

**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:

Northland Properties Corporation (as represented by AltusGroup), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, D. Morice
Board Member 2, D. Julien***

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: 175154806

LOCATION ADDRESS: 138 Crowfoot Way NW

HEARING NUMBER: 63955

ASSESSMENT: 1,830,000.00

This complaint was heard on 29 day of July, 2011 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Twelve

Appeared on behalf of the Complainant:

- *B. Neeson*

Appeared on behalf of the Respondent:

- *S. Turner*

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

There were no procedural or jurisdictional matters to be dealt with.

Property Description:

The subject consists of a free standing Denny's restaurant and drive through Automated Teller (ATM), located in the Crowfoot Power Centre in NW Calgary. The restaurant is 4,117 s.f. The ATM is assessed as 250 S.F. The land area is 0.92 acres. The complex was built circa 1997.

Issues:

The premises are currently assessed using the income approach. The rent applied by the City is \$32.00 per s.f. for the 4,117 s.f. of restaurant, and \$45.00 per s.f. for the ATM. The capitalization rate applied is 7.25 per cent.

The Complainant does not dispute the valuation method or the rent applied. The single issue under complaint is the capitalization rate, which the Complainant maintains should be 7.75 per cent.

Complainant's Requested Value: \$1,710,000.00

Evidence

The Complainant submitted a Capitalization Rate analysis intended to show that a rate of 7.75 per cent was a more appropriate capitalization rate for the subject. Within the analysis, the Complainant stated that the net operating income used to generate a market value assessment must be derived from typical rates, while the rates used to determine a market capitalization rate must be actual rents. The study contained three comparables for analysis. The analysis was entitled "Leased Fee Estate (LFE) Valuation. During the hearing, the Complainant advised the Board that the heading should be removed, as the analysis was intended to be a Fee Simple analysis. Three comparable transactions were presented, all of which are in Crowfoot Centre. Two took place in 2009, and one occurred in 2010. The three reflected rates of 7.28 per cent to 7.95 per cent, with a median capitalization rate of 7.72 per cent. The Complainant submitted that the rates were derived by using actual selling prices, and actual rents. The rents, however, were stabilized with typical vacancy rate, typical non-recoverable allowance, and typical vacancy shortfall.

The Respondent used four transactions in the capitalization rate analysis. Two were common to the Complainant's evidence. One was post facto. While the Respondent used the actual selling

price, all of the other inputs used, including the rents, were based on typical rates. The results of the analysis was a range of 6.34 to 7.97 per cent. The average and median appeared at 6.84 and 7.00 per cent. Excluding the post facto transaction, the average and median were 7.21 and 7.33 per cent. In addition, the Respondent presented third party evidence from published, reliable sources that capitalization rates for Power Centers ranged from about 6.50 to 7.00 per cent.

Board's Decision

In SC 235 Westcoast Transmission Co. Ltd. v. AA09, in the Supreme Court of British Columbia (A870297) Vancouver Registry, Mr. Justice Cumming stated ".....the concepts used, in developing capitalization rates for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalization rate on one set of assumptions about long term vacancy rates, long-term rents, and long-term expenses, and then apply that rate to the income of the subject that is not derived in the same way.

The choice of a vacancy rate goes directly into the calculation of gross income, from which the appraiser then deducts expenses to arrive at an estimate of net income. All of these factors, for consistency, should be used in the same manner as they were used in the study of comparables which resulted in the development of the capitalization rate. To do otherwise is to offend appraisal theory, and is likely to produce a mistaken result ".

The Municipal Government Board has in several past decisions stated that a capitalization rate applied to Net Operating Income based on typical factors (inputs) must be a capitalization rate that also has been derived using typical Net Operating Income factors. This Board has considered the Complainant's analysis leading to the capitalization rate conclusion, and finds that the appropriate typical inputs were not applied, since the Complainant used actual rents that may or may not represent market, or typical, rents.

The assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF August, 2011.



Jerry Zezulka
Presiding Officer

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

1. C1 Complainant Submission of Evidence,
2. C2 Complainant , Non-Residential Properties – Income Approach Valuation
3. C3 Complainant 2011 Capitalization Rate – Rebuttal Submission
4. R1 City of Calgary Assessment Brief

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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Decision No. 1546/2011 - P			Roll No. 175154806	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	2, Power Centre	Stand alone	Income approach	Capitalization rate,