

**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:**

***Altus Group Ltd., COMPLAINANT***

**and**

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

**before:**

***Board Chair, I. WELESCHUK  
Board Member H. ANG  
Board Member E. REUTHER***

This is a complaint 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:

<b>ROLL NUMBER:</b>	<b>031010929</b>
<b>LOCATION ADDRESS:</b>	<b>3550 32 Avenue NE</b>
<b>HEARING NUMBER:</b>	<b>63784</b>
<b>ASSESSMENT:</b>	<b>\$11,980,000</b>

This complaint was heard on 4<sup>th</sup> day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Andrew Izard – Representing Altus Group Ltd. – as agent for Canada Safeway Limited*

Appeared on behalf of the Respondent:

- *Shelly Turner – Representing the City of Calgary*
- *Rob Ford – Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter.

With regard to procedural issues, the Respondent's documentary evidence was not provided to either the Complainant or the Board by the deadline for submissions, in accordance with Section 8 of the Matters Related to Assessment Complaints Regulation (MRAC). The Respondent offered no explanation as to why the documentary evidence was not filed on time, other than acknowledging that it was not filed on time. The Complainant objected to the Respondent's evidence being heard.

The Board notes Section 9(2) of MRAC, which states:

"A composite assessment review board must not hear any evidence that has not been properly disclosed in accordance with section 8."

The Board decided to proceed with the hearing, but not to accept or consider the Respondent's evidence, as it was not disclosed in accordance with Section 8 of MRAC. The Respondent was allowed to cross-examine the Complainant's presentation. No rebuttal evidence was considered, as no evidence was presented by the Respondent. The parties agreed to proceed on this basis.

**Property Description:**

The subject property is located at 3550 32 Avenue NE. It is an improved property with a supermarket of 65,230 square feet (sf), non-retail mezzanine of 940 sf and a gas bar for a total area of 267,600 sf. The property is owner occupied. It is adjacent to another property used for commercial/retail uses and the site is considered a commercial – neighbourhood shopping centre.

**Issues:**

1. What is the correct capitalization rate to be applied to the subject neighbourhood shopping centre property to calculate the assessed value of the subject using the income approach?

**Complainant's Requested Value:** \$11,240,000

**Board's Decision in Respect of Each Matter or Issue:**

The Complainant agreed with "Original 2011 Municipal Shopping Centre Assessment Summary" except with the capitalization rate used in that summary to arrive at the assessed value of the subject.

**1. What is the correct capitalization rate?**

The Complainant set out the following reasons as to why the 7.25% capitalization rate for the subject was too low, and why a rate of 7.75% is the correct rate for this property.

In evidence, the Complainant cited a number of court decisions and Board decisions that discussed the appropriate approach to calculating a capitalization rate. It is the Complainant's interpretation that the appropriate approach to determining a capitalization rate is to use the actual or market lease rates in place when a sale occurs, as it is these actual lease rates and terms that influence what a buyer will pay for an income property. In other words, the purchaser is buying a particular income stream. By using actual lease rates and an actual arms-length sale price, the "market" capitalization rate is calculated. The Complainant argued that the method used by the Respondent, using "typical" lease rates to derive the capitalization rate from an actual sale, results in a "theoretical" capitalization rate that has no basis in reality. Furthermore, the Complainant stated that the Respondent did not disclose how "typical" rates are derived nor how they are defined.

The Complainant provided six comparable sales of neighbourhood shopping centres that occurred over the eighteen month period of January 2009 to June 2010 inclusive, and located across the City of Calgary. The Complainant stated that the data sheets for these comparable sales as presented in its evidence (Exhibit C-1) were mis-labelled and should read "Fee Simple Market Valuation" not "Leased Fee Estate (LFE) Valuation". Based on its analysis, the Complainant concluded that the appropriate capitalization rate to use in the income calculation to derive the assessed value of the subject is 7.75%.

The Complainant acknowledged that one of its comparable sales was “atypical” and that no reason was apparent as to why this sale price was substantially more the value indicated using the income approach. The 7.75% capitalization rate was derived from five of the comparable sales, excluding the atypical comparable.

The Complainant's methodology involved using comparable sales with relatively recent leases. Vacant space and spaces with leases nearing expiry were assumed to be leased at “market” rates actually being achieved by that property. The market rates used in the Complainant's assessed value calculation varied by the type of space. The weighted average rental rates for the five comparable sales (excluding the atypical comparable) ranged from \$18.22/sf to \$30.24/sf, and were in part a function of the mix of type of space in each comparable shopping centre property. The adjustments used by the Complainant in its income approach calculation of assessed value, such as vacancy allowance, were taken directly from the City's 2011 Assessment calculation. The resulting net operating income was divided by the actual sale price to arrive at a capitalization rate. The capitalization rate calculated for each of the five comparables ranged from 7.36% to 8.24%, with a mean of 7.87% and weighted mean of 7.70% (calculated using the mean rentable area multiplied by the mean rental rate to derive mean net operating income divided by the mean sale price).

The Respondent stated that the municipality is required to use a mass appraisal approach in determining market value for assessment purposes. Mass appraisal principles rely on typical rates so as to treat similar properties in an equitable manner. The Respondent noted that the Complainant's approach was not wrong, but reflected a market value appraisal of the subject property. An assessed value is not the same as an appraised value, even though both indicate a market value for a property. For assessment purposes, typical rates must be used by the City in its model used to calculate the assessed value of the subject.

The Complainant concluded that the calculation presented by the Complainant was correct and is the appropriate assessed value.

### **Board's Findings**

The Complainant made reference to decision rendered previously on this issue. The Board is mindful of other decisions made by various courts related to appropriate methodology. The Board is also aware of its previous decisions. That said, the principles of natural justice require that each matter be heard and a decision rendered on the evidence presented and the merits of each case. Therefore, while the Board has regard for these previous decisions, it is not bound by them if the evidence or circumstances in the case do not support such a decision.

The Board notes that both parties used the word "market rates" to describe their approaches. The Complainant used "market" to refer to capitalization rates calculated using actual sales and rental rates. The Respondent used "market" to refer to a capitalization rate calculated using typical rental rates applied to actual sales. Both methodologies are valid, but result in a different capitalization rate for the same property.

The Board understands that calculating the value of a property using the income approach must be based on a consistent methodology. In other words, if "actual" rates are to be used to calculate a value using an income approach, then all factors in that calculation must reflect actual values. On the other hand, if typical rates are used to calculate value using an income approach, then all factors in that calculation must be typical rates. It is not appropriate to calculate the value of a property with the income approach using some factors derived from actual data and some factors derived from typical data. That said, for assessment purposes, typical rates are required.

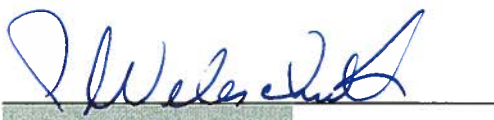
The Complainant used actual lease rates to calculate its capitalization rate, and then applied that capitalization rate to typical lease rates used by the City in its assessment calculation. This mixing of the two methods is not appropriate. To illustrate, the Board notes that the market rental rate in two comparable sales presented by the Complainant with supermarket space was \$19.00/sf and \$26.40/sf. The typical rate used in the City's Assessment calculation is \$13.00/sf for the subject supermarket space. Furthermore, the average actual rental rates for the comparable sales properties were substantially more than the \$13.51/sf average typical rate used in the City Assessment calculation.

The Board does not agree with the calculation used by the Complainant, as it is based on factors derived using different methodologies. If the Complainant uses its capitalization rate of 7.75%, it also has to use rental rates and other factors derived from actual data. This was not done. The Board is not persuaded by the Complainant's analysis or evidence. Since the Board does not agree with the conclusion of the Complainant regarding the assessed value, it has no reason to vary the assessment.

**Board's Decision:**

The assessment is confirmed at \$11,980,000.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF July 2011.



**Presiding Officer**

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure

*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.*

