



## **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:**

***412861 Alberta 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:

|                          |                      |
|--------------------------|----------------------|
| <b>ROLL NUMBER:</b>      | <b>044184406</b>     |
| <b>LOCATION ADDRESS:</b> | <b>2450 16 AV NW</b> |
| <b>FILE NUMBER:</b>      | <b>73245</b>         |
| <b>ASSESSMENT:</b>       | <b>\$1,540,000</b>   |

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] 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 their submission. The Complainant submitted there are sales 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 information 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 0.42 acre parcel located in the Banff Trail community in NW Calgary. The Subproperty Use is CM0201 Retail – Freestanding. The parcel is improved with a 3,900 square foot (sq. ft.) building that was constructed in 1972, is considered to be of A2 Quality and is occupied by Denny's Restaurant. 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 "Restaurant" space at the subject should be no higher than \$28psf".

**Complainant's Requested Value:** \$1,300,000 (Complaint Form)  
\$960,000 (Hearing)  
\$1,242,000 (Revised)

**Board's Decision:**

[8] The 2013 assessment is reduced to \$1,242,000.

**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,<br>Vendor take-back mortgage |
| 046158101   | 2803 CENTRE ST NW | Vacant during the time of sale,<br>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 correct rental rate to be utilized for determining the market value of pad restaurants, for assessment purposes?

#### **Complainant's Position:**

[19] The Complainant, at page 16, provided the Property Assessment Detail Report noting the subject is A2 Quality and was constructed in 1972, and is currently assessed at the rate of \$31.00 per sq. ft.

[20] The Complainant, at page 27, provided a list titled Physical & Economic Characteristics/ Quality Classification, noting the City has utilized these characteristics to determine the subject's quality rating. The first paragraph of the list contains the statement, "Characteristics include, but are not necessarily limited to, such items as: Location, Physical condition, Building functionality, Year of construction, Total Net Rentable Area, Type and quality of construction, Building tenant amenities and Rental rates achieved".

[21] The Complainant, at page 30, provided a picture of a neighboring property (Boston Pizza) noting it is a C Quality, with the same difficult access as the subject and it is assessed significantly lower than the subject.

[22] The Complainant, at page 35, provided a table titled 2013 Pad Restaurant Rental Rate Analysis B Quality suggesting a rental rate of \$25/sq.ft. would be more appropriate in support of a revised requested assessment of \$1,242,000.

[23] The Complaint at pages 57 through 75 provided pictures and Property Assessment Reports for all of the B Quality restaurants contained in the Rental Rate Analysis suggesting the subject should be classified as a B Quality.

**Respondent's Position:**

[24] The Respondent, at page 44, provided a table titled 2013 Lease Comparables Pad Restaurants noting the assessed rates for B and C Quality restaurants are incorrect.

[25] The Respondent, at page 45, provided a table titled 2013 Lease Comparables Pad Restaurants Revised, noting that all A Quality restaurants are still being assessed at the rate of \$31.00/sq. ft., while all B Quality restaurants are being assessed at the revised rate of \$25.00/sq.ft. and all C&D Quality restaurants are being assessed at the revised rate of \$18.00/sq. ft..

[26] The Respondent stated the subject is classified as an A Quality restaurant because of its location on 16 AV in close proximity to Crowchild Trail, and as a result it is assessed at the rate of \$31.00/sq.ft.

[27] The Board finds the subject should be more appropriately classified as B Quality with an assessed rate of \$25.00/sq.ft..

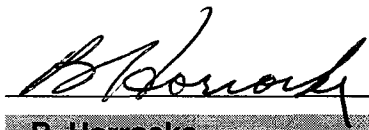
**Board's Decision:**

[28] The assessed rental rate for "Restaurant" space at the subject is \$25.00/sq.ft..

**Board's Decision:**

[29] Applying the rental rate of \$25.00/sq.ft in the Income Approach Valuation produces a net operating income (NOI) of \$86,947 which when capitalized at the rate of 7.00% yields a market value of \$1,242,100. The 2013 assessment is reduced to \$1,242,000.

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:**

| <b>NO.</b>                          | <b>ITEM</b>            |
|-------------------------------------|------------------------|
| 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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| <b>Property Type</b> | <b>Property Sub-Type</b> | <b>Issue</b>    | <b>Sub-Issue</b>     |
|----------------------|--------------------------|-----------------|----------------------|
| Retail               | Freestanding             | Income Approach | Cap rate & Rent rate |