

**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:

Alrickyan Holdings Ltd. (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:	067206508
LOCATION ADDRESS:	1202 17 AV SW
FILE NUMBER:	72592
ASSESSMENT:	\$4,160,000

The Complaint was heard on the 16th 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:

- 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.

[2] Both parties requested that the evidence, questions, answers and argument related to the capitalization rate issue considered in Complaint File No. 72151 be carried forward to this hearing. This includes evidence packages referred to as Exhibits C2, C3 and C6. The Board agreed to carry forward the evidence and argument, and to maintain the reference to Exhibits C2, C3 and C6. The only new evidence presented by the Complainant is Exhibit C1, the evidence specific to this property and complaint. Exhibit R1 is similar to but not exactly the same as presented in File 72151, so is also unique to this complaint.

Property Description:

[3] The subject property is a one storey retail B quality building located in the Beltline District, and specifically in the BL6 sub-district, constructed in 1971. The property is 8,211 square feet (SF). The property is assessed as follows: 1,330 SF as "fast food restaurant" assessed at \$33/SF, 1,374 SF of "restaurant" assessed at \$33/SF and 5,507 SF of "retail" assessed at \$30/SF. Operating costs are \$12/SF with a vacancy allowance of 9.5% and non-recoverable rate of 1% for all the space components. The capitalization rate is 5.25%. The 2013 assessment calculated using these rates is \$4,160,000.

Issues:

[4] The Complainant raised a number of issues, which the Board has distilled into the issue 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. The issue relates to whether the 2013 Assessment is correct.

1. What is the correct capitalization rate for the subject B quality retail property?

Complainant's Requested Value: \$3,640,000

Board's Decision:

[5] The Board reduces the 2013 Assessment to \$3,640,000.

Legislative Authority:

[6] 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.

[7] 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 capitalization rate for the subject property?

Complainant's Position

[8] The Complainant presented a summary of the Altus 2013 Beltline 'B' Office Capitalization Rate Summary (page 34, 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) were part of 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 it meets the definition of a market value transaction.

[9] The Complainant presented its 2013 Beltline Retail Capitalization Rate Summary (page 33, Exhibit C1) 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 two B quality retail properties included in this analysis have a capitalization rate of 4.78% and 5.94%.

[10] 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.

[11] Based on this evidence and particularly the retail capitalization data presented, the Complainant requested a capitalization rate of 6%.

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

Respondent's Position

[13] The Respondent presented evidence to demonstrate that there were a number of issues with the sales of retail properties presented by the Complainant.

[14] The Respondent presented a number of previous Board Decisions that confirmed the 5.25% capitalization rate applied in the 2013 assessment calculation.

[15] The Respondent indicated that the 5.25% capitalization rate used to prepare the 2013 assessment is based on the City's 2013 B Class Office Capitalization Rate Study.

Board Findings on this Issue

[16] The Complainant presented a Beltline Retail Capitalization Rate analysis with a range of 4.78-7.61%. The Respondent argued that these sales were not comparable to the subject property for a number of reasons. While these sales may not represent properties "comparable" to the subject, this is the best evidence before the Board.

[17] Based on the capitalization rates presented, the Board finds that a capitalization rate of 6.00% is reflective of the subject retail property.

Board's Decision:

[18] The Board concludes that the appropriate capitalization rate is 6.00%. None of the other factors used in calculating the 2013 assessment were disputed. Applying these factors into the income approach calculation results in the 2013 Assessment of \$3,640,000.

The Board reduces the 2013 Assessment to \$3,640,000.

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. C6	Complainant Disclosure – Rebuttal Submission
5. 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.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Office/retail	Mixed use	Capitalization rate	Comparable Sales