



**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:**

***17<sup>th</sup> Avenue 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:

<b>ROLL NUMBER:</b>	<b>067203406</b>
<b>LOCATION ADDRESS:</b>	<b>1410 17 Av SW</b>
<b>FILE NUMBER:</b>	<b>73284</b>
<b>ASSESSMENT:</b>	<b>\$3,450,000</b>

The Complaint was heard on the 17<sup>th</sup> 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

### **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.

### **Preliminary Matters**

[3] The Complainant objected to page 27 in Exhibit R1, which refers 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 located in BL6 (page 24-25, Exhibit C1). In response to this request, the rental rate information provided was the 2013 Beltline 1-5 CRU Rental Analysis C. They relied on the information provided by the City as the basis of their complaint regarding the rental rate applied to C retail 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 C 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 3 and 5 on page 7 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 page 27 in Exhibit R1 be removed.

[4] The Respondent acknowledged that the wrong information was sent in response to the subject Section 299/300 request. The Respondent apparently 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 page 27 was removed from Exhibit R1, the hearing could proceed as scheduled.

[5] 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.

[6] 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. That said, 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.

[7] 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 page 27 of Exhibit R1 excluded from the evidence. The parties agreed to proceed to the merit of the complaint.

#### **Property Description:**

[8] The subject property consists of two separate buildings on one lot. A 3,750 square foot (SF) single story building fronts 17<sup>th</sup> Avenue, constructed in 1949, considered an A2 quality building and is assessed as a restaurant. A 2,500 SF single story building constructed in 1957 and considered a C quality building fronts 16<sup>th</sup> Avenue SW and is used for retail. An additional 2,500 SF of storage space also exists below grade, and is assumed by both parties to be in the building that fronts 16<sup>th</sup> Avenue SW (although the City of Calgary Property Assessment Detail Report allocates this 2,500 of storage space to the A2 quality building). The 2013 Assessment is calculated using the income approach. The 2,500 SF of "retail" is assigned a market rental rate of \$21/SF with a 9.5% vacancy, \$10/SF operating costs and 1% non-recoverable rate. The 3,750 SF of "restaurant space" is assigned a \$42/SF rental rate, with 9.5% vacancy, \$12/SF operating costs and 1% non-recoverable rate. The 2,500 SF of "storage space" is assigned a rental rate of \$5/SF with vacancy of 9.5%, operating costs of \$12/SF and a non-recoverable rate of 1%. The capitalization rate used is 5.50%. The 2013 assessment calculated using these rates is \$3,450,000.

**Issues:**

[9] 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 "retail" space?
2. What is the correct rental rate for the "storage" space?
3. What is the correct capitalization rate for the subject A and C quality retail property?
4. Is the subject property equitably assessed?

**Complainant's Requested Value:**                      \$2,820,000

**Board's Decision:**

[10] The Board reduces the 2013 Assessment to \$3,010,000.

**Legislative Authority:**

[11] 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.

[12] 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 for the "retail" space?****Complainant's Position**

[13] The Complainant took the position that while the property does front on 17<sup>th</sup> Av. SW, the retail building fronts on 16<sup>th</sup> Av SW and therefore should not be assessed at the \$21/SF rate that properties along 17<sup>th</sup> Av SW are assigned. The 16<sup>th</sup> Av SW location is substantially inferior to a location fronting 17<sup>th</sup> Av SW regarding the amount of traffic (vehicle and foot) and visibility. Based on location, the Complainant argued that the rental rate assigned to C quality retail not located on 17<sup>th</sup> Av SW is the appropriate rental rate for assessment purposes.

[14] The Complainant presented the City's 2013 Beltline 1-5 CRU Rental Analysis C study on page 31, Exhibit C1, eliminating a number of leases that were either expired or not similar to the subject (i.e. house conversion or retail condominiums). Based on this analysis, the median rental rate is \$15/SF. Support information regarding the leases that were eliminated follow page 31 in Exhibit C1.

[15] The Complainant presented three equity comparables of properties located in BL5 (page 118-131, Exhibit C1) demonstrating that the retail rental rate for these retail properties is \$17/SF.

**Respondent's Position**

[16] The Respondent stated that because the property has 17<sup>th</sup> Av SW frontage, the C quality retail rental rate of \$21/SF assigned to BL 6-8 properties is used in the assessment. The table of evidence supporting this rate was redacted from Exhibit R1, as discussed in the Preliminary Issue.

[17] The Respondent presented the Assessment Request for Information (ARFI) for the subject property (page 23-24, Exhibit R1) to show that the property was achieving rents in this building at \$22/SF and \$18/SF, well above the \$15/SF rate requested by the Complainant.

[18] In response to questions from the Board, the Respondent stated that if the subject retail building was on its own title and fronting on 16<sup>th</sup> Av SW, it would be assigned the rental rate for BL5 C quality retail properties.

**The Board's Findings on this Issue:**

[19] The Board acknowledges that this is a unique property, consisting of two separate buildings, one (the restaurant) fronting on 17<sup>th</sup> Av SW (BL 6-8) and the other (the retail building) fronting on 16 Av SW (BL5).

[20] Since the subject retail building fronts on 16<sup>th</sup> Av SW, it is not really in BL 6-8 (17<sup>th</sup> Av retail corridor), the BL 6-8 rate is not appropriate. The Board finds that the appropriate rental rate for the retail space for the property is the BL5 rate of \$17/SF.

**Issue 2: What is the correct rental rate for the “storage” space?****Complainant’s Position**

[21] The Complainant presented a copy of the Assessment Request for Information (ARFI), an email from the property manager and an excerpt of the lease agreement apparently showing that the basement space is not being leased (page 107-111, Exhibit C1).

[22] The Complainant argued that the rental rate assigned storage space should be the same as mezzanine space and presented the 2013 Non-residential Properties – Income Approach Valuation calculation for the Midtown Coop (1130 -11 Av SW) showing the rental rate assigned to grocery store mezzanine space at \$2/SF.

**Respondent’s Position**

[23] The Respondent stated that storage space in the Beltline is valuable and does lease. One lease comparable was presented (page 343, Exhibit R1) showing storage space in a Beltline retail property leased at \$10/SF. Based on this comparable, the City used a rate of \$5/SF as the rental rate assigned storage space in the Beltline.

[24] The Respondent presented an excerpt from the subject Assessment Request for Information (ARFI) (page 344, Exhibit R1) which apparently demonstrated that the storage space is leasing for \$18/SF. Neither the Complainant nor the Respondent were certain as to the space leasing for \$18/SF and whether or not this was the “storage” space.

**The Board’s Findings on this Issue:**

[25] The Board acknowledges that neither party was certain as to where the storage space is located (restaurant or retail building) nor could confirm its size. As a result, the Board is not certain what “storage” space is referred to in the email from the building manager, presented by the Complainant.

[26] The only rental evidence presented for storage space in the Beltline District is the \$10/SF lease presented by the Respondent, which apparently supports the \$5/SF rental rate used to prepare the assessment. The Board notes on page 121, Exhibit C1 that one of the retail rental rate equity comparables also shows storage space assessed at \$5/SF. The Board finds that the typical rental rate for storage space in the Beltline is \$5/SF.

**Issue 3: What is the correct capitalization rate for the subject A and C quality property?****Complainant’s Position**

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

[28] The Complainant presented its 2013 Beltline Retail Capitalization Rate Summary (page 135, 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 the subject property (consisting of both an A2 and C building). Supporting documents and further analysis is presented in Exhibit C2.

[29] 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.

### **Respondent's Position**

[30] 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.

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

[32] The Respondent presented a summary table (page 31, Exhibit R1) comparing the Assessment to Sales Ratios (ASR's) for the City's capitalization rate study results with the Altus Capitalization Rate Study. The Respondent argued that this comparison demonstrates that the City's capitalization rate results in better ASR's than the Altus rate of 6%, and therefore is the appropriate rate.

[33] In response to questions, the Respondent stated that the 5.50% capitalization rate used in the assessment calculation for the subject property is determined using the Beltline B Quality Office Capitalization Rate Study. Based on this study, as well as other capitalization rates derived for other types of properties in areas adjacent to the Beltline, the City developed a table of capitalization rates for various classes of office and retail properties, and applied these to the Beltline District. The 5.50% rate is a "blended rate" applied to both the A and C quality buildings that constitute the subject property.

### **Board Findings on this Issue**

[34] The Board acknowledges that there are a very limited number of comparable sales available to indicate a capitalization rate, and none address a capitalization rate for a property with two buildings of different qualities and uses, as the subject.

[35] The Board understands that the City's 5.50% capitalization rate is a "blended" rate of other capitalization rates used in the Beltline District. This appears to be a somewhat arbitrary approach to deriving a capitalization rate, as no rigorous explanation was provided to support the derivation of the 5.50% rate.

[36] The Board prefers the Complainant's capitalization rate evidence and finds that a capitalization rate of 6.00% is more reflective of the subject A2 and C quality office/retail property.

**Issue 4: Is the subject property equitably assessed?**

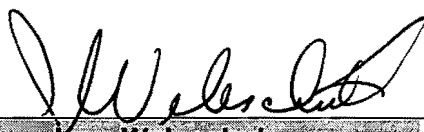
[37] The equity comparable evidence presented by the Complainant referred to the retail rental rate and storage rate, and was addressed in those sections above. No overall equity comparisons were presented by either party.

**Board's Decision:**

[38] The Board concludes that the rental rate for the "retail" component is \$17/SF, the rental rate for "storage" space is \$5/SF, and that a capitalization rate of 6% reflects a typical rate for the subject property. Applying these factors into the income approach calculation results in the 2013 Assessment of \$3,010,000.

The Board reduces the 2013 Assessment to \$3,010,000.

DATED AT THE CITY OF CALGARY THIS 19<sup>th</sup> DAY OF November 2013.



**Ivan Weleschuk**  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure – 2013 Beltline Retail Cap Analysis
3. C3	Complainant Disclosure – Evidence Appendix
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**

<b>Subject</b>	<b>Type</b>	<b>Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Retail	Multi-building	Retail rental rate Storage rental rate Capitalization rate	Equity