



**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

**CARB - 0203-0010/2012**

**IN THE MATTER OF A COMPLAINT** filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**BETWEEN:**

Shane Roest – Roest Rentals- Complainant

- a n d -

City of Lethbridge - Respondent

**BEFORE:**

Members:

Tom Golden, Presiding Officer

Bal Boora, Member

Hank Louwerse, Member

A hearing was held on Friday, June 22, 2012 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property Identifier	Assessed Value	Owner
4-1-360-1235-0001 1235 36 Street N	\$1,311,000	Roesters's Nest Ltd & 782734 AB Ltd

Appeared on behalf of the Complainant:

- Shane Roest representing Roest Rentals

Appeared on behalf of the Respondent:

- Verle Blazek, Assessor, City of Lethbridge

**PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

The subject property is an industrial building with a primary building size of 15,163 square feet (sq ft). This building is situated on .83 ha (2.06 ac) of land in an industrial area of the City on a main thoroughfare. This structure was constructed in the year 2000. The site is designated in the Land Use Bylaw as I-G or industrial general. A rent role indicates 4 leases in the building two of which are related to the owners. An assessment was prepared using an income approach. The method of assessment was not in dispute.



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### **PART B: PROCEDURAL MATTERS**

The CARB derives its authority to make decisions under Part 11 of the Act. During the course of the hearing, the parties raised the following procedural issue, which is addressed below.

After the Complainant presented his case the Respondent stated that in his opinion the Complainant provided no evidence that the assessment was in error. Therefore the requirement for the Complainant to meet the onus requirement of a complaint was not met and the appeal should be dismissed without further consideration.

#### **Procedural Issue**

- 1) Did the presentation of the Complainant meet the onus requirement provided for in the legislation.

#### **Respondents Position**

In the Respondents opinion onus was not met because:

1. The Complainant submitted no information to the process within the legislated required time periods.
2. The Complainant only used City Assessment data to support the complaint.
3. The presentation amounted to only a rebuttal of the Respondents position and added no new information to the argument.

A previous Calgary CARB decision was submitted to emphasis the importance of onus. If an Complainant could not provide sufficient evidence that the assessment is in error the Complaint can be dismissed without further investigation. Based on these reasons the Respondent would submit no evidence to the hearing for the CARB to consider. No evidence would be submitted to support the assessment.

#### **Complainants Position**

Lacking a professional knowledge of the assessment appeal system the Complainant considered the information presented to be relevant in the determination of the value of the subject property. The data the assessment department created is the only information available to the assessed person.

#### **Procedural Decision**

The Board determined that the Complainant provided sufficient information to allow the Board to review the information that maybe submitted by the Respondent in answer to the point made by the Complainant. The Complainant met the requirement of onus.



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### **Reasons**

The Board recognizes that the onus lies with the Complainant to demonstrate that there is the possibility that the assessment is in error. Should no evidence be presented then the hearing need not proceed.

The respondent would not present evidence having decided onus was not met. Establishing whether or not onus was met is the authority of the Board and not the Respondent. A Respondent may choose to not respond to a complainant however the Board will make a decision on the best evidence given it at a merit hearing.

In this case the Board disagreed with the position of the Respondent. The board recognizes the application form as part of information that may be provided to the board. A form alone provides a narrow range of information however acts as the basis for the commencement of the process. In this case the Complainant's form states:

- "Assessed value (was) to high"
- 2 bays @ back of property valued at \$7.25/sq ft, cold storage no front access bathroom etc."

In response to the first comment regarding the nature of the assessment, the Complainant discussed the cap rate used as an input to the income model. The issue as stated in the form is very broad in nature. In this case the Board finds that the intent of the Complainant was to address the inputs that resulted in the value being objected to. Based on the form the assessor could have expected to defend the income approach. In addition the Complainant made a reasonable discussion of the cap rate using the Respondents evidence.

In terms of the rent rate the form clearly suggests these rates would be questioned and the rent rate discussion made points about the applicability of the values used in the model. It was reasonable for the Respondent to discuss how the inputs to the income model affected the subject property.

Clearly the Complainants arguments were entirely based on the Respondents information however the complaint was based on the interpretation of the assessor's information as it relates to the subject lands. The Board accepts that the Respondents information may be the best available to the Complainant.

Whether or not the Complainant was giving evidence or rebuttal in this case was irrelevant. The Board understood the Complainant's presentation to be evidence.

### **PART C: ISSUES**

The CARB considered the complaint form together with the representations and materials presented by the parties. The matters or issues raised on the complaint form are as follows:

**ASSESSMENT REVIEW BOARD  
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The Complainant directed to the Board to the income calculation presented in the Respondents written submission in Exhibit 1 and noted that the calculation uses a cap rate of 7.75%. This was based on information displayed in a table entitled "Cap Rate v: Year Sold". It was pointed out that a sale occurred in 2012 with a cap rate of less than 6%. Also the trend of cap rates is downward indicating a lower cap rate was more appropriate.

**RESPONDENTS POSITION**

The Respondent did not accept the Board decision onus and refused to make a presentation and rejected the opportunity to answer any board questions insisting no evidence would be entered from the Respondent.

**Decision: Issue 1**

The cap rate of 7.75% is the appropriate rate to be used in the Income calculation

**Reasons:**

The Board did not accept the Complainant's argument as the one cap rate used was a 2012 sale and in accordance with the Regulations not applicable to the assessment year under dispute. The rate used is compatible with the written evidence provide.

**ISSUE 2:** Is the rental rate of \$7.25 the appropriate value to use in the income calculation applied to the subject property?

**COMPLAINANT POSITION**

The Complainant directed to the Board to the income calculation presented in the Respondents written submission and noted that the calculation uses a rental value of \$7.25. In his opinion the applied rental rate was high and \$7.00 would be more appropriate. The lower rate should be applied because the higher rate could not be achieved on of the rear of the building because of the substandard attributes. To support the \$7.00 rate the Complainant pointed to the rent roll also part of the Respondents submission as one lease in the subject building was at \$7.00. As further support the Complainant suggested that the comparables of rents shown in the Respondents evidence package were for much smaller buildings and therefore weak comparables.

**RESPONDENTS POSITION**

The Respondent did not accept the Board decision onus and refused to make a presentation and rejected the opportunity to answer any board questions insisting no evidence would be entered from the Respondent.



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**Decision: Issue 1**

The rental rate of \$7.25 is the appropriate rate to be used in the Income calculation

**Reasons:**

The Respondent choose not to address the Complainants position and the Board received no testimony from the Assessor. The Board relied upon the document filed as part of Exhibit 1 entitled Summary of Evidence. A review of the table entitled "Lease Rate Comparables" was used by the Complainant however the Board disagrees with the conclusion reached. The subject building is larger than the various comparables but it is noted there are 4 leases in the subject building close in size to several comparables. In particular a property listed as unit 2 supports the assessment. The board finds the requested rent of \$7.00 represent the lower of the arm length lease in the subject property and the other lease is at \$7.25 or the value used by the assessor. The actual rent role for the subject supports the assessment.

**PART D: FINAL DISPOSITION OF COMPLAINT**

The complaint is allowed (or denied) and the assessments are set (or confirmed) as follows.

Roll No./Property Identifier	Value as set by the CARB	Owner
4-1-360-1235-0001 1235 36 Street N	\$1,311,000	Roesters's Nest Ltd & 782734 AB Ltd

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 12<sup>th</sup> day of July, 2012.

Tom Golden, Presiding Officer

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**APPENDIX "A"**

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

**NO. ITEM**

1. Exhibit 1 Board package

**APPENDIX 'B'**

ORAL REPRESENTATIONS

**PERSON APPEARING CAPACITY**

- 1 Shane Roest – Roest Rentals

**CARB - 0203-0010/2012 Roll # 4-1-360-1235-0001 (For MGB Office Only)**

<b>ADDRESS</b>	<b>Appeal Type</b>	<b>Property Type</b>	<b>Sub Property Type</b>	<b>Issue</b>	<b>Sub Issue</b>
1235 36 Street North	CARB	Warehouse	Single Tenant	Sales Cost Approach	Land and Improvements