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:

TOYS R US (Canada) Ltd. (as represented by Avison Young Property Tax Services), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER
B. Jerchel, BOARD MEMBER
J. Lam, 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 2014 Assessment Roll as follows:

ROLL NUMBER: **049009798**

LOCATION ADDRESS: **3065 29 ST NE**

FILE NUMBER: **75031**

ASSESSMENT: **$10,300,000**

This complaint was heard on the 23rd day of June, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *C. Hartley*
- *B. Peacock*

Appeared on behalf of the Respondent:

- *T. Johnson*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] The subject hearing was one of two complaints of property owned by the Complainant. The subject hearing was presented in detail but the Complainant requested that the evidence and argument related to the subject hearing be carried forward to the other hearing except where there were differences as noted. With the concurrence of the Respondent, the hearing proceeded on that basis.

Property Description:

[2] The subject property is an owner occupied big box retail property constructed in 1988 located at the corner of 29 Street and 32 Avenue in the Sunridge district in the NE quadrant. It is assessed on the income approach to value based on 47,001 sf of big box retail at a rental rate of $14/sf (based on the 40,001 sf to 80,000 sf rate) and 15,385 sf of non-retail mezzanine at $2/sf to arrive at the potential net income. Vacancy of 1%, operating costs of $8/sf and nonrecoverables of 1% are deducted to arrive at a net operating income (NOI) of $670,086 which is capitalized at 6.5% to arrive at a value of $10,309,015 which, truncated, results in the assessment under complaint.

Issues:

[3] The Complaint form identified a number of reasons for complaint; however at the hearing the only issues argued were whether the vacancy rate should be the 2014 Freestanding Retail Vacancy of 8.25% for the NE quadrant and not the 1% applied, and whether the capitalization rate should be 7% and not the 6.5% applied.

Complainant's Requested Value: $8,340,000

Board's Decision:

[4] The assessment is reduced to $9,570,000.

Issue 1: Vacancy Rate

Complainant's Position:

[5] The package provided by the Respondent to comply with the Complainant's information

request pursuant to Sec 299 of the Act included the following chart:

2014 Freestanding Retail Vacancy

	NE	NW	SE	SW
Total Space	851,069	1,452,882	1,368,674	787,382
Vacant Space	69,697	129,011	108,181	52,620
Percent Vacant	8.19%	8.88%	7.90%	6.68%
Assessed	**8.25%**	**9.00%**	**8.00%**	**6.75%**

[6] The Complainant stated that this clearly indicates that typical vacancy in the NE quadrant is 8.25% compared to the 1% that was applied. The Complainant requested that the typical NE vacancy rate be applied to the subject assessment.

[7] The Complainant disputed the Respondent's suggestion that big box retail vacancy was zero, pointing out that the Rona in Creekside had been vacant since 2010. Whether rent continues to be paid is irrelevant, as the assessment is based on the fee simple interest and the rent payments would be a reflection of the leased fee interest. That property is vacant and has been available for lease since 2010 so clearly big box retail vacancy is not zero. There was no big box retail vacancy study provided to support the City's position that 1% was appropriate.

Respondent's Position:

[8] The Respondent stated that the chart provided to the Complainant had the wrong heading, and should have been titled Freestanding Retail CRU Vacancy. The vacancy rates listed are for retail spaces less than 14,000 sf. No vacancy study was done for big box retail, but 1% was applied as a nominal vacancy rate. Big box retail is typically leased by national tenants in long term leases and that category of freestanding retail generally do not become vacant. The Respondent presented assessment information for other properties from the various ranges of big box size categories (14,000-40,000 sf, 40,001-80,000 sf and over 80,000 sf) to demonstrate that all are assessed using the 1% vacancy rate for the big box component.

[9] The Respondent stated the Rona in Creekside is a "dark store" that has been closed, but the space is not vacant, as the tenant is still paying rent. It cannot be considered to demonstrate vacancy in big box retail.

Board's Reasons for Decision:

[10] The Board accepts that the 2014 Freestanding Retail Vacancy chart provided by the Respondent is for CRU spaces not including big box retail, based on the testimony of the Respondent and the amounts shown for Total Space in each quadrant, which would be expected to be substantially higher if big box retail were included. While it might have been more useful for the Respondent to have provided a chart in support of his contention that the big box retail vacancy is near zero, the Complainant likewise did not provide evidence to support a higher vacancy rate.

[11] The statements regarding the status of one big box retail space did not persuade the Board that the vacancy rate of the subject should be increased. There was no supporting evidence, and even if it were determined to be vacant notwithstanding the rent payments, it is located in the NW quadrant and would not be included in a vacancy analysis for the NE quadrant. Further, in the opinion of the Board, one vacant store would likely not represent more than 1% of the total floor area of big box retail in the NW quadrant. Accordingly, the vacancy rate applied was not adjusted.

Issue 2: Capitalization Rate

Complainant's Position:

[12] The capitalization rate study used by the Respondent contained nine transactions that occurred within the two years preceding the valuation date of July 1, 2013. The analysis is flawed, as it includes inner city properties where the land value could represent a significant consideration in the sale price, and the nine transactions range in size from 2,357 to 24,350 sf compared to the subject at 62,386 sf. Some of the net rentable areas of the sales are significantly smaller than listed in the chart, since half the rentable area is storage or office.

[13] The Respondent's lower limit for big box retail space is 14,000 sf. The Complainant submitted that sales of properties smaller than 14,000 sf should be removed from the analysis as they are not comparable. The Complainant noted that it was inconsistent for the Respondent to state that vacancy rates for retail under 14,000 sf are not relevant while at the same time arguing that for determining cap rates they are relevant. Three of the nine sales are over 14,000 sf:

Address	AYOC	Net Rentable sf	Sale date	Sale Price	Sale year typical NOI	Cap Rate
1323 Centre St NW	1972	15,469	1/11/2012	4,775,000	352,891	7.39%
6330 Bowness Rd NW	1977	15,425	8/31/2011	1,440,000	100,028	6.95%
2245 Pegasus Rd NE	1995	24,350	9/6/2012	4,675,187	297,971	6.37%

The City's average and median cap rates for the three sales that are larger than 14,000 sf are 6.95% and 6.90% respectively and support the requested cap rate of 7.0%.

[14] The Complainant stated the Respondent's method of calculating capitalization rates utilizes backward looking estimates of market rent and typical income for transactions occurring in the fall of a given year. The cap rate study analyzes a sale occurring in fall of 2013 using 2013 income parameters, which is based on information collected in the year prior to July 2013. The Complainant contends that the sales should be analyzed using income parameters that are relevant to the time period in which the sale occurred, i.e. parameters for the following year. This would provide a better estimate of income for calculating the cap rate for a sale that occurred within that period. The Complainant recognizes for the three relevant sales, the difference between the two methodologies is negligible. Using income parameters for the following year for the second and third sale resulted in average and median cap rates of 6.85% and 6.86%. Nevertheless it is an important principle and the Complainant requested the Board to consider this argument.

Respondent's Position:

[15] The Respondent presented the sales used in the cap rate analysis:

Address	AYOC	Net Rentable sf	Sale reg. date	Sale Price	Sale year typical NOI	Cap Rate
1323 Centre St NW	1972	15,469	1/11/2012	4,775,000	352,891	7.39%
207 19 St NW	1957	5,040	8/31/2012	829,319	38,514	4.64%
1435 9 Ave SE	1950	7,870	12/20/2011	1,700,000	73,833	4.34%
6330 Bowness Rd NW	1977	15,425	8/31/2011	1,440,000	100,028	6.95%
321 19 St NW	1945	4,064	7/26/2011	1,425,000	91,267	6.40%
1706 Centre St NW	1959	2,357	7/18/2011	505,000	24,743	4.90%
2245 Pegasus Rd NE	1995	24,350	9/6/2012	4,675,187	297,971	6.37%
6427 Bowness Rd NW	1944	6,837	10/30/2012	1,028,354	79,387	7.72%
416 16 Ave NW	1951	3,450	11/26/2012	625,000	37,216	5.95%

The median and average are 6.08% and 6.37% respectively, and supports the 6.5% used in the assessment. The Respondent analyzed the sales using the Complainant's requested 7% value compared to the 6.5% applied to demonstrate that 6.5% yielded a smaller differential in the total assessments vs. total sale prices. The Respondent suggested that this supports the assessed cap rate and that it should not be increased.

[16] The cap rate analysis uses the income parameters closest to the date of the sale. The Respondent stated that this is reasonable as the analysis would be based on typical market conditions at the time of sale.

Board's Reasons for Decision:

[17] The Board agrees that small retail properties are not comparable to the subject and they appear to have lower cap rates that skew the overall average and median. The Board notes that the median and average of the six sales below 14,000 sf are 5.66% and 5.43% respectively, significantly different from the median and average of the larger sales. The Board is satisfied that cap rates derived from the larger properties are a better indication of the cap rate that might be applicable to the subject property.

[18] With respect to argument of inappropriateness of using backward looking estimates of income, the difference between the two positions was negligible in this case. Accordingly, the Board determined that it did not need to determine this issue in order to make its decision with respect to the assessment under complaint.

[19] Accordingly, the Board determined that the assessment should be based on a 7.0% cap rate with all other income parameters unchanged. The NOI of $670,086 capitalized at 7.0% yields a value of $9,572,657 which, truncated, results in a revised assessment of $9.570,000.

DATED AT THE CITY OF CALGARY THIS 30th **DAY OF** June **2014.**

H. Kim

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. 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.*