

**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:

***Franz Meller and Hermann Meller
(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
J. Kerrison, MEMBER
T. Usselman, 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:	068105204
LOCATION ADDRESS:	123 8 Ave SW
HEARING NUMBER:	61149
ASSESSMENT:	\$1,050,000

The complaint was heard on September 26, 2011, in Boardroom 8 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Hartley; A. Farley

Appeared on behalf of the Respondent:

- E. Borisenko; H. Neumann

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

The subject property is a 2,600 sq.ft. (square foot) parcel of land, improved with a 3,320 sq.ft. two storey, single tenant retail structure. The improvement was constructed in 1893 and consists of a 2,300 sq.ft. main floor area and a 1,020 sq.ft. upper floor area.

Issues:

The Complainant raised the following matter in section 4 of the complaint form:

3. an assessment

The Complainant set out seven grounds for the complaint in section 5 of the complaint form with a requested assessment of \$650,000; however, at the hearing only the following issues were before the Board:

Issue 1. "The current lease has a gross income of \$72,960 which equates to \$31.72 per sq.ft."
[C1, p.10]

Issue 2: "As the subject is no less riskier than a downtown B class building, we feel that the cap rate should be 9%."
[C1, p.17]

Complainant's Requested Value:

The Complainant requested an assessment of \$762,000. This request was revised during the course of the hearing to \$760,750.

Board's Decision in Respect of the Issues:

Issue 1: "The current lease has a gross income of \$72,960 which equates to \$31.72 per sq.ft."

The Complainant argued that the subject's actual gross income illustrates that the main floor net rent coefficient applied by the assessor is excessive. In support of that argument the Complainant provided a copy of the subject property's current lease, setting out the annual minimum contract rent of \$79,080 for the land and building. [C1, pp.18-40]

To estimate the rent applicable to the retail area, the Complainant deducted the assessor's projected potential gross income attributable to the 1,020 sq.ft. upper floor area of \$6,120, resulting in a residual rent of \$72,960 attributable to the main floor space. The Complainant submitted that this rent equates to \$31.72 per sq.ft., in contrast to the assessed \$33.00 per sq.ft. net rent coefficient, and argued that the actual contract rent is the best evidence of the improvement's typical market rent. [C1, p.17]

The Respondent argued that \$33.00 per sq.ft. reflects the typical main floor market rent of similar properties along 8th Avenue as of the valuation date of July 01, 2010, and submitted that the coefficient was consistently applied to the main floor area of the subject and to the main floor areas of all similar properties located along 8th Avenue. To demonstrate that the \$33.00 per sq.ft. net rent coefficient was equitably applied, the Respondent provided a summary and photographs of thirty three similar properties located along 8th Avenue that are assigned the \$33.00 per sq.ft. net rent coefficient to the main floor area. [R1, pp.25-42]

In support of the \$33 per sq.ft. net rent coefficient, the Respondent provided the ARFI (Assessment Request For Information) form returned by the property owner, indicating the 2,300 sq.ft. main floor area is subject to a lease that commenced in February 2008 at a rent rate of \$30.00 per sq.ft. The form also indicates the 1,020 sq.ft. upper floor area is leased to the same tenant as the main floor, at a rate of \$9.88 per sq.ft. [R1, p.20-21]

The Respondent argued that the legislation requires the assessor to rely on "typical" market net rents in the preparation of an assessment and not individual contract rents, which may or may not reflect the typical market rates evident as of the valuation date. The Respondent submitted that in this instance, although the subject's \$30.00 per sq.ft. main floor contract rent is less than the \$33.00 per sq.ft. typical main floor coefficient, the subject's \$9.88 per sq.ft. upper floor contract rent is greater than the \$6.00 per sq.ft. typical upper floor coefficient.

In support of the subject's assessment, the Respondent submitted an income approach calculation relying on the subject's contract rents, capitalized at a rate of 7% to illustrate an estimate of market value of \$1,129,680, in contrast to the subject's assessment of \$1,050,000. The Respondent further provided RealNet transaction summaries of two 8th Avenue properties that exhibited recent sale prices equating to \$425 and \$381 per sq.ft., in contrast to the subject's assessment at \$316 per sq.ft.

In rebuttal, the Complainant argued that the majority of the Respondent's 8th Avenue equity comparables are superior to the subject as they are tenanted by restaurants or national retail chains, whereas the subject is leased to a local tenant because it suffers from lack of exposure as a result of its mid-block location.

Decision: Issue 1

The Board finds there is insufficient evidence to demonstrate that the \$33.00 per sq.ft. net rent coefficient does not reflect typical market rent for the main floor area of the subject property.

The Board did not find the subject's existing contract rent to be compelling evidence of typical market rents as of the valuation date of July 1, 2010, as there was no evidence to demonstrate that market rent rates were constant during the 29 month period between the date the contract rent rate was agreed to in early 2008, and the valuation date for this assessment. Further, the Board is persuaded that the \$33.00 per sq.ft. net rent coefficient is not unreasonable in relation to the Complainant's calculated contract rent rate of \$31.72 per sq.ft., as the difference of 3.8% is well within the expected tolerances of a mass appraisal valuation.

The Board accepts that the \$33.00 per sq.ft. net rent coefficient has been applied consistently and equitably to properties similar to the subject. With respect to the Complainant's rebuttal argument that the subject is inferior to the other properties along 8th Avenue, the Board notes that equity of net rent rates was not an issue in the Complainant's original submission.

Further, although the Complainant argued that the Respondent's net rent equity comparables were superior to the subject in that they are all restaurants or national retail chain tenanted, the Board finds there was no market evidence provided to verify that they have superior exposure or superior locations compared to the subject property. There was also no evidence provided to demonstrate that the subject property could not be leased to a national tenant, or any evidence to demonstrate that net rent rates differ between national retail tenanted properties and local retail tenanted properties along 8th Avenue.

Issue 2: "As the subject is no less riskier than a downtown B class building, we feel that the cap rate should be 9%." [C1, p.17]

The Complainant argued that a 9% capitalization rate should be applied to the subject's net operating income as the subject property is no less an investment risk than downtown B class buildings. In support of the 9% capitalization rate, the Complainant submitted the assessor's assessment valuation calculations for three downtown Class B office structures, indicating that a 9% capitalization rate was applied in those instances. [C1, pp.42-47]

The Respondent argued that the Complainant's comparable properties exhibiting a 9% capitalization rate coefficient are not similar in nature to the subject property as they are all high rise offices, ranging in size from 131,332 sq.ft to 212,104 sq.ft. In contrast, the subject property is a 3,320 sq.ft. retail structure. Further, none of the comparables are located along 8th Avenue, as the subject property.

The Respondent submitted that the 7% capitalization rate coefficient reflects the typical capitalization rate of retail properties along 8th Avenue as of the valuation date of July 01, 2010, and that capitalization rate was applied to the net operating income of the subject and to all similar properties located along 8th Avenue. To demonstrate equity, the Respondent provided a summary and photographs of 33 similar properties located along 8th Avenue that are assigned the identical 7% capitalization rate coefficient. [R1, pp.25-42]

Decision: Issue 2

The Board finds that there is no evidence to demonstrate that a 9% capitalization rate coefficient is appropriate for the subject property.

Although the Complainant argued that the subject property is no less an investment risk than a downtown B class building, there was no market evidence presented in support of that argument.

The Board was not persuaded that the Complainant's equity comparables share similar market conditions with the subject property. The comparables are high-rise office structures that are predominantly leased at office rent rates; are subject to office vacancy rate fluctuations; and compete in the market with other office structures for tenants of office premises, in contrast to the subject property which is predominantly a retail property with a small ancillary office area used in conjunction with the retail premises.

Board's Decision:

The assessment is **confirmed** at **\$1,050,000**.

DATED AT THE CITY OF CALGARY THIS

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DAY OF DECEMBER, 2011.



J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Rebuttal Submission

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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	Net Rent / Cap Rate