

**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:

Investors Group Trust Co. Ltd., (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
D. Julien, MEMBER
J. Pratt, MEMBER***

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

Roll Number:	121055206
Property Location:	40 Riverglen Drive SE
Hearing Number:	68584
2012 Assessment:	\$1,920,000

This complaint was heard on August 1, 2012 at the office of the Assessment Review Board located at Floor Number Three 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Mr. Andrew Izard – agent*
- *Mr. Brendan Neeson - agent*

Appeared on behalf of the Respondent:

- *Mr. Robert Ford - assessor*

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

A. Procedural Matter – Dealing with a Number of Complaints with Similar Issues

- [1] At the opening of this hearing, both parties agreed that a number of files before this Board have similar issues and that for efficiency, the full set of files should be opened and the common issues addressed at one time. Both parties had evidence that was essentially the same for each of these files on the common issues. The issues common to these files relates to a Section 299/300 preliminary matter, and the capitalization rate evidence and argument for neighbourhood shopping centres. The Board agreed to this process and opened the following files concurrently, to address just the procedural matter related to Section 299/300 and the merit of the capitalization rate evidence/argument. Both these issues are discussed in detail in CARB Decision 1222/2012-P and apply to the subject file.

Roll Number	Owner	Address	File No.
200446730	Investors Group Trust Co. Ltd.	8338 18 St. SE	68593
121055206	Investors Group Trust Co. Ltd.	40 Riverglen Dr. SE	68584
121077208	Investors Group Trust Co. Ltd.	30 Riverglen Dr. SE	68585
114155005	Canadian Property Holdings (Alberta) Inc.	7740 18 St. SE	68464
149147118	First Capital Holdings (ALB) Corporation	1221 Canyon Meadows Dr. SW	68322
052221215	First Capital (TransCanada) Corporation	1440 52 St. NE	68497
097005805	Foothills Crossing Portfolio Inc.	3619 61 Av. SE	67783
133001214	Investors Group Trust Co. Ltd.	11520 24 St. SE	67970
133001701	Investors Group Trust Co. Ltd.	11540 24 St. SE	67967
132053018	Investors Group Trust Co. Ltd.	11566 24 St. SE	67971
201570314	Riocan Holdings Inc.	2929 Sunridge Way NE	68691

- [2] The parties did not object to the panel as constituted to hear this matter. The parties agreed that the Board has jurisdiction to hear the matters before it.

B. Removal of Evidence in the Complainant's Exhibits

- [3] The Respondent raised a preliminary issue related to the contents of the Complainant's evidentiary documents, arguing that certain portions of these evidentiary packages, which were appropriately exchanged, were not relevant evidence and should not be heard. The two parties asked for a recess to discuss the issue, which the Board granted. Upon resuming the hearing, the parties informed the Board that they had addressed the issue raised by the Respondent, and that the Complainant agreed to have certain pages removed from their evidence packages. The exhibits before this Board will be the documents as disclosed, with specific pages removed as agreed to by the parties, as indicated in Appendix A.

C. Procedural Issue: Section 299/300

- [4] The Complainant raised a procedural issue related to Sections 299 and 300 of the Municipal Government Act (MGA). Specifically, the Complainant made a request for specific information relating to this assessment in the manner prescribed by the municipality and was of the opinion that the information requested was not provided. The Complainant requested that certain portions of the Respondent's evidence not be heard because the municipality did not comply with the Section 299/33 information request. After review, the Board concluded that the request was complied with and would hear all the evidence properly disclosed. For a more detailed discussion of this issue, see CARB Decision 1222/2012-P.
- [5] The hearing then proceeded with a consideration of the merits of the complaint.

Property Description:

- [6] The subject is designated as a neighbourhood shopping centre (CM0203 Retail), and is part of the Riverbend Shopping Centre located in the Riverbend District of southeast Calgary. The property has a site area of 0.67 acres with one building totalling 6,507 square feet (SF) of assessable area constructed in or about 1996. The tenant operates a restaurant/pub in 4,935 SF of the building, with 300 SF used as office space and 1,272 SF used as storage. The shopping centre is anchored by a Sobey's supermarket that is located on an adjacent titled property. The subject property also provides access into the shopping centre.
- [7] The subject is assessed using an income approach, applying the 2012 rates developed by the City for this assessment category, including a 7.25% capitalization rate and rental rates for each sub-category of retail use. The 2012 assessed value is \$1,920,000.

Issues:

[8] The Complainant raised the following issues, as the basis for the complaint:

1. **Is the subject property correctly assessed? Specifically is the capitalization rate of 7.25% the correct rate to use in the income approach calculation?**
2. **Is the CRU 2501-6000 SF space equitably assessed when compared to the assessment of other portions of the same shopping centre property?**

Complainant's Requested Value: \$1,260,000

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

1. **Is the subject property correctly assessed? Specifically is the capitalization rate of 7.25% the correct rate to use in the income approach calculation?**

[9] The Board considered this issue in detail and provided its conclusions and reasons for those conclusions in CARB Decision 1222/2012-P. The Board concluded that the capitalization rate of 7.25% is appropriate to use in calculating the 2012 assessment for neighbourhood shopping centres.

2. **Is the CRU 2501-6000 SF space equitably assessed when compared to the assessment of other portions of the same shopping centre property?**

A. Complainant's Evidence

[10] The Complainant's position is that the assessed rental rate of \$29/SF applied to the subject assessment for the CRU 2501-6000 SF space is inequitable when compared to the adjacent property, which is also part of the subject shopping centre and is of a similar vintage and use. The Complainant presented the Non-Residential Properties – Income Approach Valuation sheets for the adjacent property (8338 18 St. SE) on pages 54-56 in Exhibit C1 to demonstrate that CRU 2501-6000 SF space is assessed at a rental rate of \$20/SF. The Complainant noted that the Ricky's and Subway Restaurants occupied CRU 2501-6000 SF space and are assessed at a rental rate of \$20/SF. The Complainant argued that for the purpose of equity, the subject should be assessed at the same, \$20/SF rate.

[11] The Complainant stated that the subject property is attached to the building on the adjacent property (50 Riverglen Drive SE), therefore is not a freestanding building. In response to Board questions, the Complainant did not know how the two buildings were constructed and specifically if they shared a common wall. There is no interior access between the two buildings.

- [12] In the closing statement, the Complainant noted that the rental information for the subject property presented by the Respondent is post facto the July 1, 2011 assessment date and therefore should not be considered. Furthermore, the rental information shows that the tenant is only paying for 4,935 SF and is not paying any rent for the office and storage area portions occupied in the building.

B. Respondent's Evidence

- [13] The Respondent stated that the 2012 Assessment has an error in the coding of the subject property; that it should not have been coded as CRU 2501-6000 SF space, but rather as a free-standing or pad restaurant site. The \$29/SF rental rate applied in the assessment is also incorrect. The correct rental rate for a free-standing pad restaurant dining lounge is \$33/SF, similar to the Boston Pizza on the 8338 18 St. SE portion (different roll number) of this shopping centre, as indicated on the Non-Residential Properties – Income Approach Valuation sheets presented on pages 55-56 of Exhibit C1. Since the error was identified after the complaint was made, the City is unable to correct the error. The Respondent is asking that the assessment be confirmed, recognizing that the correct assessment would be more than the 2012 assessed value.
- [14] The Respondent argued that the roofline for the subject building is distinct from the roofline of the adjacent building (50 Riverglen Dr. SE), which indicates that the two buildings are separate. Furthermore, the Respondent argued that because the owner of the subject property could dismantle and reconstruct the building on the subject parcel without involving or affecting the adjacent owner, it is a further indication that the subject is a free standing structure.
- [15] The Respondent presented information apparently provided in the 2012 Assessment Request for Information (ARFI) showing that the lease on the subject property was renewed in November 2011 for five years at a rate of \$27/SF for the November 2011 to November 2013 period, with subsequent step-ups (page 11, Exhibit R1).

C. Board's Conclusion

- [16] Both parties agree that the subject property is being used as a restaurant/dining lounge. There is disagreement as to whether the subject building is physically attached to the adjacent building at 50 Riverglen Dr. SE, or if the subject is a "free standing" building. Each party provided anecdotal information on their understanding of the construction of the building. Typically, the Board would expect that two buildings on separate titles would not share a common wall, therefore the expectation is that the two buildings, though adjacent or very close together, are separate buildings. The Complainant did not present any evidence to demonstrate otherwise, therefore the Board concludes that the subject is a free standing building.

- [17] With regard to the equity issue, the Complainant demonstrated that the rental rate applied to CRU 2501-6000 SF spaces regardless of the retail use is \$20/SF using the assessment information presented for the adjacent 3883 18 St. SE property. Since the Board concluded that the subject is a free-standing or stand alone building with a single tenant, it is not a CRU space. Therefore, the \$20/SF rate does not apply.
- [18] The assessment information provided for the 3883 18 St. SE portion of the subject shopping centre indicates that the rental rate applied to "pad restaurant dining lounge" and "pad restaurant fast food" is \$33/SF. Given that the subject is a free-standing or "pad" site, the equitable rental rate should be \$33/SF.
- [19] The Respondent provided leasing information for the subject, and specifically that as of November 2011, the lease rate on the restaurant-only area is \$27/SF. The Board notes that this is post facto information. Furthermore, the Board is not sure how this information is relevant to the equity issue before the Board. The complaint relates to the equity of the rental rate applied and specifically equity within the same shopping centre, not to the correct market value rental rate. No other market rental information was provided by either party.
- [20] Based on equity within the same shopping centre but on different tax rolls, as that is the only equity evidence provided by either party, and based on the Board concluding that the subject is a free standing restaurant site, the correct rental rate for assessment purposes appears to be \$33/SF. That said, the Respondent requested that the assessment be confirmed. The Board is mindful of the Court of Queen's Bench Decision in Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality), 2012 ABQB 177 and specifically clause 166 which indicates that a complaint before a Composite Assessment Review Board (CARB) belongs to the Complainant and is not an opportunity for the municipality to ask the CARB to change (increase) the assessment. The municipality can only defend its assessed amount as correct. The Board understands that it does not have the authority to "correct" the assessment by increasing the assessed value.
- [21] The Board concludes that the assessed value is less than the assessed value (which is to reflect market value) if the correct and equitable factors are applied in the calculation, and that the corrected assessed value would provide equity in the assessment. However, since the Board does not have the authority to increase the assessed value, it concludes that the assessment is closer to the correct and equitable value than the Complainant's requested value.

Board's Decision

- [22] Based on the evidence presented (discussed in detail in CARB Decision 1222/2012-P), the Board concludes that a capitalization rate of 7.25% reflects market value. The Board concludes that the assessment is less than the number calculated when the correct and equitable rates are applied, but that the Board does not have the authority to increase an assessment. The Board confirms the assessment of \$1,920,000.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF August 2012.



Ivan Weleschuk
Presiding Officer

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

Exhibit No.	Description	Pages removed from original disclosure package.
C1	Complainant Evidence	82-108
C2	Complainant Evidence - Appendix	
C3	Complainant Rebuttal	10-37, 116-120, 189-202, 208-210, 220-366
C4	April 13, 2012 Website Information Reference Package	
C5	City's June 21, 2012 Information Package	
R1	Respondent Evidence	

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.*