



## **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:**

***Edron Holdings Ltd. (as represented by Altus Group Limited), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***C. Duxbury, PRESIDING OFFICER***

***T. Usselman, BOARD MEMBER***

***B. Jerchel, 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: 079031993**

**LOCATION ADDRESS: 2224 4 ST SW**

**FILE NUMBER: 72387**

**ASSESSMENT: \$5,000,000**

This complaint was heard on the 20th and 21<sup>st</sup> days of August, 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:

- A. Izard

Appeared on behalf of the Respondent:

- D. Satoor

**Board's decision in respect of procedural or jurisdictional matters:**

[1] The parties had no objection to the panel representing the Board as constituted to hear this complaint. No jurisdictional matters were raised at the outset of the hearing.

[2] The Complainant requested that page 97 of Exhibit R1 be excluded from evidence pursuant to s. 9(4) of the *Matters Relating to Assessment Complaints Regulation (MRAC)*. The representative for the Complainant requested certain information from the Respondent pursuant to s. 299 of the Act. The information requested included information supporting the Respondent's determination of \$42.00 per sf as the rent rate for the restaurant space in the subject building. Under cover of a letter dated March 22, 2013 [C1, pp. 47-48], the Respondent provided its response to the Complainant's request. The Complainant advised the Board that page 97 of Exhibit R1 was not included in the response sent by the Respondent.

[3] The hearing was adjourned so the representative appearing for the Respondent could contact his office. When the hearing resumed, the Respondent advised the Board that the Respondent has no record of the letter sent by the Complainant requesting the information or the March 22, 2013 letter providing the Respondent's response.

[4] The Board adjourned to consider the issue, and resumed to deliver an oral decision. The Board was satisfied that a letter requesting the rent rate information was sent by the representative for the Complainant. The Board was also satisfied that the March 22, 2013 letter was sent by the Respondent without page 97 of Exhibit R1 included. Pursuant to s. 9(4) of *MRAC*, the Board excluded page 97 of Exhibit R1, and did not consider it in their determination of the issues identified below.

[5] On a point of procedure, both the Complainant and the Respondent requested that all evidence and argument presented at the hearing of file number 72934 on August 20, 2013, be carried forward to this hearing in relation to the second issue identified below. The Board agreed to the parties' request.

[6] On another point of procedure, both the Complainant and the Respondent requested that all evidence and argument presented at the hearing of file number 72465 on August 19, 2013, be carried forward to this hearing in relation to the third issue identified below. The Board agreed to the parties' request and proceeded to hear the merits of the complaint.

**Property description:**

[7] The subject property is an "A2" quality retail building located at 2224 4 ST SW. It is situated in the Beltline District of the City's downtown core. The building has an assessed area of 11,987 square feet (sf) and the year of construction is 1954. It is situated on a 13,941 sf parcel of land.

**Issues:**

[8] This complaint involves three main issues:

- A. Is the rent rate applied by the City to the restaurant space in the subject building incorrect?
- B. Is the rent rate applied by the City to the office space in the subject building incorrect?
- C. Is the capitalization rate applied by the City in the income approach to valuation of the subject property incorrect, thereby resulting in an erroneous assessment? In particular:
  - 1. Should the sale of El Sombrero, located at 520, 17 Avenue SW, have been used in the City's 2013 Beltline retail capitalization rate analysis?
  - 2. Should the sale of Elbow River Casino, located at 218, 18 Avenue SW, have been used in the City's 2013 Beltline retail capitalization rate analysis?
  - 3. Should a single capitalization rate be applied to all Beltline retail properties, regardless of building quality?

**Complainant's requested value: \$3,610,000**

**Board's decision:** The Board reduces the assessment to **\$4,420,000**.

**Legislative authority, requirements and considerations:**

[9] The Board's authority is found in the *Municipal Government Act*, and the associated Government of Alberta legislation and regulations. Within this framework the following provisions of the Act, the *Matters Relating to Assessment and Taxation Regulation*, and MRAC were considered by the Board to be of particular relevance.

***Municipal Government Act***

*299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.*

*(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
- (c) any other information prescribed or otherwise described in the regulations.*

*(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).*

*1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;*

*289(2) Each assessment must reflect*

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation and other standards set out in the regulations for that property.*

- 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.*  
(2) *If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

- 467(1) *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*  
(3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*  
    (a) *the valuation and other standards set out in the regulations,*  
    (b) *the procedures set out in the regulations, and*  
    (c) *the assessments of similar property or businesses in the same municipality.*

**Matters Relating to Assessment and Taxation Regulation (AR 220/2004)**

- 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.*
- 3     *Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.*
- 6(1)   *When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.*

**Matters Relating to Assessment Complaints Regulation (AR 310/2009)**

- 9 (4)   *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

**Position of the parties:**

**A. Rent rate applied to restaurant space**

**Complainant's position**

[10] The Complainant advised the Board that the rent rate applied by the City for the restaurant space in the subject building is \$42.00 per sf [C1, p. 14]. The Complainant takes the position that the rent rate that should be applied to the restaurant space in the subject building is \$33.00 per sf [C1, p. 18]. At the hearing the Complainant advanced an alternative position that the rent rate that should be applied to the restaurant space in the subject building is \$35.00 per sf.

[11] The Complainant advised the Board that the chart entitled "2013 Beltline FS1, BL 6-8 RST/RSTF rental rate Summary – B Class" was the only information sent to the Complainant by the Respondent in support of the \$42 per sf rent rate applied by the City to the restaurant space in the subject building [C1, p. 53]. The Complainant argued that the median, mean and weighted

mean of the leases detailed on this chart all support the Complainant's requested assessed value of \$33.00 per sf.

[12] The Complainant provided a chart entitled "4<sup>th</sup> Street Restaurant Leasing", found in Exhibit C1, at page 54. This chart details five leases which the Complainant argued are the best comparables to the restaurant space in the subject building based on location, size and finishings. The Complainant provided interior photos of the properties referred to in this chart, along with evidence to confirm their size and location [C1, at pp. 71-82, and 88-96].

#### **Respondent's position**

[13] The Respondent argued that although the chart entitled "2013 Beltline FS1, BL 6-8 RST/RSTF rental rate Summary – B Class" was the only information sent by the Respondent in response to the Complainant's request for information to support the \$42 per sf rent rate applied by the City to the restaurant space in the subject building, it relates to B class restaurants and cannot be used to support a \$33.00 per sf rental rate for a restaurant in an A2 class building such as the subject. The Respondent noted that the quality classification of the subject building was not argued before this Board. The Respondent also noted that while the Complainant provided interior photos of the restaurants listed on the Complainant's chart found in Exhibit C1, page 54, the Complainant did not provide interior photos of the restaurant in the subject building. The Respondent argued that the Complainant has not provided its own analysis of lease rates for restaurant space in A2 quality buildings in the Beltline District, and requested that the Board confirm the Respondent's assessment of \$42 per sf for the restaurant space in the subject building.

#### **Board's findings and reasons for decision**

[14] The Board finds that the mean and the weighted mean of the leases detailed on the Complainant's "4<sup>th</sup> Street Restaurant Leasing" chart, at \$35.58 and \$35.72 per sf respectively, support a rent rate of \$36.00 per sf [C1, p. 54].

[15] The Board notes that neither the Complainant nor the Respondent were able to advise the Board during the hearing what the quality classifications are for the properties listed on the Complainant's "4<sup>th</sup> Street Restaurant Leasing" chart, save for the Vin Room restaurant. According to the Respondent's "2013 Beltline FS1, BL 6-8 RST/RSTF rental rate Summary – B Class", the Vin Room restaurant has a B quality rating [C1, p. 53]. The Board finds that as a known B quality restaurant, the Vin Room should be removed as a comparable to the restaurant in the subject A2 quality building.

[16] The Respondent was unable to point to any evidence properly before the Board to support its assessment of \$42.00 per sf for the restaurant space in the subject building. Having regard to the fact that the four restaurants remaining on the Complainant's "4<sup>th</sup> Street Restaurant Leasing" chart do not appear on the Respondent's B class rental rate summary found in Exhibit C1, at page 53, the fact that they are similar in size to the subject, and the fact that the interior photographs of these restaurants suggest they are higher end restaurants, the Board finds that they are appropriate equity comparables to the restaurant in the subject A2 class building. The Board also finds that removing the Vin Room from the analysis, the mean and weighted mean of the leases detailed on the Complainant's "4<sup>th</sup> Street Restaurant Leasing" chart still support a rent rate of \$36.00 per sf.

**B. Rent rate applied to office space****Complainant's position**

[17] The Complainant advised the Board that the rent rate applied by the City for the second floor office space in the subject building is \$19.00 per sf [C1 from 72934, p. 11]. The Complainant takes the position that the rent rate that should be applied to office space in the subject building is \$15.00 per sf [C1 from 72934, p 15].

[18] In support of their position, the Complainant referred the Board to a chart entitled "2013 Beltline Office Rental Rate Summary – B Class"; found in Exhibit C1 from 72934, at pages 21 to 26. The Complainant advised the Board that this chart was received from the City in response to an information request made by the Complainant pursuant to s. 299 of the Act. The Complainant argued that the mean and weighted mean of the lease rates per square foot detailed in this chart suggest that a rent rate of \$15.00 per sf is more appropriate for the office space in the subject building.

[19] The Complainant submitted its own chart entitled "FS1 Office Leasing Examples" that details nine leases for submarket area FS1 taken from the chart obtained from the City referred to above. The Complainant noted that the subject property is in submarket area FS1 [C1 from 72934, p. 9], contrary to what is shown on the document provided to the Complainant by the City entitled "Non-Residential Properties - Income Approach Valuation" found in Exhibit C1 from 72934, at pages 11-12, which suggests that the office space rent rate applied by the City was from submarket area BL6. The Complainant referred the Board to the definitions of "market area" and "submarket" found in the Respondent's Exhibit R1 from 72934, pages 280 and 282.

[20] The Complainant noted that all nine of these leases are for office space and are from buildings within one block of the subject property. The Complainant argued that the mean and weighted mean of the lease rates per square foot detailed in their chart suggest that a rent rate \$15.00 per sf is appropriate for the office space in the subject building.

**Respondent's position**

[21] The Respondent began by noting that identical inputs are used for both submarket areas BL6 and FS1, so no error in determining the assessed value of the subject property resulted from the error indicating that the office space rent rate from submarket BL6 was applied to the subject property.

[22] The Respondent explained that the reason \$15.00 per sq was not applied to the office space in the subject building is because the subject building is an A2 class building [C1 from 72934, p.9]. The City's chart entitled "2013 Beltline Office Rental Rate Summary – B Class" referred to by the Complainant is what it purports to be: a summary of office rental rates for B class buildings.

[23] In support of their contention that \$19.00 per sf is the rental rate that should be applied to office space in class A2 buildings, the Respondent referred the Board to a chart entitled "2013 Beltline Office Rental Analysis A Class" found in Exhibit R1 from 72934, at page 98. The mean and weighted mean of the three lease rates per square foot detailed in this chart, the Respondent argued, suggest that a rent rate \$19.00 per sf is more than appropriate for the office space in the A2 class subject building.

[24] During questioning by the Complainant, the Respondent acknowledged that these three leases all come from the same building and are from a different submarket than the subject building. However, the Respondent went on to note that the building is similar to the subject building; that it is still within the Beltline District; and that the A2 class has a smaller inventory

than the B Class. The Respondent also acknowledged that the classification of buildings contains a subjective component.

[25] In further support of the assessed \$19.00 per sf lease rate used by the Respondent, the Respondent referred the Board to the Assessment Request for Information dated September 7, 2012 completed in relation to the subject building. This Assessment Request for Information states that the actual lease rate for the office space in the subject building is \$35.00 per sf [R1 from 72934, pp. 14-15], far in excess of the market net rental rate applied by the City. The Respondent acknowledged that this leased is dated, having commenced October 1, 2006.

### **Board's findings and reasons for decision**

[26] The subject property is an "A2" quality retail building situated in the Beltline District of the City's downtown core [C1 from 72934, p. 9]. The rent rate applied by the City for the second floor office space in the subject building is \$19.00 per sf [C1 from 72934, p. 11]. In support of this rent rate the Respondent provided evidence of three leases in an A class building located within the Beltline District, albeit in a different submarket area. While less than ideal, the Board finds that the evidence submitted by the Respondent supports a rent rate \$19.00 per sf for the office space in the A2 class subject building. The Complainant, on the other hand, provided no evidence of A2 class office rents in the Beltline District, instead relying on a B class office rental analysis completed by the City.

[27] While the Board acknowledges that the quality classifications used by the City are subjective, the Board notes that the Complainant brought forward no evidence to suggest that the subject building was improperly classified and did not argue this issue at the hearing. Accordingly, the Board finds the B class office rental analysis relied on by the Complainant in support of their position to be of no assistance.

[28] In light of the actual lease rate for the office space in the subject building of \$35.00 per sf, and of the evidence provided by the Respondent of lease rates in an A class building located within the Beltline, and in the absence of evidence from the Complainant of what A2 class office rental rates should be, the Board finds no basis upon which to vary the market net rental rate of \$19.00 per sf used by the Respondent.

### **C. Capitalization rate**

#### **Complainant's position generally**

[29] The Complainant argued that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District, are too low, resulting in assessments that are not reflective of market value as at the valuation date of July 1, 2012. The Complainant takes the position that the capitalization rates of A and B quality retail properties in the Beltline District should both be raised to 6.0%.

[30] Regarding the requested capitalization rate of 6.0%, the Complainant submitted a chart entitled "Altus 2013 Beltline Retail Capitalization Rate Analysis", which is summarized from Exhibit C2, p. 3 as follows.

Sale #	Address	Building	Sub Property Use	Sale Date	Quality Class	NRZ	YOC	2013 Assessment	Sale Price	ASR	NOI	CAP	ASR@ 6%
1	100, 1410 1 Street SE	Sasso/Vetro	Retail Condo	7/8/2011	AA	BL2	2008	\$12,570,000	\$12,800,000	0.98	\$744,069	5.81%	0.91
2	520 17 Ave SW	El Sombrero	Retail	10/24/2011	B	BL2	1912	\$2,980,000	\$3,150,000	0.95	\$150,423	4.78%	0.83

3	1451 14 Street SW	Cosmetic Laser/ Vein Centre	Retail/ Office	5/23/2012	B	BL5	1962	\$2,940,000	\$2,600,000	1.13	\$154,410	5.94%	0.99
4	218 18 Ave SE	Elbow River Casino	Retail	7/3/2012	A2	BL8	2005	\$28,780,000	\$20,800,000	1.38	\$1,583,440	7.61%	1.27

Average	1.11	6.03%	1.00
Median	1.06	5.88%	0.95

[31] The Complainant noted that the first, second and third sales were the three sales included in the Respondent's capitalization rate analysis.

[32] The Complainant's position is that the second sale, El Sombrero, should have been removed from the analysis and that the fourth sale, Elbow River Casino, should have been included in the analysis. The Complainant took no issue with the first and third sales used in the City's analysis. On this basis the Complainant submitted a chart entitled "Altus 2013 Beltline Retail Capitalization Rate Analysis – without El Sombrero", which is summarized from Exhibit C2, p. 3, as follows.

Sale #	Address	Building	Sub Property Use	Sale Date	Quality Class	NRZ	YOC	2013 Assessment	Sale Price	ASR	NOI	CAP	ASR@ 6%
1	100, 1410 1 Street SE	Sasso/Vetro	Retail Condo	7/8/2011	AA	BL2	2008	\$12,570,000	\$12,800,000	0.98	\$744,069	5.81%	0.91
3	1451 14 Street SW	Cosmetic Laser/ Vein Centre	Retail/ Office	5/23/2012	B	BL5	1962	\$2,940,000	\$2,600,000	1.13	\$154,410	5.94%	0.99
4	218 18 Ave SE	Elbow River Casino	Retail	7/3/2012	A2	BL8	2005	\$28,780,000	\$20,800,000	1.38	\$1,583,440	7.61%	1.27

Average	1.17	6.45%	1.06
Median	1.13	5.94%	0.99

[33] Based on the sales used in this second chart, the Complainant believes that the resulting average and median capitalization rates of 6.45% and 5.94% support an increase to the Beltline A and B quality retail capitalization rates to the requested 6.0%. Furthermore, the Complainant argued, using a 6% capitalization rate results in Assessment to Sales Ratios (ASRs) which reflect a better approximation of market value.

#### **Respondent's position generally**

[34] The Respondent submitted that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District are correct. In support of their position the Respondent provided a chart entitled "2013 Beltline Retail Capitalization Rate Summary", which is summarized from Exhibit R1 from 72465, p. 99 as follows.



Sale #	Address	Building	Sale Date	Quality Class	NRZ	YOC	Sale Price	Area (sf)	Typical	
									NOI	Cap Rate
1	100, 1410 1 Street SE	Sasso/Vetro	7/8/2011	AA	BL2	2008	\$12,800,000	23,709	\$744,069	5.81%
2	520 17 Ave SW	El Sombrero	10/24/2011	B	BL2	1912	\$3,150,000	5,672	\$150,255	4.78%
3	1451 14 Street SW	Cosmetic Laser/ Vein Centre	5/23/2012	B	BL5	1962	\$2,600,000	11,259	\$153,074	5.94%

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%

[35] The Respondent's position is that the El Sombrero sale was properly considered in the City's capitalization rate analysis, and that the Elbow River Casino sale was properly excluded from the City's capitalization rate analysis. Because the Complainant took no issue with the Sasso/Vetro and Cosmetic Laser/ Vein Centre sales used in the City's analysis, the Respondent advised the Board that it would not spend any hearing time discussing these sales.

### 1. El Sombrero sale

#### Complainant's position

[36] It is the Complainant's position that the El Sombrero sale should be removed from the capitalization rate analysis on the basis that it was not a market value sale. In support of this contention, the Complainant relies on parts of an e-mail dated June 21, 2013 from John Kwei, the sole director of the purchaser of the property, 2638 Investments Ltd. [C2, pp. 78-79, and 87-88]. The e-mail states, in part:

...

1) Yes, the recent sale is an arm's length market transaction. We paid \$3,150,000 for the building which is significantly higher than market value. This purchase added another 50' frontage to the next door building that we also own... The resulting frontage of 140' is greater than the minimum requirement of 125' to develop a mixed use 12 story [sic] building. We have plans to redevelop both lots in 15-20 years.

Therefore, given the fact that we already owned the neighbouring building, and the purchase of this building gave us redevelopment potential, we paid much higher than the market value.

2) No, the property was not marketed by a realtor on the MLS.

...

[37] While the Complainant acknowledged that the sale appears to have been an arm's length transaction, the Complainant drew the Board's attention to the statements that the purchaser paid higher than the market value for the property, and that the purchaser was motivated to purchase the property by the desire to consolidate land for redevelopment purposes.

[38] The Complainant also noted that the e-mail states that the property was not marketed by a realtor on the Multiple Listing Service (MLS). In this regard, the Complainant also referenced a December 28, 2011 Non Residential Property Sale Questionnaire (sales ARFI) completed by Mr. Kwei which indicates at item 3. that the property was not listed by a real estate broker [R1 from 72465, pp. 148-151]. This, the Complainant argues, suggests that the property was not exposed to the open market as required by s. 1(1)(n) of the Act. The Complainant referred the Board to a number of previous decisions that have dealt with the issue of whether a particular sale was exposed to the open market, including NO. DL 132/08, MGB 046/10, CARB 2283/2011-P; CARB 1707/2012-P and CARB 70576/P-2013.

#### **Respondent's position**

[39] The Respondent's position is that the El Sombrero sale was a market sale and properly considered in the City's capitalization rate analysis. In support of their position the Respondent relied on the sales ARFI completed by Mr. Kwei, found in Exhibit R1 from 72465, pp. 148-151. In particular, the Respondent points to item 8., which asks: "Was this an \*arms-length transaction?" The \* refers to a box that is found immediately below item 8. which explains that "arms-length" means an "[o]pen market transaction between two unrelated parties who are knowledgeable of market conditions and under no undue pressure to buy or sell" [R1 from 72465, p. 148]. Mr. Kwei marked the "Yes" box in response to the question.

[40] In further support of the Respondent's position that the sale of El Sombrero was a market sale, the Respondent submitted the Affidavit of Value completed by the agent of the purchaser [R1 from 72465, p. 155]. The Respondent noted that the Affidavit of Value is a document sworn under oath before a Commissioner for Oaths, and states at paragraph 3):

The current value of the land, in my opinion, is \$3,150,000.00 ("value" means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer [sic] "land" includes buildings and all other improvements affixed to the land).

[41] The Respondent cautioned the Board against placing any weight on the June 21, 2013 e-mail from John Kwei reproduced above on the basis that we do not have any evidence of the specific questions asked of Mr. Kwei prompting his e-mail, and that he was not made available at the hearing for questioning. The Respondent noted that, in any event, the June 21, 2013 e-mail could be argued to support the Respondent's position that El Sombrero was a market sale. In particular, the Respondent pointed to the following statement: "Yes, the recent sale is an arm's length market transaction." The Respondent also argued that a purchaser motivated by the possibility of redevelopment in 15 to 20 years could hardly be considered unduly motivated to purchase.

[42] Regarding the Complainant's argument that the El Sombrero property was not exposed to the open market because it was not "marketed by a realtor on the MLS" as indicated in the June 21, 2013 e-mail, and according to the December 28, 2011 sales ARFI the property was not

"listed through a real estate broker", the Respondent argued that this is hardly conclusive proof that the property was not exposed to the open market at all. On the contrary, the Respondent argued, there are other ways to advertise the sale of a property than by going through a broker or by listing it on the MLS.

#### **Board's findings and reasons for decision**

[43] The Board placed no weight on the June 21, 2013 e-mail from Mr. Kwei. The fact that the questions asked of Mr. Kwei prompting his e-mail were not in evidence before the Board, the fact that Mr. Kwei was not made available for questioning at the hearing, and the fact that there are statements in the e-mail that both support and contradict the contention that the El Sombrero was a market sale, all lead the Board to find that the e-mail is of no value in determining whether the El Sombrero sale was at market value.

[44] Following Acton J.'s decision in *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, at para. 24, this Board finds that a property's sale is the best indicator of the market value of that property. The purchaser of the El Sombrero property paid \$3,150,000. The December 28, 2011 sales ARFI completed by the sole director of the purchaser, John Kwei, indicates the transaction was an arms-length, open market transaction. The Affidavit of Value completed by the agent of the purchaser indicates that the sale was an open market transaction. The Board accepts that the fact that the property was not listed through a real estate broker or listed on the MLS does not mean that the property was not otherwise exposed to the open market.

[45] The Complainant did not provide sufficient evidence to convince the Board that the El Sombrero sale was at something other than market value, to warrant the removal of the sale from the capitalization analysis for retail properties in the Beltline District. Based on the evidence before the Board, the Board finds that the El Sombrero sale was a market sale and properly considered in the City's 2013 Beltline retail capitalization rate analysis.

## **2. Elbow River Casino sale**

### **Complainant's position**

[46] The Complainant's position is that the Elbow River Casino should have been included in the City's capitalization rate analysis. The Complainant noted that the date of sale was only two days after the July 1, 2012 valuation date, and that like the subject property, the Elbow River Casino is a retail property in the Beltline District.

[47] In the Complainant's view, a casino is not a unique retail property that can only be compared to other casinos. The Complainant noted that there is nothing in the design or construction of a casino that would prevent it from being used for some purpose other than as a casino. The Complainant also noted that the land use designation for the Elbow River Casino is "Direct Control District" [C2, p. 49], which the Complainant argued means that the building could be used for almost anything.

[48] In support of their position, the Complainant referred the Board to previous CARB decisions that have determined that casinos are not particularly unique, including CARB 1850-2011-P, CARB 2377/2012-P, CARB 1828/2012-P.

### **Respondent's position**

[49] The Respondent's position is that the Elbow River Casino was excluded from their Beltline retail capitalization rate analysis because it is such a unique property.

[50] The Respondent argued that the Elbow River Casino was purpose built to accommodate a casino, and that in so doing, the Alberta Gaming and Liquor Commission's strict requirements

had to be complied with. Some of these requirements are reproduced in Exhibit R1 from 72465, pp. 16-50, and are requirements the Respondent suggests are very different from what one would find in other Beltline retail space. In the Respondent's view, these assets are built as casinos and sold as casinos. While a casino could theoretically be converted into some other retail space, the Respondent argued that in reality they are not, and that other retail space cannot simply be converted into a casino.

[51] The Respondent also pointed to the size of the Elbow River Casino property. The building has an assessed area of 77,681 sf and is situated on a 67,277 sf parcel of land. The Respondent referred to a number of previous decisions which have determined that casinos are unique properties, including CARB 2213/2010-P and CARB 1839/2011-P.

### **Board's findings and reasons for decision**

[52] The Board acknowledges that there are previous decisions that fall on both sides of the issue of whether a casino is a unique property. However, based on the evidence presented to the Board in this case, the Board accepts the position advanced by the Respondent. The sheer size of the property, combined with the requirements and restrictions attached to it, make the Elbow River Casino too dissimilar to the subject property to be considered. Accordingly, the Board finds that the Elbow River Casino is atypical retail space that was properly excluded from the City's 2013 Beltline retail capitalization rate analysis.

### **3. Single capitalization rate**

#### **Complainant's position**

[53] As detailed above, the Complainant argued that the capitalization rates of 5.50% and 5.25% applied respectively to assessments of A and B quality retail properties in the Beltline District, are too low, resulting in assessments that are not reflective of market value as at the valuation date of July 1, 2012. The Complainant also argued that assigning a higher capitalization rate to a higher quality building defies logic, as it suggests that a higher quality building carries a higher risk than a lower quality building. The Complainant requested that the capitalization rates for the A and B quality Beltline retail properties be changed from 5.50% and 5.25%, respectively, to 6.0% for both.

[54] To support the Complainant's contention that one capitalization rate should be applied to retail properties in the Beltline District regardless of the building quality rating, the Complainant submitted evidence of other retail capitalization rate studies performed by the City, including for Freestanding; Neighbourhood, Community Centre; Power Centre; and Strip Centre [C2, pp. 95-136]. The Complainant also submitted a package of previous Beltline office decisions which provide for a uniform capitalization rate of 6.0% regardless of building quality.

#### **Respondent's position**

[55] The Respondent acknowledged that while in theory one might expect that an A quality building would have a lower capitalization rate than a B quality building, the market evidence gathered by the City as summarized above supports a capitalization of rate of 5.5% for A quality retail buildings in the Beltline and a capitalization rate of 5.25% for B quality retail buildings in the Beltline.

[56] The Respondent argued that the evidence submitted by the Complainant regarding other retail capitalization rate studies performed by the City is irrelevant in determining the capitalization rate that should be applied to the retail properties in the Beltline District. The Respondent went on to advise the Board that it need not consider the evidence found at Exhibit

R1 from 72465, pp. 166-268, as this information relates to the 5.25% capitalization rate applied to B quality Beltline office buildings and is similarly irrelevant.

**Board's findings and reasons for decision**

[57] The Board finds that the evidence of other retail capitalization rate studies performed by the City is irrelevant to the determination of the capitalization rate that should be applied to the retail properties in the Beltline District. The fact that the same capitalization rate is applied to other retail properties regardless of building quality was insufficient to persuade the Board that a uniform capitalization rate should be applied to retail properties in the Beltline District.

**Board's decision:**

[58] The Board has found that the El Sombrero sale was properly considered in the City's 2013 Beltline retail capitalization rate analysis, that the Elbow River Casino was properly excluded, and that there was insufficient evidence to persuade the Board that a uniform capitalization rate should be applied to retail properties in the Beltline District regardless of building quality. Accordingly, the Board finds that there was insufficient evidence provided by the Complainant to convince the Board to deviate from the capitalization rates of 5.50% and 5.25% applied by the City respectively to assessments of A and B quality retail properties in the Beltline District.

[59] Applying a market net rental rate of \$36.00 per sf to the restaurant space in the subject building, and keeping all other inputs the same, the Board calculates the total property value for the subject property to be \$4,423,766. In keeping with the Respondent's practice of truncating property values over \$1,000,000 to the lowest \$10,000, the Board reduces the assessment to \$4,420,000.

DATED AT THE CITY OF CALGARY THIS 25<sup>th</sup> DAY OF September 2013.

  
Cathryn A. Duxbury

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure – Evidence Submission
2. C1 from 72934	Complainant Disclosure – Evidence Submission
3. C2	Complainant Disclosure - Beltline Retail Capitalization Rate Analysis
4. R1	Respondent Disclosure (p. 97 excluded)
5. R1 from 72934	Respondent Disclosure
6. R1 from 72465	Respondent Disclosure
7. 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:**

Appeal Type	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	079031993	Retail	Stand Alone	Income Approach	Net Market Rent/Lease Rates
Calgary CARB	079031993	Retail	Stand Alone	Income Approach	Capitalization Rate

Calgary CARB	079031993	Jurisdictional/ Procedural	Information Exchange (Types 1 to 6)	Insufficient/No Response Request	
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