



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:

McDonald's Restaurants of Canada Limited (as represented by Colliers International Realty Advisors Inc), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

<i>K. Thompson,</i>	<i>PRESIDING OFFICER</i>
<i>E. Reuther,</i>	<i>BOARD MEMBER</i>
<i>T. Livermore,</i>	<i>BOARD MEMBER</i>

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	082241001
LOCATION ADDRESS:	3611 17 Av SW
FILE NUMBER:	76511
ASSESSMENT:	\$1,800,000

This complaint was heard on the 22nd day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- T. Howell *Agent, Colliers International Realty Advisors Inc.*

Appeared on behalf of the Respondent:

- B. Galle *Assessor, City of Calgary*

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

[1] The Respondent brought forward a preliminary issue, claiming the Rebuttal document was received late and therefore not admissible. Argument and decision carried over from file 76513. The Complainant claimed the Rebuttal was sent from an outside computer and acknowledged it did not go through, so it was resubmitted the following afternoon. The Board deliberated and decided that the Rebuttal document was not admissible. No evidence was provided to show the document was received by the deadline.

[2] The Complainant and Respondent asked that evidence, questions, argument and summation be carried over from file 76513 and 76508. The Board agreed to this request and continued with the merits of the complaint.

Property Description:

[3] The subject property is a McDonald's restaurant located at 3611 17 Av SW in the community of Killarney/Glengarry. This property has been classed as an A2 free standing retail and is assessed as having 5,320 square feet (sf) constructed in 1993 on a 0.62 acre parcel.

[4] The subject property is assessed using the income method of valuation and has a capitalization rate of 6.50%.

Issues:

[5] The Respondent has mixed actual and typical parameters and used *post facto* sales.

[6] The value of the property would better reflect market if it were based on a capitalization rate of 7.00%.

Complainant's Requested Value: \$1,670,000.

Board's Decision:

[7] The assessments are confirmed at \$1,800,000.

Legislative Authority, Requirements and Considerations:

[8] Section 460.1(2) of the Act provides that, 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).

Position of the Parties**Complainant's Position:**

[9] The Complainant stated that the classification and other factors in the Respondent's analysis of this property is not in contention however the Respondent did not use a correct methodology when determining a typical capitalization rate for the income approach for this type of property. The Complainant stated that the Respondent, in its analysis, mixes typical parameters against actual sales which produce poor results. Actual leases should be used with the sale price to determine the capitalization rate, or the assessed rate should be used with the typical parameters. The Complainant also stated that the Respondent has made an incorrect application of *post facto* sales and as a result arrived at a lower capitalization rate than the market suggests. The capitalization rate for the subject parcel should be 7.00%.

[10] Several CARB decisions were submitted for the Board's consideration to show precedence is established on the misuse of actual vs. typical parameters, and the use of *post facto* sales [C1, pp. 10-34].

[11] The Complainant presented a chart illustrating the timeline where it said incorrect uses of *post facto* sales had occurred in the Respondent's valuation of the subject property [C1, p. 36].

[12] The Complainant included the lease and capitalization rate analysis for Respondent's 2014 rates along with the appropriate RealNet documents and assessment calculations for the sale properties used in the Respondent's capitalization study [C1, pp. 54-99].

[13] The Complainant pointed out that the Respondent used actual leases to arrive at typical rental rates, and actual vacancies to arrive at the typical vacancy rates and concluded that to arrive at a typical capitalization rate one should use actual net operating income (NOI) [C1, pp. 54-99].

[14] The Complainant stated that most of the sales in the Respondent's capitalization study were not comparable to the subject property and presented its own capitalization analysis using one of the Respondent's sales and two of its own sales [C1, p.102]. The Complainant used capitalization rates as reported by RealNet and came up with a mean capitalization rate of 7.17% and a median of 6.90% for a requested capitalization rate of 7.00%. RealNet and assessment documents were provided [C1, pp.103-116]. When the Complainant was questioned about the reduced sample size, it was stated that quality is better than quantity.

[15] The Complainant argued that the 2011 sale of the Tim Horton's at 3840 Macleod Tr SE is a valid sale to use in the capitalization analysis. Even though contamination of the land is mentioned in association with the sale in RealNet, Tim Horton's, a national brand company, renewed its lease. This would not happen if there was concern about contamination, argued the Complainant.

[16] Finally, the Complainant stated that the Respondent's typical lease rates had no relation

to the subject property [C1, p. 57]. The Complainant contends that the lease rate analysis for the subject should have been done on fast food places, not all of the free standing retail leases.

Respondent's Position:

[17] The Respondent stated that a mass appraisal approach is required in determining the market value for assessment purposes. This relies on typical rates in order to treat similar properties in an equitable manner. The Respondent submitted that its capitalization rate study used typical market rent and other typical factors to calculate the typical NOI.

[18] In the case of Westcoast Transmission Company Limited v. Assessor of Area 9 – Vancouver, Supreme Court of British Columbia (A870297) Justice Cummings directs that there must be a consistent approach with regard to assessment process, as stated on page 3 of the decision under “The Assessment Process”:

“For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently.”

[19] The Respondent contends that the Complainant's method uses an inconsistent approach of mixing actual and typical parameters to derive an assessed value. Further, the Respondent states that the Complainant's capitalization rates are taken from the published RealNet document, a third party source. This source provides no information on how the capitalization rate was derived, for example, it is unclear as to what types of leases were used to develop the NOI for each sale or what the vacancy rates were.

[20] With reference to the Complainant's capitalization study, the Respondent stated that only one of its sales was used and there was no evidence presented by the Complainant to show why the other eight sales in the Respondent's study were not used.

[21] The Respondent commented on the two additional sales introduced by the Complainant, and stated they were not appropriate for the 2014 freestanding capitalization rate analysis for the following reasons:

- 1) 3840 Macleod Tr SE is valued as a land only sale for 2014. RealNet states this property has a soil contamination issue: that future redevelopment is not likely in the future, and this property was not purchased for its income stream. No adjustments were made by the Complainant for environmental concerns.
- 2) The Respondent provided the 2014 Property Assessment Detail Report and Assessment Explanation Supplement that showed the environmental adjustment of -30% and, the RealNet document with these issues highlighted. The Respondent also provided its 2014 Non Residential Sale Questionnaire (the Sale Assessment Request for Information (ARFI)) for this property noting environmental issues and the owners statement that the property was not purchased based on the NOI.
- 3) 95 Crowfoot Cr NW, the Complainant's second sale, is located in a Power Centre and therefore would have been analysed with a different group of properties (Power Centres market differently than other free standing retail). The Respondent noted that the capitalization rate for Power Centres is 6.00%. Also provided were the Assessment documents to illustrate this, along with a map to show this property within the Power Centre.

[22] The Respondent provided its 2014 capitalization rate analysis [R1, pp. 45-62] and

showed that when developing the capitalization rate the rental rates applied were from the year of the sale. For example if the sale was in January of 2011, the 2011 rental rates would be used (reflecting the July 1, 2011 valuation date). The Respondent stated that this was following the direction of MGB DL019-10 that stated the closest rental rates to the date of sale should be used. The Complainant's method only works in an upward trending market. The Respondent also stated that in its analysis it was using similar types of properties, unlike the Complainant.

[23] With respect to the Complainant's comments about use of *post facto* sales for the capitalization studies, the Respondent claims that the Complainant is taking the Board decisions out of context and there is no legislation that says it can't use a sale after the valuation date for capitalization rate studies.

Board's Reasons for Decision:

[24] The Board will limit its comments to the relevant facts pertaining to this case. The subject property appears to be a reasonable representation within its assessment class and equitable to similar types of properties. Nothing unique or underperforming was brought forward with regards to this particular property, which also resides in a good location. This subject's classification was not challenged by the Complainant. The subjects' rental rates were also not challenged however the capitalization rate was. The Complainant asked for the capitalization rate to be changed to 7.00%.

[25] Both the Complainant and the Respondent used the income approach to value this property, however only one sale was common to both analyses, used to derive the capitalization rate. The two parties also differed when it came to the method to derive the capitalization rate. The Complainant's position was that the Respondent's analysis was mixing actual and typical parameters in deriving the capitalization rate. The Complainant stated that actual NOI's should be used to develop the capitalization rate for each sale property and then the typical capitalization rate should be determined by calculating the median. Stating that the actual NOI's were not available, the Complainant used the capitalization rates as reported by RealNet, a third party document. The Board finds, in reviewing this calculation, that it cannot accept a capitalization rate given by a third party. In particular the Board was concerned that there was no evidence to show what factors were used to arrive at the reported third party capitalization rates. Having rejected the Complainant's actual calculation of the capitalization rate, the Board found no reason to consider other arguments presented by the Complainant.

[26] The results from the Respondent's analysis satisfied the Board that market value and equity were attained.

[27] The Board finds insufficient evidence to alter the capitalization rate applied to this property. The assessments are confirmed.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF August 2014.


K. Thompson

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 Rebuttal (Late: not admitted into evidence)

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.*

Property Type	Property Sub-Type	Issue	Sub issue
Retail	freestanding	Income Approach	Cap Rate