

**Calgary Assessment Review Board****DECISION WITH REASONS**

In the matter of a preliminary decision related to 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:

Sinil Holdings Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
H. Ang, BOARD MEMBER
A. Huskinson, 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:	067168005
LOCATION ADDRESS:	1403 8 St. SW
FILE NUMBER:	71527
ASSESSMENT:	\$3,120,000

The Complaint was heard on the 16th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212-31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *A. Izard*

Appeared on behalf of the Respondent:

- *C. Fox*
- *M. Byrne*

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Panel constituted to hear this matter and make a decision on the assessment.

[2] Both parties requested that the evidence, questions, answers and argument related to the capitalization rate issue considered in Complaint File No. 72151 be carried forward to this hearing. This includes evidence packages referred to as Exhibits C2, C3 and C6. The Board agreed to carry forward the evidence and argument, and to maintain the reference to Exhibits C2, C3 and C6. The only new evidence presented by the Complainant is Exhibit C1, the evidence specific to this property and complaint. Exhibit R1 is similar to but not exactly the same as presented in File 72151, so is also unique to this complaint.

Property Description:

[3] The subject property is a single storey A2 quality building located in the Beltline District, and specifically in the BL4 sub-district, constructed in 1975. The building has a total of 6,341 square feet (SF) of assessed space demised into four bays or units. Two units, consisting of a total of 3,217 SF, are assessed as "fast food restaurant" at \$36/SF. Two units, consisting of a total of 3,124 SF, are assessed as "retail" space at \$27/SF. Both space components are assigned an operating cost of \$12/SF, vacancy rate of 9.5% and non-recoverable rate of 1%. The capitalization rate used is 5.5%. The 2013 assessment calculated using these rates is \$3,120,000.

Issues:

[4] Both parties addressed a number of topics, but only those topics that are germane to the issues and supported by evidence are discussed in this decision. All these issues relate to whether the 2013 Assessment is correct.

1. What is the correct rental rate for the "fast food restaurant" space?
2. What is the correct capitalization rate for the subject A2 retail property?
3. Is the subject property equitably assessed?

Complainant's Requested Value: \$2,430,000

Board's Decision:

[5] The Board reduces the 2013 Assessment to \$2,860,000.

Legislative Authority:

[6] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. Section 467(3) of the Act states that 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. The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[7] The Board notes that the words "fair" and "equitable" are not defined in the MGA or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard.

Issue 1: What is the correct rental rate for the "fast food restaurant" space?**Complainant's Position**

[8] The Complainant noted that the assessment must reflect the fee simple value of the property, therefore it was not appropriate to consider the tenant in deriving a rental rate. The Complainant took the position that the building was the same, regardless of its use as retail space or restaurant space, and that any additional value in the restaurant space is due to tenant improvements that would be removed if the current tenants left (Dairy Queen and Big John's Pizza). Therefore, the same rental rate applied to the retail space in the subject property should be applied to the restaurant space. The retail space reflects the market rate for the property and a rate of \$27/SF for the entire assessed area is equitable.

[9] The Complainant presented the rent roll for the subject, dated February 28, 2012 (page 28, Exhibit C1) to demonstrate that the space occupied by the Dairy Queen is paying \$27/SF, the same as the Mac's Convenience Store (assessed as retail space).

[10] In support of the \$27/SF rate, the Complainant presented the City's 2013 Beltline 1-5 CRU Rental Analysis A-A2, which supports the \$27/SF rate.

Respondent's Position

[11] The Respondent presented a summary of the Beltline CRU analysis, to demonstrate that the rate assigned restaurant space in BL 1-4 in A and A2 buildings is \$36/SF. The Respondent noted that in the Assessment Request for Information (ARFI) dated August 28, 2012 (page 19-22, Exhibit R1) the restaurant space leased by Big John's Pizza (780 SF) was renewed for a five year period at a rate of \$35/SF. The other three leases were five year leases signed in 2005 and 2006, but there was no indication of when or if they were renewed.

The Board's Findings on this Issue:

[12] The Board heard much argument about whether the restaurant space was or was not similar to the retail space in the subject property, and much speculation as to what may or may not be tenant improvements. The Board put little weight on this discussion.

[13] The City's assessed rental rate for restaurant space is \$36/SF. The 2012 lease renewal by Big John Pizza is at \$35/SF. This is all the evidence the Board received regarding rental rates for restaurants, however, this one data point seems to confirm that the typical rate is being achieved by the subject property. The \$27/SF indicated on the ARFI indicates this is a rate agreed to in June 2007, therefore is dated. The Board puts little weight on this data point.

[14] The Board is not persuaded that the subject restaurant space is more properly assessed at a rate of \$27/SF, and finds that the rate of \$36/SF is the correct rate for the subject property.

Issue 2: What is the correct capitalization rate for the subject A2 retail property?**Complainant's Position**

[15] The Complainant argued that the 5.50% capitalization rate used by the City to calculate the 2013 Assessment was not supported by any study.

[16] The Complainant presented its 2013 Beltline Retail Capitalization Rate Summary (page 21, Exhibit C1) consisting of one AA Quality retail property, one A2 Quality retail property and two B Quality retail properties to support a rate of 6.00 for an A2 quality retail building. The only AA quality retail property in the Beltline (100, 1410 1 St SE) sold in July 2011 with an indicated capitalization rate of 5.81%. The A2 retail property is the Elbow River Casino located at 218 18 Av SE which sold for an indicated capitalization rate of 7.61%. The Complainant presented support documents for all these comparable sales in Exhibit C2, and argued that they were valid sales and should be used to indicate capitalization rates for the subject property.

[17] Assessment to Sales Ratio (ASR) analysis were included in the capitalization rate tables presented by the Complainant to demonstrate the validity of their capitalization rate calculations.

[18] To further support the requested capitalization rate of 6.00%, the Complainant presented the City's 2013 Power Centre Capitalization Rate Summary (page 117, Exhibit C2), which shows the assessed rate for this type of property at 6.25%.

[19] In argument, the Complainant presented a number of previous Board decisions supporting the requested capitalization rate.

Respondent's Position

[20] The Respondent argued that the AA and A2 Quality properties in the Complainant's retail capitalization rate study are not typical properties and should not be considered by the Board. The Respondent presented documents and argued that the AA property (100, 1410 1 St SE) was purchased by the adjacent owner as a land assembly, and that the casino property (218 18 Av SE) also included two surface parking lots that are required as part of the casino license and are not properly valued in the capitalization rate calculation.

[21] The Respondent presented a number of previous Board Decisions related to the use of the Complainant's retail sales as capitalization rate comparables.

[22] In response to questions, the Respondent stated that the 5.50% capitalization rate used in the assessment calculation for the subject retail A2 property is determined using the Beltline B Quality Office Capitalization Rate Study, and considers the downtown A quality office capitalization rate study, resulting in the 5.50% capitalization rate.

Board Findings on this Issue

[23] The Board acknowledges that there are a very limited number of comparable sales available to indicate a capitalization rate.

[24] The Complainant presented a Beltline Retail Capitalization Rate analysis with a range of 4.78-7.61%. The Respondent argued that the properties used in this capitalization rate analysis were of properties that were not comparable to the subject for a number of reasons. The Board acknowledges that the properties were not comparable to the subject in all characteristics, but that this is the best evidence before the Board.

[25] Based on the capitalization rates presented, the Board finds that a capitalization rate of 6.00% is more reflective of an A2 quality retail/office property.

Issue 3: Is the subject property equitably assessed?

[26] Neither party presented any equity comparables. The equity argument presented by the Complainant was simply a comparison within the subject property, between the "retail" and "fast food restaurant" space categories. Such an equity comparison is not sufficient to demonstrate that equity does not exist. The Board finds that there is insufficient information to determine whether the subject is equitably assessed.

Board's Decision:

[27] The Board confirms the rental rate of \$36/SF for the "fast food restaurant" space component and concludes that the appropriate capitalization rate for the subject property is 6.00%. The other factors used to calculate the 2013 assessment were not in dispute at this hearing. Applying these factors to the income approach calculation results in the 2013 Assessment of \$2,860,000.

The Board reduces the 2013 Assessment to \$2,860,000.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF November 2013.



Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure – 2013 Beltline Retail Cap Analysis
3. C3	Complainant Disclosure – Evidence Appendix
4. C6	Complainant Disclosure – Rebuttal Submission
5. 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.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand-alone	Capitalization rate	Sales