

**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:

**Signature Pointe Developments Inc. c/o La Caille Development Inc.
(as represented by Altus Group Ltd.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
J. Massey, MEMBER
G. Milne, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	084183904
LOCATION ADDRESS:	1851 Sirocco Drive SW
HEARING NUMBER:	67053
ASSESSMENT:	\$16,950,000

The complaint was heard on August 23, 2012, in Boardroom 4 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- A. Izard

Appeared on behalf of the Respondent:

- S. Turner

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

During the course of the hearing, both parties requested that evidence and argument related to the capitalization rate issue presented at an earlier hearing of File 67753 (Tax Roll 201515905), be carried forward and considered by the Board in this matter without further mention.

Decision: The Board agrees to the parties' request. The evidence and argument presented at the hearing of File 67753, (Tax Roll 201515905) in respect of the capitalization rate issue, (the only issue in dispute before this Board), will be considered by the Board in this matter without the necessity of reiteration.

Property Description:

The subject property is a 214,424 sq.ft. (square foot) parcel of land, with a land use designation of Direct Control District, Special Purpose – City and Regional Infrastructure. The parcel is owned by the City of Calgary, and has been leased to the Complainant on April 14, 1997 for an initial term of 35 years, plus three, 5 year renewal options, at which point any improvements made to the parcel must be removed and the site cleared. The Complainant improved the parcel with five retail structures containing a total net rentable area of 62,890 sq.ft. The structures form part of a neighbourhood shopping centre development known as West Market Square, and exhibit the following attributes:

Improvement Area	Improvement Quality	Year of Construction
17,390 sq.ft.	A+	1999
7,814 sq.ft.	A+	1999
9,193 sq.ft.	A+	1999
20,732 sq.ft.	A+	1999
7,761 sq.ft.	A+	1999

Issues:

The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount 4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter # 4, and led evidence and argument only in relation to matter #3, an assessment amount. The Complainant set out 13 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$13,650,000; however, at the hearing, only the following issue was in dispute before the Board:

1. What is the correct capitalization rate applicable to the subject property?

Complainant's Requested Value:

At the hearing, the Complainant requested an assessment of \$15,810,000.

Complainant's Position

[1] The Complainant argued that the assessed capitalization rate of 7.25%, applied to the 2012 assessments of Neighbourhood and Community shopping centres is excessively low and not reflective of "typical" market conditions as at the legislated valuation date. The Complainant submits that a typical capitalization rate of 7.75% is evident from seven valid market transactions that have occurred during an appropriate analysis period.

[2] The Complainant provided the following two methods of analysis in support of the requested 7.75% capitalization rate.

Capitalization Rate Method 1 The application of the assessed income as prepared by the City of Calgary Assessment Business Unit.

Capitalization Rate Method 2 The application of typical market income as prescribed by the "Alberta Assessor's Association Valuation Guide", and the "Principles of Assessment 1", for Assessment Review Board and Municipal Government Board members.

[3] The Complainant submits that the first method has also been employed by the Respondent for the purpose of deriving capitalization rates, as evident in a previous submission of the Respondent included at page 22 of exhibit C3. However, the Complainant argued that the second methodology as prescribed by the Alberta Assessor's Association Valuation Guide and set out in the provincial training materials for board members is the most appropriate method to derive market capitalization rates, as it relates the typical NOI (net operating income) specific to each property, to the sale price of that property. The Complainant contends that the second method mirrors the motivations of market participants in contrast to the first method, which simply relates the property's assessed net operating income in the year of the sale to that property's sale price.

[4] In support of the methodology applied in Capitalization Rate Method 2, the Complainant provided an excerpt of the Alberta Assessor's Association Valuation Guide, "Determining Market Rents as of the Valuation Date", as follows:

Base Rent

To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):

1. For most tenants, the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):
 - Actual leases signed on or around the valuation date.
 - Actual leases within the first three years of their term as of the valuation date
 - Current rents for similar types of stores in the same shopping centre.
 - Older leases with active overage rent or step-up clauses.
2. As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.
3. If comparable lease information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be.

[5] The seven properties analysed by the Complainant transferred within 30 months of the July 1, 2011 legislated valuation date, and include the following:

Property	Address	Sale Date	Sale Price
Pacific Place Mall	999 36 St NE	27-May-11	\$ 44,000,000
Sunridge Sears Centre	3320 Sunridge Way NE	19-Jan-11	\$ 12,600,000
Calgary East Retail Centre	2929 Sunridge Way NE	18-Dec-09	\$ 19,585,500
Braeside Shopping Centre	1919 Southland Drive SW	14-Dec-09	\$ 15,275,000
Cranston Market	356 Cranston Road SE	28-Oct-09	\$ 32,000,000
McKnight Village Mall	5520 Falsbridge Gate NE	01-May-09	\$ 19,270,000
Chinook Station Office Depot	306 Glenmore Trail SW	20-Jan-09	\$ 6,944,450

[6] The Complainant's Capitalization Rate Method 1 analysis, founded upon the assessed net operating income in the year of the sale derived a range of capitalization rates from 6.38% to 8.89%, with an average capitalization rate of 7.69%, and a median capitalization rate (in oral testimony) of 8.25%, as set out below:

Capitalization Rate Method 1

Property (Address)	Sale Date	Sale Price	Assessed NOI	Capitalization Rate
Pacific Place Mall (999 36 St NE)	27-May-11	\$ 44,000,000	\$3,078,515	7.00%
Sunridge Sears Centre (3320 Sunridge Way NE)	19-Jan-11	\$ 12,600,000	\$ 825,181	6.55%
Calgary East Retail Centre (2929 Sunridge Way NE)	18-Dec-09	\$ 19,585,500	\$1,740,874	8.89%
Braeside Shopping Centre (1919 Southland Drive SW)	14-Dec-09	\$ 15,275,000	\$1,276,862	8.36%
Cranston Market (356 Cranston Road SE)	28-Oct-09	\$ 32,000,000	\$2,041,265	6.38%
McKnight Village Mall (5520 Falsbridge Gate NE)	01-May-09	\$ 19,270,000	\$1,590,480	8.25%
Chinook Station Office Depot (306 Glenmore Trail SW)	20-Jan-09	\$ 6,944,450	\$ 580,084	8.35%
			Average	7.69%
			Median	8.25%

7] The Complainant's Capitalization Rate Method 2 analysis, founded upon the property's typical net operating income in the year of the sale as established from each property's rent roll, in accordance with the criteria set out in the Alberta Assessor's Association Valuation Guide and the provincial training materials for board members, and adjusted for leases set to expire derived a range of capitalization rates from 7.34% to 8.65%, with average and median capitalization rates of 7.80%, and 7.71%, respectively, as set out below:

Capitalization Rate Method 2

Property (Address)	Sale Date	Sale Price	Calculated NOI	Capitalization Rate
Pacific Place Mall (999 36 St NE)	27-May-11	\$44,000,000	\$3,356,317	7.63%
Sunridge Sears Centre (3320 Sunridge Way NE)	19-Jan-11	\$12,600,000	\$ 932,844	7.40%
Calgary East Retail Centre (2929 Sunridge Way NE)	18-Dec-09	\$19,585,500	\$1,530,441	7.81%
Braeside Shopping Centre (1919 Southland Drive SW)	14-Dec-09	\$15,275,000	\$1,177,449	7.71%
Cranston Market (356 Cranston Road SE)	28-Oct-09	\$32,000,000	\$2,348,706	7.34%
McKnight Village Mall (5520 Falsbridge Gate NE)	01-May-09	\$19,270,000	\$1,546,503	8.03%
Chinook Station Office Depot (306 Glenmore Trail SW)	20-Jan-09	\$ 6,944,450	\$ 600,509	8.65%
			Average	7.80%
			Median	7.71%

[8] The Complainant submitted that the range of capitalization rates evident from the two analyses demonstrates the following capitalization rate ranges and variances:

	<u>Range</u>	<u>Variance</u>
Capitalization Rate Method 1:	6.38% to 8.89%	251 basis points
Capitalization Rate Method 2:	7.34% to 8.65%	131 basis points

[9] The Complainant argued that Capitalization Rate Method 2 is the most accurate as the approach mirrors the motivations of market participants, and the range of capitalization rates exhibits a significantly lower variance than exhibited in Capitalization Rate Method 1. The Complainant further argued that a significant variance of 356 basis points will be evident in the Respondent's capitalization rate analysis.

[10] The Complainant further submitted that the 7.75% capitalization rate conclusion requires a 310 basis point adjustment to reflect the subject's shortened investment recovery period due to the remaining 21 year term of the land lease, resulting in a capitalization rate of 10.85%.

Respondent's Position:

[11] The Respondent conceded to the Complainant's 310 basis point adjustment, however, the Respondent argued that the 7.25% capitalization rate applied to typical neighbourhood and community shopping centres is appropriate; therefore the "adjusted" capitalization rate applicable to the subject property should be 10.35%.

[12] In support of the typical 7.25% capitalization rate coefficient, the Respondent provided a capitalization rate analysis founded on six properties, the first five of which are common to the Complainant's analyses. The properties transferred within 24 months of the July 1, 2011 legislated valuation date, and are set out below (in corresponding order to the Complainant's evidence for ease of reference):

Property	Address	Sale Date	Sale Price
Pacific Place Mall	999 36 St NE	27-May-11	\$ 44,000,000
Sunridge Sears Centre	3320 Sunridge Way NE	19-Jan-11	\$ 12,600,000
Calgary East Retail Centre	2929 Sunridge Way NE	18-Dec-09	\$ 19,585,500
Braeside Shopping Centre	1919 Southland Drive SW	14-Dec-09	\$ 15,275,000
Cranston Market	356 Cranston Road SE	28-Oct-09	\$ 32,000,000
#400 and #1200	163 Quarry Park Bv SE	06-Apr-10	\$ 40,637,317

[13] The Respondent's capitalization rate analysis, founded on the assessed net operating income in the year of the sale derived a range of capitalization rates from 5.29% to 8.85%, with average and median capitalization rates of 6.71% and 6.77% respectively, as set out below:

Property (Address)	Sale Date	Sale Price	Assessed NOI	Capitalization Rate
Pacific Place Mall (999 36 St NE)	27-May-11	\$44,000,000	\$3,078,516	7.00%
Sunridge Sears Centre (3320 Sunridge Way NE)	19-Jan-11	\$12,600,000	\$ 825,181	6.55%
Calgary East Retail Centre (2929 Sunridge Way NE)	18-Dec-09	\$19,585,500	\$1,732,868	8.85%
Braeside Shopping Centre (1919 Southland Drive SW)	14-Dec-09	\$15,275,000	\$1,084,151	7.10%
Cranston Market (356 Cranston Road SE)	28-Oct-09	\$32,000,000	\$1,691,434	5.29%
#400 & #1200 (163 Quarry Park Bv. SE)	06-Apr-10	\$40,637,317	\$2,224,082	5.47%
			Average	6.71%
			Median	6.77%

[14] The Respondent conceded that the estimated NOI for Cranston Market could not be confirmed as there was no income data provided by the property owner at the time of sale, so "typical" rents were applied in the assessment which may have been underestimated. The Respondent further conceded that the sale of 163 Quarry Park Bv. SE was not a typical shopping centre development, which may have influenced the indicated capitalization rate somewhat. The Respondent submitted that although the analysis indicates a typical capitalization rate of approximately 6.75%, a capitalization rate of 7.25% was selected to compensate for the above factors.

[15] In further support of the assessed 7.25% capitalization rate, the Respondent submitted a time adjusted ASR (assessment to sale ratio) analysis of the Complainant's sales, indicating the 2012 assessment values and ASR's for each of the properties based on capitalization rates of 7.25% (as assessed), and 7.75% (as requested). The assessments as prepared with a 7.25% capitalization rate exhibit ASR's ranging from 0.85 to 1.10, with average and median ASR's of 0.95 and 0.93, respectively. In contrast, the assessments prepared at the requested 7.75% capitalization rate exhibit ASR's ranging from 0.80 to 1.03, with average and median ASR's of 0.89 and 0.87, respectively. The Respondent argued that this evidence demonstrates that the assessed 7.25% capitalization rate results in assessment values closer to the time adjusted sale prices. In support of the time adjustments, the Respondent provided a copy of eight power point slides setting out four time adjustment approaches, and a summary of the Respondent's time adjustment conclusions for the 2010 and 2011 sales.

[16] In response to the Complainant's submission, the Respondent argued that the Complainant's early 2009 sales of McKnight Village Mall and Chinook Station (Office Depot) are outside of the 24 month time frame preferred by the Assessor, and should be excluded from a capitalization rate analysis effective for the July 1, 2011 legislated valuation date. The Respondent argued that in prior submissions related to other retail properties, the Complainant relied upon analysis periods of 18 months or 24 months, and provided excerpts from several of the agent's prior Assessment Review Board submissions in support.

[17] The Respondent further argued that the Complainant's Method 1 capitalization rate in respect of Braeside Shopping Centre is inaccurate, as the Complainant's analysis is founded on the assessed net operating income from the 2010 assessment, when the property was incorrectly classified by the Assessor as a "Strip" shopping centre. The Respondent argued that the assessment (and net operating income) was subsequently revised as a result of the Assessor's reclassification of the development to a "Neighbourhood" shopping centre, and the corresponding parameters should have been relied on in the capitalization rate analysis.

[18] The Respondent also argued that the Complainant has been inconsistent in the determination of net market rents in the Capitalization Rate Method 2 analysis, and has in several instances, relied on only one or two leases to support the market rent conclusion. Moreover, in other instances, the leases were either significantly dated or commencing subsequent to the July 1 valuation date, (*post facto*).

[19] Aside from the Complainant's issue with the Respondent's typical capitalization rate conclusion, the Respondent conceded that the assessment is inaccurate as a result of an error in the assessed total net rentable area of the improvement. The Respondent presented an assessment recommendation to the Board in the amount of \$16,590,000, reflective of an amended net operating income of \$1,715,990.

[20] In response to the Respondent's submission, the Complainant argued that the Respondent regularly relies on market data up to 36 months prior to the legislated valuation date. In support of the argument, the Complainant provided copies of municipal documents illustrating the Assessor's reliance on such data, including but not limited to lease data, vacancy data, and industrial sales. Moreover, the Complainant argued that as the 2012 hearings have progressed through the tribunal process over the past five weeks, the Respondent has revised their capitalization rate analysis three times; nevertheless, none of the revised capitalization rate studies correspond to the assessed 7.25% capitalization rate conclusion.

[21] The Complainant further argued the Assessor's typical assessed rents do not consistently reflect the specific space type of each property. In support of the argument, the Complainant provided the example of assessed "Bank" rents that are stratified by the year of construction; ignoring location and property classification factors that affect market rent rates. The Complainant also provided examples of various CRU spaces that are assessed at similar lease rates regardless of their location in a strip, community, or neighbourhood shopping centre.

[22] The Complainant further argued that the Respondent's sale of 163 Quarry Park Bv. SE, exhibiting a 5.47% capitalization rate is atypical and should be excluded from any capitalization rate analysis. The Complainant argued that in addition to the shopping centre, the sale also includes an office building and additional land approved for a hotel development. Further, the vendor in the sale was also the developer, and is the property manager for the entire development.

[23] The Complainant conceded that only one lease was relied on to establish typical market rent for some spaces, however, the Complainant argued that in those instances, there was only one lease available and in contrast, the Respondent has provided no leases to support their assessed typical market rents. The Complainant argued that the only market evidence to scrutinize before the Board is that of the Complainant, as the Respondent has provided none.

[24] In conclusion the Respondent conceded that there was no market evidence to support the assessed rents in the derivation of the assessed capitalization rate, but argued that the question before the Board is: does a 7.75% capitalization rate demonstrate a better market value than the assessed 7.25% capitalization rate?

Decision:

[25] The Board accepts the Respondent's recommended net operating income adjustment and finds that 10.85% is the correct capitalization rate applicable to the subject property.

[26] The Board finds the Complainant's "Capitalization Rate Method 2" analysis is compelling evidence of "typical" market capitalization rates; the analysis is well supported with documentary evidence of the properties' rent rolls and ARFI (Assessment Request For Information) responses. The Board accepts that the Complainant's methodology is consistent with well established appraisal theory and the guidelines set out in the Alberta Assessor's Association Valuation Guide, and mirrors the motivations of participants in the marketplace.

[27] Although the Respondent presented argument in respect of the Complainant's evidence, analysis and methodology, the Respondent failed to provide any market evidence to refute the Complainant's capitalization rate conclusion.

[28] The Board rejects the Respondent's argument that a capitalization rate analysis should be limited to 24 months and finds that the limited analysis period appears arbitrary and

inconsistent with other property types in the municipality, as the evidence before the Board indicates that analysis periods for other property types and data often exceed 24 months. Further, with the limited number of valid sales of this property type, and the apparent difficulty in obtaining specific financial data from some of the properties, the Board is persuaded that a longer analysis period is preferable to allow for a greater sample of valid market data.

[29] The Board also rejects the Respondent's argument in respect of the income discrepancy of the Braeside Shopping Centre, as the rebuttal evidence of the Complainant demonstrates that assessed rents are not necessarily differentiated by property classification. In this instance the Board finds the income discrepancy is significant, and the Board accepts that the Complainant's typical market rent approach in Capitalization Rate Method 2 reflects the approach of the market, and eliminates any arbitrary classification issues such as the classification issue with Braeside Shopping Centre.

[30] The Board afforded little weight to the Respondent's capitalization rate analysis, as the +0.50% adjustment and resultant 7.25% capitalization rate conclusion appears to be arbitrarily selected and not based on market evidence. Further, if the Quarry Park sale is atypical, (and the Board agrees that it is), it should be excluded from the analysis rather than making an arbitrary and unsupportable capitalization rate adjustment.

[31] Moreover, there was no market evidence presented to demonstrate that the assessed rents equate to "typical" market rents for each of the properties. On the contrary, the Complainant's rent roll and ARFI evidence clearly demonstrates that the assessed rent rates assigned to several of the spaces are well below what current leases exhibit, (e.g. Cranston Market), resulting in an underestimated net operating income and consequently, inaccurate capitalization rate conclusions.

[32] In respect of the discrepancy between the Respondent's capitalization rate analysis and the Complainant's method 1 analysis, the Board accepts that as a result of stratification and grouping for mass appraisal purposes the assessed rents applied to a group of properties may not reflect the typical rents each individual property in the group is able to achieve, as evident in the Complainant's rebuttal evidence in respect of the assessment of bank properties that are assigned rent rates based solely on year of construction. For this reason, the Board finds again, that the Complainant's method 2 analysis, founded on each property's typical achievable rent, is deemed to provide the most valid indication of market capitalization rates.

[33] The Board did not find the Respondent's assessment to sale ratio analysis to be compelling evidence supportive of the assessed 7.25% capitalization rate, as the Respondent's time adjustment summary table indicated that the various time adjustment methods employed delivered inconsistent results, and there was no market evidence provided in support of the time adjustment conclusion. The Board was also persuaded by the Complainant's rebuttal evidence that demonstrated a decline in the assessed incomes of most of the (2009 sale) properties over the same period the Respondent provided positive time adjustments.

The assessment is **REVISED** from: \$16,950,000 to: **\$15,810,000**.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF OCTOBER, 2012.


J. Krysa, Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (284 pages)
2. C2	Complainant's Submission (308 pages)
3. C3	Complainant's Submission (233 pages)
4. C4	Complainant's Submission (374 pages)
5. C5	Complainant's Submission (160 pages)
6. R1	Respondent's Submission (172 pages)
7. Complainant	CARB 0568-0574/2012-P
8. Complainant	CARB 0776, 0778, 0779, 0785-0787/2012-P
9. Respondent	CARB 1154, 1159/2012-P

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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighbourhood	Income Approach	Capitalization Rate