

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

In the matter of the 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:

Home Depot Holdings Inc

*Represented by AEC international Inc - (agent),
and Miller Thomson – (solicitor) . COMPLAINANT*

and

The City Of Calgary

Represented by E. Lee (Assessor) - RESPONDENT

before:

D. H. Marchand, PRESIDING OFFICER

J. Massey, MEMBER

R. Roy, MEMBER

These are 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 NUMBERS:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
054015904	343 36 ST NE	63602	15,100,000
415063601	100 388 Country Hills BV NE	63603	15,460,000
200768687	11320 Sarcee Tr NW	63604	14,150,000
201202215	1818 16 AV NW	63605	16,940,000
101046803	6500 Macleod TR SW	63606	15,730,000
101050409	6336 Macleod TR SW	63607	2,280,000
757118500	390 Shawville BV SE	63608	15,680,000
200450021	5125 126 AV SE	63609	14,150,000
200787927	5019 Nose Hill DR NW	63612	17,780,000

These complaints were heard July 6th – 11th, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, and Boardroom 8.

Appeared on behalf of the Complainant: *B. Soulier, (Agent's Representative)*
P. A. Milligan (Lawyer)

Appeared on behalf of the Respondent: *E. Lee (City of Calgary Assessor)*

The closing of this hearing is on July 28th; the date that the Parties were requested to submit a written summary of the evidence submitted. Both Parties filed on time and no new evidence was received in their submissions

Procedural or Jurisdictional Matters:

No preliminary matters were raised by the Parties. Both Parties swore an oath. No objection was raised as to the composition of the CARB panel.

Background:

Eight of the nine properties under complaint are sites on which a Home Depot outlet is located.

- Roll 101050409 is a vacant parking lot adjacent to the Home Depot outlet at 6500 Macleod Trail SW.
- Roll 054015904 and roll 101046803 are two Home Depot outlets that have mezzanine space included within their assessments. A separate argument as to the assessed value of the mezzanine space was presented for these two roll numbers.
- Roll 201202215 and roll 200787927 are two free standing outlets where a capitalization rate of 7.5% was applied within the Income Approach model used to assess these properties. The remaining Roll numbers, with the exception of the vacant lot, have been assessed by an Income Approach model wherein the Capitalization rate applied is 7.25%
- The Parties agree that the Income Approach to value is the preferred methodology for the subject assessments and the "land only" parcel is best assessed by the direct market data approach to value.

Issues:

1. What is the market rental rate for the eight Home Depot outlets' space?
2. What capitalization rate is to be applied each of the eight Home Depot outlet's income in order to determine a value as of the valuation date?
3. Should the mezzanine space have a rental rate assigned?
4. What is the per unit rate to be applied to the vacant land parcel identified as roll 101050409.

This order will address the party positions relative to each of the issues separately.

Issue 1: The market rental rates

The market net rental rate used in Roll 201202215 and roll 200787927 is \$14.00 per sq. ft. Both of these outlets have been stratified within a category of 50,001 to 100,000 sq. ft. This is a new stratification range for the 2011 assessment. The remaining six outlets all have a market net rental rate of \$10.00 applied as they are all within stratification of greater than 100,000 sq. ft.

The Complainant is requesting a market net rental rate of \$8.00 per sq. ft for all 8 roll numbers.

In support of the \$8.00 rate a lease summary and analysis table of 12 Alberta Big Box anchor space leases was provided. The average and median face rents are \$7.57 and \$7.77 respectively. If cash allowances and expense limits are taken into account the average and median of the 12 leases analyzed is reduced to \$6.88 and 7.03 respectively.

The Respondent submitted a summary of leasing data for two leases where the space leased is greater than 100,000 sq. ft. and data from six leases containing between 50,001 and 100,000 sq. ft. The median shown is \$9.80 and \$14.50 respectively.

Board's Decision in Respect of The market rental rates:

The CARB reviewed lease data provided by both Parties. It is noted that both parties have provided the lease data relative to 8888 Country Hills BV NW. It has a 20 year lease term commenced in October 2003. It is for 132,228 sq. ft. of space with a net market rental rate of \$10.00. The CARB gives most weight to this similar lease comparable as an indicator of the market rate for space greater than 100,000 sq. ft. The CARB concurs with the Respondent's claim that the lease comparable identified as the Rona Outlet at 12300 Symons Valley RD NW is the best comparable for space between 50,000 and 100,000 sq ft. It has a 20 year lease term commenced in November 2007. It is for 99,650 sq. ft. of space with a net market rental rate of \$14.50. The remaining leases are given less consideration. One is a land lease with an indicated lease rate of \$4.00 and is atypical to the subject. Four of the indicators are joint venture leases. Two of the indicators reflect space within regional shopping centres. Six of the indicators are from locations outside of the subject's municipality and the CARB received no measure as to the relationship between the various municipalities.

The CARB will not be revising the net market rental rates for any of the properties under appeal.

Issue 2: The Typical Capitalization Rate

The CARB was advised that two capitalization rates were applied based on location. The properties located in a Power Centre or neighbourhood/community mall were assessed a capitalization rate of 7.25%. Freestanding and strip malls are assessed with a capitalization rate of 7.5%. The 7.5% rate applies to Roll 201202215 and roll 200787927.

The complainant is requesting a capitalization rate of 7.75% be applied to all eight rolls number under complaint. The complainant provided a table summarizing their capitalization rate analysis and conclusion. The data relative to 8 sales from the various quadrants to the City are shown. The capitalization rates presented are all taken directly from a third party source, RealNet. The range of capitalization rates presented is from 7.3% to 8.7%. The average rate is 8.0%.

It is the opinion of the complainant that a 7.75% capitalization rate would be appropriate and

reflective of the subject properties overall characteristics and recognizing the relative higher risk of finding tenants to occupy open large warehouse-type retail space in the event of a vacancy.

The Respondent provided a table showing the hierarchy of shopping centre types and 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%.

A summary of 4 Power Centre sales was provided in support of the 7.25% used in preparation of the assessment. Comparables 1- 3 were used in the analyses and the post facto sale was for trending or checking purposes. The CARB was advised that the City has used typical factors which include net market rent, vacancy allowance, non-recoverable allowance and operating costs at the time of sale.

The Respondent submits that the City has developed a consistent approach to arrive at a 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 in Respect of the Capitalization Rate:

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 very little weight. From the data one doesn't know if a stabilized income was used or what the actual rents are. A review of the supporting documents states that the income is estimated. The foundation of any RealNet rate used could not be explained.

The CARB gives regard to the assessment to sales (ASR) comparison chart set out in the Respondent's submission. The application of a 7.75% capitalization rate in comparison to the 7.25% used would generate an ASR median rate outside of the acceptable legislated tolerances.

The municipality's mandate is to prepare an assessment that must reflect typical market conditions for properties similar to that property being assessed. The actual market conditions may and can be equal to the typical market conditions, if so, it has to be shown.

Issue 3: Should a rental rate be assigned the mezzanine space.

Roll 054015904 has 3,384 sq. ft and roll 101046803 has 1,582 sq. ft. of mezzanine space. The rental rate assigned to the space is \$1.00 per sq. ft.

The Complainant submits that any value attributable to such space is fully recognized in the market rental rate assigned to the main floor retail/selling area. There is no retail activity, or public access in the space. It is used for storage and lunchroom/office. There is no evidence of additional rent being paid for the mezzanine space.

The Respondent contends that onus has not been met on this issue. If the space on the mezzanine did not exist then the space used for storage, office, and staffroom would still have to exist somewhere.

Board's Decision in respect to a rental rate being assigned the mezzanine space.

The CARB received no evidence that the mezzanine space wasn't being used and that the developed space added no value to the real property.

The rate of \$1.00 per sq. ft. for the mezzanine space identified in each roll will not be disturbed.

Issue 4: The per unit rate assigned to the "land only" parcel.

Roll 101050409 consists of 1.742 acres of commercial C-R3 land. The rate of \$1,310,345 per acre (\$30.00 per sq. ft.) was applied.

The Complainant submitted three comparables in support of a \$750,000 per acre rate (\$17.22 per sq. ft.) requested rate.

The Respondent submits that none of the comparables carry any relevance to the subject parcel, located in a prime retail location, across the street from Chinook Centre. The first comparable is zoned for residential use; the second comparable is a non-arms length transaction between related parties and is located on the edge of the City limits. The third comparable is a sale of a parcel located in the Town of High River and consists of 11.43 acres. The Respondent maintains the onus to show that the assessment is incorrect has not been met by the evidence provided.

Board's Decision in respect of the per unit rate assigned to roll 101050409.

The CARB agrees with the Respondent. The sales submitted as comparables are not similar to the subject parcel. No adjustments were applied to the comparables. At a minimum the CARB would have expected to see adjustments for location, land use, and parcel size.

The rate of \$1,310,345 per acre (\$30.00 per sq. ft.) for roll 101050409 will not be disturbed.

Board's Decision:

The CARB confirms the assessments as follows:

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200787927	5019 Nose Hill DR NW	63612	17,780,000

DATED AT THE CITY OF CALGARY THIS 6 DAY OF SEPTEMBER 2011.



D. H. Marchand
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure for 415063601 and 054015904
2. C2	Complainant's support and background
3. C3	Legal analysis
4. C4	Rebuttal 415063601 and 054015904
5. C5	Submission for 200768687 and 201202215
6. C6	Rebuttal 200768687 and 201202215
7. C7	Submission for 757118500 and 101046803 & 101050409
8. C8,	Rebuttal 757118500 and 101046803 & 101050409
9. C9	Submission for 200450021 and 2007787927
10. C10	Rebuttal for 200450021 and 2007787927
11. R1	for file 63602 Respondent Disclosure (687 pages)
12. R2	for file 63603 Respondent Disclosure (716 pages)
13. R3	for file 63604 Respondent Disclosure (717 pages)
14. R4	for file 63605 Respondent Disclosure (716 pages)
15. R5	for file 63608 Respondent Disclosure (717 pages)
16. R6	for file 63606 Respondent Disclosure (779 pages)
17. R7	for file 63607 Respondent Disclosure (58 pages)
18. R8	for file 63609 Respondent Disclosure (268 pages)
19. R9	for file 63612 Respondent Disclosure (715 pages)

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.*