

**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:**

**MARBLE ARCH PROPERTIES LTD.** (as represented by **ALTUS GROUP LTD.**) *Complainant*

**and**

**THE CITY OF CALGARY,** *Respondent*

**before:**

**J. Krysa,** *Presiding Officer*

**D. Pollard,** *Member*

**Y. Nesry,** *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>054013503</b>
<b>LOCATION ADDRESS:</b>	<b>1107 33 Street NE</b>
<b>FILE NUMBER:</b>	<b>70463</b>
<b>ASSESSMENT:</b>	<b>\$19,430,000</b>

This complaint was heard on the 2<sup>nd</sup> day of July and the 6<sup>th</sup> day of September, 2013, in Boardrooms 9 and 10 of the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *July 2, 2013:* **B. Neeson;** *September 6, 2013:* **K. Fong**

Appeared on behalf of the Respondent:

- *July 2, 2013:* **V. Lavalley, B. Thompson;** *September 6, 2013:* **V. Lavalley**

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

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

**Property Description:**

[2] The subject property is a 6.70 acre parcel of land, improved with a 135,866 sq.ft. (square foot) retail development. The improvement was constructed in 1980 and is comprised of a two-storey, "D" quality retail structure containing 50,000 sq.ft. per floor; a 29,866 sq.ft. "C-" quality retail area currently tenanted to a gaming establishment; and a 6,000 sq.ft., "C-" quality commercial retail unit.

**Issues:**

[3] The Complainant raised the following issues in respect of the assessment of the subject property:

1. What is the market rent rate of the subject's "D" quality, retail component?
2. What is an appropriate capitalization rate for the subject property?

**Complainant's Requested Value:** \$11,600,000.

**Board's Decision:**

- [4] The assessment is **revised** from \$19,430,000 to **\$14,830,000**.

**Legislative Authority:**

- [5] Decisions of assessment review board

**467(1)** An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

**(2)** An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

**(3)** 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,
- (b)** the procedures set out in the regulations, and
- (c)** the assessments of similar property or businesses in the same municipality.

**289(2)** Each assessment must reflect

- (a)** the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b)** the valuation and other standards set out in the regulations for that property.

**Issue 1.** What is the market rent rate of the subject's "D" quality, retail component?

Positions of the Parties:

[6] The Complainant submits that the Respondent has appropriately stratified the subject's 100,000 sq.ft., two-storey retail area as "D" quality, in accordance with the Respondent's quality classification criteria on page 11 of exhibit C1, reflecting the subject's secondary retail location within a primarily "light industrial" area, and the subject's substandard physical characteristics.

[7] However, the Complainant argues that the assessed \$10.00 per sq.ft. market rent rate is excessive in contrast to the rent rates exhibited by superior department store property leases, and also excessive in relation to the assessed market rent rates of superior department store properties. The Complainant maintains that the market rent rate of the subject's "D" quality retail area is approximately \$5.00 per sq.ft.

[8] In support of the requested market rent rate, the Complainant prepared a rent rate analysis of eleven retail properties, (of which four are common to the Respondent's analysis), each greater than 80,000 sq.ft. in size and ranging from "A-" quality to "C-" quality. The properties exhibit a range of rent rates from \$4.60 to \$14.50 per square foot, with mean and median rent rates of \$7.84 and \$7.34 per square foot, respectively. The Complainant further provided an additional lease (also common to the Respondent's analysis), exhibiting a rent rate of \$14.50 per square foot. Including this lease in the analysis, the mean and median rent rates evident are \$8.45 and \$7.47 per square foot, respectively [C1,p.47].

[9] The Complainant concedes that five of the properties are located within regional shopping centre developments, but argues that they are superior to the subject property in respect of all of the Respondent's quality classification criteria; therefore a market rent rate at the low end of the range would be appropriate for the subject's area at issue. The Complainant submits that the requested \$5.00 per square foot market rent rate is well supported by the three lowest rental rates evident from superior properties; \$4.60, \$4.69 and \$5.35 per square foot.

[10] In further support of the requested \$5.00 per square foot market rent rate, the Complainant provided documentation to demonstrate that two nearby, northeast "B" quality regional shopping centres, Sunridge Mall and Marlborough Mall, enjoy anchor tenant assessed market rent rates of \$5.00 per square foot. The Complainant provided further documentation to demonstrate that the assessed market rent rate of the anchor tenants at Chinook Centre, an "A2" quality property, is \$5.50 per square foot [C1, pp.53-77].

[11] The Respondent argues that the assessed \$10.00 per square foot rent rate accurately represents the typical market rent rate of the subject's "D" quality retail component.

[12] In support of the assessed \$10.00 per square foot rent rate, the Respondent provided an analysis, "2013 Box Store Rental Rate Analysis (80,001 SF+)", comprised of five properties ranging in area from 95,423 sq.ft to 132,228 sq.ft. The leases, commencing between March 1996 and March 2008, exhibit rent rates ranging from \$7.00 to \$14.50 per square foot, with median and mean rent rates of \$10.00 and \$10.80 per square foot, respectively. The Respondent submits that the properties in the analysis are similar to the subject as they are retail properties located outside of the downtown and beltline market areas, and are not components of enclosed or regional malls [R1,p.259].

[13] To demonstrate that the subject is equitably assessed in relation to similar properties, the Respondent provided a summary of twenty two retail properties, each greater than 80,001 sq.ft. in area, assessed with a \$10.00 per square foot market rent rate [R1,p.258].

[14] In response to the Complainant's rent rate analysis, the Respondent argues that five of the Complainant's lease examples are dissimilar to the subject property as they reflect leases of "anchor tenant" properties located in regional mall developments which operate under unique market conditions. The Respondent further argues that the Complainant's leases in respect of 1221 Canyon Meadows Drive SE, 5696 Signal Hills Circle SW and 275 Shawville Boulevard SE are not 2011 leases as indicated, but rather, are 1981, 1997 and 1996 leases, respectively, that were merely "assigned" to the new occupants.

[15] In rebuttal, the Complainant argued that the Respondent's analysis is limited to superior properties that are dissimilar to the subject in respect of quality, age, and location. The Complainant submits that the properties are newer "A" or "B" quality properties located in either power centre or community shopping centre developments constructed in 2007, and in one instance, 1996.

[16] In support of the argument that the properties are superior to the subject, the Complainant provided rent roll or Assessment Request for Information (ARFI) documentation from four small retail properties in proximity of the subject property, exhibiting lease rates ranging from \$7.50 to \$11.00 per square foot. The Complainant then provided the Respondent's income approach valuations for the properties in the Respondent's analysis, to demonstrate that the assessed typical market rent rates applied to the commercial retail units of those properties ranges from \$15.00 to \$30.00 per square foot.

#### **Decision: Issue 1**

[17] The Board finds that the market rent rate of the subject's "D" quality retail component is \$6.75 per square foot.

[18] The Board put little weight on the Complainant's lease rate analysis and finds it inconclusive, as two of the three lowest rent rates in the analysis are exhibited by superior "B" quality anchor tenant properties attached to regional shopping centre developments. This evidence persuaded the Board to accept the Respondent's argument that anchor tenant properties located in regional mall developments operate under unique market conditions, unlike the market conditions of typical retail properties.

[19] The Board did not find the Respondent's lease rate analysis to be compelling evidence of a market rent rate for the subject property. The Board notes that none of the properties share the subject's "D" quality classification or two-storey retail configuration. Further, the five properties are all located within power centre or community shopping centre developments, and do not share the subject's secondary retail location within a primarily light industrial area. The Board was also persuaded by the Complainant's rebuttal evidence that demonstrates the commercial retail units in the Respondent's lease comparables are assessed at significantly higher market rent rates than the uncontested commercial retail units within the subject property.

[20] For similar reasons, the Board did not find the Respondent's equity comparables to be compelling evidence that the subject property is equitably assessed in relation to similar properties. On the contrary, the Respondent's evidence that the subject's "D" quality component is assessed with a market rent rate, identical to that applied to superior properties demonstrates that no consideration was made to reflect the subject's inferior characteristics.

[21] Although the parties debated about the subject's physical characteristics and location, the Board notes that the Complainant is in agreement with the Respondent's "D" quality stratification. Consequently, the Board makes no finding in respect of the subject's quality classification, and accepts the appraisal evidence included in both parties' submissions that suggests the two storey component "is unique and not necessarily standard in terms of size and configuration with second floor retail".

[22] As acknowledged by the parties, there is no available market evidence of rent rates from "D" quality retail properties in the size range of the subject from which to prepare an analysis of typical market rent rates, as there are no similar ("D" quality) properties in the municipality.

[23] The Board acknowledges the parties' difficulty in determining an appropriate market rent rate without sufficient relevant market evidence; however, the Respondent (and the Board) are obligated to take into consideration the assessments of similar properties in determining an assessment.

[24] In the Board's view, the best evidence before the Board is the Complainant's lease evidence in respect of the property located at 901 64 Avenue NE, exhibiting a rent rate of \$6.85 per square foot. Although this property is part of a regional shopping centre, the evidence indicates that the lease is in respect of a stand-alone, "C" quality, single-storey structure, approximately the same total size and age as the subject prior to the subsequent tenant improvements. The Board notes that the Respondent's evidence at page 223 of exhibit R1 indicates that this property is assessed with a \$7.00 per square foot market rent rate.

[25] The Board finds that this lease of a nearby "C" quality, single storey retail property, supported by the assessed \$7.00 per square foot market rent rate, sets the upper limit of an appropriate and equitable market rent rate for the subject property; however, the Board notes that there is insufficient market evidence before the Board from which to quantify a discount to reflect the subject's "D" quality classification and second floor retail configuration.

## **Issue 2. What is an appropriate capitalization rate for the subject property?**

### Positions of the Parties:

[26] The Complainant argues that the appropriate capitalization rate for the subject property is 7.50%.

[27] The Complainant further argues submits that the Respondent's capitalization rate analysis and conclusion is flawed, as it is founded on only three, of nine valid sales transactions.

[28] In support of the argument, the Complainant provided a summary of the particulars of nine sales transactions that occurred between January 2011 and April 2012, and the indicated capitalization rates founded on the typical net operating incomes as established by the

Respondent in the preparation of the assessment for the current taxation year, if the sale occurred after the July 01, 2011 valuation date. Where the sale occurred prior to the valuation date, the Complainant's indicated capitalization rates are founded on the typical net operating incomes as established by the Respondent in the preparation of the assessment for taxation in 2012. The indicated capitalization rates range from 6.21% to 8.83%, with average and median capitalization rates of 7.47% and 7.39%, respectively [C1,p.85].

[29] The Complainant also argues that the requested 7.50% capitalization rate would establish assessment values that more closely reflect the sale prices of the group of nine properties. In support of the argument, the Complainant provided a comparison of the indicated Assessment to Sale Ratios (ASR) exhibited by the current 2013 property assessments, and the projected assessments as calculated with the Complainant's requested 7.50% capitalization rate [C1,p.98]. The analysis indicates the following ASR ratios:

	<b>ASR</b> (at 7.00% capitalization rate)	<b>ASR</b> (at 7.50% capitalization rate)
Average	1.076	0.996
Median	1.055	0.985

[30] In cross examination, the Complainant conceded that the sale of 1413 9<sup>th</sup> Ave SE should be excluded from the analysis as the sale price may have been impacted by the vendor "take-back" mortgage, however, the Complainant maintains that the remaining eight sales support the 7.50% capitalization rate conclusion.

[31] The Respondent argues that the assessed 7.00% capitalization rate is appropriate for the subject property.

[32] In support of the argument, the Respondent provided a document, "2013 Freestanding Capitalization Rate Summary". The summary sets out the particulars of three sales transactions that occurred between July 2011 and January 2012, and the indicated capitalization rates founded on the typical net operating incomes as established by the Respondent in the preparation of the assessment for the current taxation year. The indicated capitalization rates range from 6.71% to 7.39%, with average and median capitalization rates of 6.99% and 6.86%, respectively (R1, p.261).

[33] The Respondent conceded that the methodology on page 261 is incorrect, and therefore the net operating income in respect of one of the sales is also inaccurate. The Respondent provided a re-analysis of the three sales founded on the Complainant's methodology set out in paragraph 28 above. The indicated capitalization rates range from 6.41% to 7.39%, with average and median capitalization rates of 6.91% and 6.95%, respectively (R1, p.268).

[34] The Respondent provided an additional capitalization rate analysis founded on the same three sales plus the Complainant's December 2011 sale of 1435 9 Ave SE, which the Respondent conceded should be relied upon as the development permit in respect of that property had expired. The analysis exhibits a range of capitalization rates from 4.34% to 7.39%, with average and median capitalization rates of 6.27% and 6.68%, respectively (R1, p.269).

[35] In response to the Complainant's capitalization rate analysis, the Respondent argues that the sales of 2639 17<sup>th</sup> Ave SW and 3515 17<sup>th</sup> Ave SW should be excluded from an analysis as the transactions were not "brokered", therefore the properties were not exposed to the market prior to the sales. The Respondent further argues that the sale price of 2639 17<sup>th</sup> Ave SW also includes the value of "signage" income of \$12,000 per annum, in addition to real estate income; and the sale of 3515 17<sup>th</sup> Ave SW is indicated to be a non arms-length transaction in the owner's response to an assessment request for information.

[36] In respect of the sales of 6331 Bowness Road NW and 321 19<sup>th</sup> Street NW, the Respondent argues that the Complainant's assessed net operating incomes are inaccurate; the correct net operating incomes indicate capitalization rates of 6.95% and 6.40%, rather than the Complainant's indicated 6.86% and 6.71% capitalization rates, respectively.

[37] The Respondent also argues that the sales of 126 26<sup>th</sup> Ave NE and 2803 Centre Street NW are inappropriate to use in an analysis, as the properties were vacant at the time of sale. The Respondent maintains that there was an outstanding development permit, changing the use of 2803 Centre Street NW from retail to office; and the property also required major repairs, and the owner's response to an assessment request for information in respect of 126 26<sup>th</sup> Ave NE indicates that the sale price was not based on the property's net operating income.

[38] In closing, the Respondent argues that the corrected capitalization rate study on page 269 of exhibit R1 supports the assessed 7.00% capitalization rate.

## **Decision: Issue 2**

[39] The Board finds that there was insufficient compelling market evidence presented to disturb the assessed capitalization rate of 7.00%.

[40] Although the Board was not persuaded by the Respondent's evidence and argument in respect of the exclusion of some of the Complainant's sales due to vacancy and "signage" income, the Board did not find the Complainant's capitalization rate analysis to be compelling evidence of a 7.50% capitalization rate.

[41] The Complainant's requested 7.50% capitalization rate is not supported by the Complainant's analysis; after the conceded "vendor take-back" sale of 1413 9<sup>th</sup> Ave SE is excluded, the average and median capitalization rate conclusion is 7.31%. As this capitalization rate conclusion is still founded upon some questionable sales, including at least one non-arm's length transaction, the Board accepts the unrefuted evidence of the Respondent.

DATED AT THE CITY OF CALGARY THIS 18<sup>th</sup> DAY OF OCTOBER, 2013.

  
\_\_\_\_\_  
J. Krysa  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1.	C1
2.	C2
3.	R1
4.	C3
	Complainant's Submission (138 pages)
	Complainant's Submission (231 pages)
	Respondent's Submission (357 pages)
	Complainant's Rebuttal Evidence (96 pages)
	CARB 72273P-2013
	LARB 70468B-2013

*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**

<b>Subject</b>	<b>Property Type</b>	<b>Property Sub -Type</b>	<b>Issue</b>	<b>Sub - Issue</b>
CARB	Retail	Stand Alone	Market Rent Capitalization Rate	Equity