# 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:**

***ATB Building Investments Ltd. (as represented by Altus Group Limited), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***C. Duxbury, PRESIDING OFFICER***
***T. Usselman, BOARD MEMBER***
***B. Jerchel, 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:** | **067207704** |
| **LOCATION ADDRESS:** | **1108 17 AVE SW** |
| **FILE NUMBER:** | **72379** |
| **ASSESSMENT:** | **$5,630,000** |

This complaint was heard on the 20th day of August, 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*
- *K. Fong*

Appeared on behalf of the Respondent:

- *D. Satoor*

**Board's decision in respect of procedural or jurisdictional matters:**

[1] The parties had no objection to the panel representing the Board as constituted to hear this complaint. No jurisdictional matters were raised at the outset of the hearing.

[2] On a point of procedure, both the Complainant and the Respondent requested that all evidence and argument presented at the hearing of file number 72465 on August 19, 2013, be carried forward to this hearing. The Board agreed to the parties' request.

**Property description:**

[3] The subject property is an "A2" quality retail building located at 1108 17 AVE SW. It is situated in the Beltline District of the City's downtown core. The building has an assessed area of 8,290 square feet (sf) and the year of construction is 1993. It is situated on a 16,360 sf parcel of land.

**Issues:**

[4] Is the capitalization rate applied by the City in the income approach to valuation of the subject property incorrect, thereby resulting in an erroneous assessment? In particular:

1. Should the sale of El Sombrero, located at 520, 17 Avenue SW, have been used in the City's 2013 Beltline retail capitalization rate analysis?
2. Should the sale of Elbow River Casino, located at 218, 18 Avenue SW, have been used in the City's 2013 Beltline retail capitalization rate analysis?
3. Should a single capitalization rate be applied to all Beltline retail properties, regardless of building quality?

**Complainant's requested value: $5,160,000**

**Board's decision:** The Board confirms the assessment at **$5,630,000.**

**Legislative authority, requirements and considerations:**

[5] The Board's authority is found in the *Municipal Government Act*, and the associated Government of Alberta legislation and regulations. Within this framework the following provisions of the Act and the Matters Relating to Assessment and Taxation Regulation were considered by the Board to be of particular relevance.

***Municipal Government Act***

*1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;*

*289(2) Each assessment must reflect*

*(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*

*(b) the valuation and other standards set out in the regulations for that property.*

*293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,*

*(a) apply the valuation and other standards set out in the regulations, and*

*(b) follow the procedures set out in the regulations.*

*(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

*467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

*(3) 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,*

*(b) the procedures set out in the regulations, and*

*(c) the assessments of similar property or businesses in the same municipality.*

***Matters Relating to Assessment and Taxation Regulation (AR 220/2004)***

*2 An assessment of property based on market value*

*(a) must be prepared using mass appraisal,*

*(b) must be an estimate of the value of the fee simple estate in the property, and*

*(c) must reflect typical market conditions for properties similar to that property.*

*3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.*

*6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.*

**Position of the parties:**

**Complainant's position generally**

[6] The Complainant argued that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District, are too low, resulting in assessments that are not reflective of market value as at the valuation date of July 1, 2012. The Complainant takes the position that the capitalization rates of A and B quality retail properties in the Beltline District should both be raised to 6.0%.

[7] Regarding the requested capitalization rate of 6.0%, the Complainant submitted a chart entitled "Altus 2013 Beltline Retail Capitalization Rate Analysis", which is summarized from Exhibit C2, p. 3 as follows.

| Sale # | Address | Building | Sub Property Use | Sale Date | Quality Class | NRZ | YOC | 2013 Assessment | Sale Price | ASR | NOI | CAP | ASR@ 6% |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 100, 1410 1 Street SE | Sasso/Vetro | Retail Condo | 7/8/2011 | AA | BL2 | 2008 | $12,570,000 | $12,800,000 | 0.98 | $744,069 | 5.81% | 0.91 |
| 2 | 520 17 Ave SW | El Sombrero | Retail | 10/24.2011 | B | BL2 | 1912 | $2,980,000 | $3,150,000 | 0.95 | $150,423 | 4.78% | 0.83 |
| 3 | 1451 14 Street SW | Cosmetic Laser/ Vein Centre | Retail/ Office | 5/23/2012 | B | BL5 | 1962 | $2,940,000 | $2,600,000 | 1.13 | $154,410 | 5.94% | 0.99 |
| 4 | 218 18 Ave SE | Elbow River Casino | Retail | 7/3/2012 | A2 | BL8 | 2005 | $28,780,000 | $20,800,000 | 1.38 | $1,583,440 | 7.61% | 1.27 |

| | | | |
|---|---|---|---|
| Average | 1.11 | 6.03% | 1.00 |
| Median | 1.06 | 5.88% | 0.95 |

[8] The Complainant noted that the first, second and third sales were the three sales included in the Respondent's capitalization rate analysis.

[9] The Complainant's position is that the second sale, El Sombrero, should have been removed from the analysis and that the fourth sale, Elbow River Casino, should have been included in the analysis. The Complainant took no issue with the first and third sales used in the City's analysis. On this basis the Complainant submitted a chart entitled "Altus 2013 Beltline Retail Capitalization Rate Analysis – without El Sombrero", which is summarized from Exhibit C2, p. 3, as follows.

| Sale # | Address | Building | Sub Property Use | Sale Date | Quality Class | NRZ | YOC | 2013 Assessment | Sale Price | ASR | NOI | CAP | ASR@ 6% |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 100, 1410 1 Street SE | Sasso/Vetro | Retail Condo | 7/8/2011 | AA | BL2 | 2008 | $12,570,000 | $12,800,000 | 0.98 | $744,069 | 5.81% | 0.91 |
| 3 | 1451 14 Street SW | Cosmetic Laser/ Vein Centre | Retail/ Office | 5/23/2012 | B | BL5 | 1962 | $2,940,000 | $2,600,000 | 1.13 | $154,410 | 5.94% | 0.99 |
| 4 | 218 18 Ave SE | Elbow River Casino | Retail | 7/3/2012 | A2 | BL8 | 2005 | $28,780,000 | $20,800,000 | 1.38 | $1,583,440 | 7.61% | 1.27 |

| | | | |
|---|---|---|---|
| Average | 1.17 | 6.45% | 1.06 |
| Median | 1.13 | 5.94% | 0.99 |

[10] Based on the sales used in this second chart, the Complainant believes that the resulting average and median capitalization rates of 6.45% and 5.94% support an increase to the Beltline A and B quality retail capitalization rates to the requested 6.0%. Furthermore, the Complainant argued, using a 6% capitalization rate results in Assessment to Sales Ratios (ASRs) which reflect a better approximation of market value.

## Respondent's position generally

[11] The Respondent submitted that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District are correct. In support of their position the Respondent provided a chart entitled "2013 Beltline Retail Capitalization Rate Summary", which is summarized from Exhibit R1, p. 99 as follows.

| | | | | | | | | | Typical | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Sale #** | **Address** | **Building** | **Sale Date** | **Quality Class** | **NRZ** | **YOC** | **Sale Price** | **Area (sf)** | **NOI** | **Cap Rate** |
| 1 | 100, 1410 1 Street SE | Sasso/Vetro | 7/8/2011 | AA | BL2 | 2008 | $12,800,000 | 23,709 | $744,069 | 5.81% |
| 2 | 520 17 Ave SW | El Sombrero | 10/24/2011 | B | BL2 | 1912 | $3,150,000 | 5,672 | $150,255 | 4.78% |
| 3 | 1451 14 Street SW | Cosmetic Laser/ Vein Centre | 5/23/2012 | B | BL5 | 1962 | $2,600,000 | 11,259 | $153,074 | 5.94% |

| | |
|---|---|
| Median (All Quality Classes) | 5.81% |
| Mean (All Quality Classes) | 5.49% |
| Median (A Quality Class) | 5.81% |
| Mean (A Quality Class) | 5.81% |
| Median (B Quality Class) | 5.33% |
| Mean (B Quality Class) | 5.33% |

[12] The Respondent's position is that the El Sombrero sale was properly considered in the City's capitalization rate analysis, and that the Elbow River Casino sale was properly excluded from the City's capitalization rate analysis. Because the Complainant took no issue with the Sasso/Vetro and Cosmetic Laser/ Vein Centre sales used in the City's analysis, the Respondent advised the Board that it would not spend any hearing time discussing these sales.

### 1. El Sombrero sale

## Complainant's position

[13] It is the Complainant's position that the El Sombrero sale should be removed from the capitalization rate analysis on the basis that it was not a market value sale. In support of this contention, the Complainant relies on parts of an e-mail dated June 21, 2013 from John Kwei, the sole director of the purchaser of the property, 2638 Investments Ltd. [C2, pp. 78-79, and 87-88]. The e-mail states, in part:

...

> 1) Yes, the recent sale is an arm's length market transaction. We paid $3,150,000 for the building which is significantly higher than market value. This purchase added another 50' frontage to the next door building that we also own... The resulting frontage of 140' is greater than the minimum requirement of 125' to develop a mixed use 12 story [sic] building. We have plans to redevelop both lots in 15-20 years.
>
> Therefore, given the fact that we already owned the neighbouring building, and the purchase of this building gave us redevelopment potential, we paid much higher than the market value.
>
> 2) No, the property was not marketed by a realtor on the MLS.
>
> ...

[14] While the Complainant acknowledged that the sale appears to have been an arm's length transaction, the Complainant drew the Board's attention to the statements that the purchaser paid higher than the market value for the property, and that the purchaser was motivated to purchase the property by the desire to consolidate land for redevelopment purposes.

[15] The Complainant also noted that the e-mail states that the property was not marketed by a realtor on the Multiple Listing Service (MLS). In this regard, the Complainant also referenced a December 28, 2011 Non Residential Property Sale Questionnaire (sales ARFI) completed by Mr. Kwei which indicates at item 3. that the property was not listed by a real estate broker [R1, pp. 148-151]. This, the Complainant argues, suggests that the property was not exposed to the open market as required by s. 1(1)(n) of the Act. The Complainant referred the Board to a number of previous decisions that have dealt with the issue of whether a particular sale was exposed to the open market, including NO. DL 132/08, MGB 046/10, CARB 2283/2011-P; CARB 1707/2012-P and CARB 70576/P-2013.

**Respondent's position**

[16] The Respondent's position is that the El Sombrero sale was a market sale and properly considered in the City's capitalization rate analysis. In support of their position the Respondent relied on the sales ARFI completed by Mr. Kwei, found in Exhibit R1, pp. 148-151. In particular, the Respondent points to item 8., which asks: "Was this an *arms-length transaction?" The * refers to a box that is found immediately below item 8. which explains that "arms-length" means an "[o]pen market transaction between two unrelated parties who are knowledgeable of market conditions and under no undue pressure to buy or sell" [R1, p. 148]. Mr. Kwei marked the "Yes" box in response to the question.

[17] In further support of the Respondent's position that the sale of El Sombrero was a market sale, the Respondent submitted the Affidavit of Value completed by the agent of the purchaser [R1, p. 155]. The Respondent noted that the Affidavit of Value is a document sworn under oath before a Commissioner for Oaths, and states at paragraph 3):

> The current value of the land, in my opinion, is $3,150,000.00 ("value" means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer [sic] "land" includes buildings and all other improvements affixed to the land).

[18] The Respondent cautioned the Board against placing any weight on the June 21, 2013 e-mail from John Kwei reproduced above on the basis that we do not have any evidence of the specific questions asked of Mr. Kwei prompting his e-mail, and that he was not made available at the hearing for questioning. The Respondent noted that, in any event, the June 21, 2013 e-mail could be argued to support the Respondent's position that El Sombrero was a market sale. In particular, the Respondent pointed to the following statement: "Yes, the recent sale is an

arm's length market transaction." The Respondent also argued that a purchaser motivated by the possibility of redevelopment in 15 to 20 years could hardly be considered unduly motivated to purchase.

[19] Regarding the Complainant's argument that the El Sombrero property was not exposed to the open market because it was not "marketed by a realtor on the MLS" as indicated in the June 21, 2013 e-mail, and according to the December 28, 2011 sales ARFI the property was not "listed through a real estate broker", the Respondent argued that this is hardly conclusive proof that the property was not exposed to the open market at all. On the contrary, the Respondent argued, there are other ways to advertise the sale of a property than by going through a broker or by listing it on the MLS.

**Board's findings and reasons for decision**

[20] The Board placed no weight on the June 21, 2013 e-mail from Mr. Kwei. The fact that the questions asked of Mr. Kwei prompting his e-mail were not in evidence before the Board, the fact that Mr. Kwei was not made available for questioning at the hearing, and the fact that there are statements in the e-mail that both support and contradict the contention that the El Sombrero was a market sale, all lead the Board to find that the e-mail is of no value in determining whether the El Sombrero sale was at market value.

[21] Following Acton J.'s decision in *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, at para. 24, this Board finds that a property's sale is the best indicator of the market value of that property. The purchaser of the El Sombrero property paid $3,150,000. The December 28, 2011 sales ARFI completed by the sole director of the purchaser, John Kwei, indicates the transaction was an arms-length, open market transaction. The Affidavit of Value completed by the agent of the purchaser indicates that the sale was an open market transaction. The Board accepts that the fact that the property was not listed through a real estate broker or listed on the MLS does not mean that the property was not otherwise exposed to the open market.

[22] The Complainant did not provide sufficient evidence to convince the Board that the El Sombrero sale was at something other than market value, to warrant the removal of the sale from the capitalization analysis for retail properties in the Beltline District. Based on the evidence before the Board, the Board finds that the El Sombrero sale was a market sale and properly considered in the City's 2013 Beltline retail capitalization rate analysis.

**2. Elbow River Casino sale**

**Complainant's position**

[23] The Complainant's position is that the Elbow River Casino should have been included in the City's capitalization rate analysis. The Complainant noted that the date of sale was only two days after the July 1, 2012 valuation date, and that like the subject property, the Elbow River Casino is a retail property in the Beltline District.

[24] In the Complainant's view, a casino is not a unique retail property that can only be compared to other casinos. The Complainant noted that there is nothing in the design or construction of a casino that would prevent it from being used for some purpose other than as a casino. The Complainant also noted that the land use designation for the Elbow River Casino is "Direct Control District" [C2, p. 49], which the Complainant argued means that the building could be used for almost anything.

[25] In support of their position, the Complainant referred the Board to previous CARB decisions that have determined that casinos are not particularly unique, including CARB 1850-2011-P, CARB 2377/2012-P, CARB 1828/2012-P.

**Respondent's position**

[26] The Respondent's position is that the Elbow River Casino was excluded from their Beltline retail capitalization rate analysis because it is such a unique property.

[27] The Respondent argued that the Elbow River Casino was purpose built to accommodate a casino, and that in so doing, the Alberta Gaming and Liquor Commission's strict requirements had to be complied with. Some of these requirements are reproduced in Exhibit R1, pp. 16-50, and are requirements the Respondent suggests are very different from what one would find in other Beltline retail space. In the Respondent's view, these assets are built as casinos and sold as casinos. While a casino could theoretically be converted into some other retail space, the Respondent argued that in reality they are not, and that other retail space cannot simply be converted into a casino.

[28] The Respondent also pointed to the size of the Elbow River Casino property. The building has an assessed area of 77,681 sf and is situated on a 67,277 sf parcel of land. The Respondent referred to a number of previous decisions which have determined that casinos are unique properties, including CARB 2213/2010-P and CARB 1839/2011-P.

**Board's findings and reasons for decision**

[29] The Board acknowledges that there are previous decisions that fall on both sides of the issue of whether a casino is a unique property. However, based on the evidence presented to the Board in this case, the Board accepts the position advanced by the Respondent. The sheer size of the property, combined with the requirements and restrictions attached to it, make the Elbow River Casino too dissimilar to the subject property to be considered. Accordingly, the Board finds that the Elbow River Casino is atypical retail space that was properly excluded from the City's 2013 Beltline retail capitalization rate analysis.

**3. Single capitalization rate**

**Complainant's position**

[30] As detailed above, the Complainant argued that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District, are too low, resulting in assessments that are not reflective of market value as at the valuation date of July 1, 2012. The Complainant also argued that assigning a higher capitalization rate to a higher quality building defies logic, as it suggests that a higher quality building carries a higher risk than a lower quality building. The Complainant requested that the capitalization rates for the A and B quality Beltline retail properties be changed from 5.50% and 5.25%, respectively, to 6.0% for both.

[31] To support the Complainant's contention that one capitalization rate should be applied to retail properties in the Beltline District regardless of the building quality rating, the Complainant submitted evidence of other retail capitalization rate studies performed by the City, including for Freestanding; Neighbourhood, Community Centre; Power Centre; and Strip Centre [C2, pp. 95-136]. The Complainant also submitted a package of previous Beltline office decisions which provide for a uniform capitalization rate of 6.0% regardless of building quality.

**Respondent's position**

[32] The Respondent acknowledged that while in theory one might expect that an A quality building would have a lower capitalization rate than a B quality building, the market evidence gathered by the City as summarized above supports a capitalization of rate of 5.5% for A quality retail buildings in the Beltline and a capitalization rate of 5.25% for B quality retail buildings in the Beltline.

[33] The Respondent argued that the evidence submitted by the Complainant regarding other retail capitalization rate studies performed by the City is irrelevant in determining the capitalization rate that should be applied to the retail properties in the Beltline District. The Respondent went on to advise the Board that it need not consider the evidence found at Exhibit R1, pp. 166-268, as this information relates to the 5.25% capitalization rate applied to B quality Beltline office buildings and is similarly irrelevant.

**Board's findings and reasons for decision**

[34] The Board finds that the evidence of other retail capitalization rate studies performed by the City is irrelevant to the determination of the capitalization rate that should be applied to the retail properties in the Beltline District. The fact that the same capitalization rate is applied to other retail properties regardless of building quality was insufficient to persuade the Board that a uniform capitalization rate should be applied to retail properties in the Beltline District.

**Board's decision:**

[35] The Board has found that the El Sombrero sale was properly considered in the City's 2013 Beltline retail capitalization rate analysis, that the Elbow River Casino was properly excluded, and that there was insufficient evidence to persuade the Board that a uniform capitalization rate should be applied to retail properties in the Beltline District regardless of building quality. Accordingly, the Board finds that there was insufficient evidence provided by the Complainant to convince the Board to deviate from the capitalization rates of 5.50% and 5.25% applied by the City respectively to assessments of A and B quality retail properties in the Beltline District.

[36] The Board confirms the assessment at $5,630,000.

**DATED AT THE CITY OF CALGARY THIS** 24th **DAY OF** September **2013.**

**Cathryn A. Duxbury**

**Presiding Officer**

## APPENDIX "A"

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

| NO. | ITEM |
|---|---|
| 1. C1 | Complainant Disclosure – Evidence Submission |
| 2. C2 | Complainant Disclosure - Beltline Retail Capitalization Rate Analysis |
| 3. R1 | Respondent Disclosure |
| 4. C3 | Complainant Rebuttal |

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

*(a) the complainant;*

*(b) an assessed person, other than the complainant, who is affected by the decision;*

*(c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*

*(d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

*(a) the assessment review board, and*

*(b) any other persons as the judge directs.*

FOR ADMINISTRATIVE USE:

| Appeal Type | Roll Number | Property Type | Property Sub-Type | Issue | Sub-Issue |
|---|---|---|---|---|---|
| Calgary CARB | 067207704 | Retail | Stand Alone | Income Approach | Capitalization Rate |