



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:

Haiku Management GP Inc. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

Y. Nesry, BOARD MEMBER

J. Kerrison, 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 2013 Assessment Roll as follows:

ROLL NUMBER: 067092106

LOCATION ADDRESS: 739 10 Avenue SW

FILE NUMBER: 70608

ASSESSMENT: \$2,060,000

This complaint was heard on the 11th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *W. Van Bruggen*

Appeared on behalf of the Respondent:

- *D. Zhao*
-

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

[1] At the outset of the hearing, the Complainant advised the Board that notwithstanding the contents of its written submission, the Board should ignore the argument in regard to the capitalization rate, and focus on the rental analysis. There being no objection from the Respondent, the Board acknowledged the Complainant's advice, and ignored the argument on capitalization rate..

Property Description:

[2] On the subject property is a one storey, single-tenant, retail building. The building was constructed in 1928, and contains 5,825 square feet ("sq. ft.") of retail space. The Respondent has classified the building as "B" class. The land area is 6,509 sq. ft.

Issues:

- [3] Which of the Complainant's rental rates is appropriate in the context of the assessment of the subject property?
- [4] What is the acid test to confirm a valuation based on an appropriate rental rate, all other factors in the assessment remaining the same?

Complainant's Requested Value: \$1,710,000

Board's Decision:

- [5] The Board confirms the assessment at 2,060,000.

Position of the Parties

Complainant's Position:

[6] The assessment amount is not reflective of the correct application of the assessment range of key factors and variables. Key factors include location, parcel size, improvement size

and influences. The assessment amount is neither fair nor equitable relative to similar properties.

[7] The floor area of the subject property is assessed at \$22 per sq. ft. (C-1, page 7). The Complainant's first concern upon examining the Respondent's evidence was that leases were used without any indication of civic addresses (C-1, page 11). Without the addresses, neither the locations of the buildings nor their classifications can be determined. What can be said is that the median rate of leasing activity in these buildings without addresses is significantly higher than the assessed retail rate in the City's analysis. The Complainant requests that the Board disregard those leases without addresses.

[8] The Complainant has determined that the Respondent made two mistakes in its beltline retail lease rate analysis. The first mistake is the use of leasing information from as long ago as 2008. The leasing market has fallen since then. The second mistake is that the Respondent ignored economies of scale in regard to leasing by failing to break out the different commercial rental unit ("CRU") spaces. The Respondent recognizes CRU spaces in the suburban market as follows: CRU 0 - 1,000 sq. ft., CRU 1,001- 2,500 sq. ft., CRU 2,501 - 6,000 sq. ft., and CRU 6,001 - 14,000 sq. ft..

[9] The reason for using CRU spaces is to account for economies of scale, but for retail in the Beltline the Respondent considers all spaces to be the same, no matter the sizes. The Complainant has determined that current leasing for CRU spaces in the Beltline are \$18 per sq. ft. for CRU 2,501 - 6,000 sq. ft., and \$17 per sq. ft. for CRU 6,001 - 14,000 sq. ft.

[10] The following comments are in rebuttal to page 23 of R-1 (the City's evidence package). Although the Respondent suggests that a weighted average is the more appropriate way to calculate the retail rental rate, the Complainant has determined that rents from several retail condominium units were used in the Respondent's analysis. Because condominium units are measured using different techniques than other retail spaces, they tend to skew the rents.

[11] Furthermore, the Respondent has used rental activity from a building at 1313 1 Street SE. Upon examining this, it turned out that the rents were based on a sale/lease-back between the owner and the tenant, hence the rents may not be indicative of market rental activity.

[12] After removing leases from retail condos, and 1313 1 Street SE from the Respondent's rental analysis, the Complainant has determined that the weighted average for 2009 is \$24.75 per sq. ft., and the weighted average for 2010-2011 is \$18.50 per sq. ft. If the Board prefers the City's use of a weighted average instead of segmenting out each CRU space, the value of the subject property using \$18.50 per sq. ft. is \$1,710,000 (C-2, page 10).

Respondent's Position:

[13] The subject property is a single tenant building. The Complainant is requesting an office rental rate of \$18 per sq. ft. for the subject property based on leasing specific to 2010. The Respondent will submit the 2013 B-Class retail Beltline rental summary (R-1, p.23), and will reference MGB 045-09 (R-1, page 84), which directs the use of weighted averages to determine typical rents.

[14] Diminishment of marginal returns does not always apply. Some tenants are willing to pay top dollar for larger space because they want so much to get into the Beltline.

Board's Reasons for Decision:

[15] As it happens, the Board does prefer use of weighted averages in appropriate circumstances, and the Board also prefers the use of leases that commenced near the valuation date of July 1, 2012. Further, the Board is of the view that CRU spaces make economic sense, hence the Board is in favour of their use in the Beltline.

[16] That said, the Board notes that the Complainant's analysis of leasing activity for "B" Class Beltline retail space, CRU 2,501 – 6,000 sq. ft. (C-1, page 15), yields a median of \$18 per sq. ft. and a weighted average of \$18.15 per sq. ft. Generally, larger spaces rent for less per sq. ft. than smaller, but the Complainant's analysis of "B" Class leasing activity in Beltline retail space, CRU 6,001 – 14,000 sq. ft., runs contrary to the general rule because it produces a median of \$20.57 per sq. ft. and a weighted average of \$21.77.

[17] Further on, at page 19 of C-1, there is another analysis of retail leasing activity for "B" Class Beltline space, CRU 2,501 sq. ft. – 6,000 sq. ft. This one also arrives at a median of \$18 per sq. ft., but the weighted average is \$17.49. The Board is left with uncertainty caused by the unusual variances in these analyses. Nevertheless, there is another lease rate, a lease rate of 18.50 per sq. ft., a weighted average derived from the Complainant's removal of both condominium rents and 2009 leases from the City's lease rate analysis (C-2, page 3). The Board notes the result of the Complainant's valuation method using the lease rate of \$18.50 per sq. ft. at page 10 of C-2.

[18] The Complainant instructed the Board to ignore its capitalization rate study, and the Board did so. The Complainant's requested valuation at page 10 of the Complainant's rebuttal relies on the same vacancy rate, same operating costs, same non-recoverable allowance, and the same capitalization rate as does the Respondent. The only difference between Complainant and the Respondent is the rental rate, i.e., \$18.50 as opposed to the Respondent's \$22 per sq. ft.

[19] In *West Coast Transmission Co. v. British Columbia (Vancouver – Assessor of Area No. 9)* [1987] B.C.J. 1273, the Court ruled as follows: *"I stated above that the concepts used, in developing capitalization rates for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalization rate on one set of assumptions about long term vacancy rates, long term rents, and long term expenses, and then apply that rate to the income of the subject if it is not derived in the same way."*

[20] The Court went on to say, *"All of these factors, for consistency, should be used in the same manner as they were used in the study of comparables which resulted in the development of the capitalization rate. To do otherwise is to offend appraisal theory, and is likely to produce a mistaken result."*

[21] The Board acknowledges that the decision of the Court in the *West Coast Transmission* case is not binding, nevertheless the reasoning is persuasive. The problem as the Board sees it

is that the capitalization rate of 5.25% was not derived from a net operating income based on a rental rate of \$18.50 per sq. ft., but on a rental rate of \$22 per sq. ft. Without a test by way of assessment-to-sale ratio, it cannot be known whether the result of applying the capitalization rate of 5.25% to a net operating income founded on \$18.50 per sq. ft., will result in a satisfactory approximation of the valuation standard, market value.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF October, 2013.


Presiding Officer

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

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

For Administrative Use

<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
Retail	Stand Alone	Cost/Sales Approach	Land Value

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.*