



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:

1029139 Alberta 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:	080026891
LOCATION ADDRESS:	1317 – 17 AV SW
FILE NUMBER:	72924
ASSESSMENT:	\$3,980,000

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 single storey A2 quality building located in the Beltline District, and specifically in the BL6 sub-district, known as Moxie's Restaurant. The building was constructed in 1988, with a total of 6,010 square feet (SF) of assessed retail space. The 2013 assessment is prepared using the income approach. The rental rate assigned to the entire space is \$42/SF "restaurant" rate, the operating costs are \$12/SF, vacancy rate of 9.5% and non-recoverable rate of 1%. The capitalization rate used is 5.5%. The 2013 assessment calculated using these rates is \$3,980,000.

Issues:

[4] 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 following issue relates to whether the 2013 Assessment is correct.

1. What is the correct capitalization rate for the subject A2 retail property?

Complainant's Requested Value: \$3,650,000

Board's Decision:

[5] The Board reduces the 2013 Assessment to \$3,650,000.

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 A2 retail property?

Complainant's Position

[8] The Complainant argued that the 5.50% capitalization rate used by the City to calculate the 2013 Assessment was not supported by any study.

[9] The Complainant presented its 2013 Beltline Retail Capitalization Rate Summary (page 21, 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 A2 quality retail building. The only AA quality retail property in the Beltline (100, 1410 1st 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.

[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] 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%.

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

Respondent's Position

[13] 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 asserribly, 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.

[14] The Respondent presented a number of previous Board Decisions related to the use of the Complainant's retail sales as capitalization rate comparables.

[15] 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

[16] The Complainant presented a Beltline Retail Capitalization Rate analysis with a range of 4.78-7.61%. The Respondent argued that the sales used in this analysis were not comparable to the subject for a number of reasons. The Board finds that while the sales used may not be comparable to the subject in all characteristics, this is the best evidence presented.

[17] Based on the capitalization rates presented, the Board finds that a capitalization rate of 6.00% is more reflective of an A2 quality retail/office property.

Board's Decision:

[18] The Board concludes that the appropriate capitalization rate for the subject property is 6.00%. The other factors used to calculate the 2013 assessment were not in dispute at this hearing. Applying these factors into the income approach calculation results in the 2013 Assessment of \$3,650,000.

The Board reduces the 2013 Assessment to \$3,650,000.

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	Retail	Stand-alone	Capitalization rate	Sales