



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:

Earl Holdings (Willow Land) Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

A. Huskinson, MEMBER

T. Livermore, 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:	130106909
LOCATION ADDRESS:	10640 MACLEOD TR SE
FILE NUMBER:	72385
ASSESSMENT:	\$2,190,000

This complaint was heard on the 18th day of June, 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:

- K. Fong (Altus Group Ltd.)
- B. Neeson (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- E. D'Altorio (City of Calgary)
- V. LaValley (City of Calgary)

Observers: R. Farkus, A. Hendrata, B. Galle

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

- [1] There were no concerns with the Board as constituted.
- [2] No discussions have taken place between the parties with respect to this file.
- [3] The Complainant has visited the site while the Respondent has not.
- [4] At the outset, the parties requested that all evidence, argument and decisions from Hearing 72257 be brought forward to this Hearing.
- [5] The Respondent objected to the introduction of the Complainant's rebuttal document which is labelled C-3. The Respondent submitted that the entire document is new evidence and should not be heard. The Respondent submitted that numerous sales brought forward by the Complainant are all industrial properties and that there are no freestanding retail sales included. The Respondent is unable to respond as the information was not part of the Complainant's submission. The Complainant submitted there are sales with issues in other property classifications that are considered, and yet in this case the Respondent is rejecting them. The Complainant submitted they are being inconsistent. The Board reviewed the rebuttal C-3 after both parties had presented their evidence. The Board finds the rebuttal includes 11 pages of industrial sales, several of which are highlighted. Details of those sales include notations with respect to: "purchase by existing tenant", "sale of vacant property", "additional revenue from signage" and "sale of property being reclassified". The Board finds there is nothing in the evidence that would provide guidance as to how that information was used. The Board concluded that the information in the rebuttal is not directly related and is new evidence and should not be heard as per Matters Relating To Assessment Complaints Regulation (MRAC) 9(2) *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

Property Description:

[6] The subject property is a 1.00 acre parcel located in the Willow Park community in SE Calgary. The parcel is improved with a 7,371 square foot (sq. ft.) Freestanding Retail restaurant occupied by Earl's. The building was constructed in 1996 and is considered to be of B Quality. The subject is assessed utilizing the Income Approach to value.

Issues:

[7] The Assessment Review Board Complaint Form identified "an assessment amount" and "an assessment class" as the Matters For A Complaint. In addition, the Complaint Form contained 5 Grounds for Appeal. At the outset of the hearing, the Complainant advised that the only outstanding issue was: "the assessed capitalization rate is incorrect and should be increased to 7.5%".

Complainant's Requested Value: \$1,960,000 (Complaint Form)
\$2,040,000 (Hearing)

Board's Decision:

[8] The 2013 assessment is confirmed at \$2,190,000.

Legislative Authority, Requirements and Considerations:

The Composite Assessment Review Board (CARB) derives its authority from the Municipal Government Act (MGA) RSA 2000:

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).

MGA requires that

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and
- (b) follow the procedures set out in the regulations

Matters Relating to Assessment and Taxation Regulation (MRAT) requires that

(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

4(1) The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value

Issue: What is the typical capitalization (cap) rate to be utilized for determining the market value of Freestanding Retail properties, for assessment purposes?

Complainant's Position:

[9] The Complainant's Disclosure is labelled C-1 and C-2(72257).

[10] The Complainant, at page 27 of C-1(72257), provided a table titled Freestanding Retail Capitalization Study which contains information on 9 sales which occurred in the period January 11, 2011 to April 17, 2012. The improvement areas ranged from 3,760 sq. ft. to 15,469 sq. ft., year of construction (YOC) ranged from 1914 to 1979, quality ranged from A- to C- and cap rates ranged from 6.21% to 8.83%. The average cap rate was calculated to be 7.47% and the median cap rate was 7.39%. The Complainant requested a cap rate of 7.50%.

[11] The individual sales transaction reviews and summaries are contained on pages 11 through 225 in the Complainant's disclosure which is labelled C-2.

[12] The Complainant argued that the City has only used 3 sales to establish a cap rate for application to all Freestanding Retail properties whereas it has used 9 sales, which produces a better result.

Respondent's Position:

[13] The Respondent's Disclosure is labelled R-1 and R-2(72257).

[14] The Respondent, at page 20, provided a table titled 2013 Freestanding Capitalization Rate Summary which contains details on 3 sales, noting these sales are also contained in the Complainant's Cap Rate Study. The cap rates ranged from 6.71% to 7.39% with an average cap rate of 6.99% and a median cap rate of 6.86%. The Respondent noted the cap rate applied for assessment purposes is 7.00%.

[15] The Respondent advised that when its response was being prepared an error was discovered in the application of typical rent rates. The Respondent, at page 27, provided a table titled Freestanding Capitalization Rate Summary with NOI from Year of Sale, which contained the same 3 sales, noting the cap rates ranged from 6.40% to 7.39% with a median cap rate of 6.95% and an average cap rate of 6.91%. The Respondent noted the correction did not result in a change to the assessed cap rate of 7.00%.

[16] The Respondent initially submitted that 6 of the sales utilized by the Complainant should be excluded from the Complainant's cap rate study for various reasons. During the course of the hearing the parties agreed that the sale of 1435 9 AVE SE could be regarded as valid, resulting in the Respondent arguing that 5 of the Complainant's sales should now be excluded from the cap rate study for various reasons as summarized on the following page.

Roll Number	Address	Reason to Exclude
082126459	2639 17 AVE SW	Additional signage income
076051309	3515 17 AVE SE	Non-arms length sale
046043402	126 16 AVE NE	Abnormal vacancy at time of purchase
069048007	1413 9 AVE SE	Owner occupied at time of sale, Vendor take- back mortgage
046158101	2803 CENTRE ST NW	Vacant during the time of sale, Redevelopment

[17] The Board finds , after reviewing the Respondent's background documentation on pages 4 through 199 of R2, that:

(1) The sale of 2639 17 AVE SW can be included in the study because the "additional signage income " contract identified as a reason for exclusion by the Respondent was signed "post facto" to the sale date.

(2) The sale of 3515 17 AVE SE should be excluded because there is conflicting evidence on the issue of "non-arm's length" transaction between the Realnet report and the Non Residential Sales Questionnaire.

(3) The sale of 126 16 AVE NE should be excluded because at the time of sale there was a significant portion of the building vacant. The Realnet report identified it as 100% vacant.

(4) The sale of 1413 9 AVE SE should be excluded because the sale included a vendor take- back mortgage, and the purchaser indicated in the Non Residential Property Sales Questionnaire that financing played a part in determining the sale price. In addition, the title indicates a sale price of \$1.2M with financing of \$1.4M.

(5) The sale of 2803 CENTRE ST NW should be excluded because the property was vacant and therefore the sale price was not based on the properties' (NOI).

Board's Decision:

[18] As a result, when the two additional sales are considered with the three sales that are common to both parties, the average cap rate is calculated to be 6.92% and the median cap rate is 6.86% which supports the assessed rate of 7.00%.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF July 2013.



B. Horrocks

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. C1, C2 and C3 from Hearing 72257	Complainant Disclosure
4. R1 and R2 from Hearing 72257	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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Property Type	Property Sub-Type	Issue	Sub-Issue
Retail	Freestanding	Income Approach	Cap rate