



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of a preliminary decision related to 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:

Hanson Square General Partner Inc. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
H. Ang, BOARD MEMBER
A. Huskinson, 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 2013 Assessment Roll as follows:

ROLL NUMBER:	201420171
LOCATION ADDRESS:	909 – 17 AV SW
FILE NUMBER:	72151
ASSESSMENT:	\$51,610,000

The Complaint was heard on the 15th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212-31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- A. Izard

Appeared on behalf of the Respondent:

- S. Trylinski (*legal counsel*) – *attended only the portion dealing with the preliminary issue*
- C. Fox
- M. Byrne

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Panel constituted to hear this matter and make a decision on the assessment.

Preliminary Matters

[2] The Complainant objected to pages 39, 44, 45, and 46 in Exhibit R1, which referred to the 2013 Beltline 6-8 and FS1 CRU Rental Rate analysis. The Complainant stated that under a Section 299/300 Request to the City, they specifically requested documents detailing the analysis used to determine the assessed rental rates for the subject property (page 151-152, Exhibit C5). In response to this request, the rental rate information provided was the 2013 Beltline 1-5 CRU Rental Analysis AA. They relied on the information provided by the City as the basis of their complaint regarding the rental rate applied to AA office buildings for the subject property. The Complainant stated that they were not aware that the information provided was not the information the City relied for its AA office rental rates until the Respondent's evidence disclosure was received, some fourteen days prior to the hearing date. Complainant indicated, the error should have been obvious to the Respondent when reading the Complainant's evidence, and referenced point 5 on page 6 of Exhibit C1 (Summary of Testimonial Evidence). Since the municipality did not provide the information requested under a Section 299/300 request, in accordance with Section 9(4) of Matters Relating to Assessment Complaints Regulation (MRAC), the Complainant argued that the Board must not hear this evidence and requested that pages 39, 44, 45 and 46 in Exhibit R1 be removed.

[3] The Respondent acknowledged that the wrong information was sent in response to the subject Section 299/300 request. The Respondent realized this error a few days prior to the hearing and was in the process of sending the requested information to the Complainant. As a remedy, the Respondent offered to agree to a postponement or rescheduling the hearing to allow the Complainant to consider this information. The Complainant did not agree with this remedy and reiterated that if pages 39, 44, 45 and 46 were removed from Exhibit R1, the hearing could proceed as scheduled.

[4] Section 10 of MRAC addresses the ability of the Board to abridge or expand the timelines specified for the disclosure of evidence. Section 15 of MRAC addresses the Board's ability to postpone or adjourn (reschedule) a hearing. Section 15 of MRAC states that an adjournment or postponement of a hearing should only happen in "exceptional circumstances", and that such a request must be in writing with reasons.

[5] The Board acknowledges that this process must be fair to both parties. The Act and Regulations set out a process to ensure that parties have access to information, that information is exchanged and that complainants are heard in a timely fashion. In this matter, the Board must balance the Respondent's ability to present their case with the Complainant's interests to a timely decision. The Board notes that the Respondent did not realize its error until after the Complainant's rebuttal evidence was disclosed. The opportunity was there for both parties to realise a potential error, and to contact one another to address this matter long before the hearing. It is the municipality's error and therefore it is their responsibility to be proactive to correct or resolve the error. The Board understands that the Respondent acknowledged their error to the Complainant just prior to the hearing.

[6] The request for an adjournment or postponement (rescheduling) of the hearing was not in compliance with Section 15 of MRAC, as it was not in writing. The Board considered the reasons for the request by the Respondent and is not persuaded that this is an exceptional circumstance. The Board decided to proceed with the hearing, with pages 39, 44, 45 and 46 of Exhibit R1 excluded from the evidence. The parties agreed to proceed to the merit of the complaint.

Property Description:

[7] The subject property is a four storey retail/office AA quality building located in the Beltline District, and specifically in the BL6 sub-district, known as Hanson Square. The building was constructed in 2012, with the main and second floor providing a total of 46,824 square feet (SF) of assessed retail space and the two upper floors providing a total of 37,840 SF of office space. There are 154 underground parking stalls. The entire building is not yet occupied. The 2013 assessment is prepared using the income approach using BL6 AA retail/office typical rates. The office rental rate is \$23/SF, 19,702 SF of retail space is assessed at \$50/SF, 27,122 SF of retail space on the second floor (25,001+) is assessed at \$26/SF and the parking stalls are assigned a rental rate of \$4,200/stall. The office vacancy rate is 8%, the retail vacancy rate is 9.5% and the parking stall vacancy rate is 2%. Operating costs are \$14/SF for the office space and \$12/SF for the retail, with \$0/SF assigned to the parking stalls. The non-recoverable rate assigned to all space components is 1%. The capitalization rate used is 5.5%. The 2013 assessment calculated using these rates is \$51,610,000.

Issues:

[8] The Complainant raised a number of issues, which the Board has distilled into the issues below. Issues not appearing were not in dispute at this hearing. Both parties addressed a number of topics, but only those topics that are germane to the issues and supported by evidence are discussed in this decision. All these issues relate to whether the 2013 Assessment is correct.

1. What is the correct rental rate for the unoccupied office space?
 - 1.1 Is the unoccupied office space "finished"?
 - 1.2 What, if any, is the area of the "unfinished" office space?
 - 1.3 If the unoccupied office space is not "finished", what is an appropriate rental rate to apply to the unfinished area?
2. What is the correct rental rate for the 2,501-6,000 SF CRU space?
3. What is the correct rental rate for the unoccupied CRU space?
 - 3.1 Is the unoccupied CRU space "finished"?
 - 3.2 What, if any, is the area of the "unfinished" CRU space?
 - 3.3 If the unoccupied CRU space is not "finished", what is an appropriate rental rate to apply to the unfinished area?
4. What is the correct rental rate for to the underground parking stalls?
5. What is the correct capitalization rate for the subject AA retail/office property?
6. Is the 2013 assessment equitable?

Complainant's Requested Value: \$36,020,000

Board's Decision:

[9] The Board reduces the 2013 Assessment to \$37,510,000.

Legislative Authority:

[10] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. Section 467(3) of the Act states that an assessment review 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. The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[11] The Board notes that the words "fair" and "equitable" are not defined in the MGA or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard.

Issue 1: What is the correct rental rate to apply to the unoccupied office space?

[12] The Complainant did not dispute the \$23/SF rate applied to the 7,955 SF of office space that is occupied (by the building owner). The Respondent did not dispute the area of unoccupied office space presented by the Complainant.

Complainant's Position

[13] The Complainant's position is that 29,885 SF (page 281, Exhibit C1) of office space was not occupied as of the December 31, 2012 condition date. Photographs of the unoccupied office area were presented in Exhibit C1, taken by the Complainant in February 2013, showing various portions of the office area with unfinished walls, limited electrical and HVAC and no floor coverings or ceilings. The Complainant argued that the condition of this portion of the office space is "not finished" and was not leasable. The Complainant argued that no Occupancy Permits were issued for this space, therefore it was not possible to lease the space.

[14] The Complainant presented previous Board Decisions to support the position that in previous years, the City discounted the rental rate applied to "unfinished" space.

[15] The Complainant stated that the appropriate discount is \$3/SF, which is based on the Business Assessment Calculation and refers to Tenant Improvement (TI) Allowances recognized for the subject and similar properties (page 116, Exhibit C1).

Respondent's Position

[16] The Respondent argued that the subject building was completed in 2012 and available for occupancy. It is a management decision to wait to attract certain types of tenants, at a certain rental rate. The unoccupied office area is ready for occupancy, regardless of whether an Occupancy Permit has been issued, and that once a space is leased, the owner and tenant finish the space to suit the tenant. The parties negotiate who pays for these tenant improvements, and it is a normal part of commercial lease agreements.

[17] The Respondent did not directly address the \$3/SF allowance proposed by the Complainant, nor did the Respondent opine on previous City practices to apply such an allowance.

Findings of the Board on this Issue

[18] The Board is persuaded by the photographs of the unoccupied office space presented by the Complainant that the area is not "finished" to a condition that lacks only tenant improvements. It appears from the photographs that some additional work is required, although the Complainant did not provide any information of the cost of the additional work to bring the space to a state that is "leasable" space.

[19] The Board agrees with the Complainant that the rental rate applied to the "unfinished" or unoccupied space should be less than the rental rate applied to the occupied office space. The only value for this adjustment is the \$3/SF presented by the Complainant based on TI allowances applied in the Business Assessment calculation. Since this is the only evidence before the Board, the Board finds that the rental rate for the unoccupied office space is \$20/SF, being the agreed to \$23/SF rate applied to the occupied office space, less \$3/SF.

Issue 2. What is the correct rental rate to apply to the 2,501-6,000 SF CRU space?

[20] The Complainant did not dispute the \$26/SF rental rate applied to the 25,001+ CRU space (occupied by Best Buy). Based on the Complainant's requested assessment (page 281, Exhibit C1) the CRU space in dispute is related to the 2,501-6,000 SF category.

Complainant's Position

[21] The Complainant disputed the \$50/SF rental rate applied to the 2,501-6,000 SF CRU space in the subject property, which is apparently all the 19,702 SF of CRU space not occupied by Best Buy. The Complainant requested a rental rate of \$31/SF based on the information provided in response to the Section 299/300 request, being the 2013 Beltline 1-5 CRU Rental Analysis AA (page 212, Exhibit C1). This information consists of two leases, a 17,172 SF lease at \$31.00/SF and a 2,635 SF lease at \$36.25/SF. Both these are February 2009 leases. The assessed rate for this category and space component is \$31/SF.

[22] The Complainant presented a table showing the 2013 Beltline 1-5 CRU Rental Analysis A-A2, consisting of eleven leases resulting in an assessed rate of \$27/SF. The Complainant argued that the A-A2 lease rate is consistent with and supports the AA lease rate of \$31/SF.

Respondent's Position

[23] The Respondent argued that the rental information presented by the Complainant is for the Beltline 1-5 areas, while the subject property is in the Beltline 6 area, which is part of the Beltline 6-8 and FS1 sub-district (representing the rental rates along the 17th Avenue South retail corridor).

[24] The Respondent presented the Assessment Request for Information (ARFI) document dated April 11, 2013 for the subject property (page 26-31, Exhibit R1) that contained two leases signed in October 2012, a lease of 4,107 SF at \$60/SF (Wild Mountain) and a lease of 2,100 SF for \$65/SF (Swimco). The Respondent argued that rents in the subject support a rental rate of \$50/SF. The Respondent also presented the rent roll for 815 17 Av SW (Mount Royal Block) (page 40, Exhibit R1) that shows rents for CRU space in the range of \$33/SF to \$55/SF, with \$52/SF rent being achieved by a 14,977 SF space.

Findings of the Board on this Issue

[25] The Board acknowledges that the subject property is located in BL6, not BL1-5. Because of the Board's decision on the preliminary matter, the Respondent is limited in the information that it could present. The property at 815 17 Av SW is the only other AA retail/office mixed use building in the Beltline District, which further limits the data available to derive typical rates.

[26] The Board was presented with little evidence to support the \$50/SF rental rate for 2,501-6,000 SF CRU space. Both parties argued whether the 17th Avenue South corridor (BL6-8 and FS1) is or is not different than the BL1-5 area, and how this difference impacts rental rates. The Respondent did not present any evidence to persuade the Board that a location difference between BL1-5 and BL6 results in a substantial difference in CRU rental rates. The Board finds that the typical rental rate for CRU 2,501-6,000 SF CRU space in the subject property is \$31/SF.

Issue 3: What is the correct rental rate to apply to the "unoccupied" CRU space?

[27] The Complainant indicated that the unoccupied CRU space is 13,495 SF (page 281, Exhibit C1). This was not disputed by the Respondent.

Complainant's Position

[28] In Exhibit C1 the Complainant presented photographs and floor plate drawings of the occupied and unoccupied CRU space. The Complainant argued that the status of this space requires additional work before it is "leaseable" and that no Occupancy Permits have been issued. The Complainant presented the same evidence and argument referred to above to support a \$3/SF allowance for the "unfinished" or unoccupied space.

Respondent's Position

[29] The Respondent argued that the status of the retail levels was such that it was ready for tenant improvements, which would be done when leases are signed. Therefore the space is "finished" and "leaseable" and should be assessed at the typical rental rate for such space.

Findings of the Board on this Issue

[30] The Board is persuaded by the photographs presented by the Complainant that the unoccupied CRU space (all located on the main level of the subject property) is not at the same level of finish as the occupied areas. The Board notes that the only evidence presented was these photographs of the interior of the space. The argument about fee simple and leased fee estate notwithstanding, the Board finds that some discount from the typical CRU rental rate is appropriate in this circumstance. The only adjustment or allowance factor presented is \$3/SF by the Complainant, based on the TI allowance applied for Business Tax Assessment. This rate was not disputed by the Respondent. The Board finds that the rental rate for the unoccupied CRU space is \$28/SF, being \$3/SF less than the typical \$31/SF rate determined previously.

Issue 4: What is the correct rental rate for the underground parking stalls?**Complainant's Position**

[31] The Complainant disputed the \$375/stall/month (4500/year) rental rate used to calculate the 2013 assessment. The Complainant presented the 2013 Beltline Office Parking Rate Summary-AA Class on page 124, Exhibit C1 and argued that the study consists of seven stall rentals, four from the same building and the highest rental rate at \$500/month could not be verified.

[32] The Complainant presented a table showing the monthly parking summary for the subject building and for the parkade located at 1100 1 St SE (Keynote Parkade) on page 125, Exhibit C1. Based on this evidence, the complainant argued that the typical parking rate in the area is \$225/stall/month (\$2700/year).

Respondent's Position

[33] The Respondent presented the Beltline Parking AA Class Study (page 681, Exhibit R1) and argued that the \$350/stall/month rate (\$4,200/year) is based on the best evidence available to the City. The Respondent noted that no parking rates were provided on the subject ARFI, and that the City did not have the information presented by the Complainant on page 125, Exhibit C1 when the parking rate analysis was done.

Findings of the Board on this Issue

[34] The Board acknowledges that the City used the lease information it had available at the time to prepare the parking rates. Nevertheless, the Board must consider all the evidence it has available to come to a decision on this issue.

[35] Based on the information presented by the Complainant, the Board notes that the range of monthly parking rates is essentially between \$225 to \$500/month/stall, with the majority of the stalls leased at a rate between \$240 to \$315/month/stall. Based on this data, the Board finds that the typical parking rental rate is \$275/stall/month, or \$3,300/year.

Issue 5: What is the correct capitalization rate for the subject property?**Complainant's Position**

[36] The Complainant argued that the 5.50% capitalization rate used by the City to calculate the 2013 Assessment was not supported by any study. The City's 2013 Beltline Office Capitalization Rate Study (page 56, Exhibit R1) consists of five B Quality Office buildings, resulting in a 5.25% capitalization rate. No A quality office or retail properties were presented by the Respondent to support the 5.50% rate used to calculate the assessment.

[37] The Complainant presented a summary of the Altus 2013 Beltline 'B' Office Capitalization Rate Summary (page 166, Exhibit C1) consisting of four sales indicating a capitalization rate of 7%. Three of the sales are common to the sales data used in the City's B Office Capitalization Rate Study. The Complainant presented documents and argued that two of the properties used by the City in their study (605 11 Av SW and 809 10 Av SW) are a "portfolio" sale and should not be used. The Complainant presented documents and argued that its sale at 525 11 Av SW is a valid sale, as meets the definition of a market value transaction.

[38] The Complainant presented its 2013 Beltline Retail Capitalization Rate Summary (page 3, Exhibit C2) consisting of one AA quality retail property, one A2 quality retail property and two B quality retail properties to support a rate of 6.00 for an AA quality retail building. The only AA quality retail property in the Beltline (100, 1410 1 St SE) sold in July 2011 with an indicated capitalization rate of 5.81%. The A2 retail property is the Elbow River Casino located at 218 18 Av SE which sold for an indicated capitalization rate of 7.61%. The Complainant presented support documents for all these comparable sales in Exhibit C2, and argued that they were valid sales and should be used to indicate capitalization rates for the subject property.

[39] Assessment to Sales Ratio (ASR) analysis were included in the capitalization rate tables presented by the Complainant to demonstrate the validity of their capitalization rate calculations.

[40] To further support the requested capitalization rate of 6.00%, the Complainant presented the City's 2013 Power Centre Capitalization Rate Summary (page 117, Exhibit C2), which shows the assessed rate for this type of property at 6.25%.

[41] In argument, the Complainant presented a number of previous Board decisions supporting the requested capitalization rate.

Respondent's Position

[42] The Respondent presented a summary of the 2013 Beltline Office Capitalization Rate Study (page 56, Exhibit R1) with supporting documents. This study supports the 5.25% capitalization rate used to calculate the 2013 Assessments.

[43] The Respondent presented support documents and argued that the two properties located at 605 11 Av SW and 809 10 Av SW were purchased by the same party, a national retail trust, but that the City vetted the sales and understands that the indicated values on the transfer documents represent their respective market values. The sales were brokered transactions between two sophisticated parties with no indication that any premium or discount was applied to the sale price.

[44] The Respondent presented support documents and argued that the Complainant's sale at 525 11 Av SW was purchased for redevelopment, not its income stream, therefore was not a good indicator of capitalization rate (indicative of an income producing property).

[45] The Respondent argued that the AA and A2 Quality properties in the Complainant's retail capitalization rate study are not typical properties and should not be considered by the Board. The Respondent presented documents and argued that the AA property (100, 1410 1 St SE) was purchased by the adjacent owner as a land assembly, and that the casino property (218 18 Av SE) also included two surface parking lots that are required as part of the casino license and are not properly valued in the capitalization rate calculation.

[46] The Respondent presented Assessment to Sales Ratio (ASR) analysis (page 194, R1) to support the validity of its capitalization rate analysis.

[47] In response to questions, the Respondent stated that the 5.50% capitalization rate used in the assessment calculation for the subject retail/office AA property is determined using the Beltline B Quality Office Capitalization Rate Study, and considers the downtown A quality office capitalization rate study, resulting in the 5.50% capitalization rate.

Board Findings on this Issue

[48] The Board acknowledges that the subject property is somewhat unique, and that there are no good comparable sales available to indicate a capitalization rate. Both parties relied on capitalization rates derived from various building types. The Respondent relied on the Beltline B Quality Office Capitalization Rate study as the basis for its capitalization rate.

[49] The range of capitalization rates for the five B quality office sales used by the Respondent is 3.63-6.53%. The range of capitalization rates for the four B quality office sales used by the Complainant is 4.61-9.39. The range of capitalization rates for the three B quality office sales common to both analysis is 4.61-7.39% (Complainant) or 4.80-6.53% (Respondent). This difference in capitalization rates using the same sales information demonstrates the sensitivity of the resulting capitalization rate to the input data.

[50] The Complainant presented a Beltline Retail Capitalization Rate analysis with a range of 4.78-7.61%. The Respondent argued that the comparables used by the Complainant in its capitalization rate study for retail properties were not comparable to the subject for a number of reasons. All four sales in the analysis consist of retail properties with little to no office component, and properties that are not similar to the subject (year of construction, quality, size, etc.).

[51] Based on the capitalization rates presented, the Board finds that a capitalization rate of 6.00% is more reflective of the subject AA quality retail/office property in the Beltline District.

Issue 6: Is the 2013 Assessment Equitable?

[52] The Respondent presented some assessments from similar properties to support the rates used in preparing the 2013 assessment, to demonstrate that these rates were applied equitably. The Complainant presented assessments from various properties to support the rates that they were requesting. The Board finds that there is only one property that is similar to the subject in this assessment district, therefore there is insufficient evidence to determine equity simply by comparing the subject assessment to one other "comparable" property.

Board's Decision:

[53] The Board concludes that the appropriate rental rate for occupied office space is \$23/SF (not disputed at the hearing) with unoccupied office space at \$20/SF; the appropriate rental rate for occupied CRU space is \$31/SF, with unoccupied CRU space at \$28/SF; the appropriate rental rate for parking stalls is \$3,300 (\$275/stall/month); and the capitalization rate is 6.00%. Applying these factors into the income approach calculation results in the 2013 Assessment of \$37,510,000.

The Board reduces the 2013 Assessment to \$37,510,000.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF November 2013.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure – 2013 Beltline Retail Cap Analysis
3. C3	Complainant Disclosure – Evidence Appendix
4. C4	Complainant Disclosure – Rebuttal Submission
5. C5	Complainant Disclosure – Rebuttal Argument
6. C6	Complainant Disclosure – Rebuttal Submission
7. R1	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 Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Retail/office	Stand-alone	Rental rates – office unoccupied, CRU occupied, CRU unoccupied, underground parking stalls. Capitalization rate	Equity, Sales