

**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:

Anthem Heritage Hill Ltd. (as represented by AltusGroup Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J.Zezulka
Board Member, B. Bickford
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 2012 Assessment Roll as follows:

ROLL NUMBER: 112136007

LOCATION ADDRESS: 8180 - Macleod Trail SE

HEARING NUMBER: 67133

ASSESSMENT: \$40,490,000

This complaint was heard on the 9th day of August, 2012, at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, BoardroomEight.

Appeared on behalf of the Complainant:

- A. Izzard
- B. Neeson

Appeared on behalf of the Respondent:

- R. Ford

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

- (1) At the outset of the hearing, the Complainant objected to the inclusion of certain documents contained in the Respondent's submission, specifically pages 11, 12, and 15 of Exhibit R-1, being the Respondent's Assessment Brief, on the grounds that the information had not been disclosed in accordance with Sections 299 and 300 of the Municipal Government Act.
- (2) The requests were submitted within the time frames specified in the Act.
- (3) Sections 299 and 300 are reproduced as follows;

Access to assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

- (1.1)** For the purposes of subsection (1), "sufficient information" in respect of a person's property must include
- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,
 - (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and
 - (c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

RSA 2000 cM-26 s299;2009 c29 s5

Access to summary of assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

- (a) a description of the parcel of land and any improvements, to identify the type and use of the property;
- (b) the size of the parcel of land;
- (c) the age and size or measurement of any improvements;
- (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;
- (e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6

- (4) Section 9(4) of The Matters Relating To Assessment Complaints Regulation (MRAC) does not leave room for discretion.

A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

- (5) The Complainant did not request additional information to that which was originally provided, nor did it request a compliance review under section 27.6 of MRAT, which provides a

remedy when a taxpayer considers a response to an information request to be lacking or inadequate. However, this proposition has to assume that the Complainant is aware that an inadequacy exists in the first place.

(6) In the opinion of this Board, the wording in Sections 299 and 300 is clear, and leaves no room for discretion by the Assessor. The Assessor must include all documents, records, and other information relating to the subject property, as well as key factors of the valuation model in responding to a request under these sections. That applies whether or not a piece of information was specifically requested. To do otherwise is a violation of the Municipal Government Act. The Assessor could not provide any reason why the information in question was not provided when it was requested.

(7) Section 9(4) of MRAC is equally clear. The CARB is precluded from considering any evidence that was not provided in accordance with the regulations. Accordingly, pages 11,12 and 15, of R-1 are excluded from these proceedings.

Property Description:

(8) The subject is Heritage Hill Shopping Centre, a retail and office plaza located at 8180 Macleod Trail, in SE Calgary. The rentable building area is 172,063 s.f. The assessable land area is 9.133 acres.

Issues / Appeal Objectives

(9) The property is currently being assessed using the income approach. The Complainant does not dispute the valuation method. However, there are a number of issues before this CARB;

- a) The Capitalization rate applied
- b) Area allocation
- c) Office Rents
- d) Commercial Rental unit (CRU) rents
- e) Big Box store rents

Complainant's Requested Value: \$29,760,000

Issue a) Capitalization Rate

Evidence / Argument

(10) The Complainant submitted a number of documents relative to capitalization rates. Document C-1 contained the argument specific to the subject. Exhibit C-2 is the 2012 general capitalization rate analysis and argument for neighbourhood shopping centres. The C-2 document was an extensive and thorough analysis that concluded that 7.75 per cent was the appropriate capitalization rate for the valuation of community and neighbourhood shopping centres.

(11) The Complainant's study centered on seven sales. These are as follows;

- a. Pacific Place Mall; 999-36 Street NE, sold in May, 2011
- b. Sunridge Sears Centre; 3320 Sunridge Way NE., sold in January, 2011

- c. Calgary East Retail Center; 2929 – Sunridge Way NE, sold in December, 2009
- d. Braeside Shopping Centre; 1919 – Southland Drive SW., sold in December, 2009
- e. Cranston Market; 356 – Cranston Road SE., sold in October, 2009
- f. McKnight Village Mall; 5220 – Falsbridge Gate NE., sold in May, 2009
- g. Chinook Station Office Depot; 306 – Glenmore Trail SW., sold in January, 2009

(12) The Complainant submitted Realnet property reports to verify the sales details, and actual rent rolls or Assessment Request for Information (ARFI) forms to substantiate the rents adopted in the analysis.

(13) There were two methods of analysis employed. Method I used the assessed rent as employed by the City of Calgary Assessment Business Unit to analyse each of the seven properties. This method produced a range of capitalization rates from 6.38 per cent for the Cranston Market, to 8.89 per cent for the Calgary East Retail Centre. The mean capitalization rate was 7.69 per cent.

(14) Method II used the same seven transactions, but employed typical market rents, using the Alberta Assessors Association Valuation Guide (AAAVG) definition of “Typical market rents”. According to the Guide, the best source of market rents is derived from “actual leases signed on or around the valuation date”. By method II, capitalization rates ranged from 7.34 per cent for Cranston Market, to 8.65 per cent for Chinook Station Office Depot. The mean capitalization rate was 7.80 per cent, and the median was 7.71 per cent.

(15) The Respondent produced a capitalization rate study that contained six transactions, as follows;

- a. Cranston Market; 356 – Cranston Road SE.
- b. Braeside Shopping Centre; 1919 – Southland Drive SW
- c. Calgary East Retail Centre; 2929 – Sunridge Way NE
- d. 400 & 1200 163 Quarry Park Blvd. SE
- e. Sunridge Sears Centre; 3320 – Sunridge Way NE.
- f. Pacific Place Mall; 999 – 36 Street NE

(16) Five of the comparables used by the Respondent are common to the Complainant. All of the Respondents comparable transactions took place within the 24 month “time window” that the City has adopted as being appropriate for capitalization rate analysis. For that reason, the Respondents analysis did not include two of the sales used by the Complainant, being McKnight Village Mall and Chinook Station Office Depot. The Respondent took the position that the two 2009 transactions used by the Complainant are invalid for analysis purposes because they occurred outside of the 24 month time frame.

(17) The Respondent argued that the Complainant’s treatment of some of the comparables was inconsistent, because some of the centres are classified as “strip” centres rather than “neighbourhood” centres, and there should have been a rental rate adjustment in the analysis to account for the different classes.

(18) The Respondent’s analysis involved the adoption of assessed rents, rather than typical market rents. However, the Board notes that in some cases, the rents used in the City’s capitalization rate analysis do not correspond to the rents used in the preparation of the actual assessment. For example, in the analysis of Cranston Market, the net operating income used in the preparation of the assessment was \$1,391,284, but the net income used in the capitalization rate analysis was \$1,691,434. The difference is considered significant by this Board. Similarly,

the net income used in the assessment of Braeside Shopping Centre was \$1,157,940, but the amount used in the capitalization rate analysis was \$1,084,151.

(19) The City's analysis produced a range of capitalization rates from 5.29 to 8.85 per cent. The low was reflected by Cranston Market, and the high was produced by Calgary East Retail Centre. The average of the six was 6.71 per cent, and the median was 6.77 per cent. Only one comparable reflected a capitalization rate higher than the 7.25 per cent rate being used by the City.

(20) In support of their capitalization rate conclusion, the Respondent submitted the Assessment to Sales Ratios (ASR) produced when the capitalized income based on the 7.25 per cent rate is compared to the time adjusted selling price of the property. The ASR's produced range from 0.76 to 1.10, with a median of 0.93 and an average of 0.92.

(21) The Complainant argued that the time adjustment used by the City is faulty, resulting in a faulty capitalization rate conclusion. However, the Complainant offered little evidential data to support this contention.

(22) The Complainant argued that one of the transactions used by the Respondent, at 400 & 1200 Quarry Park Blvd. SE., could not be used as a valid comparable because the transaction was complicated, and was affected by a number of extraneous factors. For example, the property contained two buildings, including the shopping centre, and an office building. The "package" also included development approval for a hotel development which included extra land. In addition, the vendor was also the developer, selling agent, and property manager.

(23) The Board finds it interesting that the Complainant's Method I, and the City's analysis are both based on assessed incomes. Yet, the Potential Gross Incomes between the two are different in most instances. Neither party could offer any plausible explanation.

(24) There is no statutory or legislative requirements that limit the time frame for an analysis to a certain time period. As such, the Board finds no valid reason for excluding the Complainant's two 2009 transactions from the capitalization rate analysis.

(25) There are too many extraneous influences affecting the Quarry Park transaction for an analysis to produce any reliable results. In the Board's opinion, this transaction should be excluded from any analysis.

(26) The Board does not agree with the Respondent's position that there should have been a rental adjustment in the analysis because the classification of some of the centres had changed. The market makes no arbitrary rental adjustment for classification differences, and this Board will not either.

(27) The Board finds that the Complainant's Method II analysis, which is based on typical market rents rather than the assessed rents, most realistically reflects actual market reaction, and is therefore the most credible.

(28) The Board finds that the discrepancy between the rents used by the City in the capitalization rate analysis, and the rents used in the actual assessment for Cranston Market and Braeside Shopping Centre causes some concern as to the accuracy of at least one of the sets of conclusions ;i.e. either the capitalization study results are faulty, or the assessments are

based on incorrect information. If these properties as well as the Quarry Park transaction are excluded from the City's analysis, the average Capitalization rate reflected is 7.47 per cent.

(29) If the City's three remaining transactions, and all of the Complainant's Method I and Method II results are included, the average capitalization rate reflected is 7.70 per cent. The overall median is 7.71 per cent. These results add support to the Complainant's Method II results.

Issue b); Area Allocation

(30) The City has assessed 172,063 s.f. The Complainant does not dispute the total area. However, the parties differ as to the proper allocation/classification of the areas. Following are the two positions;

	<u>Complainant (s.f.)</u>	<u>Respondent (s.f.)</u>
Big Box	61,769	61,769
CRU < 1,000 s.f.....	-	4,184
CRU 1,000 - 2,500 s.f.....	-	3,006
CRU 2,501 - 6,000 s.f.....	6,743	10,871
CRU 6,001 -14,000 s.f.....	53,826	53,826
Office.....	43,182	31,874
Retail Office (Limited access).....	6,533	6,533

(31) Essentially, the difference between the two parties is 11,318 s.f. of space that the City has classified as CRU space in the "less than 6,000 s.f." category. The Complainant argues that this space should be classified as office space. The difference is the rent that should be applied to the different categories.

(32) In support of his position, the Complainant submitted a current rent roll for the subject. The roll indicates that all or the vast majority of the main floor tenants in the building occupying space less than 6,000 s.f. are professional offices, many of which are related to the medical profession. The Respondent did not dispute the contents or the conclusions drawn from the rent roll.

(33) The Board finds that the space should be properly categorized as office space.

Issue c); Office Rents

(34) The office space is currently assessed at \$15.00 per s.f. The Complainant is requesting \$14.00 per s.f.. However, the City's rate is supported by the Complainant's data, which reflects a base year median of \$14.50, and a mean of \$14.80. The total population data reflects a mean and median of \$14.75 and \$15.02 per s.f.

Issue d); CRU Rents

(35) CRU space between 2,501 and 6,000 s.f in the subject is currently assessed at \$22.00 per s.f. The Complainant is requesting a reduction to \$20.00. There are two spaces in this size category, totalling 6,743 s.f.

(36) The Respondent's evidence with regard to rental rates for CRU space between 2,501

and 14,000 s.f. was excluded from the proceedings in accordance with the Board's ruling regarding sections 299 and 300 of the Municipal Government Act.

(37) The Complainant presented a total of 36 rental rate comparables for CRU space. For space between between 2,501 and 6,000 s.f., the mean and median rental rates for the base year were \$19.00 and \$20.00 per s.f., with a weighted average of \$18.85. In addition, there are two commercial CRU spaces in the subject in that size category.. The rent roll shows rents of \$19.00 and \$20.00 per s.f.

(38) In the 6,001 to 14,000 s.f. category, the base year mean and median rates for CRU space was \$14.32 and \$14.15 per s.f. for space along Macleod Trail. For similar size space in the SW, the mean and median was \$14.88 and \$15.25 per s.f.

Issue e); Box Store Rents

(39) The rent being assessed to the Box Store space is \$17.00 per s.f. The Complainant argues that \$13.25 per s.f. is more appropriate.

(40) In support of his argument, the Complainant presented 12 lease comparables, that reflect a mean and median rent of \$13.36 and \$13.50 per s.f. In addition, the Complainant referred to the fact that one big Box tenant in the subject signed an August, 2011 lease at \$6.62 per s.f., and another Big Box tenant has a lease contract at \$9.10 per s.f..

(41) The Respondent presented a chart of 28 Big Box leases that reflect a mean and median of \$17.36 and \$17.00 per s.f. Of those, the Board isolated seven comparables considered to have some commonality with the subject. These reflected a mean and median of \$15.34 and \$15.00 per s.f.

Board's Findings

(42) The most reliable information and supporting documentation that the Board could rely upon was submitted by the Complainant. The Board finds that the appropriate capitalization rate should be 7.75 per cent.

(43) The Board finds the following rent structure to be appropriate for the subject;

Office space;	\$15.00 per s.f.
CRU space between 2,501 and 6,000 s.f.:	\$20.00
CRU space between 6,001 and 14,000 s.f.;	\$15.00
Box store;	\$15.00

(44) The Board accepts the space allocation as presented by the Complainant.

Board's Decision

(45) The capitalization calculations are amended to reflect the Board's findings, and the assessment is reduced to \$31,650,000.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF September , 2012.



Jerry Zezulka
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1.	C1; Evidence submission of the Complainant
2.	C2; 2012 Neighborhood-Community Shopping Centre Capitalization Rate study of the Complainant
3.	C3; Complainant Rebuttal Submission to the Respondent,s Capitalization Rate Study
3.	R1 Evidence Submission of the Respondent

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.*
- (c)

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Decision No. 1399/2012 - P			Roll No. 086143500	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail	Income approach	Capitalization rate	N/A