

**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 the following property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

**ROLL NUMBER: 052221215**  
**LOCATION ADDRESS: 1440 52 Street NE**  
**HEARING NUMBER: 63787**  
**ASSESSMENT: \$32,590,000**

**-AND -**

**ROLL NUMBER: 055066906**  
**LOCATION ADDRESS: 817 19 Street NE**  
**HEARING NUMBER: 64306**  
**ASSESSMENT: \$7,130,000**

These complaints were heard on 6<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 First Capital Realty Inc.*

Appeared on behalf of the Respondent:

- *R. Scott Powell – Representing the City of Calgary*

These two complaints both involved neighbourhood shopping centres. The issues raised were essentially common to both, with the same individuals representing the Complainant (Mr. Izard) and Respondent (Mr. Powell) respectively. Hearing 63787 (TransCanada Centre located at 1440 52 Street NE) was heard, with all evidence and issues presented. The parties agreed to have the documentary evidence for Hearing 64306 (Mayland Heights Shopping Centre located at 817 19 Street NE) marked as exhibits, and to have their verbal presentations, questions, rebuttal and final comments carried over from Hearing 63787. The only evidence unique to Hearing 64306 is a verbal description of the subject property. This decision report will address both these matters.

**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 objection to the panel representing the Board and constituted to hear the matter. As no procedural matters were raised, the Board proceeded with hearing the merits of the matter.

**Admissibility of Complainant's Evidence Mis-Labelled as LFE**

As the Complainant was presenting its evidence and began to address its capitalization rate study, the Complainant indicated that there was an error on the data sheets in their documentary evidence (Exhibit C-1). The Complainant asked that the labels on the comparable sales data sheets be changed from "Leased Fee Estate (LFE) Valuations" to "Fee Simple Market Valuations".

The Respondent objected, stating that its evidence was prepared with the understanding that the evidence presented and disclosed by the Complainant was accurate. The Respondent made the point that it is not their responsibility to question or correct the Complainant's evidence. The Respondent provided two alternative remedies. The Board could rule the mis-labelled portion of the Complainant's evidence inadmissible. Alternatively, if the Board chooses to proceed and hear the material in question, that it be acknowledged that any changes or modifications to the Respondent's presentation is in response to the errors that the Complainant identified during its verbal submission.

The Complainant stated that the error should have been clear if the presentation was read in the context of the whole document. The Complainant also stated that this error had been raised and corrected in some previous and recent hearings without incident. The Complainant stated that the capitalization rate study was a key aspect of its case and that not allowing this evidence would severely cripple the case.

The Board notes that it is not the Respondent's, nor the Board's, responsibility or place to ensure the accuracy or correctness of the Complainant's documentary evidence. That onus lies with the author of the document. The Respondent addressed the material provided in good faith and as disclosed. Even if the Complainant had notified the Respondent of the error, which it did not do, the rules of disclosure contained in Section 8 of the Matters Related to Assessment Complaints Regulation (MRAC) do not allow the Respondent to change its submission within 14 days of the hearing date.

The Board decided to hear the Complainant's material related to its capitalization rate study, as to not hear this evidence would prejudice the Complainant's case. The Respondent indicated that this was an acceptable option provided that the Respondent was allowed to modify its submission as appropriate in light of the correction.

The Board allowed the Respondent to modify its submission by removing portions, pages or sections of the Respondent's presentation that were no longer relevant as a result of the correction to the Complainant's material. The Board noted that retracting material exchanged in accordance with Section 8 of MRAC should not prejudice the Complainant, and that if requested, the Board will recess to allow the Complainant to re-organize its verbal evidence or arguments. This will also apply to the Respondent, if it requests a recess to facilitate reorganizing its presentation.

The Board concluded that it will not modify the Complainant's documentary evidence, and that any corrections to the document will be on record as the Complainant presents its verbal evidence. To do otherwise would also contravene Section 8 of MRAC as they apply to disclosure prior to a hearing.

The parties agreed to proceed on this basis. The hearing continued with merit issues.

**Admissibility of Exemption for the Area Occupied by Goodwill**

The Complainant calculated its requested assessment value using a rental rate for the bank occupied space of \$24.00 square feet (sf) and using a capitalization rate of 7.75%, the correct rates according to its evidence. As part of this calculation, the Complainant also recalculated the exempt portion of the subject property occupied by Goodwill using the 7.75% capitalization rate applied to the entire subject property. This change in capitalization rate resulted in the exemption being \$3,100,000, compared to the \$3,320,000 exemption indicated in the Original Municipal Assessment Summary.

The Respondent objected to this matter of the exemption being raised, on the basis that the Goodwill space was a separate Roll Number (Exempt Roll Number 200184117) which was not before this Board.

The Board concluded that the Goodwill space was indeed under its own Roll Number and was not an issue before this Board. The calculation of the amount of the exemption is not before this Board and will not be considered.

The Complainant accepted this decision and modified its final assessed value accordingly. The hearing continued with merit issues.

**Property Description:**

Two similar neighbourhood shopping centre properties were considered, and are described as follows.

**Hearing No. 63787 – TransCanada Centre (1440 52 Street NE)**

The subject property is a neighbourhood shopping centre with a total of 167,375 sf of rentable space allocated to ten sub-categories. The anchor tenant is Canada Safeway, which occupies 48,055 sf. The total space also includes 669 sf of non-retail mezzanine. Exempt space of 15,897 sf used by Goodwill and under a separate roll number is not part of the total 167,375 sf indicated on the Assessment Summary.

**Hearing No. 64396 – Mayland Heights Shopping Centre (817 19 Street NE)**

The subject property is classified as a neighbourhood shopping centre for assessment purposes, with a total of 41,680 sf of rentable space allocated to six sub-categories. The anchor tenant is Family Foods, which occupies 20,174 sf. The total space also includes 192 sf of non-retail mezzanine. The shopping centre originally hosted a Canada Safeway store and was built in the late 1960's.

The subject property does not include the Petro-Canada gas station and a small CRU strip mall located on the north end of the larger shopping plaza.

**Issues:**

Two common issues were identified by both parties. One of these issues pertained only to Hearing No. 63787, related to the appropriate rental rate for the bank space on that subject property. The other issue was common to both the subject properties. The two issues are:

1. What is the correct rental rate to apply to the bank space to calculate the assessed value of the subject TransCanada Centre property (Hearing 63787) using the income approach?
2. What is the correct capitalization rate to be applied to the respective subject neighbourhood shopping centre properties (Hearing 63787 and Hearing 64396) to calculate the assessed value of the subject using the income approach?

**Complainant's Requested Value:**

Hearing No. 63787    TransCanada Centre                      Roll No. 052221215    \$30,090,000

Hearing No. 64396    Mayland Heights Shopping Centre    Roll No. 055066906    \$ 6.670,000

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

The Complainant agreed with the "2011 Municipal Shopping Centre Assessment Summary" provided for each subject property with regard to the areas and sub-categories, as well as all factors used by the Respondent in calculating the 2011 assessment except for the lease rental rate applied to the bank space in the TransCanada Centre (Hearing 63787) and the capitalization rate used in both respective Summaries to calculate the assessed value of the two respective subjects. There was no unique equity issue raised, other than that associated with the use of the appropriate rental rate for the bank space or the appropriate capitalization rate.

**1. What is the correct lease rental rate for the bank space located in the TransCanada Centre?**

The Complainant stated that the 2011 Assessment was calculated using a rental rate for the CRU Bank Space of \$29 sf, and requested this rate be changed to \$24 sf, which better reflected the rate used to assess other similar properties in the area. The Complainant presented the actual rental information for the subject bank space, occupied by Servus Credit Union Ltd. The lease rate was \$23.50 sf, increasing to \$24.50 sf on March 1, 2011. This rate will increase to \$25.50 sf on March 1, 2015.

The Complainant presented nine neighbourhood shopping centre comparables, each with a CRU Bank Space. The rental rates for this space varied from \$24 sf to \$26 sf, with eight of the nine comparables at \$24 sf. The Complainant argued that these comparables represented similar types of neighbourhood shopping centres, with many in the same general area as the subject. Based on these comparables, a rate of \$24 sf was indicated for the CRU Bank Space. During questioning, the Complainant indicated that the comparables may have been from space that was constructed prior to 1999, but that in most cases, it had since been renovated. The Complainant pointed out that the City's assessment model did not make any allowance or recognition for renovations.

The Respondent presented its comparable sales to support its use of a \$29 sf rental rate for CRU Bank Space. The assessment model used by the City stratifies bank space rental rates by year of construction. The Comparables presented by the Respondent were for space constructed between 1990 to 2004 inclusive. The subject was constructed in 1992. Six of the comparables included leases starting in the period January 2008 to May 2010, with the rental rate ranging from \$26.10 sf to \$35.00 sf. The rental rate did not appear to be affected by the size of the space leased or whether it was a CRU or pad site. This data indicated an average rental rate of \$30.80 sf and median of \$31.00 sf. The Respondent then presented evidence showing that CRU Bank Space for property with a year of construction between 1990 to 2004 were all assessed using a rental rate of \$29 sf.

**Board's Findings:**

The Board considered both sets of comparables and found that the Respondent's data to be the better indicator of the market. This data supported the use of a rental rate of \$29 sf, as a market rate for this type of property. The Board concurs that for assessment purposes, a rental rate of \$29 sf for CRU Bank Space is appropriate.

**2. 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 its 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 to calculate the capitalization rate, 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 City, 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 or 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 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 subjects is 7.75%.

The Complainant acknowledged that one of its comparable sales was "atypical" and that no reason was apparent as to why this actual sale price was substantially more its 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 adjustment factors 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 began its presentation by retracting pages 42 to 371 of its documentary evidence (as disclosed) as a result of the correction the Complainant made to its evidence. This portion of the Respondents evidence was no longer relevant in light of the correction. The amended document was marked as Exhibit R-1.

The Respondent stated that it 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 models to calculate the assessed value of the subject.

The Complainant rebutted the Respondent's evidence by reiterating that the use of typical rates results in a fictitious capitalization rate. Therefore, the calculation presented by the Complainant was correct and should be the assessed value.

#### **Board's Findings:**

Both parties 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 before them does not support such a decision.

The Board notes that both parties used the word "market rates" to describe their data and the resulting capitalization rate. 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 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 using the income approach by using some factors derived from actual data and some factors derived from typical data.

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. Furthermore, for assessment purposes, typical rates are required.



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 used 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 assessments.

**Board's Decision:**

The assessment is confirmed at:

TransCanada Centre	Roll No. 052221215	\$32,590,000
Mayland Heights Shopping Centre	Roll No. 055066906	\$ 7,130,000

DATED AT THE CITY OF CALGARY THIS 21 DAY OF July, 2011.

  
Ivan Weleschuk  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

*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.*