

[10] The Board found the correct assessment of the subject to be $26,370,000 net of related assessment using the following factors; 174 assessed parking stalls, $2,400 income per parking stall, $14 per square foot office rental rate on the 95,015 square feet of non-exempt office space, and a capitalisation rate of 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

### Issue #1 – Number of parking stalls:

### Complainant's Position:

[11] The Complainant provided a diagram (not to scale) showing the parking configuration on site (C1 p. 31). Combined on the diagram are two adjacent parcels, which the subject utilises for parking as well. The diagram shows 211 parking stalls with 30 parking stalls located on the adjacent sites. Of the remaining 181 parking stalls, the Complainant testified that, seven are utilised for non-revenue visitor parking resulting in an assessed count of 174 parking stalls.

### Respondent's Position:

[12] The Respondent testified that a physical count was performed indicating 209 parking spaces with eight being utilised for non-revenue visitor parking (R1 p.334). Through questioning and review of the evidence, there is no clear indication that the count involved only the subject property; however, the testimony of the Respondent is that the technician is informed of the property lines and conducted the count solely on the subject property.

**Board Reasons for Decision:**

[13] The Board found the evidence of the Respondent suggests that an onsite count was conducted of the subject property. It appears that two adjacent parcels, which are not obvious to a layperson, were included in the count. Anyone conducting a count would require a detailed map to correctly identify the subject boundaries. The count obtained by the Respondent's technician (209 parking stalls) is very close to the testimony and evidence of the Complainant (211 parking stalls exist on the three parcels). Furthermore, the Respondent failed to demonstrate how they arrived at 187 assessed parking stalls.

[14] A prehearing resolution of disputed facts (E.g. Number of parking stalls) can be simple and avoids a delay in the hearing process. Alternatively, aerial photos are readily available with sufficient detail to arrive at the correct factual information.

[15] A party providing evidence which is wrong or unsubstantiated could be cause to assign costs under Matters Relating to Assessment Complaints Regulation [*MRAC*], Schedule 3, Part 1, *"Disclosure of irrelevant evidence that has resulted in a delay of the hearing process."* – $1,000.

**Issue #2 – Assessed rate of parking spaces:**

**Complainant's Position:**

[16] The Complainant provided an excerpt from a previous decision on the subject 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 (C1 p. 9).

[17] 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 (C1 pp. 38-41).

[18] The testimony from the Complainant is that the rental rate per parking stall should drop to $1,482 per stall (versus the assessed $2,400 per stall) in order to calculate an equitable assessment at $25,000 per stall.

**Respondent's Position:**

[19] 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 per stall rental rate was calculated (R1 pp. 263-268).

**Board Reasons for Decision:**

[20] The Board confirms the parking rate derived by the Respondent ($2,400 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 per stall); the Complainant did not demonstrate how parking in Condominium office buildings is comparable with the subject.

[21] 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.

**Issue #3 – Assessed rental rate of office space:**

**Complainant's Position:**

[22] The Complainant disclosed a copy of the Respondent's *'2013 Beltline Office Rental Rate Summary – B Class'* findings to illustrate to the Board how the subject assessment was calculated. The Complainant further segregated the rental rate data by individual Non-Residential Zone [*NRZ*] to show that for the subject, located in *NRZ* BL4, $14 per square foot is more reflective of market value versus the assessment of $15 per square foot (C1 pp. 42-69).

[23] The main justification for stratifying the rental rates by *NRZ* comes from the evidence that the Respondent found different values for vacant land depending on the *NRZ* (C1 p. 50). The Complainant testified that it makes sense that if vacant land values derive different results between *NRZ*, so too will rental rates. The analysis of the Complainant found a rental rate is $14 per square foot for the subject (C1 p. 60).

[24] The other change calculated by the Complainant is the duration of the lease (by removing all leases less than a three year term).

**Respondent's Position:**

[25] The Respondent testified that their analysis is that the rental rates for the entire Beltline are correctly considered as a whole resulting in a value of $15 per square foot when looking at the last three months leading up to the valuation date (R1 p. 37).

**Board Reasons for Decision:**

[26] The Board found the rental rate study conducted by the Respondent to be in error. Firstly, while purporting to be a 12 month study for the current valuation period, it actually extends 13 months with one month considered *post facto* – after the valuation date. The correct period should be July 1, 2011 through June 30, 2012. The Respondent provided no authority for the Respondent to include *post facto* leases. This error resulted in nine leases incorrectly analysed within the 155 lease study.

[27] Secondly, the Board is concerned about the significant range of lease values - $9.00 through $27.00 per square foot. The Board, while intrigued with the concept of lease term as a factor of typical lease parameters, found no evidence to alter the analysis.

[28] The Board considered 39 leases listed below when finding the correct assessment for the subject. These 39 leases calculate a mean of $14.45 per square foot, a median of $14.00 per square foot and a weighted mean of $13.96 per square foot:

| Area (square feet) | Lease Start Date | Term (years) | Face Value |
|---|---|---|---|
| 5482 | 07/01/2011 | 3 | $ 10.00 |
| 3089 | 07/01/2011 | 3 | $ 11.00 |
| 3099 | 07/01/2011 | 5 | $ 15.00 |
| 1372 | 07/01/2011 | 5 | $ 15.00 |
| 1900 | 07/01/2011 | 3 | $ 16.50 |
| 4193 | 07/15/2011 | 5 | $ 14.00 |
| 3111 | 08/01/2011 | 5 | $ 13.00 |
| 12750 | 08/01/2011 | 5 | $ 15.00 |
| 5613 | 08/31/2011 | 3 | $ 12.00 |
| 1200 | 09/01/2011 | 5 | $ 15.00 |
| 5690 | 09/01/2011 | 5 | $ 10.00 |
| 7712 | 09/01/2011 | 6 | $ 14.39 |
| 3700 | 10/01/2011 | 5 | $ 15.00 |
| 979 | 10/01/2011 | 5 | $ 16.50 |
| 11195 | 10/01/2011 | 5 | $ 10.00 |
| 5955 | 10/01/2011 | 5 | $ 14.00 |
| 1016 | 11/01/2011 | 5 | $ 15.00 |
| 2025 | 01/01/2012 | 5 | $ 13.50 |
| 2053 | 01/01/2012 | 5 | $ 14.00 |
| 3761 | 01/01/2012 | 5 | $ 14.50 |
| 2335 | 01/01/2012 | 3 | $ 13.00 |
| 1539 | 01/01/2012 | 3 | $ 13.00 |
| 2975 | 02/01/2012 | 3 | $ 12.00 |
| 2757 | 02/01/2012 | 2 | $ 27.00 |
| 2100 | 02/01/2012 | 5 | $ 16.00 |
| 1430 | 03/01/2012 | 3 | $ 14.00 |
| 2199 | 03/01/2012 | 5 | $ 17.50 |
| 5344 | 03/01/2012 | 1 | $ 14.00 |
| 2581 | 03/01/2012 | 1 | $ 14.00 |
| 7711 | 03/01/2012 | 5 | $ 16.00 |
| 7925 | 03/01/2012 | 1 | $ 14.00 |
| 1430 | 03/01/2012 | 3 | $ 14.00 |
| 629 | 04/01/2012 | 3 | $ 15.00 |
| 5055 | 04/01/2012 | 2 | $ 16.00 |
| 1640 | 05/01/2012 | 5 | $ 14.00 |
| 2094 | 05/01/2012 | 7 | $ 14.00 |
| 2459 | 06/01/2012 | 5 | $ 15.50 |
| 1867 | 06/01/2012 | 5 | $ 17.00 |
| 4651 | 06/01/2012 | 5 | $ 14.00 |

**Issue #4(i) – Capitalisation rate calculation with leased fee adjustment:**

**Complainant's Position:**

[29] 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 (C1 pp. 154-211). The Complainant testified briefly on the materials, making specific note of pages 160 and 180.

**Respondent's Position:**

[30] The Respondent did not specifically address this issue; however, the Respondent asserted that their methodology (i.e. no leased fee adjustment) is consistent with previous Board decisions; Municipal Government Board [*MGB*] 145/07 (R1 pp. 51-88), and *MGB* DL 019/10 (R1 pp. 89-93). The Respondent testified that they are trying to calculate in the same manner as previous Boards have directed.

**Board Reasons for Decision:**

[31] 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"*.

**Issue #4(ii) – Capitalisation rate calculation with consistent typical rental rates:**

**Complainant's Position:**

[32] The Complainant testified and produced evidence to show how the Respondent calculated the capitalisation rate inconsistently (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.

[33] 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 (C2 pp. 18-27).

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

**Respondent's Position:**

[35] 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. They indicated that this methodology is consistent with previous Board decisions.

[36] 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"* (R1 p. 75 #2).

[37] 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"* (R1 p. 91, second last paragraph).

[38] The Respondent testified that they are trying to calculate in the same manner the previous Boards have directed.

**Board Reasons for Decision:**

[39] 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*.

[40] 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."*

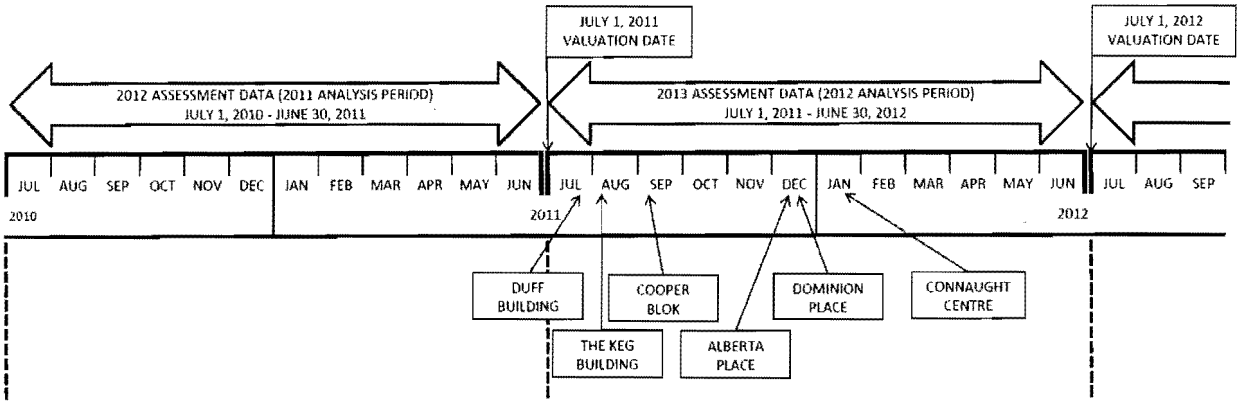
[41] The Board finds that *Westcoast* clearly indicates that the assumptions (i.e.: valuation parameters) must be consistent – consistency is the key principal. The Board finds that the correct capitalisation rate is that derived using consistent typical *NOI*. The typical *NOI* period should match the 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.**

**Issue #4(iii) – Capitalisation rate calculation - identification of additional comparable:**

**Complainant's Position:**

[42] 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 (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%.

**Respondent's Position:**

[43] 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."* (C1 p. 119, centre of page under heading PROPERTY LOCATION)

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

**Board Reasons for Decision:**

[45] 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.

[46] 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%.

**Issue #4(iv) – Capitalisation rate calculation - identification of comparables to remove:**

**Complainant's Position:**

[47] 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 (C2 p. 42).

[48] The Complainant provided corrected calculations and request for the Board to consider (C2 p. 62).

**Respondent's Position:**

[49] The Respondent argued that the five sales within their capitalisation rate study have been analysed and are appropriately included within the study.

[50] The Respondent again expressed concern that new calculation and information was in the Rebuttal Document and it constituted the addition of new evidence (which amounts to case splitting).

**Board Reasons for Decision:**

[51] 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:**

[52] 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.*

[53] The Board inadvertently used the term *'assessment year'* 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**
**Presiding Officer**

## APPENDIX "A"

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

| NO. | | ITEM |
|---|---|---|
| 1. | C1 | Complainant Disclosure |
| 2. | R1 | Respondent Disclosure |
| 3. | C2 | Rebuttal 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.*

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