



## **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:**

***Shaw Cablesystems Limited***  
***(as represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

**and**

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

**before:**

***B. Horrocks, PRESIDING OFFICER***  
***T. Livermore, BOARD MEMBER***  
***R. Kodak, 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 2014 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>200922466</b>
<b>LOCATION ADDRESS:</b>	<b>3322 23 ST NE</b>
<b>FILE NUMBER:</b>	<b>76812</b>
<b>ASSESSMENT:</b>	<b>\$2,480,000</b>

This complaint was heard on the 5th day of August, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6  
Appeared on behalf of the Complainant:

- T. Howell (Colliers International Realty Advisors Inc.)

Appeared on behalf of the Respondent:

- B. Galle (City of Calgary)
- G. Jones (City of Calgary)

**CARB's Decision in Respect of Procedural or Jurisdictional Matters:**

- [1] There were no concerns with the CARB as constituted.
- [2] The parties have visited the site.
- [3] The parties have not discussed the file.

**Preliminary Matter:**

[4] The Respondent requested that the Complainant's Rebuttal Disclosure (C-2) be rejected. The Respondent submitted that page 122 of C-1 contains the Respondent's capitalization (cap) rate analysis and the Complainant could have put any argument with respect to that in its Disclosure (C-1). The Complainant submitted that the information provided in response to its s.299 request was somewhat lacking. The CARB decided that it would allow the Complainant's Rebuttal and that it would place the appropriate weight on it when making its decision.

**Property Description:**

[5] The subject property is a 0.56 acre parcel located in the North Airways community in NE Calgary. The site is improved with a 5,946 square foot (sf) freestanding restaurant commonly known as the WhiteSpot. The improvement was constructed in 2006 and is classified A2 quality.

[6] For the 2014 tax year the subject property was assessed using the Income Approach to Value. Typical rent applied was \$31.00 per square foot (psf). Typical vacancy allowances and non-recoverable operating expenses were deducted. The resulting net operating income (NOI) was capitalized at a rate of 6.50% to arrive at an assessed value which was truncated to \$2,480,000.

**Issues:**

[7] An assessment amount was identified on the Assessment Review Board Complaint Form as the matter that applies to the complaint. At the outset of the hearing, the Complainant advised that there was one outstanding issue, namely; capitalization (cap) rate.

**Complainant's Requested Value:** \$2,160,000 (Complaint Form)  
\$2,310,000 (Hearing)

**CARB's Decision:**

[8] The 2014 assessment is confirmed at \$2,480,000.

**Legislative Authority, Requirements and Considerations:**

The Composite Assessment Review Board (CARB) derives its authority from the Act, Section 460.1:

- (2) *Subject to section 460.1(1), 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).*

The Act 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*

**CARB's Decision in Respect of Each Matter or Issue**

**Issue:** What is the typical cap rate to be utilized in the Income Approach to value for determining the market value, for assessment purposes?

**Complainant's Position:**

[9] The Complainant's Disclosure is labelled C-1.

[10] The Complainant submitted that the Respondent's methodology for determining a cap rate for use in the Income Approach to Value is flawed in that it has applied "typical" parameters against "actual" sales to achieve a "typical" cap rate and further that it is applying the wrong parameters in its analysis. The subject property is assessed using a 6.50% cap rate while the Complainant requested a 7.00% cap rate.

[11] The Complainant, on pages 17 through 40, provided the following decisions: CARB 1302/2011-P, CARB 1340/2011-P, CARB 1036/2012-P and CARB 70999P-2013, which address the need for the use of consistent methodology when calculating a market value using the Income Approach. The Complainant argued that these previous decisions support its methodology.

[12] The Complainant, on page 122, provided a table titled 2014 Freestanding Centre Capitalization Rate Study as prepared by the City of Calgary. The Complainant noted that four of the sales, specifically; 207 19 ST NW, 2245 Pegasus Rd NE, 6427 Bowness RD NW and 418 16 AV NW, had all occurred after July 1, 2012. The Complainant, on page 42, produced a timeline noting the sales in question and submitted that 2014 Roll Year parameters (NOI) should have been used in the calculation of their cap rate as opposed to 2013 NOI.

[13] The Complainant, on page 98, provided a table titled 2014 Citywide Restaurant Dining Lease Analysis: A Quality, as prepared by the City of Calgary noting the Respondent had used "actual" lease rates to determine the "typical" lease rate to be applied in the assessment. The Complainant submitted that the Respondent's methodology was flawed because it was mixing actual and typical parameters.

[14] The Complainant, on page 187, provided a table titled Capitalization Rate Analysis. The table contains details of 3 sales that occurred in the period November 29, 2011 to April 4, 2014. The table contains a cap rate for each sale that had been extracted from the RealNet Transaction Summary for that sale. The cap rates ranged from 5.80% to 8.80%, with a median cap rate of 6.90% and a mean cap rate of 7.17%. The Complainant requested a cap rate of 7.00% to be applied in the subject assessment.

#### **Respondent's Position:**

[15] The Respondent's Disclosure is labelled R-1.

[16] The Respondent submitted that the Complainant's requested market value for the subject is based on an inconsistent methodology that mixes "actual" and "typical" inputs whereas the Respondent's analysis used a consistent approach where "typical" market rent, adjusted for typical vacancy, op costs, and non recoverable expenses were taken from the year in which the sale occurred to calculate the NOI.

[17] The Respondent, on page 21, provided the Property Assessment Detail Report for 3840 Macleod TR SE, the Complainant's first sale, noting there are environmental concerns with the property and as such the sale is not considered typical and shouldn't be used in a cap rate study. The Respondent submitted that if that sale were excluded from the Complainant's cap rate study, the remaining two sales would produce a median cap rate of 6.35% which compares favourably to the assessed cap rate of 6.50%.

[18] The Respondent, on page 31, provided the Property Assessment Detail Report for 95 Crowfoot CR NW, the Complainant's third sale, noting the Subproperty Use is CM1403 Retail – Shopping Centres – Power and not comparable to the subject. The Respondent submitted that Power Centres have different vacancy rates and operating costs than freestanding retail. The Respondent submitted that the subject is assessed as a freestanding retail property and not just a restaurant.

[19] The Respondent, on page 43, provided a table titled 2014 Freestanding Centre Capitalization Rate Study as prepared by the City of Calgary. The table contains details of nine sales that occurred in the period July 26, 2011 and November 26, 2012. The cap rates ranged from 4.34% to 7.72%, with a mean cap rate of 6.08% and a median cap rate of 6.37%. The Respondent noted that the subject is assessed using a cap rate of 6.50%.

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

[20] The Complainant's Rebuttal Disclosure is labelled C-2.

[21] The Complainant, on page 5, provided a table titled 2013 Freestanding Capitalization Rate Summary as prepared by the City of Calgary. The Complainant noted the Sale Year Assessed Net Operating Income (NOI) was different for 321 19 ST NW and 6331 Bowness Road NW than the NOI used in the 2014 Freestanding Capitalization Rate Study. The Respondent did not provide a reasonable explanation for the discrepancy.

**CARB's Findings:**

[22] The CARB finds the Complainant relied upon cap rates and actual rents that were provided by third parties, some of which were estimated. The CARB has no way of knowing how those rates or rents were derived or for what purpose. The Respondent followed the methodology articulated in MGB 145/07. The CARB understands that calculating the value of a property using the Income Approach must be based on a consistent methodology. If "actual" rates are to be used to calculate a value using the Income Approach, then all of the parameters in that calculation must reflect actual values. The CARB finds the Complainant's final calculation of the market value is flawed. The Complainant used "actual" NOI to calculate its cap rate and then applied that cap rate along with "typical" lease rates and other "typical" parameters in its requested assessment calculation. The mixing of the two methods is not appropriate.


[23] The CARB finds that the properties at 3840 Macleod TR SE and 95 Crowfoot CR NW are not comparable to the subject property and those sales should not be included in a cap rate study for freestanding retail. The Complainant's cap rate study is reduced to the sale of 1323 Centre ST NE.

[24] The CARB finds that substituting the 2013 NOI values for the sales of 321 19 ST NW and 6331 Bowness Road NW in the 2014 Freestanding Centre Capitalization Rate Study does not change the outcome. The revised mean cap rate is 6.09% while the revised median is unchanged at 6.37%.

**CARB's Reasons for Decision:**

[25] The Complainant failed to demonstrate that the Respondent has erred in its determination of the cap rate for its mass appraisal process.

DATED AT THE CITY OF CALGARY THIS 21<sup>st</sup> DAY OF August 2014.

  
B. Horrocks

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal 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

<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
<i>Retail</i>	<i>Stand Alone</i>	<i>Income Approach</i>	<i>Cap Rate</i>