

**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:	132053018
Property Location:	11566 24 Street SE
Hearing Number:	67971
2012 Assessment:	\$5,010,000

This complaint was heard on August 2, 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. Doug Hamilton - 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 Douglas Square Shopping Centre located in the Shepard Industrial District of southeast Calgary. The property has a site area of 1.97 acres with two buildings totalling 15,646 square feet (SF) of assessable area. The Property Assessment Report indicates that the year of construction is 2008, but both parties agreed this is not correct and that the actual year of construction is 1997-98. The tenants consist of various commercial uses. The shopping centre consists of three separate titles (separate tax rolls) owned and operated by the same company. The Centre is anchored by a Sobeys supermarket that is located on the adjacent property.
- [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 \$5,010,000.

Issues:

[8] The Complainant raised the following issue, 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 rental rate applied to the CRU 1001-2500 SF space and the CRU 2501-6000 SF equitable when compared to similar space in the same shopping centre?**

Complainant's Requested Value: \$4,170,000

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 rental rate applied to the CRU 1001-2500 SF space and the CRU 2501-6000 SF equitable when compared to similar space in the same shopping centre?**

A. Complainant's Evidence

[10] The Complainant's position is that the assessment is incorrect because the rental rate assigned to the CRU 1001-2500 SF sub-component at \$26/SF and CRU 2501-6000 SF sub-component at \$24/SF is more than the rates used for similar categories on another titled portion of the same shopping centre, and that the assessed rates are more than the actual rents being paid for this space. The basis for the equity issue is that a portion of the same shopping centre, located at 11540 24 Street SE (different roll number) has its CRU 1001-2500 SF space assessed at a rate of \$23/SF and the CRU 2501-6000 SF space assessed at a rate of \$22/SF (page 46-48, Exhibit C1). The Complainant argued that this is not equitable, especially given that it is in the same shopping centre, with the three titled portions all owned and operated by the same company.

- [11] On pages 52-58, the Complainant presented the rent roll for the entire shopping centre (all three titled portions) to demonstrate that the rents that are being achieved are below the "typical" rates used by the City in its assessment. The following is a summary of the information from the rent roll for the CRU spaces at issue, which the Complainant says supports a rental rate of \$23/SF for CRU 1001-2500 SF space and \$22/SF for CRU 2501-6000 SF space.

Unit No.	Tenant Name	Lease Start Date	Leased Area (SF)	Rent (\$/SF)
206	Juvenescence Child	July 2011	2,026	21.00
226	Peking Express Restaurant	June 2011	1,066	26.00
303	Douglas Square Physio	July 2011	2,140	23.00
315	1553554 Alberta Ltd. c/o Saigon	Feb 2011	4,080	21.00

B. Respondent's Evidence

- [12] The Respondent stated that the 11540 24 Street SE portion of the shopping centre that is being used as an equity comparable by the Complainant is incorrectly assessed, and that the rate for the CRU 1001-2500 SF space should be at \$26/SF not \$23/SF, and the CRU 2501-6000 SF space should be assessed at a rate of \$24/SF not the \$22/SF rate. The Respondent stated that the third portion of the shopping centre is assessed at the same rates as the subject (and is also before this Board in this set of hearings, therefore the assessment is available to the Board to confirm the rates used). The Respondent argued that the Complainant should not benefit from a mistake in the assessment.
- [13] The Respondent stated that the \$26/SF rate for CRU 1001-2500 SF space and \$24/SF rate for CRU 2501-6000 SF space is the rate that is being applied to all neighbourhood shopping centres in 2012. No specific equity information or market data was presented to support this statement.

C. Board's Conclusion

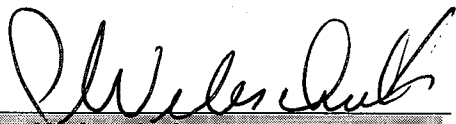
- [14] The Board notes that neither party presented much evidence to support their positions. The Complainant's equity position was simply that the assessment for one of the three titled portions of the subject shopping centre had CRU space assessed at a lower rate than the other two titled properties in this shopping centre, including the subject property. The Respondent stated that the assessment on that portion of this shopping centre that is at rates lower than the other two portions is an error and that all three portions should be assessed at the same rate as the subject. Ignoring the issue of whether there is a mistake made by the municipality using the lower rates for one of the three properties, the equity issue is a stalemate, as one of the three titled portions of this shopping centre is assessed using the same rates as the subject and one portion is assessed using lower rates. This evidence is inconclusive, therefore the Board is not persuaded by the Complainant's argument.

- [15] The Complainant presented actual lease rates only from the subject shopping centre (rent roll presented on page 64-69. Exhibit C1), which the Board concludes is not sufficient to establish a market rate for similar retail properties. The Board does not accept the Complainant's proposition that the four rents presented demonstrate that the actual lease being achieved support the requested lease rates. The three leases for the 1001-2500 CRU category range from \$21/sf to \$26/SF, while there is only one CRU lease in the 2501-6000 SF category at \$21/SF.
- [16] Under Matters Relating to Assessment and Taxation Regulation (MRAT), the assessment standard is market value. An assessment must be based on market value and reflect typical market conditions for properties similar to the subject (Section 2 and 4 of MRAT). The Complainant did not present any evidence to show that the assessment for the subject property does not reflect market value.

Board's Decision

- [17] 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 is not persuaded that the subject is inequitably assessed. The Board confirms the assessment of \$5,010,000.

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	104-140
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.*