

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:

Artis Mountpara LTD., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Petry, PRESIDING OFFICER

B. Jerchel, BOARD MEMBER

E. Bruton, 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: 067022509

LOCATION ADDRESS: 630 4th Street S.W.

FILE NUMBER: 72017

ASSESSMENT: \$27,370,000

This complaint was heard on the 9th day of August, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- S. Storey, Fairtax Realty Advocates

Appeared on behalf of the Respondent:

- L. Wong, City of Calgary

Property Description:

- [1] The subject is a class B office complex in the downtown and consists of 68,069 square feet (sq. ft.) of rentable floor space. The property also includes 47 parking stalls. The assessment has been determined by the capitalized net income approach. The Complainant has challenged the capitalization rate (cap rate) of 5% and the rental rate of \$19 per sq. ft.

Preliminary Matters:

- [2] The Respondent raised an objection concerning rebuttal evidence that the Complainant intends to place before the Board in this hearing. There were three rebuttal documents, submitted by the Complainant in this matter and these documents were tentatively marked as C-2, C-3 and C-4.
- [3] The Respondent argued that the Complainant had not disclosed any evidence in accordance with the Matters Relating To Assessment Complaints Regulation (MRAC) section 8(2)(a)(i) and is now attempting to introduce its evidence in chief as rebuttal evidence. The Respondent argued that there is no connection between the Complainant's rebuttal evidence and the disclosure made by the Respondent and marked as R-1. Therefore the three rebuttal documents are not true rebuttal evidence and should be disallowed by the CARB.
- [4] The Complainant explained that it had every intention of disclosing its evidence in chief at the appropriate time but there had been some problem in faxing these materials and they did not get through to the Assessment Review Board or to the Respondent in a timely manner. Nevertheless, the Complainant argued that it has the right to present rebuttal evidence and this evidence is properly before the CARB as it does in fact respond to the Respondent's filings in this matter. The Complaint form indicates clearly that the cap rate used by the Respondent is incorrect. The rebuttal evidence is in response to the Respondent's evidence respecting four sold properties where 5% and 6% cap rates are shown to have been applied by the Assessor. The 5% cap rate applied to the subject is in dispute and the Complainant maintained that it should not be denied the opportunity to put forward its evidence to show that the cap rate value used by the Respondent is incorrect.

Decision on the Preliminary Matter

- [5] The CARB carefully reviewed the proposed rebuttal evidence along with the Respondent's disclosure and found that the rebuttal evidence is new evidence and does not directly respond to the evidence disclosed by the Respondent. Section 8(2)(a)(i) of MRAC provides the following:

"(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing"

- [6] The Complainant in this case did not comply with any of the above. There was no disclosure of evidence, no summary of testimonial evidence, no witness reports and no written argument exchanged 42 day before the hearing. Section 8(2)(c) sets out the same requirements for rebuttal evidence and also requires that rebuttal must be in response to the Respondent's disclosure. Section 9(2) of MRAC states the following:

"A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."

- [7] The CARB found that the evidence contained in the Complainant's three rebuttal documents had not been properly disclosed in accordance with section 8 of MRAC, and further, that the evidence was not in direct response to any evidence disclosed by the Respondent. The Complainant's rebuttal evidence was new evidence, directly in support of the matters raised in its complaint and should have been disclosed 42 days prior to the hearing date. To allow such evidence to be introduced at the rebuttal stage would result in a splitting of the Complainant's case.

- [8] The CARB also reviewed a Court of Queen's Bench, "application for leave to appeal", decision by Madam Justice B.L. Veldhuis, which addresses the question of excluding rebuttal evidence. In this case, GSL Chevrolet Cadillac Ltd. argued that it could not have included rebuttal evidence in its initial disclosure because it did not know on what grounds the City would defend its assessment. Madam Justice B.L. Veldhuis addresses the issue in the following manner in paragraph (20) of her decision:

"This is not an argument disputing a question of law. At best it is an expression of dissatisfaction with the statutory regime. At worst, it is an intentional splitting of the complainant's case, the very thing the MRAC disclosure provisions are designed to prevent".

Then at paragraph 21, *"The only error of law in this circumstance would have been to include this evidence, when the statutory regime clearly prohibited it".*

- [9] The CARB has concluded that even though the argument as to why the rebuttal evidence should be allowed, is different in the case at hand, the reason for disallowing such evidence is the same as in the GSL Chevrolet Cadillac Ltd. decision.
- [10] Accordingly, for the reasons reviewed above, the CARB disallowed the Complainant's rebuttal evidence except for a decision of the CARB, number 1589/2012-P. The rebuttal documents were returned to the Complainant after the Board's ruling on the matter.

Merit Issues:

- [11] What is the correct cap rate to be applied when determining the market value of the subject property using the capitalized income approach?
- [12] Should the rental rate for the subject property be reduced from \$19 per sq. ft. to \$18 per sq. ft.

Complainant's Requested Value:

- [13] The Complainant's request is that the assessment be reduced to \$19,200,000.

Board's Decision:

- [14] The CARB confirms the assessment at \$27,370,000.

Legislative Authority, Requirements and Considerations:

- [15] The Composite Assessment Review Board (CARB), derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(2): Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing an assessment, the assessor must, in a fair and equitable manner, apply the valuation and other standards set out in the regulations, and follow the procedures set out in the regulations

The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1)(b). The CARB consideration will be guided by MRAT Part 1, Standards of Assessment, Mass appraisal section 2:

An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property

Summary of the Party's Positions

Complainant

- [16] The Complainant argued that the subject property has experienced a 140% increase in the assessed value over the previous year and that the current assessment does not reflect the subject property's market value. There has been little change to the lease rates in place, the tenants are the same and the property has not changed since last year's assessment. Therefore the Complainant suggests that, on its face, an increase of 140% is totally unrealistic.
- [17] The Complainant argued that most of the increase relates to the dramatic decrease in the cap rate. Cap rates have a long standing hierarchy wherein properties with less perceived risk will sell at lower cap rates than properties with higher risk. B class buildings are perceived to have a higher risk than the risk associated with A class buildings, and yet the City of Calgary appears to have these rates reversed. B class buildings have been assessed using a 5% cap rate while A class buildings have been assessed using a 6% cap rate. This makes no sense. The typical hierarchy is also consistent in the reports generated by third party reporting agencies such as CBRE.
- [18] The Complainant also suggested that cap rates reported by agencies such as CBRE represent a reasonable reflection as to the correct range for cap rates applicable to various investment property types. CBRE report cap rates for downtown B class office buildings to be 6.75% – 7.25% for Q1, 2012 and 6.50% – 7.00% for Q2, 2012.
- [19] The Complainant argued that in most cases, sales of properties such as the subject include leasehold interests, which ultimately affect the selling price. Purchasers will pay a premium for a property that is leased-up at rates that today in all likelihood exceed the current typical lease levels. The Respondent has not made any such adjustment to sales prices used in its cap rate analysis.
- [20] It would also appear that the Respondent has engaged in sales chasing. This arises when the increase in value of unsold properties is more than the increase in value for properties that actually sold.
- [21] The Complaint form had included a table showing information on 14 sales and their respective cap rates. The average cap rate for all 14 sales was 6.7%. For the B class sales only, the average cap rate was shown to be 6.83%. On this basis the Complainant argued that the appropriate cap rate for the subject property is 6.8%.
- [22] The Complainant provided its pro-forma analysis using its recommended cap

rate of 6.8% and a lease rate of \$18.00 per sq. ft., resulting in a proposed value of \$19,199,313 rounded to \$19,200,000.

Respondent

- [23] The Respondent indicated that the Complainant had made no disclosure except for the complaint form itself. No evidence was provided by the Complainant in support for a lower lease rate and the Respondent maintained that the assessment has been done fairly, equitably and at market.
- [24] The Respondent brought forward the assessment detail sheets for four properties to show that the subject property had been assessed in the same manner as other B class properties in the downtown. These documents confirmed that the Respondent had used the same parameters for the assessments of the other properties where the class is the same as the subject. This information also confirmed that an A class building located at 800 5th Avenue S.W. had been assessed using a cap rate of 6% and a rental rate of \$24 per sq. ft.
- [25] The Respondent argued that the Complainant's cap rate information was unsupported as there was no information respecting the sales or how the cap rates were determined. Cap rates must be determined using typical net operating factors and sale prices should not be adjusted as suggested by the Complainant.
- [26] The Respondent stated that the Complainant has no case for its suggested changes to the assessment and requested that the assessment be confirmed.

Findings and Reasons for the Board's Decision:

- [27] The CARB shares the Complainant's concern with respect to the large 140% year over year increase to the subject property's assessment and also with the inverted cap rates where a rate of 6% has been applied to A class buildings while a 5% rate has been applied to B class buildings. While these facts may lead to reasonable and challenging questions regarding the assessment, the Complainant bears the onus to introduce compelling evidence that would support a more correct or probable result.
- [28] Such evidence was not disclosed in the first instance, 42 days prior to the hearing. In light of the CARB's decision respecting the rebuttal evidence in this case, the Complainant was left with only the minimal information it had included with the complaint form. This document did not include any evidence in support of the change the Complainant sought with respect to the lease rate issue.
- [29] The testimony of the Complainant revealed that the cap rates were developed using actual rather than typical net operating income (NOI). For assessment purposes both the derivation and the application of cap rates should be based on consistent, typical data. The CARB did not have evidence showing the analysis completed by the Complainant nor did it have sufficient sales data or property information to determine the validity of the Complainant's cap rate

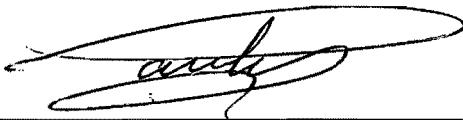
study.

[30] In the final analysis, the Complainant's evidence was insufficient and it failed to advance a case on which the CARB could base a decision to reduce the assessment.

[31] The assessment is therefore confirmed at \$27,370,000.

It is so order.

DATED AT THE CITY OF CALGARY THIS 5th DAY OF
September 2013.



Presiding Officer

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

NO.	ITEM
1. C1	Complainant Complaint Form
2 C2	Complainant CARB 1589/2012-P
2. 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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Commercial	B Class Office	Downtown	Cap Rate	Disclosure Issue