

**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:

Capital City Shopping Centre Limited (*as represented by Altus Group*), COMPLAINANT

and

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

before:

T. B. Hudson, PRESIDING OFFICER

S. Rourke, MEMBER

R. Kodak, MEMBER

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: 065078404

LOCATION ADDRESS: 1200 37 St SW

FILE NUMBER: 68268

ASSESSMENT: \$76,140,000

This complaint was heard on the 15th day of August 2012, at the office of the Assessment Review Board, located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *A. Izard*
- *B. Neeson*

Appeared on behalf of the Respondent:

- *B. Thompson*
- *H. Yau*

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

[1] The parties agreed that the issue of a 2012 capitalization (Cap) rate for typical retail properties classified as Neighborhood, Community Centres would be argued in the context of complaint file # 66395.

[2] The Cap rate issue is also common to complaint file #'s **68268**, 68380, 67985, 67954, 68249, 68223, 68226, 66396, and 67217, that will all be heard by this panel of the Board.

[3] Therefore the parties agreed and the Board concurred, that the evidence, argument and decision of the Board with respect to complaint file # 66395 and the 2012 Cap rate issue, would be applied to all of the complaint files identified in point [2].

[4] The Complainant noted that they had identified information within the Respondent disclosure packages for some of the above noted complaint files; that was requested and refused under Section 299 and 300 of the Act.

[5] The Board takes the position that information formally requested by the Complainant under Section 299 and 300, and withheld by the Respondent, would be barred as evidence to be heard by the Board, as per the Matters Relating to Assessment Complaints Regulation (MRAC) Section 9(4).

[6] The MRAC Section 9(4) regulation states as follows; "A composite assessment review board must not hear any evidence from a municipality that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant".

[7] The Respondent objected, characterizing the Board's position as prejudicial to their defence of the assessment. However, the Respondent did agree to proceed as per the Board's position.

[8] The parties also agreed that any 299 and 300 issue would be considered as a preliminary matter by the Board, prior to the merit hearing for each of the complaint files identified in point [2].

[9] With respect to complaint **file # 68268**; the Complainant submitted a formal Section 299 request to the Respondent's Assessment Business Unit (ABU), to provide the lease rates used to develop typical rates for Commercial Rental Unit (CRU), space in the 6,001 to 14,000 square foot (sf.) size range. The request was declined, however the requested information was subsequently included on page 49 Exhibit R1, in defence of the assessment.

[10] The Board therefore determined that as per MRAC Section 9(4), page 49 of Exhibit R1 would be barred from the hearing.

[11] The Respondent pointed out that the Complainant's Rebuttal disclosure document (i.e. Exhibit C4), included response to issues that were not addressed in the disclosure document (i.e. Exhibit R1) of the Respondent, for this complaint **file #68268**. By mutual agreement with the parties, the Board determined that page 10-52, and page 66-67 of Exhibit C4, were not relevant to complaint **file #68268**. The parties also agreed that the relevance of the identified pages to the remaining complaint files listed in point[2] above, would be determined by the Board as a preliminary matter, prior to the merit hearing on each property assessment complaint as required.

Property Description:

[12] The subject property is a 29.25 acre parcel of land, and is improved with a 158,022 square foot(sf.) Walmart store, a 47,980sf. Safeway supermarket, a 5,000sf. bank, 114,861 square feet of commercial rental unit (CRU) space, an 11,120sf. pad restaurant, an 18,563sf. recreation area, 20,640 square feet of office space, an 18,000sf. theatre, 1,911 square feet of upper level retail space, 850 square feet of kiosk space, a 2,109sf. food court, and 210 square feet of storage. The property is known as the Westbrook Mall, and was originally assessed at \$76,140,000 based on the capitalized income approach to value. **The assessment was amended to \$75,680,000 on February 24, 2012, based on application of tax exempt status on space occupied by the Calgary Board of Education.**

Issues:

[A] Does Application of a 7.75% Cap Rate Produce a Better Estimate of Market Value for the Subject Property, than the 7.25% Cap Rate Applied in the Current Assessment?

[B] Should a Vacancy Rate of 4% be Applied to All of the Space on the Subject Property, excepting the Space Occupied by WalMart, Safeway and the Theatre.

Complainant's Requested Value: \$69,190,000.

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

{A} The Board finds no compelling evidence to conclude that application of the requested Cap rate of 7.75% would result in an improved estimate of market value for the subject property.

[13] The Complainant submitted their version of a 2012 Cap rate analysis for typical neighbourhood, community shopping centres, (pages 122-145 of Exhibit C1), in support of the requested 7.75% Cap rate.

[14] Seven sales of neighbourhood, community shopping centre properties similar to the subject were analyzed to establish a typical cap rate, using two methodologies.

[15] The seven property sales occurred over a period of approximately 30 months prior to the valuation date of July 1, 2011. Five of the sales occurred in 2009, and two in 2011.

[16] The first methodology applied the assessed income for each property at the time of sale, divided by the sale price, to arrive at a Cap rate average of 7.69%, and a median of 8.25% for the seven sales.

[17] The second methodology applied the Alberta Assessor's Association Valuation Guide (AAAVG), to determine typical market income for each property at the time of sale, divided by the sale price, to arrive at a Cap rate average of 7.80%, and median of 7.71% for the seven sales.

[18] The Respondent submitted the 2012 Neighborhood, Community Centre Capitalization Rate Summary (page 62 of Exhibit R1), in support of the assessed 7.25% Cap Rate.

[19] Six sales of neighbourhood, community shopping centre properties similar to the subject were analyzed resulting in a Cap rate average of 6.77% and a median of 6.71%.

[20] The six property sales occurred over a period of approximately 24 months prior to the valuation date of July 1, 2011. Three of the sales occurred in 2009, one in 2010, and two in 2011.

[21] Five of the property sales were common to the submissions of both parties, three of the five sales occurred in 2009 and the other two in 2011. These sales included: the Cranston Market on October 28, 2009; the Braeside Shopping Centre on December 14, 2009; the Calgary East Retail Centre on December 18, 2009; the Sunridge Sears Centre on January 19, 2011; and the Pacific Place Mall on May 27, 2011.

[22] The Complainant included two additional 2009 sales in their analysis: the McKnight Village Mall that sold May 1, 2009; and the Chinook Station Office Depot that sold January 20, 2009.

[23] The Respondent included one additional sale in their analysis: the Quarry Park sale of April 6, 2010.

[24] The Complainant suggested that the Quarry Park sale should be given little or no evidentiary weight, because the sale included an office complex, and the property is not a typical neighbourhood, community shopping centre.

[25] The Respondent noted that the McKnight Village and Chinook Station sales were not included in their 2012 Cap rate analysis, and should be given little or no evidentiary weight, because they occurred outside of the 24 month period preceding the July 1, 2012 valuation date.

[26] The Respondent also argued that the second methodology submitted by the Complainant should be given little or no evidentiary weight, because it mixes actual and typical values in arriving at NOI at the time of the sale. Cap rates should be derived by using typical values for all factors, because the Assessor must apply typical values in order to calculate assessments. This inconsistency can lead to assessment values that do not reflect the full fee simple interest.

[27] The Respondent also submitted an Assessment to Sale Ratio (ASR) Comparison Table, (page 63 of Exhibit R1) to demonstrate the impact on the ASR for the Complainant's seven property sales, when the assessed Cap rate of 7.25%, is changed to the requested Cap rate of 7.75%.

[28] The ASR was calculated by dividing the time adjusted sale price of each of the Complainant's seven sales, by the estimate of assessment value produced by applying both the requested 7.75% cap rate, and the assessed 7.25% cap rate to the assessed NOI. The ideal ratio is 1.00, and the closer the estimate of assessed value is to 1.00, the closer the assessment estimate is to market value.

[29] Application of the requested 7.75% cap rate resulted in an average ASR of 0.89, and a median ASR of 0.87 for the seven sale properties. The assessed 7.25% cap rate resulted in an average ASR of 0.95, and a median ASR of 0.93.

[30] The Complainant argued that the ASR comparison evidence prepared by the Respondent should be given little weight, because the time adjustment factors used were not supported by market evidence.

[31] In their rebuttal submission (i.e. pages 136 to 165 of Exhibit C4), the Complainant quantified changes in net operating income (NOI), from the time of each of the seven sales to the July 1, 2011 valuation date, and proposed that the resulting median time adjustment factor of negative 11.48% could be applied to each of the seven sale prices.

[32] Application of the proposed negative 11.48% time adjustment factor to the sale prices, resulted in a median ASR of 1.107 based on the assessed cap rate of 7.25%, -and a median ASR of 1.036 based on the requested cap rate of 7.75%.

[33] The Respondent countered that changes in NOI from the time of sale to the valuation date could be attributed to many factors including space allocation, and lease arrangements for example. Without further analysis to eliminate the influence of factors other than time on NOI changes, using changes in NOI to establish a time adjustment factor is misleading.

[34] The Respondent also noted that even when sales are not adjusted, the ASR results are superior using the assessed Cap rate of 7.25%.

[35] When the analysis of each party is confined to the five sales common to their submissions, and to the application of the typical assessed NOI, **as corrected by the Complainant (page 102 of Exhibit C4)** at the time of each sale, the resulting Cap rate average is 7.14% and the median is 6.69%. This evidence supports the assessed Cap rate of 7.25%.

{B} The Board finds that equity in the assessment is best achieved if the typical vacancy rate of 4% is applied to all space on the subject property, with the exception of the space occupied by WalMart, Safeway and the Theatre.

[36] The Complainant referred to the published 2012 typical vacancy rate of 4% applied by the Respondent in the capitalized income assessment calculations of all neighbourhood/community shopping centres in SW Calgary, with no exceptions noted. (page 98 and 99 of Exhibit C1). Equity in assessment would be best achieved by application of the 4% vacancy rate to the subject property, as requested.

[37] The Respondent noted that this rate was not applied to the subject because it is an enclosed mall where site specific vacancy rates of 2.5% for CRU and 1% for office space are applied. The 4% rate was only applied to the assessments of so called "open-air" neighbourhood/community shopping centres in SW Calgary. However, the Respondent conceded that the 4% rate is typical for neighbourhood/ community shopping centres in SW Calgary.

Board's Decision: The assessment is reduced to the revised amount of \$73,990,000.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF September 2012.



T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	ABU 299/300 Response
3. C3	Complainant Cap Rate Appendix
4. C4	Complainant Cap Rate Rebuttal
5. R1	Respondent 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*

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<i>Decision No. 1476/2012-P</i>			<i>Roll No 065078404</i>	
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Neighborhood Shopping Centre	Market Value	Cap Rate