

**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:

ROLL NUMBER:	051191708
LOCATION ADDRESS:	2520 52 Street NE
HEARING NUMBER:	64054
ASSESSMENT:	\$8,310,000

This complaint was heard on 8th 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:

- *Brendan Neeson – Representing Altus Group Ltd. – as agent for Calgary Co-operative Association*

Appeared on behalf of the Respondent:

- *R. Scott Powell – 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.

Two issues were identified. One related to the area occupied by the gas bar and therefore the appropriate assessment for this space. Evidence was heard on this matter.

With respect to the second issue, both parties indicated that the evidence on the correct capitalization rate used to calculate the assessed value of the property is identical to that presented and argued at other recent hearings before this same panel, with these same parties representing the subject clients. Both parties asked that the Board carry over the evidence with regard to the capitalization rate issue, including all questions and responses, and closing arguments. The Board concurred with the request of the parties and will carry forward into this hearing evidence, testimony, questions and responses, procedural matters, and arguments from Hearing Numbers 63787 and 64306 (See CARB 1311-2011-P).

Admissibility of Complainant's Evidence Mis-Labelled as LFE

As discussed more fully in Decision 63787 and 64306 (CARB 1311-2011-P), the Complainant stated in its presentation 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 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 its presentation.

The Board decided 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 it applies to disclosure prior to a hearing.

The parties agreed to proceed on this basis. The hearing continued with merit issues. This same discussion and direction from the Board applies to the evidence filed at this hearing.

Property Description:

The property is located at 2520-52 Street NE and is known as the Village Square Co-op. It is part of a larger neighbourhood shopping centre development. The property was constructed in 1977 and consists of 57,178 square feet (sf) of retail used as a Calgary Co-op super market, and a pad site with a 2380 sf restaurant (tenant) and a gas bar. The retail space and gas bar are owner occupied.

Issues:

1. What is the correct area occupied by the gas bar, and therefore what is its correct assessment?
2. 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: \$7,480,000

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

1. What is the correct size of the gas bar?

The Complainant stated that the size of the gas bar or its operations did not materially change since 2010, and yet the assessment increased from \$45,000 to \$70,000. The Complainant stated that this was not fair and provided evidence of the \$45,000 assessment rate for 2009 and 2010. The area of the retail area occupied by the gas bar has not changed and is in the order of 990 square feet (sf). The Complainant provided a sketch from the City of Calgary online Assessment Search that indicated that the size of the gas bar was 958.576 sf, but did not measure the space to verify its size.

The Respondent stated that the City policy is to assess gas bars using 1,000 sf or less of retail area at a rate of \$45,000, and gas bars using more than 1,001 sf of retail area at a rate of \$70,000. The Respondent stated that he measured the subject property prior to the 2011 assessment and determined that the net rentable retail area for the gas bar is 1,025 sf. The documentary evidence (Page 28 of Exhibit R1) showed how the area was calculated. Specifically the retail area consists of a foot print of 18 ft by 55 ft. This total space did not include a narrow storage area of 45 sf that was separated by a cinder block wall because the space was considered too narrow for retail use. However, the gas bar also occupied an 80 sf area attached to the southwest corner of the main building that was used as an office. The resulting net rentable retail area is 1,025 sf. Based on this measurement, the Respondent stated that the gas bar falls into the greater than 1,001 sf retail area category for assessment purposes and therefore should be assessed at \$70,000. The Respondent then provided a table showing thirteen gas bar properties over 1001 sf with an assessment of \$70,000. The Respondent also stated that the office and/or employee area that is not part of the "retail area" proper is typically included in calculating the area occupied by a gas bar operation, as it is used by the business and has value.

In Rebuttal, the Complainant argued that the office portion is not part of the retail area and therefore the assessment should be \$45,000.

Board's Findings:

The best evidence before the Board regarding the size of the space occupied by the gas bar is that provided by the Respondent. Including the office area, the Board concurs that the net rentable retail space is 1,025 sf.

The Complainant did not provide any evidence regarding the use of the "office" area that would indicate that it is not part of the gas bar operation. An area used for an office or employee area, that is not part of the retail area proper, is typical in a retail/gas bar operation. The Board concludes that this "office" space is part of the total rentable space and a part of the retail operation. The Board accepts that the retail area of the subject gas bar is greater than 1,001 sf and that an assessment rate of \$70,000 is appropriate and equitable, and in keeping with the City's assessment policy for this type of property.

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.

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 had 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 and 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 the sale price was substantially more the value indicated by applying 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 29 to 358 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 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, and are used by the City in its assessment model used 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 the correct and accurate rate and should be applied in the calculation of assessed value.

Board's Findings:

Both parties made reference to decisions 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 requires 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 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 using the income approach 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 and rates 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 \$8,310,000

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:**

NO.	ITEM
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.*