

**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:	200446730
Property Location:	8338 18 Street SE
Hearing Number:	68593
2012 Assessment:	\$27,970,000

This complaint was heard on July 30 to 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. Brendan Neeson - agent*
- *Mr. Andrew Izard - agent*
- *Mr. Tony Friend - legal counsel (appeared for part of July 31, 2012)*

Appeared on behalf of the Respondent:

- *Mr. Robert Ford - assessor*
- *Ms. Leila Gosselin – legal counsel*

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, and the full set of files should be opened and the common issues addressed at one time. Both parties had evidence that was the same for each of these files. 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 evidence, argument and decisions on these two issues as presented in this decision will apply to all the files identified below. 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:

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 contents 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 evidentiary packages. The exhibits before this Board will be the documents as disclosed, with specific pages removed, 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). The Complainant made a request for specific information relating to this assessment in the appropriate manner and was of the opinion that the information request was not complied with. The relevant portions of the Act and Regulations are as follows.

299(1) *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment for that person's property.*

- (1.1) *For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*
- (a) *All documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
 - (b) *The key factors, components and variable of the valuation model applied in preparing the assessment of the property, and*
 - (c) *Any other information prescribed or otherwise described in the regulations.*
- (2) *The municipality must, in accordance with the regulations comply with a request under subsection (1).*

300(1) *An assessed person may ask the municipality, in the manner prescribed by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*

- (1.1) *For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:*
- (a) *A description of the parcel of land and any improvements, to identify the type and use of the property;*
 - (b) *The size of the parcel of land;*

- (c) *The age and size or measurement of any improvements;*
- (d) *The key factors, components, and variables of the valuation model applied in preparing the assessment of the property;*
- (e) *Any other information prescribed or otherwise described in the regulations.*

- (2) *The municipality must, in accordance with the regulations comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.*

The remedy available to the Board if the Section 299/300 request is not provided is described in Section 9.4 of Matters Related to Assessment Complaint Regulation (MRAC):

9(4) A composite assessment review Board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

- [5] The parties agreed that the evidentiary packages were otherwise properly disclosed in accordance with Section 8 of MRAC.
- [6] To better describe the issue, the Complainant requested that five exhibits be entered as evidence (Exhibits C1, C2, C3, C4 and C5 with the agreed to pages removed). The Complainant described the effort made to request information from the City and what was received in response.
 - City of Calgary Assessment Information Request forms dated March 13, 2012 is presented on pages 14-15, Exhibit C1. The information requested related to how the City arrived at its stratification of commercial retail units (CRU's); how the City calculated the 7.25% capitalization rate applied to neighbourhood shopping centres in 2012; and how the City calculated potential gross (net) income (PGI), effective gross (net) income (EGI) and net operating income (NOI).
 - A letter from Altus Group Limited to the City Assessor dated February 17, 2012 in C1 (but both parties agreed the actual letter sent was dated March 30, 2012) that accompanied the information request forms asking for specific information is presented on pages 16-18, Exhibit C1.
 - A letter from the City Assessment Department dated April 13, 2012 in response to the March 30, 2012 letter requesting information.
 - The April 13, 2012 letter made reference to information requested that was on the Assessment website and an email from the City on April 13, 2012 provided a table listing the specific website references (pages iv to vii, Exhibit C4). The Complainant provided Exhibit C4 which is a copy of the material that was available on the City's website.
 - A letter from the City Assessment Department dated June 21, 2012 that summarizes a response to the Altus March 30, 2012 letter, including a number of pages of attached information.

- [7] The Complainant raised a number of issues related to Section 299 of the MGA, the process and the frustrations related to obtaining information through that process. Both parties acknowledged that this Board has limited authority to address those issues. Essentially, the remedy available to this Board is Section 9(4) of MRAC, which states that the Board must not hear evidence from a municipality that was requested under Section 299/300 but was not provided. The Board notes that there is no time specified for when a response is required. The fifteen day response indicated in Section 27.4 and 27.5 of Matters Relating to Assessment and Taxation Regulation (MRAT) refers to the assessed person's ability to trigger a compliance review with the Minister, which is a matter outside the authority of this Board.
- [8] The Board notes that both parties agreed that the request was made by the Complainant in the prescribed manner, and was dated March 30, 2012. A response was provided April 13, 2012. That response included a letter with summary that responded to each of the items specifically requested and a copy of the Non-Residential Properties – Income Approach Valuation sheets (pages 21 – 28, Exhibit C1). Some of the requested information was provided and some responses indicated that no further information would be forthcoming, for various reasons. An email was also sent as a follow up to the letter identifying the specific website references referred to in the City's letter (Exhibit C4). Subsequently, another document containing information not specifically addressing the March 30, 2012 request for information, but providing some of the information requested, was sent to Altus dated June 21, 2012 (Exhibit C5).
- [9] The Board notes that the information referred to in Section 299 of the Act is essentially satisfied in the "non-residential properties – income approach valuation" sheets provided (page 26-28, Exhibit C1). Some of the information requested was received in the April 13, 2012 package. The Complainant identified five specific items requested that the Complainant did not believe was provided. Three of these five requests involved information on how PGI, EGI and NOI were calculated. The Board notes that the wording of these three requests was poor and not specific with regard to the information sought. The replies provided in the April 13 letter answer the questions asked. So those three items are not further considered. The other two items involve a request for "what leases were used to create the CRU stratifications" and "what sales were used by the city to determine the 7.25% cap rate".
- [10] With regard to the leases used to determine the CRU stratifications request, the Respondent stated that actual information provided by owners via the ARFI process is confidential and cannot be released in detail. The Board notes that pages 128 to 167 Exhibit C4 provides a list of the retail neighbourhood and retail strip properties in the City's data base and ostensibly were the properties used to determine the stratifications. It may have been useful if the City described the process to determine the stratifications as opposed to just providing data. That said, the Board concludes that this data satisfies the request, as it responds to the question "what leases were used to create the CRU space type stratifications..." Therefore, evidence and references to this issue will not be excluded from either the Respondent's evidence or the Complainant's rebuttal.

- [11] With regard to the request for “sales used in the City’s determination of the 7.25% cap rate”, the Board notes that this information appears to be provided on page 6 for strip retail properties and page 8 for neighbourhood retail properties in Exhibit C5. The Board acknowledges that this information was provided June 21, 2012, prior to the Respondent’s disclosure package being delivered and prior to the Complainant having to prepare its rebuttal evidence package. The Complainant’s rebuttal evidence addressed this information in detail. Section 9(4) of MRAC states that the Board is not to hear any evidence requested under Section 299 but not provided. As discussed, there is no time limit as when the request must be complied with, only that it must be provided if it is to be heard. (As stated earlier, the fifteen day requirement in Section 27.4(2) refers only to the Complainant’s ability to trigger a Compliance Review under Section 27.6 of MRAT.) Therefore, with no statutory provision for when compliance to a Section 299 request is required in order that the Board hear the evidence, the Board applies the rules of natural justice to assess whether the Complainant is disadvantaged in making their case. Given the circumstances described, the Board concludes that the requested evidence was provided, and within a time frame that did not disadvantage the Complainant in making their case, therefore the evidence on this topic will not be excluded from the Respondent’s evidence or the Complainant’s rebuttal.
- [12] The Board understands that a request for a Ministerial Review has been requested, but this matter is outside the jurisdiction of the Board and will not influence the Board or its decision on merit. The hearing then proceeded with a consideration of the merits of the complaint.

Property Description:

- [13] The subject is designated as a neighbourhood shopping centre (CM0203 Retail) for assessment purposes, referred to as the Riverbend Shopping Centre. It has a total of 108,479 square feet (SF) of various commercial uses, including a bank, commercial retail units of various sizes, pad restaurants and a supermarket. The property is a total of 11.70 acres in size and located in the southeast quadrant of the City, south and east of the intersection of Glenmore Trail and 18th Street. The improvements were all built in 1996, with quality ratings of A2 to B.
- [14] 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. The 2012 assessed value is \$27,970,000.

Issues:

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?**

Complainant's Requested Value:

\$26,140,000

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?**

[15] Both parties agreed that the only issue is the capitalization rate. The Complainant did not have an issue with any of the other factors used by the City to calculate the assessed value. Both parties presented their capitalization rate evidence to support their position. The Complainant argued that the correct capitalization rate for neighbourhood shopping centres is 7.75% while the City used a rate of 7.25%.

A. Complainant's Evidence

[16] The Complainant presented two methodologies to derive their capitalization rate. Method I is based on the methodology used by the City and described on pages 21-28, Exhibit C2. This method uses "typical" factors, including lease rates for the year of sale to calculate the capitalization rate (the ratio of net operating income to market value). The Complainant also referred to this approach as using "assessed" rental rates, or rates that were considered "typical" by the City and applied in their assessment calculations.

[17] The Complainant presented a table summarizing seven sales that occurred between May 27, 2011 and January 20, 2009. The capitalization rate is presented, along with some of the key data used to derive the capitalization rate for each sale. The rental rates applied in the analysis were "assessed" rates used by the City in the year of sale. The mean of these seven sales is shown as 7.69% (page 28, Exhibit C2). Support data and calculations for each of the seven sales followed (pages 29-95, Exhibit C2).

[18] The Complainant also presented Method II which is based on the Alberta Assessor's Association Valuation Guide (AAAVG) and the Principles of Assessment I for Assessment Review Board Members and the Municipal Government Board Members (Principles of Assessment I). This methodology is described in detail in pages 98-115, Exhibit C2. It is based on using "market" rents with the best evidence of market rents according to the AAAVG being (in descending order of importance):

- Actual leases signed on or around the valuation date.
- Actual leases within the first three years of their term as of the valuation date.
- Current rents for similar types of stores in the same shopping center.
- Older leases with active overage rent or step-up clauses. (page 102, Exhibit C2)

The Principles of Assessment I document states that "To value the fee simple estate, the sales used for income producing properties must reflect market rents or the net revenue to the owner in respect of the assessable real estate. Vacancy rates and operating costs must also represent current market conditions. If all leases have been recently

negotiated, one may assume that the property is operating at market levels.” (page 106, Exhibit C2) The difference between the two approaches is that Method II used “actual” lease rates while Method I uses “typical” or “assessed” rates. In both methods, the objective is to derive lease rates that reflect “market” rates.

- [19] The same seven sales used in Method I are analyzed using Method II, and the capitalization rates derived are summarized on a table on page 45, Exhibit C2. The Complainant used lease rates taken from the subject rent rolls where available. In cases where current leases for certain space types was not available from the subject rent rolls, recent leases from other similar buildings were used. The AAAGV hierarchy of data was used to determine the best data. The mean rate is indicated as 7.80% and the median rate is indicated as 7.71%. Pages 118-223, Exhibit C2 present the support data for the Method II calculations.
- [20] Based on the analysis done using both methods, the indicated capitalization rate is 7.75%.
- [21] The Complainant pointed out weaknesses in some of the sales comparables used by both the Complainant and the Respondent.
- The shopping centres located at 356 Cranston Road SE (Cranston Market) and 163 Quarry Park Blvd SE (Market at Quarry Park) are considered Class A shopping centres, so of superior quality to the subject and therefore are able to obtain superior rents compared to the subject.
 - The Braeside Shopping Centre at 1919 Southland Dr. SW was sold in December 2009 classified as a strip centre, but the classification has been changed to a neighbourhood shopping centre. Therefore, the issue of what “typical” rates should be applied in the capitalization rate analysis were raised.
 - Except for the sale of Pacific Place (999 36 Street NE) in May 2011 and Sunridge Sears Centre (3320 Sunridge Way NE) in January 2011, the other sales were all 2009 sales, therefore potentially representing a different market environment than the current market environment.
- [22] With regard to the six sales that the Respondent presented, the Complainant attempted to demonstrate the weaknesses in the data or the lack of comparability to the subject. The resulting analysis (page 27, Exhibit R1) indicates a median of 6.77% and average of 6.71%, with the City using a rate of 7.25% in the assessment calculations. The Complainant argued that the Respondent’s own data does not support their conclusion of 7.25%.

- [23] The Complainant discussed the time adjustment that the City used in adjusting sale prices (presented on page 53, Exhibit R1), and argued that the Complainant's data did not indicate that any time adjustment is required. Furthermore, the Respondent did not present the data used to derive the time adjustment. The results have a great deal of variability in quantity and in trend (some negative and some positive results). The result of an inappropriate time adjustment is that the assessment to sales ratio (ASR) analysis done by the City to support its model inputs is not correct and results in the ASR being closer to 1 (the preferred outcome) than it actually is if the correct time adjustment is used (which is no time adjustment).

B. Respondent's Evidence

- [24] The Respondent stated that this was the first time that they were presenting data to support their capitalization rate of 7.25%. In previous hearings in 2012 on neighbourhood shopping centres, they did not present any evidence to support their rate. The Respondent stated that based on the modelling analysis done, the indicated capitalization rate is 7.25%. To support this conclusion, the Respondent presented six comparable sales and their summary analysis (page 27, Exhibit R1). Pages following provided more detailed analysis of each of the six comparable sales. The average is indicated as 6.71% and the median is indicated as 6.77%.
- [25] The table on page 27, Exhibit R1 also provides an ASR analysis using time adjusted sales prices and showed an average ASR of 0.92 for the six comparables presented. Using a capitalization rate of 7.75% as argued by the Complainant, the resulting average ASR is 0.86. This analysis supports the use of the City's 7.25% capitalization rate. To further demonstrate that the 7.25% capitalization rate reflects market value, the Respondent presented a table on page 44, Exhibit R1 showing that the ASR for the seven Complainant's comparable sales after applying the City's time adjustment had a mean ASR of 0.95, compared to a mean ASR of 0.89 using a 7.75% capitalization rate.

C. Board's Conclusions

- [26] In considering the issue before the Board, the "test" is defined in the Municipal Government Act, and specifically Matters Relating to Assessment and Taxation Regulation (MRAT), which states:

4(1) *The valuation standard for a parcel of land is*
(a) market value,

The Board notes that the focus of the Complainant's evidence is the capitalization rate. The Complainant accepted all the other factors used by the City in the assessment of the subject property.

- [27] The Board accepts that there are a number of variations as to the exact methodology that can be used to derive a market value using the income approach. The key, as has been stated by the Board in many previous hearings, is to use a consistent approach to the calculation. If actual rates are being used, then all rates must reflect actual rates. The Board notes that in Method II, the Complainant presented evidence to support the use of the rental rates used and why those rates reflected "market" or "actual" rates. However, other factors such as vacancy rates, operating costs, and non-recoverable costs were the rates as used by the City, therefore representing "typical" or "assessed" rates. Because this is not a consistent use of the methodology, the resulting Method II analysis is not considered reliable.
- [28] Both parties presented evidence and argument as to why the various comparable sales, many common to both parties, were not good indicators of capitalization rate. The Board notes that two sales were common to both parties, both were considered good sales by the parties, these were the two most recent sales and there was agreement as to the capitalization rate analysis done for each. Both the Complainant (page 28, Exhibit C2) and the Respondent (page 27, Exhibit R1) agreed that the capitalization rate for Pacific Plaza (999 36 Street NE) was 7.00% and the capitalization rate for Sunridge Sears Centre (3320 Sunridge Way NE) was 6.55%. This analysis best supports the Respondent's capitalization rate of 7.25%. The Board was not persuaded by the Complainant's other evidence presented as Method I, because of the weaknesses identified in the other comparable sales.
- [29] The ASR analysis done by the Respondent (pages 26 and 44, Exhibit R1) also supports the use of a capitalization rate of 7.25%. This ASR analysis gives the Board confidence that using the City's 2012 rates for assessing neighbourhood shopping centres results in an assessed value that reflects the market value of the respective properties.
- [30] The Board notes that the Complainant did not provide much evidence to demonstrate that using a capitalization rate of 7.75% in the assessment calculation better reflects the market value of the respective properties. The objective of any assessment calculation is to provide an assessment that reflects market value, as is clearly stated in Section 4 of MRAT.
- [31] The Board notes that the Respondent presented considerable argument related to the issue of onus, stressing that the onus is on the Complainant to prove based on greater than 50% probability that the assessed value is not correct or is inequitable. Only if the Complainant meets the test of onus is the Board to consider the evidence presented by the Respondent (shifts onus onto the Respondent). That said, the Respondent has a right to be heard, and to determine if based on probabilities onus has shifted, it may be necessary to consider the evidence presented by the Respondent.

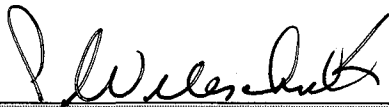
[32] The Respondent presented the Board with a number of court decisions to support their argument. The Complainant presented the Board with a number of previous Board decisions from this assessment year for similar retail properties, where the Complainant was successful in convincing the Board that the correct capitalization rate is 7.75% for neighbourhood shopping centres (shifted onus). This Board was not party to those hearings, and is not bound by previous decisions. The data presented as well as how that data is presented varies from hearing to hearing. The Board also notes that this was the first hearing in the 2012 assessment year where the City presented its capitalization rate data, and this may have allowed for a more thorough and complete examination of the evidence. Regardless, the Board was not convinced by the Complainant's evidence for reasons discussed herein.

[33] For the reasons above, the Board concludes that the correct capitalization rate is 7.25%.

Board's Decision

[34] Based on the evidence presented, the Board concludes that the assessed value of \$27,970,000, using a capitalization rate of 7.25%, reflects market value. The Board concludes that the assessment is correct and confirms the assessed value of \$27,970,000

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	97-133
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.*