



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:

Sable Developments-Kensington Gate Corp. (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
A. Maciag, BOARD MEMBER
J. Massey, 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:	067859926
LOCATION ADDRESS:	101 – 10 Street NW, Calgary AB
FILE NUMBER:	71553
ASSESSMENT:	\$15,170,000

This complaint was heard on the 12th day of June, 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:

- *C. Hartley and B. Peacock*

Appeared on behalf of the Respondent:

- *H. Argento and N. Sunderji*

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

- [1] There were no preliminary procedural or jurisdictional matters before the CARB.

Property Description:

[2] The property that is the subject of this assessment complaint, known as "Kensington Gate," is a strip of retail stores with a second floor of offices. The property is prominently located on the northwest corner of Memorial Drive and 10 Street NW, facing onto the 10 Street bridge from downtown. The property also has frontage to Kensington Road NW.

[3] The building was constructed in 1991. There is a total rentable area of 38,613 square feet of which 11,721 square feet are second floor offices. The retail area has tenant spaces of varying sizes. The largest retail tenant is Julio's Barrio Mexican Restaurant and Lounge which occupies 7,532 square feet on the prominent Memorial Drive – 10 Street corner. Chocolaterie Bernard Callebaut occupies the 1,204 square foot store on the corner at 10 Street – Kensington Road. There are two tenants currently in occupancy of second floor office space, one of which is the property owner. The second office tenant is Bulldog Oil & Gas which occupies an area of 6,194 square feet.

[4] The 2013 assessment was prepared using an income approach. Depending on the size of premises, rent rates from \$25.00 to \$36.00 per square foot were assigned to retail space. The second floor office space has a rent rate of \$21.00 per square foot. An overall 4.0 percent vacancy allowance was deducted as was a 1.0 percent non-recoverable expense allowance. For vacant space, operating costs were deducted at a rate of \$8.00 per square foot. The resulting net operating income of \$1,024,253 was capitalized at a rate of 6.75 percent to arrive at the \$15,170,000 assessment.

Issues:

[5] In the Assessment Review Board Complaint form, filed March 1, 2013, Section 4 – Complaint Information had a check mark in the box for #3 "Assessment amount".

[6] In Section 5 – Reason(s) for Complaint, the Complainant stated a number of grounds for the complaint however many of these were not addressed at the hearing.

[7] At the hearing, the Complainant pursued the following issues:

- 1) The rental rate applied to second floor office space should be reduced from \$21.00 to \$12.00 per square foot.
- 2) The vacancy rate should be increased from 4.0 percent to 11.0 percent.
- 3) The capitalization rate should be increased from 6.75 to 7.50 percent.

Complainant's Requested Value: \$11,120,000

Board's Decision:

[8] The complaint is partially successful and the assessment is reduced from \$15,170,000 to \$13,680,000.

Position of the Parties

Complainant's Position:

[9] The Respondent uses 13 strip shopping centre sales in its capitalization rate analysis. The locations of the centres vary. Five of the 13 properties are in either the northeast or northwest quadrants (the subject is in the northwest).

[10] The capitalization rates for the five sales with northeast or northwest locations are higher than those for the eight centres in the south half of the city, averaging 7.20 to 7.21 percent. The capitalization rates for the eight sales in the south average 6.09 to 6.33 percent. The Complainant argued that four of the south sales are either on Macleod Trail or influenced by that roadway and those four sales tend to bring the capitalization rates lower.

[11] With weight given to the five sales in the north, the subject capitalization rate should be increased from 6.75 to 7.50 percent.

[12] The three year vacancy history for the property showed vacancy rates of 8 percent, 11 percent and 16 percent. (At the hearing, it was discovered that the 8 percent rate should have been 12.8 percent). The median rate of 11 percent should be applied in the assessment valuation. A copy of the July 2012 response to the Respondent's Assessment Request for Information (ARFI) showed vacant space of 5,939 square feet (15.38 percent of the total area). The 2012 tenant roll showed 2,812 square feet of vacant retail space and 3,127 square feet of vacant office space. For 2010, the same amount of office was vacant but retail vacancy was 1,832 square feet. As at September 2011, the only vacancy was the 3,127 square feet of office.

[13] In support of the requested office rent rate reduction, the Complainant provided data on the two office leases in the subject property. Both leases commenced on January 1, 2010. Bulldog Oil & Gas pays a rent of \$12.00 per square foot for the 6,194 square feet. Sable Developments, the property owner, pays the same \$12.00 rate. In the Respondent's 2013 Retail Office Leases analysis, the Complainant found four Kensington area leases at rents of \$12.00 (the subject's Bulldog lease), \$14.50 (1431 Kensington Road NW) and \$18.00 (two leases at 1982 Kensington Road NW). With the most weight put on the subject leasing and the subject's high office vacancy, a rate of \$12.00 per square foot should be used.

[14] The evidence of the Complainant included a Queen's Bench judgment "*Mountain View (County) v. Alberta (Municipal Government Board) 2000 ABQB 594*." That order established that

the proper standard for valuation is market value. In a summary paragraph, Justice Fraser stated, *"I am of the view that the Board was entitled in law to reduce the land assessment under review to market value as it did, notwithstanding that the resulting value was not determined by the use of mass appraisal and notwithstanding that the revised assessment may not have been fair and equitable at the time having regard to other assessments in the County."* From this, the Complainant concluded that the market value standard must at all times be met. It is not that mass appraisal cannot find market value. It is that dissimilar data or a limited amount of market data makes mass appraisal less reliable therefore actual data from the subject property can provide a true market value estimate.

Respondent's Position:

[15] On a city-wide basis, there have been 13 shopping centre sales that could be analyzed to find an appropriate capitalization rate for strip shopping centres. The Complainant is attempting to reduce the number of properties for analysis by isolating five sales where those properties happened to be in the north half of Calgary. There is no market based rationale for making this arbitrary stratification of the sales. Typically, the larger the number of sales in the analysis, the better the conclusion.

[16] The Respondent argued that the Complainant has provided no evidence to support its position that properties in north Calgary sell at higher capitalization rates than properties in the south.

[17] Given the location and excellent exposure of the subject property, the Respondent suggested that the capitalization rates from the Macleod Trail sales might be the best indicators for the subject.

[18] With regard to vacancy, the Respondent provided its vacancy analysis that supported its vacancy rate of 4.0 percent that is applied to strip centres.

[19] By comparing tenant rolls in the evidence disclosures, the Respondent argued that vacant retail spaces changed from time to time and even from month to month during a given year. This was proof that the subject property did not suffer from any chronic vacancy problem. The Respondent's information showed that for 2008 and 2009, there had been no vacancy at all in the subject.

[20] The Respondent's office rent rate was supported by lease samples from other retail-office properties. One of the Complainant's Kensington Road examples was included as was the Bulldog lease. The majority of the lease data pertained to leases in a property in Ranchlands, a community in suburban northwest Calgary. The Respondent argued that the median (\$20.00) and mean (\$20.24) averages from the nine lease sampling supported the \$21.00 rate applied to the subject office space.

Board's Reasons for Decision:

[21] The CARB finds that there is insufficient support for any changes to the vacancy rate or the capitalization rate. The evidence does support an adjustment to the office rent rate.

[22] Of the 13 sales in the capitalization rate analysis, six were 2012 sales and those more current sales support the 6.75 percent capitalization rate selected by the Respondent for strip centres.

[23] The 13 sale properties have varying characteristics other than location in the north or

south parts of Calgary. Building ages and sizes vary. The subject property has 38,613 square feet of rentable retail and office area whereas the 13 sale properties range from 2,834 to 39,480 square feet. Some of the properties have prominent locations on major roadways while others are within residential communities. There are four properties in south Calgary with Macleod Trail influence. Those in the north do not have "highly" similar locations to the subject. The Edmonton Trail sale actually involved two separate properties that are located immediately north of the downtown core of the city. That property has the most similar location to the subject. It sold on the basis of a 5.56 percent capitalization rate. Another sale property has a 16 Avenue NW address which means that it is located on the Trans-Canada Highway in a commercial area. Its capitalization rate (March 2010 sale) was 9.27 percent. The CARB finds that if the 13 sales were to be stratified so that only those with highly similar characteristics to the subject were used in the capitalization rate analysis, the result would be based on one or two sales at best and this would not be a good sampling of market activity and investor expectations for this type of investment property.

[24] The conclusion that the CARB draws from the capitalization rate analysis is that the Respondent has used mass appraisal techniques in determining the appropriate capitalization rate for strip retail centres and given the amount and diversity of data that it had to work with, has come to a reasonable conclusion.

[25] The CARB accepts the Respondent's position that the evidence does not support a claim for a higher overall vacancy rate. Other than some office space, there has not been any retail bays that been consistently vacant over the years.

[26] It is a finding of the CARB that the office space in the subject property is not in high demand. The last lease for office space was in 2010 when the \$12.00 rate was set. The Respondent's \$21.00 rental rate is strongly influenced by its lease samples from the Ranchlands property. The CARB does not find any locational or market similarities between the Ranchlands property and the subject. Ranchlands is located some 16 kilometres northwest of the subject Kensington area. The Ranchlands property adjoins a densely developed retail power centre. It is apparent that Kensington retail space brings high rents but office space is not as highly regarded. The CARB therefore accepts the Complainant's requested rate of \$12.00 per square foot.

[27] Recalculation of the income approach with the office rental rate reduced to \$12.00 per square foot yields an assessment amount of \$13,680,000.

DATED AT THE CITY OF CALGARY THIS 4 DAY OF July 2013.

W. Kipp

W. Kipp

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 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 Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Mall	Income Approach	Rent Rate Vacancy Rate Capitalization Rate