

Court of King's Bench of Alberta

Citation: Kelly Ramsey GP Ltd. v Edmonton (City), 2026 ABKB 580

Date: 20260819
Docket: 2403 01874
Registry: Edmonton

Between:

Kelly Ramsey GP Ltd. as represented by Canadian Valuation Group Ltd.

Applicant

- and -

The City of Edmonton and The City of Edmonton Composite Assessment Review Board

Respondents

**Reasons for Judgement
of the
Honourable Justice Michael J. Lema**

I. Introduction

[1] Did the Edmonton Composite Assessment Review Board decide reasonably in reducing the City's 2023 assessment of the Enbridge Building from \$287 million to \$280 million instead of to \$230 million (all figures approximate) as sought by the owner?

[2] Per the owner, the Board erroneously deferred to the City's position on various assessment issues instead of performing its own analysis of those issues' impact on market value.

[3] Per the City, the Board performed its own analysis and reached reasonable conclusions on each one.

[4] I accept the City's position on each issue, as explained below.

II. Background

[5] The background is outlined in the Board's decision, reported at 2023 ABECARB 1767.

[6] The Board accepted the owner's position on two issues, resulting in the above-noted adjustment.

[7] It accepted the City's position on seven other issues, finding no other reductions to the assessment amount were warranted.

[8] The owner seeks judicial review of the Board's decision on those issues.

[9] The City did not seek review of the Board's decision in favour of the owner on the first two issues.

III. Legal Principles

[10] The parties agree that the standard of review is reasonableness. This is consistent with the Supreme Court of Canada's decisions in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[11] In determining if a decision is reasonable, the reviewing court must focus on the decision maker's reasoning process and outcome. The review is not a hearing de novo. The court is not asking what decision it would have made in the place of the administrative decision maker, nor should the decision be held to a standard of perfection. Rather, the reviewing court must establish whether the administrative decision fell within the range of possible conclusions open to the administrative decision maker: *Vavilov* at paras 83 and 91.

[12] It is not for the courts to reweigh the evidence considered by the tribunal, and a reviewing court should not parse the decision or embark on a line-by-line treasure hunt for error: *St. Albert Housing Society v St. Albert (Composite Assessment Review Board)*, 2017 ABCA 129 at para 26. The reasonableness of a decision must be determined in light of the relevant factual and legal constraints that bear on it: *Vavilov* at paras 99 and 101.

[13] The Alberta Court of Appeal has recognized the Board as "a specialized tribunal created to review decisions of assessors as to valuation of property": *St. Albert Housing* at para 27. The unique expertise and specialized knowledge of Board requires deference from the reviewing court: *Costco Wholesale Corporation v Calgary (City)*, 2022 ABKB 615 (Campbell J.) at para 25.

[14] Assessment review boards operate under the *Municipal Government Act*, RSA 2000, c M-26 [MGA] at ss 453-484.1; it provides the statutory framework for their decisions. If a party has a complaint as contemplated by ss 460(5) MGA, they must submit it to the Board in accordance with s 460 MGA.

[15] In reviewing an assessment, the Board 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.
[MGA, ss 467(3)]

[16] The Supreme Court of Canada and the Alberta Court of Appeal have both described the goal of the MGA and the mandate of the Assessment Review Boards as ultimately being to determine a market value that is correct, fair, and equitable: **Capilano** at paras 54 and 61; **Altus Group Ltd. v Alberta (City of Edmonton Composite Assessment Review Board)**, 2023 ABCA 35 at paras 11 and 13.

[17] Paragraph 1(1)(n) MGA defines market value as the amount a property might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. Section 5 of the **Matters Relating to Assessment and Taxation Regulation**, 2018, Alta Reg 203/2017 [MRAT] sets out that an assessment of a property based on market value must be made using mass appraisal and must be an estimate of the value and reflect typical market conditions for properties similar to that property.

[18] A property assessment is presumed to be correct: **Costco** at para 35. A complaint to the contrary requires the complainant to meet the requirements of section 460 of the MGA. At the initial stage, the complainant has the evidentiary burden to put forward some evidence capable of showing on a balance of probabilities that the assessment was incorrect. Veit J. in **Ross v Edmonton (City)**, 2016 ABQB 730 described the complainant's burden at this stage as adducing sufficient evidence to put a matter in issue, which is distinct from having to prove a fact [para 19].

[19] The review board must then assess the evidence to determine whether there is merit to the complaint. Issues can be dismissed if the board is not satisfied that the evidence is sufficient to warrant continuing the process: see (for example) **Costco** and **Beta Management Inc. v Edmonton (City)**, 2017 ABQB 571 (Renke J.).

[20] Once the board is satisfied that there may be merit to the complaint, the City is engaged to provide its disclosure. The city may choose to participate and provide evidence and arguments, or they may make a tactical decision not to put forward any: **Beta Management** at para 140. After the initial stage, the complainant is ultimately responsible for proving, on balance of probabilities, that the assessment is incorrect: **Beta Management** at para 140; **Ross** at para 4; and **Canadian Tire Properties Inc. v Medicine Hat (City)**, 2024 ABKB 589 (Hartigan J.) at para 16.

IV. Positions

[21] The owner asserts that it discharged its initial evidentiary burden on each of the issues here and that the Board showed undue deference to the City.

[22] The City seemed (for most of the issues) to accept that the owner had discharged its initial onus, focusing more on its position that the Board had performed its own analysis i.e. not simply deferred to the City's position.

[23] In the end, the parties core disagreement is about whether the Board deferred to the City's position instead of performing its own analysis.

[24] Below I explore that question, issue by issue.

V. Analysis – capitalization rate

[25] The Board's decision on this and the other issues includes a detailed (and I find materially accurate) synopsis of each side's position and arguments. For the cap-rate issue, I reproduce them below to set the stage for examining how the Board handled this issue.

A. Owner's cap-rate position and arguments before Board

[26] Here (per the Board) are the owner's position and arguments on the appropriate cap rate:

Time Adjustments

The Complainant reviewed the Respondent's capitalization rate study for the downtown office inventory. **In 2022, the median and average capitalization rate for the AAA inventory was 6.16%.** The Complainant noted that for this year's capitalization rate study for AAA downtown office buildings, **the same two sales were used — Edmonton Tower and Stantec Tower — with a time adjustment of 1.00 for the sales prices.** This resulted in an average and median capitalization rate for the AAA inventory of 5.19% and **an assessed capitalization rate of 6%.**

The Complainant argued that this methodology is flawed and that the City of Edmonton, by removing all time adjustments, has concluded that there have been no market changes despite the chaos caused by the Covid 19 pandemic.

In order to ascertain whether there was really no time adjustment factor and that the market was flat, **the Complainant presented four groups of sales in a paired sales analysis.** Each group consisted of a sale of a property prior to the onset of the Covid 19 pandemic and the sale of a similar property in terms of age, location and attributes during the pandemic. The average change per month gleaned from this information was a negative .88%.

The Complainant argued that **this evidence demonstrates that the market was not flat** and that a time adjustment factor should be applied to the sales which form part of the capitalization rate study.

Interest Rates and Inflation

The Complainant argued that the rise in interest rates and spiking inflation which was evident in the market by the valuation date **adds another measure of uncertainty to the office building market and adds to the risk for investors.**

Revised Capitalization Rate

The Complainant then calculated a time-adjusted sale price (tasp) for both Edmonton Tower and Stantec Tower. For Edmonton Tower, the tasps are \$284,388,236.31 and a capitalization rate of 6.90%. and for Stantec Tower, the tasps are \$378,622,174.06 and a capitalization rate of 5.35%.

The average and median capitalization rate is 6.13%. The Complainant argued that, based on this analysis, a capitalization rate higher than 6% should be applied in the subject assessment and requested that the Board increase the capitalization rate of the subject to 6.25%. This would recognize the lingering effects of the Covid 19 pandemic and the increasing risks as a result of inflation and rising interest rates.

When the capitalization rate for the subject is changed to 6.25%, along with the other changes referenced in issues 1, 2, 3, 4, 5, 6, and 7, the resulting value for the subject is \$230,448,630.00. [paras 55-62] [emphasis added]

B. City's cap-rate position and arguments before Board

[27] Here (per the Board) are the City's position and arguments on cap rate:

[I]s the capitalization rate of 6% applied to the subject assessment reasonable and appropriate?

Time Adjustments

The Respondent [City] critiqued the Complainant's calculation of an appropriate time adjustment factor to apply to sales pursuant to a paired sales analysis.

The Respondent noted that for the first group of paired sales, the sale at 2003 91 Avenue SW was a net zero building with many specialty features such as four electric car charging stations and a platinum certification. The sale at 1903 91 Street SW was a AA class suburban office building and sold as part of a portfolio transaction.

Of the second pair of sales presented by the Complainant, the sale at 10358 172 Street NW was a B class suburban office and the purchase price included an amount for furniture and accounted for main floor renovations. The sale at 17203 103 Avenue NW is three times larger than the first sale, was a A class suburban office and was sold with a recent renovation and substantial vacancy.

Of the third pair of sales presented by the Complainant, the sale of 10055 106 Street NW was assessed as a BL class office building and had been assessed with typical vacancy for the past five years. The second sale at 10550 Jasper Avenue NW is a BL class office building but sold with chronic vacancy and was the lowest ever downtown sale. As well, it was assessed with an adjustment for unfinished space.

Of the fourth pair of sales presented by the Complainant, the sale of 9888 Jasper Avenue NW was a B class office building with above market leases and below typical vacancy and was LEED (Leadership in Energy and Environmental Design) gold certified. There was also a full building renovation completed in 2017. The second sale at 10123 99 Street NW is an A class property with no mechanical upgrades, older tenant spaces and only main floor renovations.

The Respondent provided sales information sheets and assessment detail reports of the properties in the Complainant's paired sales analysis to confirm the differences in the paired sales.

The Respondent argued that the time adjustment factor derived from these paired sales presented by the Complainant cannot be relied upon as the timing of the sales was not the only factor affecting the sale prices.

The Respondent presented the details of two additional groups of paired sales. The first group included sales of Oxford Tower in November, 2019 and

Canadian Western Bank Building in November, 2020. This group showed a positive change of 2.46% per month. The second group included the sale of Edmonton Tower in July, 2018 and the sale of Stantec Tower in October, 2019. This group showed a positive change of 1.27% per month.

The Respondent argued that **both groups involve properties of similar age and subclass and are very similar and support the argument that changes over time for the sales are either flat or increasing.**

The Respondent stated that the office inventory is small and there are few sales and **historically the City of Edmonton has combined all commercial properties into a single time adjustment analysis.** The Respondent showed that for 2023 commercial properties were showing increased values.

In response to a general market opinion that the office inventory had not increased in value, **the City of Edmonton created a separate time adjustment model for office properties for this assessment year.**

This model demonstrated that any market change in the office inventory over a five-year period was flat and presented a chart of the time adjustments using only office property sales.

The Respondent submitted that, to determine time adjustments for the office inventory, the City of Edmonton used sales to assessment ratio (SAR) time analysis. If the SAR ratio was higher at the start of the valuation period than at the valuation date, a declining trend is indicated.

The Respondent presented a chart to show that there was **little correlation to the variable of time and, as such, no time adjustment could be applied to the office inventory.**

Interest Rates and Inflation

With respect to the Complainant's argument that increasing interest rates and burgeoning inflation would discourage investors, the Respondent stated that the series of **increases in interest rates did not begin until after the valuation date.**

Capitalization Rate Study

The Respondent stated that, just because a time adjustment factor was not applied to sales, does not mean that time adjustments were not used. The Respondent applied typical market rates, such as for rental rates and vacancy, to the office building AAA sales.

The Respondent presented a chart of the two sales of AAA office buildings, Edmonton Tower and Stantec Tower, in 2018 and 2019. **A time adjustment of 1.00 was used but the sale prices were adjusted to reflect typical rates. The adjusted capitalization rates showed an average and median of 5.19%.**

The Respondent also included AAA lease rate studies and AAA office vacancy studies from 2020 which reflect the pre-Covid 19 pandemic time. The Respondent stated that **there has been little change to the typical market factors for AAA office buildings. In general, the Respondent stated that the AAA office**

buildings have been occupied, have collected lease income and have stable rental rates.

The Respondent argued that supports the 6% capitalization rate applied to the subject as being reasonable and appropriate. [paras 113-131] [emphasis added]

C. Owner's rebuttal submissions before Board

[28] The Board then summarized the owner's rebuttal arguments:

Issue - Time Adjustments and Resales

The Complainant argued that with respect to pair 1 of the Complainant's paired sales analysis, **the second sale confirms that there is a downward trend in value over time.**

With respect to pair 2 of the Complainant's analysis, the Complainant notes that the most recent sale of an A class property was selling below the value per sf of the second sale of a B class property, thus **exhibiting a downward trend.**

With respect to pair 3, the Complainant argues that the sale which closed just before the valuation date and marked as the lowest ever downtown sale should be **a strong indicator that the market was declining.**

With respect to pair 4, a superior class of building selling for a per sf value than an inferior property that sold earlier is evidence that the **market is declining.**

With respect to the two extra paired sales groups presented by the Respondent, pair 5 involved Oxford Tower and Canadian Western Bank Place. The Canadian Western Bank **sale was in November of 2020 which would not account for trends in the market until the valuation date in 2022. The Complainant noted that the resale of Canadian Western Bank in 2021 involved a nearly \$30 million loss.**

With respect to pair 6, the Complainant noted that **both properties sold prior to the Covid 19 pandemic. This evidence is not relative to the issue of the negative impact of Covid 19 on the office market.**

Issue - Interest Rates and Risk

The Complainant presented articles from both Canada and the United States from 2022 which outlined the risk presented by soaring interest rates climbing inflation. There is information outlined in these articles that the Bank of Canada will have to use restrictive interest rates to control runaway inflation .

The Complainant argued that this demonstrates that, contrary to the Respondent's position, **interest rates were not stable, and investors would perceive growing risk in the real estate and financial market.** [paras 147-154] [emphasis added]

D. Board's cap-rate decision

[29] Here are the Board's analysis and decision on cap rate:

Is the capitalization rate of 6% applied to the subject reasonable and appropriate?

Time Adjustments.

The Board acknowledges that there is a **general market sentiment that office properties have declined in value as a result of the societal chaos caused by the Covid 19 pandemic and the resulting alteration in work arrangements.**

The Complainant attempted to quantify a general decline with a paired sales analysis. The Board finds that this analysis is flawed and does not lead to reliable results.

Each of the four pairs of sales presented by the Complainant include the sale of one property pre- pandemic and a more recent sale of a similar property. However, **the paired sales in each group exhibit too many differences from each other in terms of other factors such as age, investment class, location, renovations, vacancy or modern upgrades. The decline in market value which the Complainant extracted from the four groups of paired sales cannot definitely be attributed to a change over time, as there are too many other factors which have had an impact.** All the properties used by the Complainant have **significant differences with the counterpart** in the group that will affect the sale price.

The Respondent presented a regression analysis using a sales to assessment ratio to demonstrate that the time adjustment in the office inventory is virtually flat and did not apply a time adjustment.

The Board finds that, **although it seems intuitively obvious that the office market may have declined as a result of the Covid 19 pandemic, there was no reliable evidence supplied by the Complainant to quantify any decline in value over time.**

Interest Rates

While there may be a general market sentiment that rising interest rates and ballooning inflation increase risk and discourage investment in the office inventory, there is **no concrete evidence before the Board to confirm or quantify this risk .**

Capitalization Rate Study

The Respondent applied typical market rates to the sales of the AAA office properties to arrive at an adjusted sale price, although the time adjustment factor remained at 1.0. The average and median adjusted fee simple capitalization rate is 5.19% The Board finds that this evidence supports the assessed capitalization rate of 6% for the subject. [paras 200-206] [emphasis added]

E. Owner's cap-rate arguments on judicial review

[30] Next are the owner's cap-rate submissions at the judicial review (reproduced from its brief):

The Board's deference to the City's assessment is most notable in its treatment of the cap rate and lease rates for the restaurant and bank CRU spaces.

In determining the cap rate, the City appeared to disregard the impact of the COVID-19 pandemic on downtown office building values. It relied on two pre-pandemic sales without making any time adjustments, effectively concluding that the downtown office market had not changed post COVID-19 pandemic.

Record, pages 396, 500

With respect to time adjustments, the Board stated:

The Board acknowledges that there is a general market sentiment that office properties have declined in value as a result of the societal chaos caused by the Covid 19 pandemic and the resulting alteration in work arrangements

The Board finds that, **although it seems intuitively obvious that the office market may have declined as a result of the Covid 19 pandemic**, there was no reliable evidence supplied by the Complainant to quantify any decline in value over time. [emphasis added]

Kelly Ramsey, at paras. 200 and 204 **[Authorities 3]**

The Board ignored the fact that it had evidence before it in relation to time adjustment factors and sales information for both office properties and other property types as well its own decision from the previous year. It was open to the Board to take the "intuitively obvious" approach and focus on post COVID-19 sales in determining the cap rate. Instead, the Board deferred to the City's assessment without conducting its own analysis.

Record, pages 504, 612-627

With respect to interest rates, the BOARD stated:

While there may be a general market sentiment that rising interest rates and ballooning inflation increase risk and discourage investment in the office inventory, there is no concrete evidence before the Board to confirm or quantify this risk.

Kelly Ramsey, at para. 205 **[Authorities 3]**

Again, the Board ignored the evidence before it that interest rates had steadily gone up post COVID-19 pandemic.

Record, page 602

Although the Board acknowledged that the City's position appeared to ignore the impact of the COVID-19 pandemic on downtown office properties, it nonetheless upheld the City's 6% cap rate. In doing so, the Board unreasonably erred by deferring to the City's assessment rather than conducting its own analysis.

...

As noted above, although the Board expressed reservations about the City's methodology for determining both the cap and the lease rates for the CRUs, it nonetheless **deferred to the City's valuation and failed to conduct the analysis necessary to determine the Property's market value**. The Board cannot simply rely on the City's models; it is required to make **its own determination of the correct market value**. In particular, the Board must consider any extenuating circumstances that materially affect market value. In this case, the Board was **required to consider the impacts of the COVID-19 pandemic on market value, rather than defaulting to the City's mass appraisal approach**.

...

The Board's findings demonstrate that **it effectively abdicated its role to determine the appropriate cap rate** ... to be applied in assessing the Property. With respect to the cap rate, the **Board acknowledged that it was "intuitively obvious that the office market may have declined as a result of the COVID-19 pandemic,"** yet nevertheless accepted the City's cap rate, which was **premised on the assumption that the downtown office market had not changed as a result of the pandemic**. ... The Board was required to determine the Property's correct market value, which necessarily entailed making its own determinations with respect to these key valuation inputs. It failed to do so.

...

As set out above, the Board's findings regarding the cap rate ... are internally inconsistent and fail to establish any rational chain of analysis. **Although the Board acknowledged that it was "intuitively obvious that the office market may have declined as a result of the COVID-19 pandemic", it nonetheless accepted the City's cap rate, which assumed no such decline, without providing any explanation for why the City's rate was correct.** ... The Board offered no explanation for this conclusion. On its face, this reasoning is contradictory and fails to demonstrate a coherent analysis.

In summary, the Board's reasons for its conclusions regarding the cap rate ... are internally inconsistent and conclusory. The reasons fail to demonstrate a justified reasoning process based on the record before the Board. [paras 49-55, 60, 65, 69 and 70] [emphasis added]

F. City's arguments on judicial review

[31] Here are the City's cap-rate arguments at the JR hearing:

The Applicant suggests that the Board deferred to the City's assessment by not making changes to the CAP Rate to reflect a decline in the value of office properties due to COVID. The Applicant states that the Board ignored evidence in relation to time adjustment factors (TAF), information for other properties, and its own decision on the Property from the prior assessment year. The Applicant suggests that it was open to the Board to take an 'intuitively obvious approach' to determine a CAP Rate.

The City disagrees. The Decision clearly shows how the Board considered its mandate, the burden and standard of proof, the submissions of the parties, and that it weighed the evidence to determine not to make a change to the CAP Rate. Again, the Applicant may be dissatisfied with how the Board weighed the evidence, but it is not the role of this court to reweigh the evidence.

With regard to COVID, the Applicant argued before the Board that the issue is the “negative impact COVID has had on the office market”. The Applicant provided news articles to support its position. None of the articles, however, contained concrete information about the impact of COVID on the office market or on CAP Rates.

In relation to the CAP Rate specifically, the Applicant requested the Board to increase the CAP Rate to 6.25%. The Applicant’s request was based on a TAF determined from a paired sales analysis suggesting that property values were decreasing as a result of COVID. The Applicant also provided the Board with evidence about rising interest rates. The applicant also relied on the CAP Rate that was applied by the Board in 2022 to account for market changes due to COVID.

The City provided evidence showing that the Applicant's paired sales analysis, and therefor TAF, was not reliable as it did not show that the difference in property values between the properties in each pair was due to COVID and not other factors. The City provided further evidence supporting its TAF and CAP Rate. The City also showed an analysis of interest rates showing that they only began rising after the valuation date. Evidence after the valuation date, with very limited exception, cannot be used to determine the assessment.

The Board’s independent analysis of the argument and evidence of the parties is clearly shown by the Decision and the Record. The Board did not defer to the City’s CAP Rate or assessment, ignore evidence in relation to TAFs, or ignore prior Board decisions in relation to the Property.

With regard to TAFs, the Board summarized the evidence and argument of both the Applicant⁹⁸ and the City in the Decision. The Board acknowledged a “general market sentiment that office properties have declined in value as a result of ... Covid”. The Board, however, determined that there was no reliable evidence quantifying the impact of COVID on the value of office properties. The Board rejected the Applicant’s attempt to quantify the impact of COVID on the value of office properties using a paired sales analysis. The Board stated that the Applicant’s paired sales analysis was “flawed and does not lead to reliable results” because the paired sales in each of the groups exhibited too many ‘significant differences’ from each other.

The Board also acknowledged that although rising interest rates may indicate a general sentiment of increased risk, the Applicant provided “no concrete evidence” to quantify this risk. Circumstantial evidence does not require the Board to make a decision in favour of the Applicant.

Considering the standard of a balance of probabilities, the Decision is reasonable. The Board rejected the Applicant’s paired sales analysis and determined that there

was no reliable evidence to quantify the impact of COVID on the office market. The Board accepted the City's evidence as supporting the City's CAP Rate¹⁰³. Considering the Board's weighing of the evidence, and the balance of probabilities, the Decision is not unreasonable.

Further, notwithstanding the Board's comment that it seems 'intuitively obvious that the office market may have declined as a result of COVID', intuition does not satisfy the standard of proof or justify a change to the assessment: evidence does.

The Board determined there was 'no reliable evidence' to support an increase to the CAP Rate. Accordingly, the Board would have made an error of law had it changed the CAP Rate after it rejected the Applicant's evidence and determined there was no evidence to support a change.

The 2022 Decision

The Decision is also not unreasonable because the Board didn't follow the 2022 decision in relation to the Property (2022 Decision). First, the Record included a number of cases confirming that case law is not evidence. It would have been an error for the Board to have accepted the 6.25% CAP Rate from the 2022 Decision, or the evidence referred to in that decision, as evidence.

Further, the Board is not bound by *stare decisis*, particularly as property assessment is legislated to be an annual process. As stated in ***Metrowest Developments Ltd v Calgary (Assessment Review Board)***, 2014 ABQB 450:

Despite the fact that it is preferable if the ARB explains why an assessment is different from one year to the next, when the issue is an assessment decision based on factual evidence before it in any one year, the ARB is not obligated to explain the reason for any difference from the previous year, as it is not bound in any way to the prior year's assessment or the decisions of a prior ARB on the same property...In other words, there is no duty to be "consistent" with another ARB's factual findings...

Similarly, in ***Anthem Riverfront Holdings v Calgary (City)***, 2017 ABQB 356, this Court held:

... The City points out that there is no duty for various panels of the Board to be consistent with one another; see [Metrowest]. It argues that such differences of opinion are inherent in the MGA's requirements for annual assessment. I agree. Consistency among Board decisions is not to be expected, as *stare decisis* does not apply to the Board and different panels may weigh evidence differently. Given this, it stands to reason that different panels may arrive at different conclusions...

No Test of Intuitively Obvious

The Applicant suggests that the Board could have taken an ‘intuitively obvious’ approach in determining the CAP Rate. A test of ‘intuitively obvious’ is akin to the Applicant suggesting that the Board could have increased the CAP Rate based on judicial notice and is incorrect.

In *Kay Kay Corporation v Condominium Corporation No. 072 4807*, 2017 ABCA 335, the ABCA reviewed the allocation of the purchase price of a condominium complex amongst the individual condominium units. Fourteen of the units were subject to a health notice. The ABCA concluded that the Chambers Judge erred by imposing a 20% reduction, or any reduction, in the amount of proceeds allocated to the 14 units based on judicial notice. The ABCA confirmed the SCC’s iteration of the test for judicial notice in *R v Find*, 2001 SCC 32:

... As stated in *Find* at para 48:

Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy...

Increasing the CAP Rate to 6.25% was not obvious, as suggested by the Applicant,¹¹⁰ nor was the Board able to take judicial notice of this CAP Rate. The Complaint, evidence, argument of the parties, and Decision all show that the CAP Rate was the subject of debate among the parties, and a 6.25% CAP Rate was not immediately and accurately demonstrable by resort to “sources of indisputable accuracy”.

The Applicant also suggests that it was ‘open to the Board’ to take a different approach in its determination of the CAP Rate¹¹¹. As discussed above, the Decision is not unreasonable because there might be an alternate outcome. The existence of an alternate outcome, or the possibility of the evidence being weighed differently, does not show that the Decision is unreasonable. [paras xx-85] [footnotes omitted] [emphasis added]

G. Analysis of Board’s cap-rate review

[32] Did the Board simply defer to the City’s position, or did it make its own finding on the appropriate cap rate?

[33] I find that the Board made its own finding and that that finding was reasonable, for these reasons.

[34] First, on the owner’s complaint that the City “disregard[ed] the impact of the COVID-19 pandemic on downtown office building values”, the City acknowledged the owner’s submissions

on an asserted impact, bolstered (per the owner) by media accounts of the impact and, more substantively (per the owner), by before-and-after sales data of assertedly comparable properties.

[35] The Board's core finding here was that the owner did not adequately quantify the asserted impact.

[36] It concluded (reasonably, I find) that each of the asserted pairs was materially imperfect i.e. with various non-time differences possibly accounting for the differing sales outcomes and that the owner's rebuttal submissions addressing the City's analysis here did not materially undercut it.

[37] In other words, the owner did not adequately show and quantify a negative COVID-19 effect on the market value of the AAA buildings of which the Enbridge is one example.

[38] Second, the asserted "impact" evidence cited by the owner in paragraph 52 of its brief ("Record, pages 504, and 612-627) was simply (in the case of page 504) a chart of 37 property sales from August 15, 2017 to May 27, 2022, with no argument (if applicable) that the properties were sufficiently similar that a "general decline" pattern was apparent or (as far as I could tell) any multiple sales of the same property (to show the same pattern).

[39] The material at pages 612-627 was simply the Board's decision on the owner's appeal of the 2022 assessment, which featured a 6.25 per cent cap rate i.e. the rate sought by the owner for 2023. Here the City argued, and the Board found (reasonably, I find) that the City adequately explained its different approach for the 2023 assessment (i.e. in narrowing the group of comparables to exclude unrepresentative (value-increasing) examples).

[40] Contrary to the owner's argument, it was not open to the Board to take the "intuitively obvious" approach (and here the Board actually said "although *it seems* intuitively obvious that the office market may have declined as a result of the Covid 19 pandemic") i.e. to reduce the assessment merely on that account i.e. in the absence of evidence reflecting an actual quantifiable impact.

[41] Third, on the owner's interest-rate submissions, I accept the City's (correct) position that, even if interest rates were beginning to rise during the assessment period, the owner did not provide sufficient evidence to show a negative impact on market value or, in any case, to quantify that effect here.

[42] Fourth, and finally, on the asserted "deferral to the City's position", the Board examined the City's cap-rate evidence (e.g. as discussed in paras 203 and 206 of its decision) and found that it adequately explained the 6.0 per cent cap rate urged by the City.

[43] Alternatively, if the Board did not or did not adequately review the City's evidence on this issue, I accept the City's position that the presumption of regularity (as explained in ***Canapen (Phipps-Mckinnon) Ltd v Edmonton (City)***, 2017 ABQB 502 (Ackerl J.) -- paras 61-64) applies i.e. with the owner's cap-rate evidence and arguments not accepted, and with no other indication that the assessment was off-target cap-rate-wise, the Board was entitled to rule (even implicitly) that the City-asserted cap rate was correct or at least reasonable.

[44] In other words, the Board's decision here can be characterized as a rejection of the owner's cap-rate evidence at the initial-evidentiary-burden stage i.e. as insufficient to engage the City's obligation to defend its cap-rate position, as discussed in principle in *Beta Management* (paras 139-140) and as exemplified in *Costco Wholesale Corporation* (paras 35-44).

[45] All to say: the Board's cap-rate decision was reasonable in the circumstances here.

VI. Analysis -- Commercial Retail Unit (CRU) lease rates

[46] The issue here is simpler and accordingly I do not reproduce the initial arguments (to the Board) or the arguments in full at the JR.

[47] The owner focuses on these passages from the Board's decision on the restaurant lease rates:

The Board recognizes that the [City] must employ a methodology to arrive at assessed rental rates when there are few leases available. **The ratio methodology used does result in a rental rate for the CRU restaurant spaces which may or may not be entirely accurate given the uncertain relationship between the small CRU spaces and the other types of CRU spaces on which this methodology is based.**

However, it is the responsibility of the Complainant to provide sufficient evidence to show that the rental rates applied to the CRU restaurant spaces in the subject are not correct. As outlined above, the Board finds that the Complainant used flawed and inferior comparables to arrive at the requested values. [emphasis by owner]

[48] And these passages from the Board's decision on the bank space:

The board from that the **ratio methodology does result in a rental rate for the CRU bank space which may or may not be entirely accurate or reliable given the uncertain relationship between the small CRU spaces and the CRU bank spaces on which this methodology is based.**

However, it is the responsibility of the [owner] to provide sufficient evidence to show that the rental rate applied to the CRU bank space in the subject is not correct[,] and that evidence was not supplied. [emphasis by owner]

[49] Per the owner, "despite expressing doubts about the City's ratio methodology, the [Board] merely deferred to the City's approach. In doing so, the [Board] unreasonably erred."

[50] I disagree.

[51] In its JR brief and oral submissions at the hearing, the owner's counsel did not challenge the Board's findings that, on both CRU fronts, the owner's evidence was flawed, stemming from inapplicable time periods or concerning non-comparable properties, or both.

[52] In other words, the owner offered what was reasonably found to be irrelevant evidence on the gauging of the appropriate lease rates.

[53] The Board recognized that the City's methodology used narrower data.

[54] The owner did not point to other data that the City must or should have used i.e. beyond its rejected data. Or propose an alternative methodology.

[55] As noted, the Board observed that the City's methodology might not be appropriate.

[56] But also, that it might be appropriate.

[57] The point is that, with the owner offering only irrelevant evidence and not proposing an alternative methodology or different conclusion applying the existing methodology (e.g. model used incorrectly), the Board was not obliged to proceed further with its analysis.

[58] Here we are in the territory of the presumption of regularity, with the owner failing to discharge its evidentiary burden to show a potential mistake in the assessment. Per Campbell J. in **Costco Wholesale**: "What is required is sufficient evidence to show a potential mistake in the 2018 assessment" (para 37).

[59] Campbell J.'s expansion of that point is directly applicable here:

The CARB's explanation for rejecting Costco's capitalization rate argument is clear: actual numbers had not been used, and it had been provided with dated, unreliable information. The CARB had no evidence to support Costco's adjustments to the actual numbers and based on its specialized knowledge and expertise, did not accept them. This being the case, the CARB was entitled to conclude that Costco had not provided sufficient evidence to show an error in the City's capitalization rate.

Costco argues that upholding the 2018 Assessment was arbitrary because the City provided no evidence to support its capitalization rate. In the Decision, the CARB acknowledged that the City had not provided evidence to support its assessed capitalization rate. However, **at the initial evidentiary stage, Costco, not the City, has the burden of presenting the evidence supporting its complaint that the capitalization rate used in the 2018 Assessment was wrong.**

With respect to the rental rate, the CARB explained that the leases Costco provided were not sufficient evidence to support finding an error [details of analysis omitted].

The CARB's explanation for rejecting Costco's rental rate argument is clear: the dated leases did not represent current market values and leases for anchor mall tenants and for tenants in malls undergoing major redevelopment were not comparable. Most compelling for the CARB was that the Royal Oak Walmart lease, identified by both parties as a comparable, had a rental rate of \$10.00, the same rate applied in the 2018 Assessment. These are matters within the CARB's expertise and the CARB was entitled to reject the other six leases and rely on the one.

Costco submits that this case is very similar to **Ross v Edmonton (City)**. I do not agree. The CARB in this case made no comment as to what the capitalization rate,

rental rate or assessment should be and gave reasons for finding Costco's evidence insufficient. After considering the parties' extensive written and verbal evidence and submission, the CARB concluded as follows:

In the matter of the subject, the Board was asked to review the issues of a freestanding retail capitalization rate and the rent rate applied to Big Box over 100,000 SF. **The Boards finds that [Costco] has not met the *prima facie* requirement of identifying that there may be an error with the rates established by the [City].**

...

Thus, the onus of burden of proof has not been shifted to the [City] and based upon a review of all of the evidence provided, the assessment will remain unchanged.

The Decision, when read as a whole, demonstrates that the CARB recognized the distinction between the initial evidentiary burden of proof and the ultimate or persuasive burden of proof in complaint hearings. The Decision was based on the lack of evidence of an error in the 2018 Assessment. Merely suggesting alternatives to the inputs used in an assessment does not demonstrate error. Further, when assessing whether a complainant has established a *prima facie* case, the CARB is not required simply to accept the complainant's evidence at face value. **The CARB is charged with assessing whether a complaint has merit and, in so doing, is entitled to use its expertise to evaluate whether the evidence is sufficient to warrant consideration of the complaint. To preclude the CARB from making any assessment of the complainant's evidence would render the initial evidentiary burden meaningless.** [paras 39-44] [emphasis added]

[60] For a similar (and also-applicable-here) analysis, see *Canadian Tire*:

... Both [*Ross v Edmonton (City)*, 2016 ABQB 730 (Veit J.) and *Costco Wholesale* (cited above)] require **some evidence that is capable of showing that a mistake exists**. The balance of probability standard which is described in the above paragraph of *Costco v Calgary* is not in relation to the overall evidentiary burden, but whether it is more likely than not that the evidence provided *could* disclose an error.

...

It is clear, when reviewing the decisions, including the portions of the decisions that set out the respective positions of the parties, that **the Board rejected the total value/square footage approach utilized by the Applicants, as that approach did not take into account any distinctive features of those properties which would have factored into their assessments. They therefore found the quality of the Applicants' evidence did not reach the level of meeting their preliminary evidentiary burden.** Such an

assessment of the quality of that evidence was within the scope of the Board's area of expertise. [paras 22 and 35] [emphasis added]

[61] While the owner seizes on the noted Board comments that the City's approach may or may not have been entirely accurate, in these circumstances the Board might equally have said "having rejected the owner's arguments and associated evidence here, we are not obliged to explore the soundness of the City's approach." In other words, rather than the highlighted "may or may not be accurate" comments casting a shadow on the Board's analysis, they simply reflect the operation of the presumption of regularity i.e. the owner having failed to discharge its initial evidentiary burden.

[62] With the owner not challenging the Board's sidelining of its evidence as irrelevant to the valuation exercise, I find (applying the analytical approach reflected in *Costco Wholesale* and *Canadian Tire*) that the Board's conclusion on the appropriate lease rates was reasonable.

VII. Analysis -- other issues

[63] As noted, the appeal to the Board involved nine issues, on which the owner's position was accepted on two (parkade and CRU vacancy rates).

[64] The owner's principal arguments were aimed at the discussed-above cap rate and CRU lease-rate issues, collectively representing four issues (i.e. cap rate, smaller-restaurant lease rate, larger-restaurant lease rate, and bank lease rate).

[65] That leaves three issues: separate vacancy shortfall for parkade, office vacancy rate, and office lease rate.

[66] On these issues, the owner offered no detailed submissions, limiting its arguments (written and oral) to a general complaint that the Board deferred to the City's position on each of them instead of performing an independent analysis of each.

[67] I disagree.

[68] On the parkade-vacancy-shortfall issue, the Board explained (and did so reasonably) why it accepted the City's position that the owner's approach would lead to double-counting i.e. with the parkade-vacancy aspect already addressed in and via the building vacancy aspect.

[69] On the office vacancy rate, the Board reasonably explained why "vacant space which is generating income should not be counted as vacant" i.e. why the City's approach to sublease space in another of the AAA buildings was appropriate.

[70] On office lease rate, the Board reasonably explained why it accepted the City's lease-rate study and its carveout of one of the properties.

[71] On all these issues, the Board performed its own analysis of the evidence and reasonably explained why it accepted the City's arguments and associated evidence.

[72] In none of them did the Board point to a range of possible outcomes and conclude that the City's position was accepted because it was "reasonable and appropriate."

[73] Instead, for each it landed on a precise market-value-impact figure.

[74] In the end, the Board's framing of these (and the other) issues as being whether the City's proposed answer on each issue was "reasonable and appropriate" makes no difference.

[75] Precise figures were advanced by the City, anchored by evidence, and the Board explained reasonably why those figures were accepted.

[76] If I am wrong, I find that the owner failed to particularize its complaints on these remaining issues i.e. in arguing only that the "reasonable and appropriate" framing was off-target.

[77] That is, even if the Board may have erred in accepting the City's position on any of the remaining issues, the owner did not actually argue why its position and associated evidence should be preferred as to the market-value impact.

VIII. Conclusion and closing note

[78] For these reasons, I find that the Board reached reasonable conclusion on each of the issues in question.

[79] Accordingly, I dismiss the owner's judicial-review application.

[80] In light of what I understand is the parties' collective approach to costs, I award costs of the application to the City under Schedule C (column 1) and make no order of costs for or against the Board.

[81] I thank all counsel for their helpful written and oral submissions.

Heard on February 11, 2026.

Dated at Edmonton, Alberta on August 19, 2026.

Michael J. Lema
J.C.K.B.A.

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