

**CALGARY
COMPOSITE 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:

***McDonald's Restaurants of Canada Limited
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Fleming, PRESIDING OFFICER
R. Roy, MEMBER
B. Jerchel, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 075173906

LOCATION ADDRESS: 4615 17 Ave. SE

HEARING NUMBER: 64615

ASSESSMENT: \$1,920,000

This complaint was heard on 26th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *M. Uhryn, D. Porteous*

Appeared on behalf of the Respondent:

- *Kelly Gardiner*

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

There were no procedural or administrative matters raised at the hearing.

Property Description:

The property, an "A+" quality development containing 6,046 square feet (sq. ft.), 4,348 sq. ft. of retail space and 1,698 sq. ft. of storage (according to the City's Income Approach to Valuation). The building was built in 1973; it sits on .83 acres of land and is occupied by McDonalds. The land use designation is Commercial - Corridor 2 and the property is on a Main Traffic route. The property is valued on the Income Approach.

Issues:

There were a number of issues listed on the complaint form, but at the hearing the Complainant indicated there was one issue in dispute.

What is the best evidence of the appropriate capitalization rate for the subject?

Complainant's Requested Value:

\$1,760,000

Board's Decision in Respect of Each Matter or Issue:

The Cap Rate study prepared by the Respondent provides the best information on cap rates.

Board's Decision and Reasons:

The Complainant was requesting a capitalization rate (cap rate) of 8.25% (as opposed to the City's 7.50%) based on a cap rate study that they prepared (Ex. C1, pg 17)

The Complainant indicated that all the attributes used by the City were acceptable with the exception of the cap rate. The Complainant's Freestanding Retail (FSR) Cap Rate Study contained 7 properties, 4 of which were in common with the cap rate study of the Respondent. The median and mean of the Complainant's study was 8.30% and 9.24% respectively (Ex C1 pg 17).

The Complainant questioned a number of the sales in the Respondent's Cap rate study (Ex R1 pg 15). They indicated that in their opinion, the property at 9950 MacLeod Trail was virtually a strip centre based on its size and tenancy. The property at 2803 Centre St. should be considered an outlier at a cap rate of 4.45% and they noted the tenancy was Blockbuster Video, now bankrupt. The final sale 3319 & 3363 26 Ave. was part of a \$250 million portfolio sale. Based on this, all of these sales should be excluded from the City study. The relatively large number of exclusions should cast doubt on the validity of the Respondent's study. The weakness of the Respondent's study should provide confidence for considering the Complainant's study which supports the 8.25% cap rate and the request for a reduced assessment of \$1,760,000.

The Respondent referred to their FSR Cap Rate Study (Ex. R1 pg 15) which supported their cap rate of 7.50%. They disputed the suggested removal of the MacLeod Trail sale, the Centre St. sale and the 3319 & 3363 26th Ave. NE sale. The MacLeod Trail SE sale met the criteria as a FSR building in spite of its size. The Centre St. N sale represented a price that the purchaser felt was market for what was, at that time, thought to be a quality tenant. Finally, while admitting that the 26th Ave. sales might be part of a portfolio sale, the sale was adequately researched by the City staff and found to be valid for inclusion in the qualified sales.

With respect to the Complainant's study, the Respondent pointed out that sales 5 and 6 both sold as vacant with no income and so should not be included based on "attributed" rental figures, which incidentally resulted in the highest cap rates in either study. In addition, the Respondent pointed out that 3660 20th Ave. NE was actually a strip centre in the City's Strip Centre Capitalization Rate study and so should be removed from the Complainant's FSR Study.

As a result, the Respondent asked that the CARB accept the City study which demonstrated support for the cap rate at 7.50% and confirm the assessment.

The CARB considered all the evidence and argument. The CARB accepted all of the 4 sales that were common to each party (Index # 1 – 4 in the Complainant's study (Ex. C1 pg 17)). The CARB put little weight on the other 3 sales in the Complainant's study. The CARB concluded that without more evidence from the Complainant, it was not prepared to accept that the motivation in the purchase of a vacant property was similar to the motivation in purchasing an income producing property. Based on this, Index sales #5 and 6 were not found to be comparable with the other sales. In the case of the property at 3660 20th Ave, NE, the CARB accepted the evidence of the Respondent (Ex. R1, pg. 27) that the property was classified as a strip centre, and so was not comparable to the subject.

In reviewing the Study of the Respondent, the CARB accepted that the sale of the Centre St. property was an outlier at a 4.45% cap rate which was significantly lower than the balance of properties in the analysis. The CARB also was not convinced it was a valid sale based on the price and the tenancy, in a period where sophisticated purchasers might have had concerns about the quality of the tenant. The CARB also put little weight on the last sale of 3319 & 3363 26th Ave. because it was part of a portfolio sale of over \$200 million, and the Respondent could not provide evidence that the allocation of the value among the properties comprising the total sale were correct. The CARB did put weight on the MacLeod Tr. S property based on the classification of the City and the lack of definitive evidence from the Complainant which would support exclusion.

As a result, the CARB was left with 5 sales for the Respondent and 4 sales for the Complainant. The CARB calculated the Median for both and arrived at Medians of 7.53% for the Respondent's sales and 7.70% for the Complainant's. On this basis, the CARB supported the 7.53% calculation because it resulted from a greater number of sales, albeit only one more. Accordingly, the 7.53% cap rate provides support for the Respondents rate at 7.50%.

The CARB also calculated the value based on the 7.70% cap rate and found that the value was 2.6% less than the current assessed value. This magnitude of change was insufficient to disturb the assessment.

Board Decision:

The complaint is denied and the assessment is confirmed at \$1,920,000

DATED AT THE CITY OF CALGARY THIS 9 **DAY OF** August **2011.**


James Fleming
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.*