

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: 067092205

LOCATION ADDRESS: 731 10 Avenue SW

FILE NUMBER: 70609

ASSESSMENT: \$4,620,000

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's agent advised the Board that notwithstanding the contents of its written submission, it would not submit an argument in regard to capitalization rate, only rental activity. There being no objection from the Respondent, the Board acknowledged the Complainant's advice.

Property Description:

[2] On the subject property is a one storey building with 15,008 square feet ("sq. ft.") of retail space split between the main floor (10,008 sq. ft.), and a floor below grade (5,000 sq. ft.). The building, constructed in 1958, has been classified by the Respondent as a "B" building. The area of the land is 13,017 sq. ft.

Issues:

- [3] What is the proper rental rate for the subject property?
- [4] If the Complainant's rental rate is appropriate, what capitalization rate should be used?

Complainant's Requested Value: \$4,020,000

Board's Decision:

[5] The assessment is confirmed at \$4,620,000.

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. for space on the main floor, the below-grade space at \$14 per sq. ft. (C-1, page 9). The Complainant's first concern upon examination of 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 unknown buildings is significantly higher than the assessed retail rate in the Respondent's analysis. MNP requests that the Board disregard the leases that lack 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 - 6,001 sq. ft., and CRU 6,000 - 14,000, but not in the Beltline.

[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 the same no matter the sizes. MNP has determined that current leasing for CRU spaces in the Beltline are \$18 per sq. ft. for CRU 2,500 - 6,000 sq. ft., and \$17 per sq. ft. for CRU 6,001 - 14,000 sq. ft. (C-1, pages 15 & 16).

[10] The following comments are in rebuttal to page 23 of R-1 (the Respondent'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 the leases of 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 Respondent's use of a weighted average instead of segmenting out each CRU, using \$18.50 per sq. ft. for the main floor results in a valuation of \$4,028,395 (C-2, page 10). Rounded, the amount is \$4,020,000.

Respondent's Position:

[13] In the Opinion of the Respondent, the issue before the Board is this: What is the correct rental rate? The subject property is a single tenant building. The Complainant is requesting a retail rental rate of \$18 per sq. ft. for the subject property (R-1, page 5) based on leasing specific to 2010. The Respondent will submit the 2013 B-Class retail Beltline rental summary, and will reference MGB 045-09 (R-1, page 85) 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 a weighted average in the analysis of leases. It is, at least,, preferable to the Complainant "segmenting out" each CRU. The Board also prefers the use of leases that commenced nearer the valuation date of July 1, 2012. That said, the Board finds the lease rate derived from the Complainant's analysis, \$18.50 per sq. ft., reasonable in the circumstances.

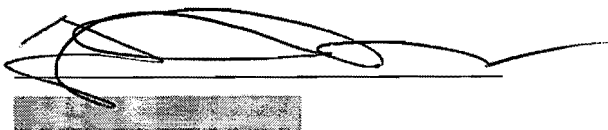
[16] The Complainant instructed the Board to ignore its capitalization rate study, and the Board did so. The Complainant's requested valuation at page 10 of the Complainant's rebuttal (Exhibit C-2) relies on the same vacancy rate, same operating costs, same non-recoverable allowance, and the same capitalization rate as the Respondent. The only difference between Complainant and Respondent is the rental rate, i.e., \$18.50 per sq. ft. as opposed to the Respondent's \$22 per sq. ft.

[17] 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 property if it is not derived in the same way."*

[18] 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."*

[19] The Board acknowledges that the decision 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 rental rate of \$18.50, but from a rental rate of \$22 per sq. ft., hence the result of the applying the capitalization rate of 5.25% to a net operating income founded on a lease rate of \$18.59 per sq. ft. is questionable at best. Only through assessment-to-sale ratio can it be determined whether the result meets the valuation standard of 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

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

<u>Appeal Type</u>	<u>Property Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Income Approach	Market Rent/ Lease Rates
