

REVISED

**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:

***ROYOP (WALDEN) DEVELOPMENT LTD., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member B. JERCHEL
Board Member E. BRUTON***

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: 201703998

LOCATION ADDRESS: 151 WALDEN GATE SE

FILE NUMBER: 68606

ASSESSMENT: \$16,050,000.00

This complaint was heard on 6 day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- A. Izard, Altus Group Ltd. – Representing Royop (Walden) Development Ltd.

Appeared on behalf of the Respondent:

- B. Thompson – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] At the request of both the Complainant and the Respondent, the common issue of capitalization rate would be presented only once and the decision of the Board was to be cross-referenced to all hearings before this Board. In total, there were five files for retail shopping centre properties in various locations in the City of Calgary owned by four different parties. For all these files, the common issue for the Board to decide was the appropriate capitalization rate to be applied in an income approach analysis. Since this issue is common to all five properties, it was agreed by the parties and accepted by the Board that the capitalization rate issue would be argued on File 68682, Roll Number 054015722, and applied to the remaining files.

[3] The common decision on the capitalization rate will be applied to the following files:

File Number	Roll Number	Address
68545	49008295	3545 32 Avenue NE
68682	054015722	335 36 Street NE
68499	063143804	555 Strathcona Boulevard SW
68604	201473402	1110 Panatella Boulevard NW
68606	201703998	151 Walden Gate SE

[4] Two files had an additional issue which the Board will consider and render a decision on separate from the common issue of capitalization rate.

Property Description

[5] The subject property, identified as The Gates of Walden at 151 Walden Gate SE, is a community shopping centre comprised of six buildings totalling 56,828 square feet of rentable area. The structures in the complex, constructed in 2011, were given a quality classification is A-. The subject property is situated on a 5.67 acre parcel of land in the Walden community. The complex has been valued on an Income Approach for \$16,050,000.00.

Complainant's Requested Value: \$15,010,000.00

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

[6] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[7] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[8] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue:

[9] The assessed capitalization rate 7.25% is incorrect and should be increased to 7.75%.

Complainant's Evidence:

[10] The Complainant argued the 7.25% capitalization rate used by the assessor in determining the assessments for neighbourhood shopping centres was too low and therefore was not reflective of the market conditions on the valuation date of July 1, 2011. The Complainant submitted its analysis of sales of shopping centres, supported by backup documentation and determined that a revised capitalization rate of 7.75% was warranted. The Complainant requested the revised rate be applied to the calculation to determine the assessment for five properties under complaint before the Board.

[11] The Complainant's submission "Royop Development Corp – 151 Walden Gate SE" (C1A) reviewed the evidence on seven sales and the two methods of analysis:

Capitalization Rate Method I: The Application of Assessment Income as Prepared by the City of Calgary Assessment Business Unit ('ABU'). (C1A, Pg. 107)

and

Capitalization Rate Method II: The Application of Typical Market Income as Prescribed by the Alberta Assessors' Association Valuation Guide ('AAAVG') and the Principles of Assessment I for Assessment Review Board Members and the Municipal Government Board Members ('Principles of Assessment'). (C1A, Pg. 107)

[12] Method I determined the capitalization rate by relating the sale price to the typical income for the property, using typical rates as established by the ABU for the year of the sale. If the sale occurred in 2010, the Complainant employed the July 1, 2010 typical rental rates as applicable to the property valuation.

[13] In Method II the Complainant used rental rates derived from the analysis of leases within each shopping centre to determine a 'typical' rental rate to calculate the income for the centre. The rates were used in the determination of the capitalization rate formula. (Capitalization Rate = Net Operating Income/Sale Price, as outlined in the AA AVG)

[14] In the application of Method II, the Complainant examined the rent rolls of the individual properties that sold, using actual leases from the spaces and leases from comparable spaces within the shopping centre which sold. In the analysis of Cranston Market the Complainant however used 'typical' rental rates derived from other shopping centres. The Complainant stated the rates in Cranston Market were not 'typical' rents in comparison to other neighbourhood shopping centres. The 'typical' rental rates were applied in each analysis along with the typical vacancy, operating costs and non-recoverable expense rates, as determined by the ABU.

[15] The Complainant followed the recommendations found in the AA AVG for the determination of 'typical' rental rates:

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
 - o Actual leases signed on or around the valuation date,
 - o Actual leases within the first three years of their term as of the valuation date,
 - o Current rents for similar types of stores in the same shopping centre,
 - o 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 rate can be compared to the rents established for similar tenants in other similar properties.
3. If the comparable information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s).

[16] Excerpts from the "Principles of Assessment I" were entered into evidence, as were portions of documents produced by the City of Calgary in past years, that described the City's capitalization rate methodology, which is similar to the Complainant's methods.

[17] The Complainant analyzed sales of seven community shopping centres, applying the two methods to determine capitalization rates.

Sale Property Name	Address	Sale Date	Method I Determined Capitalization Rate (%)	Method II Determined Capitalization Rate (%)
Pacific Place Mall	999 36 Street NE	27-May-2011	7.00	7.63
Sunridge Sears Centre	3320 Sunridge Way NE	19-Jan-2011	6.55	7.40
Calgary East Retail Centre	2929 Sunridge Way NE	18-Dec-2009	8.89	7.81
Braeside Shopping Centre	1919 Southland Drive SW	14-Dec-2009	8.36	7.71
Cranston Market	356 Cranston Road SE	28-Oct-2009	6.38	7.34

McKnight Village Mall	5220 Falsbridge Gate NE	01-May-2009	8.25	8.03
Chinook Station Office Depot	306 Glenmore Trail SW	20-Jan-2009	8.37	8.65
	Mean		7.69	7.80
	Median		8.25	7.71

C1A, Pg. 107

Respondent's Evidence:

[18] The Respondent submitted six sales used in the determination of the ABU's capitalization rate. The analysis period covered sales within 24 months of the valuation date of July 1, 2011, and leases for the period within 30 months prior to the valuation date.

[19] The six sales which occurred within the 24 month period removed the sales for McKnight Village Mall and Chinook Station Office Depot, used by the Complainant, and introduced the sale for The Market at Quarry Park, not used by the Complainant.

[20] The analysis of the six sales by the Respondent suggested a capitalization rate with a mean of 6.71% and a median of 6.77%. The capitalization rate was set at 7.25% by the ABU. (R1, Pg. 59)

Sale Property Name	Address	Sale Date	ABU Determined Capitalization Rate (%)
Cranston Market	356 Cranston Road SE	28-Oct-2009	4.92
Braeside Shopping Centre	1919 Southland Drive SW	14-Dec-2009	7.10
Calgary East Retail Centre	2929 Sunridge Way NE	18- Dec-2009	8.85
Market at Quarry Park	400 & 1200 163 Quarry Park Boulevard SE	06-April-2010	5.04
Sunridge Sears Centre	3320 Sunridge Way NE	19-Jan-2011	6.55
Pacific Place Mall	999 36 Street NE	27-May-2011	7.00
	Mean		6.58
	Median		6.78
	ABU Capitalization Rate		7.25%

[21] For the above table, the Board used the capitalization rates for Cranston Market and the Market at Quarry Park as revised by the Respondent during the course of the hearing. The median and mean were based upon the corrected capitalization rates and therefore differs from the original capitalization rates presented by the Respondent.

[22] It was the verbal testimony of the Respondent that the City of Calgary made a judgement call in the setting of the capitalization rate for the neighbourhood shopping centres as the mean and median rates calculated were in fact lower than the rate set by the ABU for assessment purposes.

[23] The Respondent maintained that the Complainant's analysis of the Braeside sale was incorrect because it contained a mix of input variables. The Braeside Shopping Centre had

originally been classified as a strip retail centre, but in 2010 was reclassified as a neighbourhood shopping centre. The Respondent noted the Complainant had analysed the sale using a strip retail centre rental rate but applied typical rates for vacancy, operating costs and non-recoverable expenses allowance applied to neighbourhood shopping centres. It was argued the inconsistent application of rates resulted in an incorrect capitalization rate.

[24] The Respondent held the position the sale of the Market at Quarry Park was a legitimate sale and was therefore included in the ABU analysis of the capitalization rate. In testimony and during questioning, the Respondent stated that the details for the property had been adjusted over time with the inclusion of additional square footage, as it became known to the City of Calgary. The Respondent was unable to state that the current details were the same as at the time of sale, but may have reflected additional construction after the sale date.

[25] The sale at Cranston Market was complicated by the fact this was a new shopping centre whose designation had changed over time from an A- to an A+. The original assessment classification was based upon incomplete information with respect to income and expenses. In the following year, when lease information was provided, the classification was raised to the current A+. The Respondent acknowledged it was an outlier with a significantly lower capitalization rate. It was submitted in testimony, by both the Complainant and the Respondent, the location of the property, isolated from other shopping areas, resulted in rental rates which did not fall within the norm for neighbourhood shopping centres.

[26] The Respondent was critical of the Complainant's Method II as it reflected a mix of actual rents for the sale properties and the typical rates for vacancy, operating costs and non-recoverable allowance as determined by the ABU. It was confirmed by the Complainant that in some cases a single lease rent had been used to determine the rent rate used in the analysis. In other cases the lease rates were based upon leases signed after the valuation date of July 1, 2011. It was the Respondent's contention that the methodology was contrary to the legislated process of mass appraisal. The AAAG which the Complainant relied upon was not a mandated process but a hierarchical guideline for the determination of rent rates.

[27] The Respondent stated that the rental rates are determined through the analysis of the information obtained from the Assessment Request For Information (ARFI) forms, which are sent to all property owners and managers each year. For the capitalization rate analysis, lease information for the 30 month period prior to the valuation date was utilized. For space types with numerous occurrences, rent rate analysis was conducted on a city quadrant basis. For space types of limited numbers, such as theatres, a city-wide approach is taken.

[28] The Respondent recognized that there had been variations of the ABU capitalization rate studies as a result of corrections to the information used in the study. This was reinforced by the Respondent correcting the table of analysis during the hearing process. In response to the Complainant's criticism of the different versions of the capitalization study, the Respondent noted that the applied 7.25% capitalization rate had never changed.

[29] The Respondent submitted assessment to sales ratios (ASR's) calculated for each of the sales used in the capitalization studies by each of the parties. These ASR's required the application of time adjustment to the original sale prices in order to compare to the current assessed values. The submission included data used by the Respondent to support the time adjustments. The 7.25% capitalization rate employed by the Respondent produced ASR's that fell more within the acceptable range than those produced with the 7.75% capitalization rate of the Complainant.

Findings of the Board:

[30] The Board reviewed each of the Methods presented by the Complainant. Method I appears to be similar to that used by the ABU, as submitted by the Respondent (allowing for minor differences in NOI and resulting capitalization rates), using typical rates as established by the ABU. While there was disagreement over the amount of income and the results, there was a degree of consistency in the results of the Complainant's Method I and the Respondent's analysis, with a number of results being identical. Method II was found to be less reliable as it incorporated site specific rental rates as opposed to the 'typical' rental rates, along with typical vacancy allowances, operating costs and non-recoverable allowances as determined by the ABU. The Board found Method II served as a check to the capitalization rate determined by Method I, but placed less weight on the approach to determining a capitalization rate.

[31] The Board found upon examination of the sales that there were five in common to both parties' analyses. For three of the sales, the input factors were the same or so similar to result in the same capitalization rate. The three sales were Pacific Place with a 7.00% capitalization rate, Sunridge Sears with a 6.55% capitalization rate and Calgary East Retail with an 8.85% or 8.89% capitalization rate, as result of differing Net Operating Income (NOI) values.

[32] The Board gave less weight to the capitalization rates derived for Cranston Market as each party analyzed this sale using different criteria with respect to the rental rates. The Board found it was not satisfied with either analysis as each lacked satisfactory supporting market evidence. Lacking the market evidence the Board reduced the weight for this sale, as it was not possible to determine whether one party's analysis was more reliable than that of the other party.

[33] The sale of The Market at Quarry Park shopping centre has been presented to numerous Boards in the past, with mixed acceptance or rejection as an arms-length transaction. After consideration of the evidence presented, this Board is unwilling to accept the sale as an open market transaction. To coin a phrase, "This sale has too much hair on it". The sale was reported to include a 100 room hotel, which has yet to be constructed; a daycare centre was to be opened after the sale; the transfer of a nearby office building between the same buyer and seller of the shopping centre may or may not have been contingent upon the other sale. The Board found this transaction could not be used as an indicator in the determination of a capitalization rate and accordingly excluded the sale.

[34] With respect to the sale of the Braeside Shopping Centre the Board allowed this sale to be included in the calculation of the capitalization rate. The Board did not accept the capitalization rate as calculated by the Complainant due to the mixed use of strip retail centre and neighbourhood shopping centre rates. The Board appreciates the designation for the centre had changed over time due to the reclassification by the City of Calgary, but does not accept the argument put forward by the Complainant that the rates should be mixed as a result of the change. As the Complainant had included the Braeside Shopping Centre in its analysis for a neighbourhood shopping centre, it must therefore use the variable assigned to the classification in its entirety, not mixing two different classifications. Sales of these properties are based upon economic performance not the classification and rates set by the ABU. No argument was presented to challenge the current classification of the Braeside Shopping Centre.

[35] Arguments were presented as to the time frame used by the City of Calgary to determine its sales to be subject to its analytical framework. The Respondent stated it applied a consistent period of 24 months for sales and 30 months for leases, before the valuation date of July 1, 2011. The Complainant argued that if the ABU used 30 months for leases it should therefore

apply the same time period for its selection of sales. The Complainant, by using a longer period to select sales, introduced two additional sales for consideration – McKnight Village Mall and Chinook Station Office Depot. Neither party presented evidence to dispute the sales as valid market transactions. The Board found there is no legislated restriction on the time period for analysis of sales. The City of Calgary ABU has arbitrarily selected a 24 month period for the current analysis. The Board prefers to receive the additional information presented by the McKnight Village Mall and Chinook Station Office Depot sales in its calculation of the capitalization rate, and accordingly appropriate weight has been given to these two transactions.

[36] The Board, having considered the sales, selected the six sales found to be most reliable to calculate the capitalization rate for neighbourhood shopping centres.

Sale Property Name	Address	Sale Date	Capitalization Rate (%)
Chinook Station Office Depot	306 Glenmore Trail SW	20-Jan-2009	8.37
Braeside Shopping Centre	1919 Southland Drive SW	14-Dec-2009	7.10
Calgary East Retail Centre	2929 Sunridge Way NE	18- Dec-2009	8.85
McKnight Village Mall	5220 Falsbridge Gate NE	01-May-2009	8.25
Sunridge Sears Centre	3320 Sunridge Way NE	19-Jan-2011	6.55
Pacific Place Mall	999 36 Street NE	27-May-2011	7.00
	Mean		7.69
	Median		7.68
	ABU Capitalization Rate		7.25

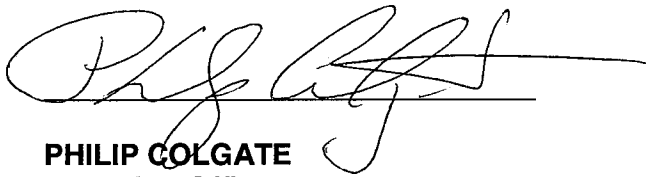
[37] The Board finds the analysis of the six sales more closely supports the rate of 7.75% requested by the Complainant and adjusts the assessment accordingly.

[38] Much evidence and argument was submitted by both parties with respect to the Assessment to Sales Ratios (ASR's), but the Board found there was insufficient or conflicting evidence to support the position of either the Complainant or the Respondent. The Complainant advocated the use of analyzing income comparison over time. But the Board was not convinced by the argument that a single time adjustment rate should apply to all the sales regardless of the actual date of sale. The Respondent argued that the monthly time adjustment was determined by an analysis of all retail properties in the City of Calgary, not just the neighbourhood shopping centres before the Board. None the less, flaws were pointed out in the ABU technique in that time adjustments are arbitrarily set at the mid-point of the month, so sales only days apart would have different time adjustment values applied in the determination of the market value. The Respondent submitted that it employed three of the four methods to determine time adjustment and then determined the mean and median. The Board found this approach flawed in that the range of the individual values was so broad, with both negative and positive values, as to render the result near meaningless. Ultimately, the Board was not convinced by either party's arguments and place little weight on the ASR presentations.

Board's Decision:

[39] Based upon the findings of the Board, the assessment is revised to \$15,010,000.00

DATED AT THE CITY OF CALGARY THIS 10 DAY OF October 2012.

A handwritten signature in black ink, appearing to read 'Philip Colgate', is written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1A	Complainant Disclosure
2. C1B	Complainant Disclosure
3. C3	Complainant Disclosure
4. C4	Complainant Rebuttal
5. R1	Respondent Disclosure
6.	Numerous Decisions of MGB and CARB

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 Mall	Income Approach	Capitalization Rate