

**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:

***Pacific Place Mall General Partner Ltd. (as represented by Altus Group Ltd.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***C. McEwen, PRESIDING OFFICER
D. Julien, MEMBER
K. Coolidge, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 054009907

LOCATION ADDRESS: 999 36 ST NE

HEARING NUMBER: 64056

ASSESSMENT: \$37,440,000

This complaint was heard on the 23rd day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- K. Fong

Appeared on behalf of the Respondent:

- D. Zhao
- B. Thompson

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

There were no procedural or jurisdictional matters.

Property Description:

The subject property is a 543,057 square foot parcel improved with a 184,505 square foot community shopping centre, the Pacific Place Mall, located in the Franklin district of NE Calgary. The subject is assessed using the Income Approach to Value.

Issues:

Is the subject assessment too high and, therefore, inequitable to comparable properties?

Specifically,

1. Should the subject space types be reallocated to correct factual errors?
2. Is the rent rate applied to the Food Court space too high?
3. Should the subject capitalization rate be increased from 7.50% to 7.75%?
4. Is the rent rate applied to the Recreation space too high?
5. Is the rent rate applied to the Theatre space too high?
6. Is the rent rate applied to the Kiosk space too high?

Complainant's Requested Value:

\$29,270,000

Board's Findings and Reasons in Respect of Each Matter or Issue:

1. Should the subject space types be reallocated to correct a factual error?

The Respondent informed the Board that the subject property's assessed space had been reallocated based upon a thorough analysis of the subject Assessment Request for Information (ARFI) data. A revised assessment value for the subject property of \$35,080,000 was recommended. The Complainant accepted the Respondent's revised allocation of the subject space.

The Board accepts the reallocation of space agreed to by mutual consent of both parties.

2. Is the rent rate applied to the Food Court space too high?

The Complainant argued that the \$90 per square foot rate assessed the subject Food Court area was excessive. In support, the Complainant provided a table of four subject leases, dated from February 2005 to July 2008, indicating lease rates of \$37-\$50 per square foot. The Complainant also provided a table of five lease comparables taken from Village Square Mall, dated February 2004 to May 2008, indicating lease rates of \$40-\$70 per square foot. The Complainant argued that these lease activities supported the requested rent rate of \$50 per square foot.

The Respondent provided two comparable Food Court leases from Westbrook Mall, dated April 2008 to October 2008, indicating lease rates of \$90 and \$95 per square foot respectively. The Respondent also pointed out a discrepancy between the lease start dates on the subject Rent Roll and the start dates on the subject ARFI. The Respondent asked that little weight be provided the lease information as the actual start dates could not be confirmed.

In rebuttal (C3), the Complainant challenged the similarity of the Westbrook Mall comparable. The Complainant provided a lease table for eight Food Court properties within Westbrook Mall indicating recent lease rates of \$59-\$139 per square foot. The Complainant argued that Westbrook Mall was a higher class of shopping centre than the subject due to location and its anchor tenants (Walmart and Safeway) and could, therefore, command higher lease rates from its tenants than Pacific Place Mall. The Complainant further argued that, based upon differences in characteristics, the subject property should be assessed at a lower rate than Westbrook Mall and, again, requested a subject Food Court rate of \$50 per square foot.

The Respondent argued that the subject property and Westbrook Mall were similar if not exact comparables. Both properties are enclosed malls which enjoy high traffic due to their excellent locations. The Respondent also noted the close proximity of a Canadian Tire store to the subject property.

The Board finds that the Complainant has not met onus. Aside from the lease chart for Village Square Mall, the Board has no evidence before it regarding this comparable. The Board is, therefore, unable to determine the similarity of the subject and comparable properties and whether assessment inequity exists between them. The Board finds the same weakness in the Complainant's argument regarding the Westbrook Mall comparable. Without details such as photographs of the Food Court areas, traffic count comparisons and Westbrook Mall ARFIs, the Board is unable to conclude that inequity exists between the subject and Westbrook Mall because so little information is provided regarding the characteristics of the comparable.

3. Should the subject capitalization rate be increased from 7.25% to 7.75%?

The Complainant provided argument and evidence that the typical Neighbourhood Shopping Centre capitalization rate of 7.25%, applied to the subject property for assessment purposes, was incorrect. The Complainant argued that the city's employment of typical rent rates to calculate a typical cap rate resulted in a cap rate lower than investors in the marketplace would be willing to assign the subject property. In support of the argument, the Complainant provided a table of five, 2009 Neighbourhood Shopping Centre sales indicating mean and weighted mean capitalization rates of 7.87% and 7.70% respectively. The Complainant also provided the

valuation analysis conducted for each of the properties represented on the table. The valuation analysis accepted the city's typical inputs for vacancy, vacant space shortfall and non-recoverables while adjusting the rent rates to match the actual leases on the rent roll. Vacant space was provided a rent rate consistent with the leases in place for similar space within the specific property. The Complainant argued that the Respondent's typical capitalization rate of 7.25% was not supported by the actual income generated by the properties used in the city's capitalization rate study for Neighbourhood Shopping Centres. The Complainant further argued that several of the property sales used by the Respondent to develop the typical capitalization rate for Neighbourhood Shopping Centres were not representative of typical transactions and, therefore, should be given very little weight by the Board.

The Respondent provided a table of eight Neighbourhood Shopping Centre sales that were used to develop the city's 2011 Neighbourhood, Community Centre Capitalization Rate Study. The sale of the properties occurred between August, 2008 and April, 2010 and provided a median cap rate of 7.16%. The Respondent explained that cap rate calculations were moved to the closest .25%. Accordingly, the typical cap rate for Neighbourhood Shopping Centres was established at 7.25%. The Respondent described the sales as valid and representative of the marketplace. In addition, the Respondent provided a table, entitled 2010 Published Capitalization Rates, summarizing the cap rate analysis of three national real estate firms that reported the second quarter 2010 Capitalization Rate for Neighbourhood/Community Shopping Centres to be 6.75-7.30%. The Respondent also provided a chart (Neighbourhood, Community Centre Capitalization Rate Assessment to Sales Ratios, 7.25% v. 7.75%) that compared the average and median Assessment to Sales Ratios (ASR) for the eight properties used in the city's neighbourhood cap rate study. The analysis demonstrated that a cap rate of 7.75% resulted in a median ASR ratio of 0.87, lower than the ASR derived from a 7.25% cap and below the mandated range of 0.95-1.05. The Respondent argued that properties within the study would be under assessed using the higher cap rate.

In rebuttal, the Complainant provided an analysis of the eight sales used by the Respondent in the 2011 Neighbourhood, Community Centre Capitalization Rate Study. The Complainant argued that the application of typical inputs to determine the potential gross income (PGI) and net operating income (NOI) of each property distorted the results and ultimately, delivered an unreliable capitalization rate calculation for the properties. The Complainant further argued the typical rates themselves were unevenly applied to properties sharing similar characteristics, thereby magnifying the inconsistency of the assessment process. The Complainant also dismissed the importance of the ASR comparison provided by the Respondent. The Complainant argued that there was no evidence provided to support the time adjustments applied to the sale prices used in the study and, therefore, asked whether the calculated ASRs were nothing more than numbers manufactured to support the assessments. The Complainant also questioned how meaningful the Respondent's ASR study was given that it related to dissimilar properties which transferred infrequently. Finally, the Complainant challenged three sales used by the Respondent in the 2011 Neighbourhood, Community Centre Capitalization Rate Study. The sale of West Springs Village, located at 873 85 ST SW, was described as unbrokered and, therefore, considered non arms-length by the Complainant. The sale of Deer Valley Market Place, located at 1221 CANYON MEADOWS DR SE, included developable land which the Complainant argued distorted the value of the improved property and was unadjusted by the Respondent within the cap rate study. The sale of The Market at Quarry Park, located at 163 QUARRY PARK BLVD SE, was also challenged by the Complainant as the property was part of a portfolio sale between the developer and purchaser.

The remaining five properties from the Respondent's cap rate study, adjusted by the Complainant for actual leases in place, provide a mean cap rate value of 7.87%, supportive of the Complainant's requested Neighbourhood Shopping Centre cap rate of 7.75%.

The Board finds that the requested Neighbourhood Shopping Centre capitalization rate of 7.75% to be unsupported by the evidence before it. Although the Complainant raised some legitimate questions regarding the Respondent's cap rate study, the Complainant failed to provide better evidence to support an alternative cap rate. The Board finds the Complainant's position that actual leases provide a better indicator of value than typical leases to be just a starting point for a more exhaustive study of the inputs that define the Income Approach to Value. The Complainant fails to explain how these inputs might move in relation to one another. For example, does a lease rate influence the related vacancy rate of a property? By accepting the typical vacancy rate provided by the Respondent, the Complainant suggests that there is no influence and yet this conclusion defies common sense. The weakness of the Complainant's argument is that it simply doesn't go far enough and makes broad assumptions regarding input values that the Board cannot accept. It is not enough for the Complainant to simply state that the city's typical inputs are accepted without the analysis to indicate that each typical input is appropriate to each property. As the Complainant described the properties to be a heterogeneous collection, the Board requires discrete and complete calculations for each.

The Board does give some weight to the Respondent's ASR Study and to the third-party reports which both support the assessed cap rate of 7.25%.

4. Is the rent rate applied to the Recreation space too high?

The Complainant described the Recreation space as an abandoned and deconstructed bowling alley. Although the bowling alley was a going concern on July 1, 2010, it had been gutted by December 31, 2010 and the Complainant argued that it should be assessed on its physical properties on the latter date. The Complainant recommended that the Recreation space be classified as vacant and an assessed rate of \$7 per square foot be applied to it based upon the asking rent for the vacant A&B location in Sunridge Mall. The Complainant provided a marketing brochure for the A&B site to support the requested rate.

The Respondent argued that the vacant space was assessed as Recreation space at a \$12 per square foot. If it were assessed as vacant Retail space, the assessed rate would climb to \$21 per square foot. The Complainant also provided an email dated June 1, 2011 indicating leasing activity on the A&B site for \$18 per square foot.

The Board finds the current assessed rate of \$12 per square foot appropriate. The Board accepts the Respondent's argument that the alternative to the \$12 Recreation rate is a \$21 per square foot Retail rate and, therefore, that the current rate favours the Complainant. The Board does not accept the requested rate of \$7 per square foot as the request is based upon a leasing brochure that understates the actual leasing activity within the comparable space.

5. Is the rent rate applied to the Theatre space too high?

The Complainant argued that the assessed rate of \$13 per square foot for the Theatre space was too high based upon the age of the theatre, its condition and the type of movie (third run) played there. No evidence was provided to support the request.

The Respondent argued that the subject theatre received the lowest assessed rent rate available and shared that rate equitably with the only other theatre in Calgary classified the same as the subject. The Respondent did not provide any evidence as the Complainant had not provided any evidence to respond to.

The Board finds the Complainant's argument fails as onus has not been met.

6. Is the rent rate applied to the Kiosk space too high?

The Complainant argued that the assessed rate of \$75 per square foot for Kiosk space was too high based upon the quality of the subject mall and compared to other similar malls. The Complainant asked the Board to review the subject Rent Roll to confirm that Kiosk lease rates from \$50-\$160 per square foot were below the assessed rate.


The Respondent argued that the subject Kiosk space was assessed fairly and equitably. The Respondent compared the subject ARFI to the subject Rent Roll and demonstrated the differences between the reported start dates of the leases for Kiosk space. The Respondent asked that little weight be afforded the lease information as the actual start dates could not be confirmed. The Respondent argued that the Complainant had not met onus and asked the Board to confirm the Kiosk rent rate.

The Board finds the Complainant's argument fails as onus has not been met.

Board's Decision:

The assessment is reduced to the recommended amount of \$35,080,000 based upon the revised space allocations agreed to by both parties.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF August 2011.


C. McEwen
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
4. C3	Complainant Rebuttal

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.*