

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:

CERTUS DEVELOPMENTS INC.
(as represented by Altus Group.)
COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Krynski, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
P. Charuk, 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:	067091306
LOCATION ADDRESS:	815 10 Avenue SW
FILE NUMBER:	72325
ASSESSMENT:	\$8,540,000

This complaint was heard on 6th day of August, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *B. Neeson*

Appeared on behalf of the Respondent:

- *R. Ford*

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

- [1] The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the Hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

- [2] The subject property comprises a 2 storey "B" quality retail building, located at 815 10 Avenue SW. It is situated in the Beltline District of the City's Downtown Core. The building has an assessed area of 23,741 square feet (sf) and the year of construction is 1998. It is situated on a 16,278 sf parcel of land.

Issue:

- [3] The 5.25% Capitalization Rate (cap. rate) being applied in the Income Approach is incorrect, thereby resulting in an erroneous assessment.

Complainant's Requested Value: \$ 7,480,000

Board's Decision

- [4] The Board confirms the assessment at \$8,540,000

Legislative Authority, Requirements and Consideration

- [5] The Calgary Composite Assessment Review Board takes authority from the Municipal Government Act and associated Government of Alberta Legislation and Regulations.

Complainant's Position:

- [6] Respecting the capitalization rate issue, both Complainant and Respondent have requested that all evidence and argument presented at this Hearing, be cross-referenced to this Board's scheduled Complaints as follows: File Numbers 72252; 72325; 72327; 72729.
- [7] The Complainant is arguing that the Capitalization rates of 5.25% and 5.5% applied respectively to assessments of B and A class retail properties in the Beltline District, are excessively low, which results in assessments that are not reflective of market value as at July 1, 2012. Altus is requesting that both the B and A quality Beltline retail capitalization rates be changed from 5.25% and 5.5%, to 6.0% for both.
- [8] In support of their request, the Complainant has provided the "Altus 2013 Beltline Retail Capitalization Rate Analysis" as summarized below. [Pg. 23, C-1]

Sale #	Address	Qual.	NRZ	AYOC	AREA (sf)	Sale Date	2013 Asmt.	Sale Price	N.O.I	C/R	ASR	ASR@6%
1	100, 1410 1 St. SE	AA	BL2	2008	23,709	07/08/2011	12,570,000	\$12,800,000	\$744,069	5.81%	0.98	0.91
2	520 17 Ave. SW	B	BL2	1912	5,672	24/10/2011	2,980,000	\$3,150,000	\$150,255	4.78%	0.95	0.83
3	1451 14 St. SW	B	BL5	1962	11,259	23/05/2012	2,940,000	\$2,600,000	\$154,410	5.94%	1.13	0.99
4	218 18 Ave. SE	A2	BL8	2005	77,681	07/03/2012	28,780,000	\$20,800,000	\$1,583,440	7.61%	1.38	1.27
Average:										6.03%	1.11	1.01
Median :										5.88%	1.06	0.98

- [9] It was noted that sales 1, 2 and 3 were also included in the Respondent's evidence. The Complainant has included sale #4, (Elbow River Casino). In the opinion of the Respondent, it is a current sale and notwithstanding that it is a Casino, it is representative of the B quality group of retail properties in the Beltline.
- [10] In the Complainant's opinion, sale #1, a AA Class retail Condo and sale #4, the Elbow River Casino, an A class property should be included in the B class retail analysis, as the City has merged all classes into a single capitalization rate in other instances, therefore the same should be done for the Beltline retail, with a single 6% capitalization rate spanning all quality classes.
- [11] Further to this, the Complainant argued that, even though it was included in their initial summary chart above, sale #2 at 520 17 Ave. SW, should ideally be removed from the analysis. Altus claims that the property was not listed with a broker, and furthermore, the purchaser was unduly motivated to purchase the property, thereby paying above market value. The purchaser owns the property next door, and was assembling a future redevelopment site. An email to Altus from a representative of the purchaser was submitted, attesting to this notion. Consequently, the Complainant submitted a second analysis, excluding the referenced sale: [Pg. 23, C-1]

Sale #	Address	Qual.	NRZ	AYOC	AREA (sf)	Sale Date	2013 Asmt.	Sale Price	N.O.J	C/R	ASR	ASR@6%	
1	100, 1410 1 St. SE	AA	BL2	2008	23,709	07/08/2011	12,570,000	\$12,800,000	\$744,069	5.81%	0.98	0.91	
3	1451 14 St. SW	B	BL5	1962	11,259	23/05/2012	2,940,000	\$2,600,000	\$154,410	5.94%	1.13	0.99	
4	218 18 Ave. SE	A2	BL8	2005	77,681	07/03/2012	28,780,000	\$20,800,000	\$1,583,440	7.61%	1.38	1.27	
										Average:	6.45%	1.17	1.08
										Median :	5.94%	1.13	0.99

- [12] Based on the foregoing, the Complainant submits that the resulting average and median capitalization rates of 6.45% and 5.94% readily support a reduction in the Beltline B class retail capitalization rates to the requested 6%. Furthermore, per the analysis above, it is argued that the resulting Assessment to Sale Ratios (ASR's) reflect a better approximation of market value, with the application of a 6% capitalization rate. The City rate of 5.25% yields an average ASR of 1.17% and a median ASR of 1.13%, while the proposed 6% capitalization rate yields average and median ASR's of 1.08 and 0.99. This, the Complainant argues, results in a better market value assessment.
- [13] Net operating incomes (NOI) as presented in the Altus analysis were indicated to be representative of assessed sale year NOI's, based on City information.
- [14] Additionally, in support of their position, the Complainant references Municipal Government Board (MGB) Order 70576/P-2013.

Respondent's Position:

- [15] The Respondent provided the "2013 Beltline Retail Capitalization Rate Summary" [Pg. 28, R-1], in support of the assessed capitalization rates for retail properties in the Beltline District:

Sale #	Address	Qual.	NRZ	AYOC	AREA (sf)	Sale Date	2013 Asmt.	Sale Price	N.O.I	C/R
1	100, 1410 1 St. SE	AA	BL2	2008	23,709	07/08/2011	12,570,000	\$12,800,000	\$744,069	5.81%
2	520 17 Ave. SW	B	BL2	1912	5,672	24/10/2011	2,980,000	\$3,150,000	\$150,255	4.77%
3	1451 14 St. SW	B	BL5	1962	11,259	23/05/2012	2,940,000	\$2,600,000	\$153,074	5.89%
										Median (All Quality Classes): 5.81%
										Mean (All Quality Classes): 5.49%
										Median (A Quality Class): 5.81%
										Mean (A Quality Class): 5.81%
										Median (B Quality Class): 5.33%
										Mean (B Quality Class): 5.33%

- [16] The Respondent explained that, while sale #1 is included in the overall analysis, it is sales #2 and #3 that form the basis of the capitalization rates for the B class retail in the Beltline. They are both B quality retail properties, similar to the subject, and together, display median and mean capitalization rates of 5.33%. This supports the 5.25% utilized by the City.

- [17] Furthermore, the Respondent submits the Complainant's Sale #1 should be excluded from the B class retail analysis as it is a "AA" class property, quite new, (built in 2008), and not representative of the "B" quality group.
- [18] Additionally, the respondent argues that Altus sale #4 also must be excluded from the analysis. This property is the Elbow River Casino, was purpose-built as a casino, has a total assessable area in excess of 77,000 sf, containing 313 underground parking stalls, along with two additional surface parking lots that were included in the sale. It is classed as an "A" quality building, and it is the Respondent's opinion that this property is very dissimilar to the typical B class retail property in the Beltline. Further to this, sale documents report that a new mortgage registered concurrent with the sale, indicated an amount that exceeded the sale price. In the Respondent's opinion, this raises concerns respecting the validity of this sale.
- [19] Finally, the Respondent takes the position that the Subject of the Complaint is a B class retail property, and any argument and evidence respecting A class retail in the Beltline is irrelevant, and should be presented at Hearings specific to A class retail.
- [20] With respect to the Complainant's comments regarding sale #2, 520 17 Ave. SW, it is the Respondent's opinion that the Sale is arm's length, as evidenced by the Industry reports, and the letter from the purchaser wherein the purchaser states "Yes, the recent sale is an arm's length market transaction". Furthermore, it is the Respondent's opinion that little weight should be put on the purchaser's statement that they were motivated by future redevelopment plans and "paid much higher than market value", since the referenced redevelopment plans are 15 to 20 years hence, and much can change in that time. Furthermore, the purchaser swore an affidavit of transfer declaring the \$3,150,000 purchase price to be the true market value of the land. This is sworn on a legal document pursuant to the Land Titles Act, validated by a Commissioner for Oaths.

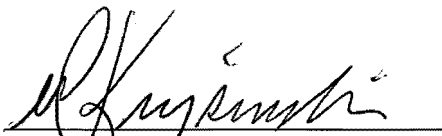
Board's Reasons for Decision:

- [21] There was insufficient market evidence from the Complainant to convince the Board that a variance to the capitalization rate is justified.
- [22] The Altus argument was initially predicated on four sales, of which one is a AA class property and one is an A class property. That leaves two B class sales. However, the Complainant argued that one of the sales (520 17 Ave. SW) was tainted due to purchaser's motivation and not having been listed with MLS. Consequently, the revised list of three sales was presented as supporting evidence for a 6% capitalization rate. The Board is of the opinion that A class property sales do not belong in a B class analysis. Removing the A class sales results in a single sale in the Complainant's analysis. This Board is hesitant to make capitalization rate changes on the basis of a single sale.
- [23] While the evidence from the City in support of the capitalization rate was also very limited, the Board focused on the two B class sales that were in both parties' evidence. The Board is of the opinion that sale #2 was a valid transaction, and as such, it should be included in the analysis. While there is the issue of purchaser motivation, the Board notes that the purchaser did endorse the affidavit of value, declaring the \$3,150,000 purchase price as "being the current value of the land". Furthermore, while the email from the purchaser to the Altus Group indicated that they had paid "higher than market value", that additional amount paid was not quantified, making it difficult for this Board to discredit the sale outright, on that basis alone. The fact that the property was not listed

on the MLS does not necessarily mean that the property was not being marketed. Many commercial sales are not listed with the MLS. There was no evidence that the property was not being privately marketed.

- [24] In the final analysis, the Complainant did not satisfy the "burden of proof" requirement to convince the Board that a variance in the capitalization rate was warranted. While the City's evidence was less than ideal, the two sales provided support to the assessed 5.25% capitalization rate. The ASR's for the two B class sales utilizing the 5.25% capitalization rate provided a mean/median of 1.04, while the mean/median utilizing the requested 6% capitalization rate reflect a mean/median ASR of 0.91. The 1.04 ASR is within the mandated range.
- [25] The Board reviewed the CARB Order submitted by the Complainant. It is this Board's position that, while prior Decisions are considered, the Board is not bound by previous Orders. Ultimately, the Board forms its decision based on evidence and argument as presented, relative to the Hearing.
- [26] On review and consideration of all the evidence before it on this issue, the Board found the Complainant's evidence was not sufficient to warrant a variance in the assessment. The assessment is confirmed at \$8,540,000.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF August 2013.


Walter F. Krynski

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 Beltline Retail CAP Appendix
4. C3	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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Beltline Retail	B Class	Capitalization Rate	