

**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:

***Loblaw Properties West Inc.
(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:	200491736
LOCATION ADDRESS:	100 Country Village Rd. NE
HEARING NUMBER:	64226
ASSESSMENT:	24,790,000

This complaint was heard on June 15, 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

Appeared on behalf of the Respondent:

- D. Zhao

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

At the commencement of the hearing, the Parties advised the Board that the evidence and argument pertaining to capitalization rates (Issue #1 below) was identical to that submitted to the Board in a hearing earlier in the day, and as detailed in Decision 0974/2010-P. The Parties asked that the Board consider that evidence and argument for the present hearing without further mention.

The Board agrees to the request of the Parties with respect to the above. Issue #1 below, is to be decided based on the previous submissions of the Parties without further mention.

Property Description:

The subject property is a 802,476 sq.ft. (18.42 Ac.) parcel of land, improved with a 147,637 sq.ft. "Big Box" (Superstore) retail structure with an additional 22,324 sq.ft. of mezzanine area, a 6,448 sq.ft. freestanding retail structure (liquor store), and a gas bar and carwash, constructed in 2004.

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 11 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$19,460,000; however, at the hearing the Complainant withdrew grounds 1-5, and 7-9. Of the 5 issues set out in the Complainant's evidence and submissions at C1 p.3, issues 2, 3 and 5 were withdrawn by the Complainant at the hearing, leaving only the following issues in dispute:

Issue 1. "The current assessed cap rate of 7.25% is excessive of market indicators – a market indicated cap rate of 7.75% should be applied." {Ground 6}

Issue 2. "The assessed rate of \$26.00 psf applied to the liquor store space is neither supported by the business assessment nor equitable to similar spaces." {Ground 10}

Complainant's Requested Value: \$21,270,000 [C1,p.3], revised to \$22,950,000, as a result of abandoning issues 2, 3 and 5 as set out on C1, p.3.

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

Issue 1. "The current assessed cap rate of 7.25% is excessive of market indicators – a market indicated cap rate of 7.75% should be applied." {Ground 6}

The Complainant submitted a 7 page analysis titled "2011 Power Centre Retail Capitalization Rate Analysis **Leased Fee Estate (LFE) Valuations**" [C1, pp.47-53]. 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 one 2010 sale, and a 2009 multi property sale of two shopping centre parcels located within the municipality that exhibit a range of capitalization rates from 7.28% to 7.95%, and mean and weighted mean capitalization rates of 7.65% and 7.76% respectively. The Complainant indicated that the median capitalization rate of 7.72% 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 rate in place (as adjusted above), for the total area of each particular space type.

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 three shopping centre sales that transferred between August 2008 and February 2010, (which included the Complainant's sales), exhibiting a range of capitalization rates from 6.67% to 7.97%, and median and mean capitalization rates of 7.31%. A further analysis, established by including an additional sale of a shopping centre that occurred subsequent to the valuation date resulted in median and mean capitalization rates of 6.99% and 7.07% respectively [R1, p.39].

The Respondent further submitted an analysis of the 2011 ASR (assessment / sale ratio) for the four sales, indicating a range of time adjusted ASR's from .88 to 1.06, with a median of 0.95. A further analysis using the Complainant's requested 7.75% capitalization rate illustrated a range of time adjusted ASR's from .82 to 1.00, with a median of 0.89.

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 is insufficient evidence to conclude that the capitalization rate of 7.25% applied to the subject is incorrect.

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.

The Board also notes that if the assessor had understated net operating incomes in the calculation of capitalization rates, applying the Complainant's capitalization rates (derived from higher levels of net operating income) to the assessor's understated net operating incomes would effectively compound the error, if there is one. Notwithstanding, the Board finds there was inconclusive evidence to support the Complainant's contention, as in the sale of 800 Crowfoot Cr. NW relied on in both analyses, the NOI used in the Respondent's capitalization rate calculation was higher than that of the Complainant [R1 p.39 and C1 p.47].

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.

The Board was not persuaded by the Complainant's argument that the Board is not bound by the quality standards set out in *Matters Relating to Assessment and Taxation AR 220/2004*. The Board's jurisdiction with respect to decisions of the Board is set out in section 467(3) of the *Municipal Government Act*.

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

It appears clear that the Board is bound to the same valuation and other standards and procedures set out in the regulations as the assessor; including the quality standards requirement set out in section 10 of *Matters Relating to Assessment and Taxation AR 220/2004* as there is no specific reference to its exclusion. Further, it would make little sense if the Board was able to demand a higher standard of an assessment at the complaint stage, than is required by the legislation in the preparation of the assessment.

Issue 2. "The assessed rate of \$26.00 psf applied to the liquor store space is neither supported by the business assessment nor equitable to similar spaces." {Ground 10}

The Complainant argued that the \$26.00 per sq.ft. market rent coefficient applied to the freestanding retail structure currently occupied by a liquor store, should be set at \$21.00 per sq.ft., a rate consistent with the subject's NARV (net annual rental value) conclusion for business tax purposes by the municipality. The Complainant further argued that the market rent coefficient applied for property assessment purposes has historically been identical to the NARV applied for business tax purposes. In support of these arguments the Complainant provided the subject's 2008 to 2010 business assessment notices and related property assessment valuation summaries demonstrating the consistent application of the rates [C1, pp.58-67].

The Complainant also argued that the \$26.00 per sq.ft. market rent coefficient applied to the subject was inequitable to the coefficient applied to other, similar improvements. In support of the argument, the Complainant submitted the property assessment valuation summaries for two freestanding retail structures also occupied as liquor stores, exhibiting market rent coefficients of \$22.00 and \$24.00 per sq.ft. [C1, pp.68-69].

The Respondent argued that recent case law has clarified several issues relating to the appropriate calculation of NARV (net annual rental value) for business tax purposes, and as a result, market rent coefficients for property assessment purposes are not required to be consistent with the NARV coefficient applied for business tax purposes.

In response to the Complainant's equity argument, the Respondent submitted a summary of 8 comparable freestanding retail improvements which were assessed with a \$26.00 per sq.ft. market rent coefficient [R1, p.40]. The Respondent withdrew the comparable located at 220 Crowfoot, as it exceeded the 14,000 sq.ft. maximum size of the subject's stratification.

Decision: Issue 2

The Board finds that there is insufficient evidence to conclude that the \$26.00 per sq.ft. market rent coefficient applied to the subject property, is inequitable with the coefficient applied to other, similar properties.

The Board accepts that the Respondent's seven comparable assessments are evidence of an equitable application of the \$26.00 per sq.ft. market rent coefficient, as all are identified with a sub-property use of CM 1403 (Retail – Shopping Centres – Power); the same sub-property use as the subject. The Complainant's two comparable assessments indicate that market rent coefficients were not applied consistently; however as the examples are unidentified with respect to sub-property use, the Board is unable to ascertain if they are similar to the subject property.

With respect to the issue of the relationship between the market rent coefficient applied in a property assessment valuation and the NARV applied in the calculation of a business tax, the Board finds that the legislation is separate and distinct for each specific function.

Board's Decision:

The assessment is confirmed at \$24,790,000.

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.	MGB Board Order 046/10
5.	MGB Board Order 132/08
6.	MGB Board Order 123/10
7.	MGB Notice of Decision – Roll 065078404 (2009)
8.	ARB Notice of Decision – Roll 200261774 (2010)
9.	ARB Notice of Decision – Roll 081184301 (2010)

Items 4 through 9 were presented in support of the parties' positions at the hearing referenced in decision CARB-0973/2010-P, with the parties' request that consideration of those documents be carried forward to this matter.

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.*