

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:

The Toronto Dominion Bank (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:	049011505
LOCATION ADDRESS:	2045 34 ST NE
FILE NUMBER:	72700
ASSESSMENT:	\$3,960,000

This complaint was heard on the 19th 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:

- 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] Neither party has visited the site.
- [4] At the outset, the parties requested that all evidence, argument and decisions from Hearings 72257 and 72271 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 1.96 acre parcel located in the Sunridge community in NE Calgary. The Subproperty Use is CM0201 Retail – Freestanding. The parcel is improved with a 9,600 square foot (sq. ft.) building that was constructed in 1993, is considered to be of B Quality and is occupied by a Bank. 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 outstanding issues were: “The assessed capitalization rate is incorrect and should be increased to 7.5%” and “The assessed rental rate for “Retail Bank” space at the subject should be no higher than \$30psf”.

Complainant’s Requested Value: \$3,460,000 (Complaint Form)
\$3,460,000 (Hearing)

Board’s Decision:

[8] The 2013 assessment is reduced to \$3,710,000.

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-arm's 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%.

Issue: What is the typical rental rate to be utilized for determining the market value of 'B Quality' classified Banks, for assessment purposes?

Complainant's Position:

[19] The Complainant, at page 26, provided a table titled 2013 Altus Group's 'B Quality' retail Bank Analysis which contains details of leases with respect to 15 'B Quality' Banks. The lease start dates range from January 1, 2010 to July 1, 2012, lease rates range from \$20/sq.ft. to \$43/sq.ft. with a median of \$30.00/sq.ft. The Complainant's request is for an assessed rate of \$30/sq.ft.

[20] The Complainant, at page 29, provided a table titled 2013 Bank Rate Study Summary, noting the Citywide Rate is \$42.00/sq.ft. for A Quality, \$32.00/sq.ft. for B Quality, \$27.00/sq.ft. for C Quality and \$37.00/sq.ft. for Power Centres.

[21] The Complainant, at page 34, provided a list titled Physical & Economic Characteristics/Quality Classification. The list is used to determine the Quality classification for Banks and includes Location, Physical condition, Building functionality, Year of construction, Total Net Rentable Area, Type and quality of construction, Building tenant amenities and Rental rates achieved.

[22] The Complainant argued that the Quality rating can also be impacted by the surrounding tenant mix and lease rates can be impacted by astute tenants negotiating tenant allowances.

[23] The Complainant, at page 50, reproduced the 2013 Altus Group's 'B Quality' Retail Bank Analysis noting all of the properties are reported as 'B Quality' on the City of Calgary website. The Complainant added a column headed City Bank Study Quality to demonstrate how the City's application of their characteristics has produced results which vary from what is reported on the website.

Respondent's Position:

[24] The Respondent, at page 48, provided a table titled 2013 Bank Rate Study Summary noting there are 4 Quality ratings for Banks with rates that vary from \$42.00/sq.ft. to \$27.00/sq.ft.. The Respondent noted the subject is classified as 'B' Quality.

[25] The Respondent, at page 50, provided a table titled 2013 Bank Lease Analysis: B Quality, noting there are 16 leases with lease start dates ranging from May 1, 2010 to July 1, 2012. The lease rates range from \$27.00/sq.ft. to \$38.00/sq.ft. with a median rate of 32.25/sq.ft.. The Respondent noted the subject is assessed at the rate of \$32.00/sq.ft..

[26] The Respondent referred to page 34 of C-1 which contains the characteristics used to classify Banks. The Respondent advised that the methodology for classifying Banks has been changed from previous years and that the criteria are now more comprehensive.

[27] The Board finds the approach taken by the Complainant is consistent and reasonable. The Complainant has merely taken the information with respect to classification as reported on the City web site, attached the corresponding leases and analyzed them to produce a result that is reasonable. Conversely, the Respondent's classification process is not transparent and produces inconsistent results.

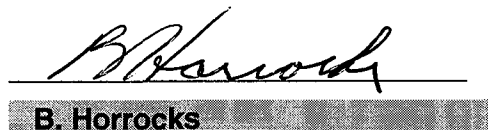
Board's Decision:

[28] The typical rental rate for 'B Quality' classified Freestanding Banks is reduced to \$30.00/sq.ft..

Board's Decision:

[29] Applying a rental rate of 30.00/sq.ft. produces a Net Operating Income (NOI) of 259,785 which when capitalized at the rate of 7.00% yields a market value of \$3,711,222. The 2013 assessment is reduced to \$3,710,000.

DATED AT THE CITY OF CALGARY THIS 18 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
5. C1 from Hearing 72721	Complainant Disclosure
6. R1 from Hearing 72721	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 Only

Property Type	Property Sub-Type	Issue	Sub-Issue
Retail	Freestanding	Income Approach	Cap rate & Rent rate