

CALGARY  
**COMPOSITE ASSESSMENT REVIEW BOARD**  
DECISION WITH REASONS

In the matter of **two complaints** against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

**COMPLAINT A**

***ROYOP PROPERTIES CORPORATION - As the assessed person***

***Represented by Altus Group Ltd, (Agent) - COMPLAINANT A***

**COMPLAINT B**

***CANADIAN TIRE CORP. As a taxpayer***

***Represented by AEC INTERNATIONAL INC., (Agent) – COMPLAINANT B***

and

***The City Of Calgary, - RESPONDENT***

before:

***D. H. Marchand, PRESIDING OFFICER***

***J. Massey, MEMBER***

***R. Roy, MEMBER***

These complaints 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 #:	LOCATION ADDRESS:	ASSESSMENT:	HEARING NUMBER:
415035518	388 Country Hills BV. NE	56,300,000	63306 and 63500

The Complaints were heard August 21 – 22, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the **Complaint A:** *K. Fong; (Agent's Representative)*

Appeared on behalf of the **Complaint B:** *B. Ryan; (Agent's Representative)*

Appeared on behalf of the Respondent: *D. Zhao; (City of Calgary Assessor)*

**Description and Background to the Property under Complaint:**

The subject is identified with a sub-property use code CM1403-Shopping Centres - Power. The subject has a land use designation of Commercial – Regional 3. It is located in the community known as Country Hills Village. The site area consists of 871,044 sq. ft. or 20.00 acres and is improved with 213,283 square feet of rentable space, a Gas Bar, a Car Wash, 2 Restaurants, and a Theatre summarized as follows:

Bank space	-	7,779 sq. ft.
Big Box Space (Canadian Tire)*		
50,000 – 100,000 sq. ft.	-	72,053 sq. ft.
Car Wash		n/a
CRU less than 1,000 sq. ft.	-	730 sq. ft.
CRU between 1,000 & 2500 sq. ft.	-	5,269 sq. ft.
CRU between 2,501 & 6,000 sq. ft.	-	9,283 sq. ft.
Gas Bar		n/a
Non-retail Mezzanine	-	16,821 sq. ft.
Restaurant Dining Lounge	-	12,152 sq. ft *
Restaurant Fast Food	-	3,771 sq. ft
Theatre	-	<u>85,423 sq. ft.</u>
		213,283 sq. ft.**

\* This size was agreed to at the hearing. \*\* includes 1 sq. ft. each for car-wash and gas-bar.

**Complainant A** advised that only 3 issues of the 11 points filed as Grounds for Appeal within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* would be argued at this hearing. They have been reworded and restated as follows:

1. *The market rental rate for Bank CRU space should be revised from \$37 to \$32\*\*\*.*
2. *The Canadian Tire space (50,000 – 100,000 sq. ft) should be revised from \$14 to \$12.*
3. *The capitalization rate for the property should be revised from 7.25% to 7.75%.*

**Complainant A's revised assessment request is \$50,350,000.**

\*\*\* In light of recent CARB decisions on a similar complaint the Respondent concedes that the subject's Bank CRU space is best reflected by a market rate of \$32.00 per sq. ft. This is consistent with the rate applied to similar space. The revised assessment as a result of amending the rate applied to the Bank CRU space is **\$55,780,000.**

**Complainant B** advised that only 2 issues of the 5 points filed as Reason's for Complaint within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* would be argued at this hearing. They have been reworded and restated as follows:

1. *The Canadian Tire space (50,000 – 100,000 sq. ft) should be revised from \$14 to \$10.*
2. *The capitalization rate for the property should be revised from 7.25% to 7.75%.*

Complainant B is requesting that the Canadian Tire component or portion of the overall property's assessment should be \$9,220,000.

**Procedural or Jurisdictional Matters:**

This hearing was originally scheduled for July 5<sup>th</sup> but was postponed to the August 21-22 dates to allow for more hearing time. At the time of postponement the Parties were advised that their disclosure period had closed.

At the start of Complainant B's portion of the hearing the CARB was asked to invoke S.465(1)(b) and requested the CARB to order the production of some lease documents that Complainant B wished to speak to as part of their argument. The City objected indicating that the disclosure period was closed and that the CARB had indicated no new exchanges were to take place as a result of the postponement being granted.

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

The CARB will be proceeding based on the disclosed evidence that took place in order to comply with the originally set hearing date. And will reserve the right to revisit S.465(1)(b) if the need arises during the course of the hearing.

The CARB will be issuing only one decision as to the assessment of roll number 200094522 after giving consideration to the two Complainants' arguments set out in the issues identified in the background.

**Issue 1: the market rental rate for the Canadian tire space requested by Complainant A.**

**Complainant A** provided the CARB with market 4 lease rate comparables and the Respondent provided the CARB with 6 market lease rate comparables; one is the subject, The following summarizes the Party's data relative to the Canadian Tire space:

From Complainant A					From Respondent				
Roll number	Space area	Lease start	Yr	Rate /sf.)	Address	Space area	Lease start	Yr	Rate /sf.
200683597	99,650	Jan 08	20	\$14.50	25 Heritage Meadows	59,202	July 08	10	\$12
201058856	95,423	Mar 08	20	\$14.50	11938 Sarcee Tr	95,423	Mar 08	20	\$14.50
200768620	51,403	Sept 06	10	\$11.50	12300 Symons Valley Rd	99,650	Nov 07	20	\$14.50
024014706	47,069	Jun 10	5	\$7.64	11690 Sarcee Tr	51,403	Sept 06	10	\$11.50
		<b>Average</b>		<b>\$12.04</b>	4155 126 av. SE	60,534	Oct 05	15	\$15
					388 Country Hill (subject)	72,053	Nov 99	20	\$16.65
							<b>Average</b>		<b>\$14.03</b>
							<b>Median</b>		<b>\$14.50</b>
							<b>Rate Applied</b>		<b>\$14.00</b>

**Complainant B** argues that historically, the subject property, and similar box stores have been grouped in the same strata in the City of Calgary and assessed the same rate at \$10.00 per square foot for both business and property assessment purposes. However in 2011 as a result of creating a new stratification; a 50,001 to 100,000 sq. ft. category, an inequity between the different box stores resulted. Specifically the Canadian Tire box stores, which have seen on average a 33% increase in rental rates applied, while other similar and comparable box stores have increased 10% and others have remained unchanged. A big box just below 100,000 sq. ft. carries an assessment higher than a property greater than 100,000 sq. ft. The Complainant submits that this inequity is unfair and results in an additional tax burden on the subject.

**Board's Decision in respect to the market rental rate for the Canadian Tire space:**

Three of the four comparable leases provided by Complainant A are the same as those used by the Respondent and yield an average rate of \$13.50. The comparable indicating a rate of \$7.64 is considered to be atypical. The Respondent's use of the subject's current rate of \$16.65 is somewhat suspect as it was signed in 1999 at a rate of \$13.94. It appears that the step-up is generating a rate above the typical rate for similar space. The CARB acknowledges that the new stratification in 2011 will have varying effects on the relationship that previously existed. The evidence presented does not support a \$10.00 rate or a \$12.00 per sq. ft. for the box store space in the 50,001 to 100,000 square foot range. The evidence supports the rate applied in the assessment. The market rate for the Canadian Tire space of 72,053 sq. ft. will not be disturbed.

**Issue 3: The capitalization rate for the subject Power Centre requested by Complainant A and Complainant B**

**Complainant A** provided a table summarizing their capitalization rate analysis and conclusion. The analysis included the same two sales shown as comparables 1 and 2 by the Respondent. They are the sales at 800 Crowfoot Crescent NW and 20, 60, 140 Crowfoot Crescent NW.

Complainant A advised that the actual income for the property at the time of sale was applied. If space was vacant or had a term of less than one year remaining, the space was leased up to 100% by applying a market rental rate. Then an allowance rate for vacancy and non-recoverables as well as the operating cost allowance rate as those applied by the municipality was applied.

For the sale of 800 Crowfoot Crescent NW a cap rate of **7.28%** was concluded.

Complainant A chose to analyse the property at 20, 60 Crowfoot Crescent NW separately and without consideration of 140 Crowfoot Crescent NW. The cap rates concluded were **7.95%** and **7.72%** respectively.

The average of the three indicators is 7.65%, the median is 7.72% and the weighted mean is 7.76%. Based on these conclusions a capitalization rate of 7.75% is requested.

**Complainant B** also provided a table summarizing their capitalization rate analysis and conclusion. The data is relative to 8 sales taken directly from a third party source, RealNet. The data is from various locations and quadrants within the City. The range of capitalization rates presented is from 7.3% to 8.7%. The average rate is 8.0% and the median of the eight indicators is 8.1%.

Complainant B concludes with the following statements:

*It is recognized and reasonable that potential tenants for spaces over 100,000 square feet in area are not as prevalent as smaller tenants. Consequently, the ability to lease larger spaces is limited and the risk associated with investing in larger spaces naturally increases significantly...*

And

*Upon consideration of the capitalization rate survey and our analysis of risk it is concluded that the appropriate capitalization rate for the valuation of the subject property is 7.75%.*

**The Respondent** provided the CARB with a summary of the 2011 capitalization rates

The first is a snapshot of capitalization rates based on the hierarchy of shopping centre types - freestanding, strip, neighbourhood, community, power and regional's A, B, C. The lowest capitalization rate is 6.50% which is assigned to the A type Regional Malls. The next is 6.75% assigned to the B type Regional Malls. The rate of 7.25% is assigned to the C type Regional Malls, neighbourhood, community, and power centres. A rate of 7.50% is assigned to the strip and freestanding centres.

Second, is a table showing the 2010 second quarter published Capitalization Rates by CBRE, Colliers, and Altus InSite. The rates published are: CBRE – 6.75% to 7.25%, Colliers – 6.50% to 7.00%, and Altus InSite – 6.50%.

Third, is a summary of 4 Power Centre sales used in support of the 7.25% capitalization rate. The 4<sup>th</sup> sale, being a post facto sale, was for trending or checking purposes.

The CARB was advised that the potential gross income was the product of the various leasable spaces at a typical rental rate for the defined space, leased up to 100% capacity less the typical vacancy allowance for the type of space and location, a 1% non-recoverable allowance, and typical operating cost allowances.

The Respondent submits that the development of the typical capitalization rate was consistent with the manner in which the Income Approach's direct capitalization method was applied in the preparation of the assessment.

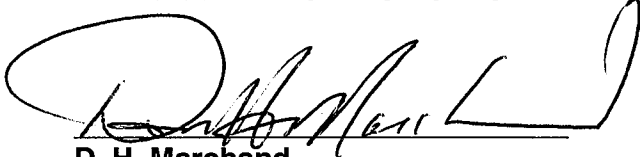
**Board's decision as to capitalization rate for the subject Power Centre requested by Complainant A and Complainant B**

The CARB gave consideration to all the sales data provided and gives most weight to the property sales involving similar Power Centre uses and location. All parties presented the 20, 60, 140, Crowfoot Cr NW sale as an indicator. The RealNet provided cap rate of 8.7% for the sale is given little weight as a review of the supporting documents states that: *"The aggregate income at the time of sale for both properties in the portfolio was approximately \$3,928,000 representing a going in yield of 8.7%."* Both Complainant's chose to review the portfolio sale as two sales rather than as one transaction. No support for the actual income was provided and there was no attempt to show that the actual income used in Complainant A's analysis was typical for similar properties.

The municipality's mandate is to use typical market conditions for properties similar to that property. The actual market conditions can be equal to the typical market conditions. Complainant A used typical rates and applied the same allowances as the Municipality expect for the potential income figure. Actual was used versus the typical income in the analysis of the 20, 60, 140, Crowfoot Cr NW sale. The use of the actual income in this case does not capture the full fee simple estate of the property.

**Final Decision:** The assessment is revised to **\$\$55,780,000.**

DATED AT THE CITY OF CALGARY THIS 8 DAY OF September 2011.

A handwritten signature in black ink, appearing to read 'D. H. Marchand', is written over a horizontal line.

**D. H. Marchand**  
**Presiding Officer**

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING on Aug. 22 – 23/11  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEMS for 63306</b>
1. C1	Complainant A's Disclosure for Roll: 415035518 (file 63306)
2. C2	Complainant A's Rebuttal Submission pt. 1 of 2 (file 63306)
3. C3	Complainant A's Rebuttal Submission pt. 2 of 2 (file 63306)
4. R1	Respondent Disclosure for Roll 415035518 (file 63306)
5. R2	Copy of CARB 1026/2011-P
6. R3	Copy of MGB 123/10
7. R4	Copy of CARB 0974/2011-P
	Recalculation based on amendment to Bank Space rental
<b>NO.</b>	<b>ITEMS for 63500</b>
1. C1	Complainant B's Disclosure for Roll: 415035518 (File 63500)
2. C2	Complainant B's Support and Background (210 pages)
3. C3	Complainant B's Rebuttal Submission (46 pages)
4. C4	Package of 2011 Decisions 1087/2011-P to 1094/2011 –P
5. C5	Copy of MGB 123/10
6. C6	Copy of MGB 100/09
7. R1	Respondent Disclosure for Roll 415035518 (File 63500)
8. R2	Copy of CARB 1026/2011-P
9. R3	Copy of CARB 0974/2011-P

*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.*