



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:

KANE'S MOTORCYCLE SHOP LTD. (as represented by Altus Group Ltd), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***R. Glenn, PRESIDING OFFICER
E. Bruton, BOARD MEMBER
D. Julien, 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:	201335072
LOCATION ADDRESS:	914 11 ST SE
FILE NUMBER:	72148
ASSESSMENT:	\$5,760,000

This complaint was heard on Tuesday, the 9th day of July, 2013 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 2.

Appeared on behalf of the Complainant:

- K. Fong, Agent

Appeared on behalf of the Respondent:

- B. Thompson, Assessor
- C. Yee, Assessor

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

[1] When asked, neither party raised any issues with regard to either Jurisdiction or, Procedure. However, the parties made a joint submission indicating that they wished all of the evidence and argument from file CARB 72901 to be applied to all of the subsequent files in this series. These files include: CARB 72073, CARB 71439, CARB 72303, CARB 72117, CARB 72112, CARB 72683, CARB 72135, and CARB 72271, with all of the foregoing being 2013-P. The Board agreed to allow this, and to apply the instant evidence and argument to all the subsequent files in this series as above.

Property Description:

[2] The subject property is a retail free-standing big box building operating as KANE'S MOTORCYCLE SHOP, located in the community of Inglewood in SE Calgary, built in 2000, and comprising a gross building area of 44,674 SF.

Issues:

[3] Both of the parties agree that the only real issue here is the Capitalization Rate. The Respondent used a Cap Rate of 7% in their assessment, whereas the Complainant advocates for a 7.5% Cap Rate.

Complainant's Requested Value:

[5] \$5,370,000

Board's Decision:

[6] The Cap Rate is confirmed at 7.00%, or, an assessment of \$5,760,000.

Complainant's Position:

[7] The Complainant argues 2 main points. These are:

- (a) in reviewing the 3 sales transactions provided to the Complainant by the ABU (Assessment Business Unit) under a section 299 request, the ABU failed to include six additional market sale transactions in determining their typical capitalization rate for Freestanding Retail properties within the municipality. As a result, the Complainant will argue that the ABU's Cap Rate analysis is fundamentally flawed. Further, when following the Capitalization Rate Methodology employed by the ABU, an increase in the Respondent's current Cap Rate of 7% is well supported.
- (b) when testing the Complainant's findings against the current assessed values of the nine sale properties, the ABU's current 2013 assessed values do not meet the legislative standard of having a result between 0.95 and 1.05 Assessment to Sales Ratio (ASR).

[8] The Complainant begins their argument in earnest by querying how the instant Capitalization Rate was arrived at. It is apparent from the Respondent's materials that they did indeed rely on only 3 sales comparables for their 2013 Freestanding Capitalization Summary. The Complainant states the Respondent should have included an additional 6 sales, and lists them.

[9] The Complainant goes on to provide an analysis which shows that the average of the 9 comparable cap rates is 7.47%, and the median is 7.39%. They go on to state that the determination of the cap rate is not a science, but it is an art. They carry on showing that the ASR (Assessment to Sales Ratio) for the 9 sales comparables in their current cap rate averages 1.076 with a median of 1.055, whereas with a cap rate of 7.50%, the ASR averages 0.996 with a median of 0.985. Based on that view, they state that the current assessment is beyond the legislated requirement. Further, the assessment here is beyond the sale price.

[10] The Complainant then goes on to analyze each of the comparable nine sales with a view to showing the sales were all bona fide arms-length transactions. In almost all the comparables, the assessment was higher than the sale price. The Complainant goes on to pose the question: what is the proper market value for assessment purposes?

[11] They argue that the Respondent does not take rent into account in their assessment. They suggest that the Respondent takes the "looks and quality of a property into account", but little else. They carry on suggesting that: signage income, traffic count, and a number of other similar factors, are difficult to assess. They say the Respondent does not assess cell phone towers on commercial buildings. They reiterate the cap rate calculation on each of the 9 sales comparables. They reiterate that all of the sales comparables were sold on the open market.

[12] The Complainant sums up their argument by stating that their evidence should be preferable because they used only one approach and they considered 9 properties, whereas the Respondent used only 3 (actually 4) in their analysis. The Complainant's state that if the Respondent's method was followed, the resultant Cap Rate becomes "shockingly low".

[13] They agree that the proper test is market value, but add that there must be an open market sale to be a valid comparison. They say the Respondent's sale ARFI's had big mistakes in their numbers.

Respondent's Position:

[14] The Respondents commence their argument by confirming that they used typical values to arrive at the current cap rate, and subsequently, their current assessment. They state that most income producing properties are valued based on their income potential. They used a regressed typical lease rate by observing market triple net leases from January 1, 2010 to June 30, 2012. They agree that they only had 4 sales comparisons, but, they say that it is the quality of the sales that makes them very valid comparables.

[15] They reiterate that direct capitalization is the method employed to value all of the properties in the commercial retail inventory using the income approach. This involves capitalizing the typical net operating income by a typical overall capitalization rate determined from the comparable sales of similar properties. The Respondent also provides the figures which are the basis for their assessment at \$5,760,000.

[16] The Respondent also queries where the Complainant obtained their information regarding Net Operating Income for the sales comparables. In 5 out of their 9 sales comparables, the Complainant relied on an NOI figure that was different than that relied on by the Respondent. In at least one of the sales, there was a vendor take back mortgage, and so the Respondent argues the transaction was not arm's length. The Respondent argues that they are not sure how the Complainant arrived at the NOI's they relied on, but the Respondent once again reiterates they used typical figures in their calculations.

[17] The Respondent also notes that during the sale year, assessed net operating income did change slightly for 2 of the sales comparables. They also argue throughout their presentation that the Complainant's Cap Rate calculations were inconsistent.

Board's Decision in Respect of Each Matter or Issue:

[18] The 3 sales the Respondent relied on support the Cap rate of 7%. There is serious doubt that the 4th sale which the Respondent relied on would support the 7% figure when this property has a 4% Cap Rate. The sale questionnaire produced by the Respondent supports the in-depth analysis used for their Cap Rate study. The Respondent uses 2013 for the 2012 income study, whereas the Complainant mixes 2011 and 2012 data for their analysis in order to arrive at their requested Cap Rate of 7.5%.

[19] In their summary of testimonial evidence, the Complainant seemed to not be aware of all of the information from the Respondent. In addition, the Complainant argued that non-arms length and non-brokered sales should not be used in an analysis. They say the problem with sales of these types is that the Complainant queries whether they were "properly marketed" and so they raise a question as to the validity of the sale prices relied on by the Respondent.

[20] On the whole, the evidence of the Complainant lacked the sense of credibility and veracity provided by the evidence of the Respondent. The evidence of the Complainant seemed to require a stretch in order to properly support their requested increased Cap Rate. The evidence of the Complainant simply did not rebut the evidence of the Respondent. The Board was not prepared to accept the Complainant's evidence as adequate proof that a change was indicated.

[21] Based on all of the foregoing, the Board finds that the argument of the Complainant fails, and therefore the subject Cap Rate is confirmed at 7% and the assessment is confirmed at \$5,760,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF AUGUST, 2013.



R. Glenn
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Additional Disclosure
3. C3	More complainant Disclosure
4. 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.*