

**COMPOSITE
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:

***Anterra Sunridge Power Centre Ltd. (as represented by Altus Group Ltd.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER

R. Roy, MEMBER

A. Wong, MEMBER

This is a complaint to the Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 200182947

LOCATION ADDRESS: 3221 Sunridge Way NE

HEARING NUMBER: 67234

ASSESSMENT: \$31,520,000.

This complaint was heard on 11th, 12th and 13th day of June, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- A. Izard
- B. Neeson
- K. Fong
- D. Hamilton

Appeared on behalf of the Respondent:

- B. Thompson
- R. Ford

Procedural or Jurisdictional Matters:

The Complainant brought forward a Preliminary Issue related to their request for information, from the Assessor, under Sections 299 and 300 of the Municipal Government Act (MGA) and the ensuing response from the Assessor which the Complainant maintains did not meet the requirements of Section 299 of the MGA. As a result of this response the Complainant requested that the CARB not allow the Assessor to introduce their evidence brief pertaining to this property as same includes much of the requested, but allegedly not produced, information.

The Assessor maintains that the information provided to the Complainant does in fact meet the requirements of Section 299 of the MGA and thus their evidence brief should be allowed.

The CARB was advised, by both parties, that this matter has been forwarded for Ministerial Review. In that a decision of the said Ministerial Review has not yet been released, the CARB is of the judgment that the Merit Hearing should proceed and the evidence brief of the Assessor will be allowed.

As a matter of Procedure, and with the agreement of both parties, it was requested that the CARB hear, in this Hearing, an extensive capitalization rate argument presented by the parties and that all of that evidence and argument related to same would be carried forward and become applicable to other, similar property Assessment Complaints, scheduled to be heard by this same panel of the CARB, with the same parties, this same week. More specifically, the other affected Hearings are Hearing Numbers: 66617, 67933, 68043, 68138, 68141, 68165 and 68193.

The CARB agreed with this request but reserved the right to produce written decisions relating to the individual properties or certain group(s) of the properties, at the discretion of the CARB.

Property Description:

According to the *Property Assessment Public Record* (Exhibit C-1 pg. 22), the subject property is categorized as being a CM1402 – Retail – Shopping Centre – Community with an A- quality rating. The property consists of five (5) structural components ranging in size from 4,709 Sq. Ft. to 61,533 Sq. Ft. The Year of Construction (YOC) for four of the components is recorded as 2003 while the YOC of the smallest structure is recorded as 2008. The underlying site is reported as being 10.01 acres in size.

The property has been valued, for assessment purposes, through application of the Income Approach with the following inputs:

<u>Category</u>	<u>Rentable Area</u>	<u>Rental Rate</u>	<u>Typical Vacancy</u>
Big Box 14,001 – 40,000 Sq. Ft.	80,120 Sq. Ft.	\$17.00/Sq. Ft.	1.00%
CRU 1,000 – 2,500 Sq. Ft.	7,256 Sq. Ft.	\$25.00/Sq. Ft.	6.25%
CRU 2,501 – 6,000 Sq. Ft.	4,272 Sq. Ft.	\$24.00/Sq. Ft.	6.25%
<u>Category</u>	<u>Rentable Area</u>	<u>Rental Rate</u>	<u>Typical Vacancy</u>
CRU > 6,000 Sq. Ft.	31,420 Sq. Ft.	\$21.00/Sq. Ft.	6.25%

Pad Site		4,709 Sq. Ft.	\$24.00/Sq. Ft.	6.25%
Vacant Space Shortfall	@	\$8.00/Sq. Ft.		
Non-Recoverable Allowance	@	1.00%		
Capitalization Rate	@	7.25%		

Issues:

There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The Assessor's applied capitalization rate of 7.25% is excessively low and not reflective of the market conditions as at the designated valuation date and the resultant assessed value is incorrect. The appropriate capitalization rate should be 7.75% (revised from the requested 8.00% as shown on Exhibit C1 pg. 29).

Complainant's Requested Value: \$29,490,000. (Exhibit C1 pg. 122)

Party Positions:**Complainant's Position**

The Complainant maintains that the capitalization rate of 7.25% applied to 2012 assessments of Neighbourhood – Community Shopping Centres within the city of Calgary is excessively low and is not reflective of market conditions as at the valuation date. The Complainant maintains that, based upon a review and comprehensive analysis of the valid Neighbourhood – Community Shopping Centre transactions (Exhibit C2), an increase in the current assessed 7.25% capitalization rate to a well supported 7.75% is warranted.

In their Exhibit C2, the Complainant has analysed seven (7) Neighbourhood/Community Shopping Centre sales and this analysis incorporates two different methods of deriving a capitalization rate, both of which support their requested rate of 7.75%.

As outlined in their brief (Exhibit C2 pg 2) the methods they have incorporated are:

Capitalization Rate Method I:	The application of assessed income as prepared by the <i>City of Calgary Assessment Business Unit (ABU)</i> .
Capitalization Rate Method II.	The application of typical market income as prescribed by the <i>Alberta Assessor's Association Valuation Guideline (AAAVG)</i> and the <i>Principles of Assessment 1</i> for Assessment Review Board Members and Municipal Government Board Members (Principles of Assessment).

To verify that Capitalization Rate Method I is the method utilised by the Assessor, the Complainant introduced (Exhibit C2 pg. 24) an excerpt from *Retail Valuation Methodologies, Procedures and Definitions*, prepared, as indicated under the Heading *Terms* therein, "... for The City of Calgary Assessment business unit (ABU) to use as an additional supporting document to outline procedures and definitions used by the ABU." This document goes on, under the Heading *Income Approach*, to state: "Direct capitalization is the method employed to

value the all of (sic) properties in the commercial retail inventory valued using the income approach. This involves capitalizing the derived typical net operating income by an overall typical capitalization rate determined from comparable sales of similar properties. The income parameters of the year the sale occurred in are used for the purpose of developing a capitalization rate using typical conditions.”

The seven sales analysed by the Complainant are: *Pacific Place Mall, Sunridge Sears Centre, Calgary East Retail Centre, Braeside Shopping Centre, Cranston Market, McKnight Village Mall and Chinook Station Office Depot*. In their Method I analysis, which incorporates the assessed income from the year of the sale, the Complainant derived (Exhibit C2 pg. 19) a median capitalization rate of 7.69% and, indicated verbally, a median of 8.25% both of which, the Complainant suggests, are supportive of their requested 7.75% rate.

The Complainant also completed a second capitalization rate analysis which they have referred to as Capitalization Rate Method II. It is the contention of the Complainant that this Method II is the method as outlined in the *Alberta Assessor's Association Valuation Guidelines (AAAVG)* and they introduced (Exhibit C2 pgs. 100 – 103) excerpts from the AAAVG which, among other things, provides a detailed, step-by-step approach to *Determining Market Rents as of the Valuation Date* shown on page 102 of the aforementioned Exhibit C2. The process is outlined as follows:

“Base Rent

To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance)

- 1. For most tenants the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of “market” rents are (in order of descending importance):*
 - Actual leases signed on or around the valuation date.*
 - Actual leases within the first three years of their term as of the valuation date.*
 - Current rents for similar types of stores in the same shopping centre.*
 - Older leases with active overage rent or step-up clauses.*
- 2. As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to rents established for similar tenants in other similar properties.*
- 3. If comparable information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be.”*

In addition, the Complainant introduced (Exhibit C2 pgs 105 – 108) excerpts from the *Alberta Principles of Assessment I* prepared for the training of *Assessment Review Board Members* as well as *Municipal Government Board Members*. The Complainant further introduced (Exhibit C2 pgs. 114 – 115) an excerpt from the *City of Calgary Assessment 2009 Retail Capitalization Rate Document* which, at pg. 114, outlines the process the Assessor applies to obtain data as well as the capitalization rate calculation process.

Having completed their Method II analysis in accordance with the above given guidelines and having analyzed the same sales used in their Method I analysis, the Complainant concludes (Exhibit C2 pg. 19) with a Mean capitalization rate of 7.80% and a Median capitalization rate of 7.71% which, they maintain, fully supports their requested 7.75% capitalization rate.

Respondent's Position

The Assessor introduced (Exhibit R1 pg. 15) the Complainant's Method I capitalization rate analysis with what the Assessor contends are required changes to the data. The Assessor maintains that the Complainant has reported the incorrect selling price for the *Pacific Place Mall* at \$44,000,000 whereas it should be \$46,000,000 and using this corrected sales price results in a capitalization rate for this sale of 6.69% not the 7.00% reported by the Complainant. The Assessor also maintains that the Complainant has erred in the analysis of the *Braeside Shopping Centre* in that they incorrectly applied *Strip Shopping Centre* typical inputs rather than *Neighbourhood Community Shopping Centre* inputs. The Assessor explained that the error stems from the property having been reclassified from "strip centre", which was applied at the time of the sale, to "neighbourhood community centre" which the Assessor maintains is the correct classification. The change in classification and hence the inputs required, results in the net operating income (NOI) decreasing from the \$1,276,862 (Exhibit C2 pg. 19) to \$1,100,296 and this in turn results in a capitalization rate of 7.20% (Exhibit R1 pg. 15). Making these two corrections results in a Mean capitalization rate of 7.48% and a Median of 7.20% which is supportive of the Assessor's applied 7.25%. Additionally, as shown in the second chart (Exhibit R1 pg. 15) the Assessor has removed the capitalization rates derived from the analysis of both *McKnight Village Mall* and *Chinook Station Office Depot* as both of these sales were recorded more than 24 months prior to the valuation date and this results in an even lower Mean capitalization rate of 7.14% and a Median of 6.69% which further supports the Assessor's applied 7.25%.

The Assessor also maintains that the Complainant has been inconsistent in how they have analysed lease data to derive their market rent estimates. To this end the Assessor introduced (Exhibit R1 pg. 62) a detailed chart which shows, property by property, the number of leases reviewed and the time frame between the valuation date and the date of the leases analysed. This chart indicates that the Complainant has analysed lease data that dates as far back, from the valuation date, as 8 years and 8 months. In terms of the number of leases examined, this chart indicates that in a number of instances the Complainant has used only 1 lease to support their conclusion as to market rent.

Complainant's Rebuttal

The Complainant disagrees with the Respondent's position regarding the sale price of the *Pacific Place Mall* and produced (Exhibit C3 pgs. 16 – 21) a copy of *Alberta Land Title Certificate #111 130 902* which relates to the said property and which states the value as being \$44,000,000 with the title having been registered as a "Transfer of Land". Additionally, the Complainant produced (Exhibit C3 pg 23) a copy of the *Affidavit of Value*, also pertaining to this sale, which refers to \$44,000,000. The Complainant also noted that the City records the sale price of the property as being \$44,000,000 in their computerised data system (Exhibit R2 pg. 283) which is the source the Assessor refers Complainants to who are seeking information pertaining to the sales data used by the Assessment Business Unit. (It should be noted that the aforementioned Exhibit R2 is a print out of the sales data found on the city web site and which was submitted by the Assessor at the direction of the CARB).

Additionally, the Complainant introduced (Exhibit C3 pgs. 41 – 42) a copy of the *Property Tax Statement of Account* for the *Braeside Shopping Centre* which shows no change in the property assessment during the 2010 roll year.

Additionally, the Complainant introduced (Exhibit C3 pgs. 56 – 63) examples of lease analyses prepared by the ABU for the 2012 assessment year where the leases analysed exceed 24

months from the valuation date and suggest to the CARB that the 24 month age restriction for sales/lease analysis period referred to by the Assessor is purely arbitrary and the Complainant would have no reasonable way of knowing of same.

The Respondent attempted to introduce a Land Transfer document to challenge the Complainant's rebuttal information; however, in that this information had not been previously exchanged with the Complainant as required under the Matters Relating to Assessment Complaints (MRAC) regulation, the CARB did not allow this document to be introduced.

Board's Decision:

The assessment is **reduced** to **\$29,490,000**.

Decision Reasons:

The CARB found the capitalization rate study, submitted by the Complainant, to be a well supported analysis both in terms of methodology and data inputs. While the Assessor takes issue with the reported sales price of the *Pacific Place Mall*, the CARB finds the evidence of the Complainant in the form of the *Certificate of Title* and the *Affidavit of Value* (Exhibit C3 pgs. 16 & 23) to be convincing. Further, the City's own data source (Exhibit R2 pg. 283) also refers to the sales price as being \$44,000,000. Certainly if there is a mistake in terms of the reported sales price then it is incumbent upon the City to alter their data base as this is the data to which enquiring Complainants are referred by the ABU.

With regard to the *Braeside Shopping Centre*, the CARB notes that removing this sale from the Complainant's analysis does not significantly alter the conclusions of that study. Referring to the two charts (Exhibit C1 pg. 55), removing the *Braeside Shopping Centre* sale produces, in Method I, a Mean capitalization rate of 7.57 and a Median rate of 7.63% and in Method II produces a Mean capitalization rate of 7.81% and a Median rate of 7.72%.

With regard to the 24 month lease date analysis period suggested by the Assessor, the CARB finds the above referred to evidence of the Complainant to be compelling and agrees that the said 24 month period appears arbitrary and subject to change at the whim of the Assessor. Accordingly the CARB accepts the lease analyses as submitted by the Complainant.

The Respondent did not provide any evidence to support their applied 7.25% capitalization rate, but rather chose to argue about some of the evidence and analysis put forth by the Complainant and by so doing the Respondent has ignored the fact that once a Complainant has produced sufficient evidence to establish a *prima facie* case, the *Onus* then shifts to the Respondent to defend their position. In this regard the Respondent has failed completely as they have produced no evidence to support their application of a 7.25% capitalization rate.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF JULY 2012.



C. J. Griffin,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant's Capitalization Rate Study
3. C3	Complainant's Rebuttal
4. R1	Respondent Disclosure
5. R2	Print Out of Assessor's Sales Data as found on their web site (Submitted at the direction of the CARB)

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.*