

**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:

***First Capital Holdings (Alb) Corporation, (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:	149147118
Property Location:	1221 Canyon Meadows Dr. SE
Hearing Number:	68322
2012 Assessment:	\$35,530,000

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 (CM0204 Retail) and referred to as Deer Valley Market Place in the Deer Ridge District of southeast Calgary. The original portion of the centre was constructed in 1980, containing a total of 196,728 square feet (SF) of retail space on a 19.76 acre site. In 2011, a major redevelopment/renovation began on the shopping centre, which included the replacement/addition of two pad sites, and a redevelopment of a portion of the original large building area, with the objective of reducing the size of the original building and replacing internal mall access with access directly from the exterior of the building.
- [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 \$35,530,000.

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. **What is the correct area for assessment purposes and how is the area to be allocated to the various sub-components?**

Complainant's Requested Value: \$27,820,000

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. **What is the correct area for assessment purposes and how is the area to be allocated to the various sub-components?**

[10] This issue flows from a major renovation/re-development that is being undertaken on the subject property. The parties did not agree on the total building area for assessment purposes, nor did they agree on how the space is to be allocated to sub-components for assessment purposes. The Board is therefore being asked to make a decision on the assessable area of the subject property as of December 31, 2011 for the 2012 taxation year. The Board is directed by Section 289(2) of the Act which reads as follows:

289(2) Each assessment must reflect

- a) *the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,*

[11] The Board notes that the areas presented in the evidence vary, some information is lacking, the information is not consistent between sources, and that totals resulting from simple addition of areas do not agree with the indicated value for the area. In part, these differences may be due to the square foot unit being derived via a conversion from square metres. Nevertheless, this lack of precision and consistency is challenging for the Board, and likely the reader.

A. Complainant's Evidence

- [12] The Complainant's position is that the assessment is incorrect because too much area is included in the assessment calculation. The Complainant took the position that the total assessable (rentable) area is 198,804 SF, and allocated between various space types (sub-categories) as presented on page 68, Exhibit C1. The Complainant speculated that the City just added the new space that became rentable in 2011 without deleting the space that was being removed from the original building. A rent roll as of March 31, 2012 is presented (pages 70-71, Exhibit C1) showing that the gross leasable area is 198,804 SF. This rent roll also shows the area that is being removed as "vacant". A rent roll as of December 31, 2010 is also presented (pages 72-74, Exhibit C1) showing the gross leasable area prior to any redevelopment of 196,562 SF.
- [13] A 2008 site plan is presented (page 46, Exhibit C1) to show the site prior to any redevelopment. A June 1, 2011 site plan is presented (page 47, Exhibit C1) showing the location and configuration of the two new pad sites, however no sketches or plans are presented showing the size of the intended redevelopment to the original building. Photographs of the site showing the new pad sites, existing buildings and renovations on the original building are presented (pages 48-66, Exhibit C1) apparently taken on December 20, 2011. The photographs show portions of the original internal mall area under major renovations, with portions of the concrete floor removed, portions of the interior stripped to the supporting walls and some holes in the walls to facilitate access for large equipment. Some of the tenants are still in place in this portion of the building, in spite of the renovations. The Complainant stated that some 21,000 SF is to be demolished from this portion of the original building, with the original tenants relocated to the two new pad sites.
- [14] Should the Board determine that the 21,000 (more or less) SF that is in the process of being demolished did exist as of the December 31, 2011 condition date, then this areas should be assessed at a rate of \$2/SF, consistent with the "storage space" rate used by the City.

B. Respondent's Evidence

- [15] The Respondent calculated the 2012 assessment on a total of 218,928 SF of leasable area, as indicated on the Non-Residential Properties-Income Approach Valuation sheets (page 6-7) presented in Exhibit R1. In response to an Assessment Request for Information (ARFI), the taxpayer provided an April 2011 rent roll (page 13-17, Exhibit R1) that indicated a gross leasable area of 205,848 SF. The Respondent stated that this rent roll did not include the new building, referred to as Block A, which became leasable later in 2011. An assessment officer subsequently inspected the property and identified an area of 12,913 SF in this building (page 12, Exhibit C1), which is added to the 205,848 SF in the rent roll to result in the assessed area of 218,928 SF (The board notes that the addition results in a different total: 205,848 SF + 12,913 SF = 218,761 SF).

- [16] The Respondent presented a photo of a site plan showing the proposed redevelopment and a photograph of a table indicating the existing area and area with the redevelopment completed on pages 10-11, Exhibit R1. This information indicates that the total area prior to the redevelopment is 230,189.6 SF. This table indicates that the proposed Block A is to be 11,943 SF, proposed Block B a total of 9,285 SF and the renovated original building a total of 103,001 SF. The Board notes that the total area in the proposed redevelopment is 124,229 SF. However, this space includes the area occupied by the Co-op Gas Station, which for assessment purposes is considered as 1 SF. This would reduce the total building area by about 4,294 SF, indicating a total area of (124,229 SF – 4,294 SF) 119,935 SF.
- [17] The Respondent argued that as of December 31, 2011, the area of the original building under renovation was essentially in place, because the structural integrity of the walls and roof existed. The Respondent relied on the rent roll provided by the property owner as well as the area for Block B determined by the Assessment Officer's inspection to arrive at their assessed area and sub-category allocations.

C. Board's Conclusion

- [18] In considering the rent rolls presented by the Complainant, the Board understands that the vacant space, calculated at 19,382 SF, when added to the 198,804 SF of leased area results in a total area of 216,186 SF. The Board also understands that the area indicated as "vacant" on the March 2012 rent roll is to refer to space that is being demolished, but that is not indicated in the rent roll.
- [19] The Board notes that the area used in the 2012 assessment (218,928 SF) is 20,124 SF more than the area used in the Complainant's requested assessment. The Board notes that in the 2012 assessment, the entire space including that reported as "vacant" is considered to be leased at market rates with CRU space assessed at rates between \$14 to \$22/SF depending on the size of the unit. These rates reflect space that is leasable, which is not the condition of this space as of December 31, 2011.
- [20] The Board reviewed the requested assessment and the March 2012 rent roll and is satisfied that the requested assessment properly allocates the rentable area to the appropriate space types. There is no dispute or issue related to the rental rates or other factors that are applied to the respective space types for the purpose of deriving the assessed value. The Board concludes that the 198,804 SF of space is appropriately assessed, in accordance with the calculation on page 68, Exhibit C1.
- [21] Based on the photographs presented showing the status of the area being demolished as of December 31, 2011, the Board concludes that this space did exist and therefore should attract some value for assessment purposes. The actual size of this space is not obvious from the evidence presented, but is in the order of 19,382 SF to 20,124 SF. The Board prefers the 19,382 SF indicated by the Complainant's evidence.

- [22] The Complainant suggested that if this area under redevelopment is to be assessed, then as of December 31, 2011, its only use is as unheated storage space. The rate used by the City for such space is apparently \$2/SF. The Respondent agreed that this is the rate applied to such space. The Board concludes that much of the structural elements of the space did exist and as of December 31, 2011 would contribute to value. Therefore, the Board adds the value of this area, being an annual income of (19,382 SF x \$2/SF) \$38,764 to the net operating income of \$2,156,251 as indicated on page 68, Exhibit C1. This new net operating income of (\$38,764 + \$2,156,251) \$2,195,015 is divided by the 7.25% capitalization rate to result in the indicated market and assessed value of \$30,276,068, truncated to \$30,276,000.

Board's Decision

- [23] 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. As discussed above, the Board reduces the assessed value to \$30,276,000 based upon a review of the gross leasable area.

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	120-156
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.*