

**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:

***Airstate Ltd.*
(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: 071126452

LOCATION ADDRESS: 2840 Memorial Dr. SE

HEARING NUMBER: 61321

ASSESSMENT: \$4,980,000

This complaint was heard on 28th 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*

Appeared on behalf of the Respondent:

- *S. Turner*

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 is comprised of two buildings totalling 13,818 sq. ft. on 2.72 acres of land. One building containing 8,567 sq. ft. is occupied by Swiss Chalet, and the other at 5,251 sq. ft. is occupied by Boston Pizza. The property is located at the corner of memorial Dr. and 28th St. SE. The assessment was prepared using the Income Approach to Value (IAV).

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 Capitalization Rate (cap rate) to use to calculate the IAV for the subject properties; is it the 8.25% suggested by the Complainant or the 7.50% used by the Respondent?

Complainant's Requested Value:

\$4,520,000

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

The cap rate produced by the Respondent's Study is the best cap rate to use in the valuation.

Board's Decision:

The Complainant indicated that all the attributes used by the City were acceptable with the exception of the cap rate. The Complainant was requesting a rate of 8.25% and the Respondent was asking for 7.50%. The Complainant provided a Freestanding Cap Rate (FSR) Study containing 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 20).

The Complainant questioned a number of the sales in the Respondent's Cap rate study (Ex R1 pg 26). 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 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 Complainants study which supports the 8.25% cap rate and the request for a reduced assessment of \$4,520,000.

The Respondent 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. 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 of 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. The Respondent provided a list of 2011 Unusable sales from the City, which supported the exclusion of these two properties that were vacant at the time of sale. 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 continued all the evidence and argument. In reviewing the evidence provided by the City, it was noted that the 2011 Unusable Sales report (Ex R1 pg 28 -29) that the 2 sales at 5445 Falsbridge Dr. NE were excluded as portfolio sales. The City could not explain why these unusable sales were included in the FSR cap rate study. Both of these sales were common to the studies of both the Complainant and Respondent. It was also observed that another common sale (the first sale of 3319 & 3363 26th Ave NE) was actually two buildings, and neither party could provide any details of sizes of the buildings nor could they confirm that the attributes should or were identical for each of the two buildings. Accordingly, due to the uncertainties surrounding 3 of the common sales, the CARB placed little weight on this information.

Next, the CARB reviewed the arguments of each party with respect to the others sales. The CARB accepted the argument that the vacant sales of the Complainant should not be included because it was likely that the motivation to purchase would be different for a vacant building than for an otherwise income producing property and therefore the sales were not comparable. Stated another way, the CARB accepted the argument of the City that these were unusable sales. Likewise, the CARB also accepted the argument of the Respondent that the 3660 20 Ave. NE was a strip centre and therefore not comparable with FSR properties.

The CARB accepted the argument of the Complainant that the sale of 2803 Centre St. N was an outlier given its significantly lower cap rate. The CARB received insufficient evidence from the Complainant to consider rejecting the MacLeod Trail S property.


In the final analysis, from the Complainant's study (Ex.C1 pg 20), little weight could be put on Index Numbers 1,2 ,3 ,5 ,6, and 7 for the reasons identified above. This left only one property comparable in the Complainant's evidence, Index number 4 – 4033 Bow Trail and the CARB concluded that this was insufficient evidence to consider disturbing the assessment.

The CARB would note that the analysis of the City did not fare much better with only two comparables remaining after the evaluation process. The burden however is on the Complainant to demonstrate the Assessment is wrong, and in this case, that burden was not met in the opinion of the CARB

Board Decision:

The appeal is denied and the assessment is confirmed at \$4,980,000

DATED AT THE CITY OF CALGARY THIS 8 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.*