

**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:

***Calgary Co-operative Association Limited
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
A. Wong, MEMBER
J. Rankin, 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:	181056300
LOCATION ADDRESS:	8220 Centre Street NE
HEARING NUMBER:	64273
ASSESSMENT:	28,830,000

This complaint was heard on June 13 and 14, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- K. Fong and A. Izard

Appeared on behalf of the Respondent:

- D. Zhao and E. Lee

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

The subject property is a 658,666 sq.ft. (15.12 Ac.) parcel of land, improved with a 135,923 sq.ft neighbourhood shopping centre, known as the Beddington Co-op Shopping Centre. The original development of 125,424 sq.ft. was constructed in 1979, with the remaining areas added in 1995 and 1998.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment amount
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount. The Complainant set out 10 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$22,650,000; however as set out in the Complainant's evidence and submissions at C1 p.4, only the following issues remain in dispute:

Issue 1. "The Cap Rate of 7.25% is not reflective of market indicators – a Cap Rate of 7.75% should be applied to the subject given is Functional Obsolescence, Physical Condition, and supported by our Cap Rate Study." {Ground 5}

Issue 2. "The rental rate of \$13.00 psf applied to the subject property's 68,429 sf of Super Market space is excessive and does not take into consideration of its Functional Obsolescence as almost half of the assessed area are of warehouse use." {Grounds 8 and 9}

Issue 3. "The rate of \$70,000 applied to the subject's gas bar is excessive and inequitable as the actual gas retail area is less than 1,000 sf." {Ground 6}

Issue 4. Although not specifically identified in the Complainant's schedule of issues at page 4 of C1, the Complainant requested that the 1% vacancy allowance applied to the 16,140 sq.ft. (liquor store) improvement, be increased to 6.25%. {Ground 10}

Complainant's Requested Value: \$22,100,000; revised during the course of the hearing to \$22,880,000.

Board's Decision in Respect of Each Matter or Issue:

Issue 1. "The Cap Rate of 7.25% is not reflective of market indicators – a Cap Rate of 7.75% should be applied to the subject given is Functional Obsolescence, Physical Condition, and supported by our Cap Rate Study." {Ground 5}

The Complainant submitted a 6 page analysis titled "2011 Shopping Centre Capitalization Rate Analysis **Leased Fee Estate (LFE) Valuations**" [C1, pp.106-111]. At the presentation of the evidence, the Complainant advised the Board that the subtitle "Leased Fee Estate (LFE) Valuations" should be replaced by "Market Valuation", as a clerical error had occurred during the preparation of the submission. The analysis consisted of five 2009 shopping centre sales located within the municipality that exhibit a range of capitalization rates from 7.36% to 8.66%, and mean and weighted mean capitalization rates of 7.87% and 7.70% respectively. The Complainant argued that the median capitalization rate of 7.54% was not statistically viable due to the small sample size of the sales.

The indicated capitalization rates were calculated by dividing the actual NOI (net operating income), as adjusted, by the sale price of each property. The Complainant submitted that only the following adjustments were made to the actual NOI of the sales:

1. Vacant space, and leased spaces with leases set to expire within 12 months of the sale date, were assigned a rent rate consistent with the average of actual lease rates at which similar spaces in the property were leased, to establish the property's PGI (potential gross income);
2. The municipality's typical allowances for vacancy, vacant space shortfall, and non recoverable expenses were applied to the PGI, to determine the property's NOI.

For each of the sales, the Complainant provided a summary of the average (actual) lease rates in place (as adjusted above), for the total area of each particular space type.

The Complainant also submitted a further analysis of the sales, by including the 2010 sale of 163 Quarry Park Blvd SE, displaying a calculated capitalization rate of 6.73%, and resulting in a revised mean capitalization rate of 7.68%. It was argued though that this sale should not be included as it was part of a multi-property portfolio that included non-retail components and was specifically built for the purchaser by the vendor [C1, pp.112-113].

The Complainant argued that the assessor's methodology of applying typical market rent rates not specific to the property yielded inaccurate results, as the typical incomes used in the capitalization rate calculations were understated, resulting in indicated capitalization rates that were therefore incorrect.

The Respondent argued that the capitalization rate methodology properly employed by the assessor was to relate the "typical" income levels as applied in the preparation of assessments, to the sale price of the property to determine a "typical" capitalization rate. In support of that argument, the Respondent submitted an analysis of 8 shopping centre sales that transferred between August 2008 and April 2010, (which included the Complainant's sales), exhibiting a range of capitalization rates from 5.04% to 8.38%, and median and mean capitalization rates of 7.16% and 7.12% respectively [R1, p.40].

The Respondent further submitted an analysis of the 2011 ASR (assessment / sale ratio) for the eight sales, indicating a range of time adjusted ASR's from .68 to 1.11, with a median of 0.97. A further analysis using the Complainant's requested 7.75% capitalization rate, illustrated a range of time adjusted ASR's from .63 to 1.04, with a median of 0.87 [R1, p.418].

The Respondent argued that the analysis confirmed that the Complainant's requested capitalization rate of 7.75% would clearly result in an underassessment of the market indicators, and therefore of the shopping centre inventory as a whole, in contravention of the quality standards set out in section 10, *Matters Relating to Assessment and Taxation Regulation AR 220/2004*

In rebuttal argument, the Complainant submitted that although the assessor is bound by the quality standards set out in *Matters Relating to Assessment and Taxation, AR 220/2004*, the Board is not; therefore the Respondent's ASR evidence should be afforded little weight by the Board.

Decision: Issue 1

The Board finds that there was insufficient market evidence to conclude that the capitalization rate of 7.25% is not reflective of market indicators. The Board further finds that there was insufficient evidence of how the requested 7.75% capitalization rate is related to the physical condition and functional obsolescence matter set out in issue 1.

Notwithstanding the purported clerical error in the subtitle of the Complainant's analysis, the Board finds that the Complainant's approach and calculations are generally reflective of the leased fee estate of the property, and not the fee simple estate of the property. Providing merit to the analysis though, is that the sale price would also be reflective of the leased fee estate of the property and not the fee simple estate of the property; consequently the final capitalization rate conclusions may accurately reflect the capitalization rate associated with the leased fee estate of the property. However, as the legislation requires that it is the fee simple estate of a property that must be valued, an adjustment would be required to the Complainant's leased fee estate capitalization rate conclusion to reflect the lower risk of maintaining an income stream influenced by contract rents that are at levels below current market rates, as a result of dated lease agreements in place. The Board notes that the Complainant has made no adjustment to the 7.75% capitalization rate conclusion.

Further, although the Complainant has provided a calculation of the average rent rate for each space type to arrive at their capitalization rate conclusion for each sale, the Board was not provided with any supporting documentary evidence, such as rent rolls or specific leases the Complainant relied upon to draw conclusions regarding appropriate lease rates to apply to vacant spaces, etc.

Lastly, the Complainant provided no evidence of how the requested 7.75% capitalization rate related to the physical condition or functional obsolescence of the subject property as set out in issue 1, as none of the comparable sales suffered from a physical condition or functional obsolescence issue. Rather, it was argued that the Complainant's sales represented "typical" properties in the marketplace.

Although the Board had some concern with some of the Respondent's capitalization rate calculations identified during cross examination, the ASR evidence submitted by the

Respondent was found to be persuasive evidence that a 7.25% capitalization rate results in a level of assessment that is a fair representation of market value within the context of mass appraisal.

Issue 2. "The rental rate of \$13.00 psf applied to the subject property's 68,429 sf of Super Market space is excessive and does not take into consideration of its Functional Obsolescence as almost half of the assessed area are of warehouse use." {Grounds 8 and 9}

The Complainant argued that the subject property suffers from functional obsolescence as a result of an excessive amount of warehouse storage area, 32,778 sq.ft., in relation to the total supermarket area of 69,944 sq.ft., and that an appropriate market rent coefficient for this storage area was \$2.00 per sq.ft. In support of that argument the Complainant submitted floor plans of the subject property [C1, pp. 23-24], several photographs of the storage area [C1, pp. 32-59], and floor plans of comparable supermarkets [C1, pp. 81-88] to illustrate that the subject has an apparent atypical amount of storage space. The Complainant further submitted 3 equity comparables to demonstrate that a market rent coefficient of \$2.00 per sq.ft. was an equitable rate that has been applied by the assessor to similar storage areas of other properties [C1, pp. 89-92]. During argument, in response to the Respondent's assertion that typical supermarkets include stockroom areas, the Complainant revised his requested assessment to \$22,880,000, to reflect an estimated surplus storage area of 27,208 sq.ft. with a market rent coefficient of \$2.00 per sq.ft.

The Respondent argued that typical supermarkets include similar retail "support" areas, and that the \$13.00 market rent coefficient applied to the total area of the subject is derived from and reflective of actual leases that also include similar spaces. The Respondent further argued that although the Complainant revised his calculation of excess storage space based on an estimated typical ratio of 15% of total area, there was no direct evidence to support that a 15% ratio is typical for supermarkets in this size range.

Decision: Issue 2

The Board finds that there was insufficient evidence to verify that the subject property suffers from functional obsolescence as a result of the amount of storage space. The Board further finds that there was no market evidence presented to call into question the market rent coefficient of \$13.00 per sq.ft.

The Board noted that the Complainant conceded during cross examination, that the entire area is currently used by the property owner. This was also evident in the review of the floor plan of the subject, and the photographs submitted at C1, pp. 32-59, that illustrate the space is used for a variety of retail support purposes including truck loading docks, stockrooms, coolers and freezers, meat cutting, processing and wrapping, multiple staff areas, as well as HVAC and mechanical areas and general storage for shopping cart repairs, seasonal items, etc.

While it appears that there may be a somewhat higher proportion of retail support area in the subject property than in the comparables presented by the Complainant, the specific areas and corresponding retail/support ratios of the comparables were not provided to the Board. Consequently, the Board is unable to ascertain the range of retail/storage area ratios that may be considered typical for this type of improvement in the context of a mass appraisal valuation.

Issue 3. "The rate of \$70,000 applied to the subject's gas bar is excessive and inequitable as the actual gas retail area is less than 1,000 sf." {Ground 6}

The Respondent conceded that the subject's Gas Bar component was improperly stratified as being greater than 1,000 sq.ft. in area when it was, in fact, 945 sq.ft. in area, and recommended a \$320,000 reduction to the assessment to reflect the Complainant's requested market rent coefficient of \$45,000 per annum for this component.

Decision: Issue 3

The Board accepts the position of the parties with respect to the proper stratification of the Gas Bar as referenced above.

Issue 4. Although not specifically identified in the Complainant's schedule of issues at page 4 of C1, the Complainant requested that the 1% vacancy allowance applied to the 16,140 sq.ft. (liquor store) improvement, be increased to 6.25%. {Ground 10}

The Complainant argued that the liquor store should be awarded a 6.25% vacancy allowance, identical to the vacancy allowance provided to all other components of the assessment excluding the supermarket.

The Respondent submitted that CRU (Commercial Retail Unit) components 14,001 sq.ft to 50,000 sq.ft. in size were stratified as "Junior Big Box" improvements, and that the assessor's analysis of market data concluded that a 1% vacancy allowance was evident.

Decision: Issue 4

The Board finds that there was no market evidence of vacancy rates applicable to the strata of improvements referred to as "Junior Big Box". As the burden of proof to present a prima facie case is on the Complainant, and in this instance the Complainant has failed to do so, the Board accepts that a 1% vacancy allowance is appropriate.

Board's Decision:

The assessment is revised from \$28,830,000 to **\$28,510,000.**

DATED AT THE CITY OF CALGARY THIS 20 DAY OF JULY, 2011.



J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Capitalization Rate Issue Rebuttal
4. C3	Complainant's Storage Area Issue Rebuttal
5.	MGB Board Order 046/10
6.	MGB Board Order 132/08
7.	MGB Board Order 123/10
8.	MGB Notice of Decision – Roll 065078404 (2009)
9.	ARB Notice of Decision – Roll 200261774 (2010)

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.*