

**COMPOSITE
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 (MGA).

between:

**3934381 Canada Inc. (as represented by Altus Group Limited)
Cineplex Entertainment LP (as represented by Cobank Property Tax Services Inc.)
COMPLAINANTS**

and

The City Of Calgary, RESPONDENT

before:

**C. J. Griffin, Presiding Officer
J. Rankin, MEMBER
P. Pask, MEMBER**

This is a complaint to the Composite Assessment Review Board (CARB) 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: 175035914
LOCATION ADDRESS: 151 Crowfoot Cr. NW
HEARING NUMBER: 65617 & 67871
ASSESSMENT: \$83,190,000.

This complaint was heard on 15th day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- B. Neeson (Altus Group Limited)
- J. Cohen (Cobank Property Tax Services Inc.)

Appeared on behalf of the Respondent:

- S. Turner
- D. Zhao

Procedural Matters:

[1] This decision deals with two separate Complaints with separate issues and two separate Complainants, both relating to a single overall property or a portion thereof. The overall property in question is a Power Centre – Shopping Centre, known as Crowfoot Crossing, which has many components including a Cineplex theatre. Complainant #1 *3934381 Canada Inc.*, represented by *Altus Group Limited (Altus)* has a complaint pertaining to the capitalization rate used in estimating the assessed value of the entire property. Complainant #2 *Cineplex Entertainment LP*, represented by *Cobank Property Tax Services Inc. (Cobank)* has a complaint pertaining to the assessed rental rate used in estimating the assessed value of the theatre space.

[2] While the above referenced complaints were heard separately, but by the same panel of the CARB and on the same day, the CARB is of the judgment that, given there is only a single roll number pertaining to the entire property, only one single decision can be provided for the property. This single decision deals with the issues brought forward by each of the two Complainants.

[3] In terms of procedure, the Complainant informed the Board that they would be introducing a capitalization rate argument with supporting evidence and that this same capitalization rate argument is an issue for several ensuing complaints which are also to be heard by this same panel of the CARB this same week. Accordingly the Complainant suggested that, in order to expedite the Hearing process, all of the argument and evidence pertaining to the capitalization rate issue be carried forward and be applied to those ensuing Hearings where appropriate. The Respondent agreed with this proposal and, accordingly, the CARB will carry forward the capitalization rate argument and brief and will apply same to ensuing complaints where appropriate.

Issues:

[4] Complainant #1, represented by *Altus*, brought forward the following issue(s) of complaint for the CARB to consider:

1. The 7.25% capitalization rate utilized by the Assessor to estimate the assessed value of the subject property, and all 2012 assessments of Power Centres in Calgary, is excessively low and is not representative of market conditions as at the Date of Value. A more realistic capitalization rate of 7.75% is warranted for the valuation of Power Centres, including the subject property.

[5] At the Hearing the Complainant #2, represented by *Cobank*, reduced the issue to be considered by the CARB to:

2. The assessed theatre market of rent \$22/Sq. Ft. is too high and would more accurately be representative of market rent at a rate of \$20/Sq. Ft.

Complainant's Requested Value: \$76,530,000. (Exhibit Altus C-1 pg. 2)

Party Positions:**Complainant #1 Position:**

[6] The Complainant introduced their *Power Centre Retail 2012 Capitalization Rate Analysis* (Exhibit C-2) which, based on two analytical techniques concludes that the appropriate capitalization rate for Power Centres should be 7.75%. The methods utilized by the Complainant are described (Exhibit C-2 pg. 2) as:

Capitalization Rate Method I: The application of assessed income as prepared by the *City of Calgary Assessment Business Unit (ABU)*.

Capitalization Rate Method II. The application of typical market income as prescribed by the *Alberta Assessor's Association Valuation Guideline (AAAVG)* and the *Principles of Assessment 1* for Assessment Review Board Members and Municipal Government Board Members (Principles of Assessment).

[7] The Complainant explained that Capitalization Rate Method I is the method utilised by the Assessor which involves capitalizing the derived typical net operating income by an overall typical capitalization rate determined from comparable sales of similar properties. The income parameters of the year the sale occurred in are used for the purpose of developing a capitalization rate using typical conditions.

[8] In support of their claim that Capitalization Rate Method II is the method prescribed in the *Alberta Assessor's Association Valuation Guidelines (AAAVG)*, the Complainant introduced (Exhibit C-2 pgs. 27 – 31) excerpts from the AAAVG which, at page 30, provides a detailed, step-by-step approach to *Determining Market Rents as of the Valuation Date*. The process is outlined 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 rents established for similar tenants in other similar properties.*
3. *If comparable 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."*

[9] In addition, the Complainant introduced (Exhibit C-2 pgs. 33 – 36) excerpts from the *Alberta Principles of Assessment I* prepared for the training of Assessment Review Board Members as well as Municipal Government Board Members.

[10] Having completed their Method II analysis in accordance with the above given guidelines and having analyzed the same two sales used in their Method I analysis, the Complainant concludes (Exhibit C-2 pg. 3) with a Mean and Median capitalization rate of 8.57% which, they maintain, provides support for their requested 7.75% capitalization rate.

Respondent's Position Pertaining to Complainant #1

[11] The Respondent introduced their own Power Shopping Centre 2012 Capitalization Rate study (Exhibit R-1) which provides a summary of the two sales analyzed by the Complainant as well as an additional sale pertaining to the sale of a free standing bank property located within the Crowfoot Power Centre. This 7,256 Sq. Ft. property was sold in December of 2010 (registration date) and, using similar parameters to those utilized in the analysis of the other two sales, indicates a capitalization rate 6.35%. While the results of their analysis of the common two sales is identical to the results found by the Complainant, the inclusion of this third sale reduces the median capitalization rate to 7.33% and the mean capitalization rate to 7.22% both of which, the Respondent contends, provide strong support for the assessed capitalization rate of 7.25%.

Complainant #2 Position:

[12] During the course of this Hearing the CARB was made aware, by Complainant #2, that this market rent Complaint was originally scheduled to be heard by the CARB, together with two similar theatre properties, on July 5, 2012. Those two properties were dealt with at that Hearing but this Complaint was adjourned until this date due to a scheduling conflict. All of the evidence, from both parties, in this Hearing is identical to that presented in the referenced Hearings (CARB Decisions 0988-2012-P and 0989-2012-P) and the issues are also identical. The aforementioned CARB Decisions are contained within the Rebuttal evidence of the Complainant #2 (Exhibit C-3). Complainant #2, being aware of the referenced decisions, withdrew their issue pertaining to vacancy as same was not successful in either of those referenced Hearings.

[13] In that no new evidence is presented by either party and the issue(s) remain the same, the CARB questioned the need for this Hearing as the matter(s) have already been dealt with in the referenced CARB Decisions. Accordingly, the CARB finds no reason to vary the decisions of the referenced July 5/12 Hearings. Additionally, the CARB is concerned that need for this Hearing borders on an abuse of the system by the Respondent and such actions in the future may well result in a Cost Award being granted to the Complainant.

[14] The reader is referred to CARB Decisions 0988-2012-P and 0989-2012-P for detail pertaining to the position of Complainant #2 as it pertains to this complaint.

Respondent's Position – Pertaining to Complainant #2

[15] Refer to CARB Decision 0988-2012-P and 0989-2012-P

Board's Decision:

[16] The assessment is **reduced** to: **\$81,790,000.**

Decision Reasons:

[17] The first issue for the CARB to consider in this case is that of the assessed capitalization rate. Both parties have analyzed two of the same sales and they have both arrived at the same conclusion regarding same; however, the Respondent has analyzed a third sale not considered by the Complainant and it is the analysis of this third property which, combined with the other two, provides support for the 7.25% capitalization rate as assessed. The Complainant explained to the CARB that they did not analyze this third sale as they were of the judgment that it was not a good comparable as it involves the sale of a relatively small, free standing bank and as such is not representative of a Power Centre property sale. The CARB does not accept this position of the Complainant. The property is clearly located within the Crowfoot Power Centre and it constitutes, in the judgment of the CARB, a valid sale for consideration in a capitalization rate analysis of Power Centre properties. In this regard the Board concurs with the findings of other CARBs that have dealt with this same issue and that position is best explained in CARB Decision 1882-2012-P:

"The Board concurs with the Respondent that a Power Centre is not any one single building, but rather the sum of its components, an amalgam of large and/or small buildings acting in concert to attract business to a definable area. Therefore, to exclude any one component strictly on the basis of its size relative to the other components, is erroneous."

[18] The second issue the CARB deals with in this complaint is that of the assessed rental rate for the theatre property as brought forth by Complainant #2. As previously outlined, this matter has already been dealt with by the CARB. Accordingly the reader is referred to CARB Decisions 0988-2012-P and 0989-2012-P which granted the rent reduction to \$20/Sq. Ft., a decision with which this panel of the CARB agrees.

DATED AT THE CITY OF CALGARY THIS 6th DAY OF November 2012.


C. J. Griffin,
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant #1 Submission
2. C-2	Complainant #1 Capitalization Rate Study
3. C-1	Complainant #2 Submission Part 1
4. C-2	Complainant #2 Submission Part 2
5. C-3	Complainant #2 Rebuttal
2. R-1	Respondent's Submission (both Complaints)

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 MGB Administrative Use Only

<i>Decision No. 2022-2012-P</i>		<i>Roll No. 175035914</i>		
<u><i>Subject</i></u>	<u><i>Type</i></u>	<u><i>Issue</i></u>	<u><i>Detail</i></u>	<u><i>Issue</i></u>
CARB	Retail- Power Centre	Market Value	Capitalization Rate	Theatre Rent