

**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 (MGA).

between:

**First Capital (Fairmont) Corporation (*as represented by Altus Group Ltd.*),  
COMPLAINANT**

and

**The City Of Calgary, RESPONDENT**

before:

**C. J. Griffin, PRESIDING OFFICER  
B. Jerchel, 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: 200571917**

**LOCATION ADDRESS: 9919 Fairmont Dr. SE**

**HEARING NUMBER: 68396**

**ASSESSMENT: \$14,900,000.**

This complaint was heard on 25<sup>th</sup> and 26<sup>th</sup> day of June, 2012 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:

- A. Izard
- K. Fong

Appeared on behalf of the Respondent:

- S. Turner
- D. Zhao

**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. Specifically, the Complainant requested that the Assessor provide the lease data utilized by the Assessor to derive the typical lease rate(s) applied to derive the assessed value for the subject property. In that this information was not provided to the Complainant by the Assessor, the Complainant requested that the CARB not allow the Assessor to introduce specific portions of their evidence brief pertaining to this property as same includes the requested, but 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 in its totality. Additionally the Respondent introduced (Exhibit R4) a copy of the information most recently provided to the Complainant in response to their request. The Respondent maintains that Exhibit R4 shows they have complied completely with the information request of the Complainant. The CARB deemed **Exhibit R4** to be **inadmissible** for this Hearing as it had not been properly disclosed and it was not exchanged within the timelines required under the Regulation (MRAC).

The CARB carefully reviewed Section 299 of the MGA and determined that the wording of same is specific in that it states:

*“299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person’s property.*

*(1.1) For the purposes of subsection (1), “sufficient information” in respect of a person’s property must include*

*(a) all documents, records and other information in respect of that property that the assessor has in the assessor’s possession or under the assessor’s control,*

*(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property and*

*(c) any other information prescribed or otherwise described in the regulations*

*(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).”*

The CARB also carefully reviewed **Section 27.3(1)** of *Matters Relating to Assessment and Taxation Regulation* (MRAT) which states:

*“For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include*

*(a) descriptors and codes for variables used in the valuation model*

*(b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and*

(c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property

(2) Despite subsection (1), information that is required to be provided under section 299 or 300 of the Act does not include coefficients.”

“Coefficient” is defined (MRAT 27.1(a)) as:

“A number that represents the quantified relationship of each variable to the assessed value of a property when derived through a mass appraisal process;”

The typical lease rate is, in the judgment of the CARB, an example of “...information in respect of that property...” There is no requirement in the MGA or in the *Matters Relating to Assessment Complainants Regulation* (MRAC) or MRAT that requires the Assessor to release information that pertains to the background information utilized to derive the typical lease rate applied to the property. In this case it is the *typical lease rate* applied that meets the requirements of Section 299 (1.1) (a), not the background information utilized to derive same. The CARB likens the matter to a formula such as:  $(A + B) \times C / D = \text{Value}$  where the various components of the formula, be it A, B, C or D is the information specific to that property; how A, B, C or D was derived extends beyond the requirements of the MGA. If the requested background information were a requirement of the MGA then it would require the Assessor to release their entire data base and their analysis of same and this, in the judgment of the CARB, would be unreasonable and would go beyond the intent of the legislation. In essence the CARB is of the judgment that the typical lease rate is a “coefficient” and, as outlined above, is excluded from the information required to be released by the Assessor to the Complainant. If, as in this case, a ratepayer is of the opinion that the “typical lease rate” applied to their property is incorrect then they have the opportunity, through the Complaint Process, to bring their evidence as to the correct “typical lease rate” before a CARB to adjudicate the matter. Accordingly, it is the decision of the CARB that, in this case, the Assessor has fulfilled the requirements of the MGA Section 299 (1.1) (a) and the Assessor’s brief will be allowed, in full, in the merit Hearing to follow.

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. It was further noted that this same capitalization rate argument, with the same evidence, had been argued before two of the CARB panel members just weeks prior to this Hearing.

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. 37), the subject property is categorized as being a CM02032 – Retail – Shopping Centres – Neighbourhood with a B+ quality rating. The property consists of three (3) structural components ranging in size from 1 Sq. Ft. (gas bar) to 47,213 Sq. Ft. The Year of Construction (YOC) for two of the components is recorded as 1974 while the YOC of the remaining structure is recorded as 1964. The underlying site is reported as being 4.71 acres in size.

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

<b><u>Category</u></b>	<b><u>Rentable Area</u></b>	<b><u>Rental Rate</u></b>	<b><u>Typical Vacancy</u></b>
Supermarket	18,479 Sq. Ft.	\$17.00/Sq. Ft.	1.00%
CRU 0 – 1,000 Sq. Ft.	5,059 Sq. Ft.	\$24.00/Sq. Ft.	6.00%
CRU 1,000 – 2,500 Sq. Ft.	7,632 Sq. Ft.	\$23.00/Sq. Ft.	6.00%
CRU 2,501 – 6,000 Sq. Ft.	3,592 Sq. Ft.	\$22.00/Sq. Ft.	6.00%
Office	6,804 Sq. Ft.	\$18.00/Sq. Ft.	6.00%
Gas Bar	1 Sq. Ft.	\$45,000/Yr.	6.00%
Pad Site/Fast Food	3,083 Sq. Ft.	\$26.00/Sq. Ft.	6.00%
Retail Bank	9,065 Sq. Ft.	\$25.00/Sq. Ft.	6.00%
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%.
2. The applied typical office rent rate is incorrect and requires modification.

**Complainant's Requested Value:** \$13,370,000. (Exhibit C1 pg. 47)

### **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 C4), 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 C4 pg 2) the methods they have incorporated are:

Capitalization Rate Method I: The application of assessed income as prepared by the *City of Calgary Assessment Business Unit (ABU)*.

## Capitalization Rate Method II.

The application of typical market income as prescribed by the *Alberta Assessor's Association Valuation Guideline* (AAAVG) and the *Principles of Assessment 1* 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 C4 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 C4 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 C4 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 C4. 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 C4 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 C4 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 C4 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. 18) 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 C4 pg. 19) to \$1,100,297 and this in turn results in a capitalization rate of 7.20% (Exhibit R1 pg. 18). 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. 18) 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, a time frame extending beyond the analysis period utilized by the Assessor, 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. 30) 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 C5 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 C5 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.

Additionally, the Complainant introduced (Exhibit C5 pgs. 51 – 52) 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, regardless of the fact that the classification of the property had been changed by the Assessor.

The Complainant introduced (Exhibit C5 pgs. 58 – 74) 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 **\$13,680,000**.

#### **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 C5 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 Assessor 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. 92), 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.

In terms of the lease rate argument the CARB refers to the Complainant's Exhibit C1 pg. 51 which indicates the Median of \$15.00/Sq. Ft. for all of the analysed leases (excluding the first one which is post-facto). The CARB further referred to the Respondent's Retail Office Lease Comparables (Exhibit R1 pg. 17) and found that the Quarry Park lease not to be comparable as this property is in a clearly superior (A+) classification. Additionally, the CARB noted the 20 Inverness Sq. comparable to have been double counted. Removing those two comparables produces a Median of \$15.33/Sq. Ft. Accordingly the CARB is of the judgment that \$15/Sq. Ft. is the most appropriate lease rate to be applied to the subject office space.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF JULY 2012.



C. J. Griffin  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant's Request for Information
3. C3	Complainant's Legal Argument (Preliminary)
4. C4	Complainant's Capitalization Rate Study
5. C5	Complainant's Rebuttal Brief
6. R1	Respondent Disclosure
7. R2	Print Out of Assessor's Sales Data as found on their web site
8. R3	Recent CARB Decision (related to Preliminary Issue)
9. R4	<b>Deemed inadmissible by the CARB</b>

*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 MGB Administrative Use Only**

<i>Decision No. 0776-2012-P</i>			<i>Roll No. 200571917</i>	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Shopping Centre	Cap. Rate	Assessed Rent	Office Rent

