

**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(4), Revised Statutes of Alberta 2000 (the *Act*).

between:

***Canada Safeway Limited, COMPLAINANT,
as represented by Altus Group***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
S. Rourke, MEMBER
P. Charuk, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 041055807

LOCATION ADDRESS: 5048 16th Avenue NW

HEARING NUMBER: 63792

ASSESSMENT: \$7,390,000

This complaint was heard on Tuesday, the 30th of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *D. Hamilton*

Appeared on behalf of the Respondent:

- *B. Thompson*

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

No procedural or jurisdictional matters were raised.

Property Description:

The subject property is a Safeway store located at 5048 16th Avenue NW in the Calgary community of Montgomery. The subject property has a floor area of 42,335 sq. ft. Adjacent the subject property, and not separated from the subject property by a road, is a retail strip centre.

Issues:

1. Has the subject property been incorrectly assessed as part of a neighbourhood shopping centre?
2. Have the net operating income ("NOI") and the capitalization rate resulted in an incorrect assessment?

Complainant's Requested Value: \$6,920,000.

Summary of the Complainant's Submission

The only issue is the capitalization rate ("cap rate"). There is no dispute with the market net rental rate of \$13.00 per sq. ft. used in the assessment, or the resultant net operating income ("NOI"). The Respondent classified the subject property as a neighbourhood shopping centre based on its proximity to a retail strip centre, despite the fact that the retail strip centre and the subject property are separate and apart, as evidenced by the fact that each property has its own Roll number. If the Safeway is truly part of the retail strip centre, why can't Safeway appeal the assessment of the strip centre? The capitalization rate for the subject property should be 7.75 percent, not the cap rate of 7.25 percent used by the assessor.

The correct method of calculating a typical market cap rate is by analyzing the relationship between the current year income of a property and its sale price. Income divided by sale price results in the cap rate. To develop a typical cap rate to be used in valuing property, cap rates for comparable properties are analyzed. In the case of *Bentall Retail Services et al.*, Mr. Justice

Silverman held that the typical market capitalization rate should be based on direct market evidence. Municipal Government Board decisions have held that in determining the typical market capitalization rate the income should be based on actual income, while the income used to predicate an assessment should be based on typical market rents from properties similar to the assessed property. Furthermore, the Respondent's time adjustments for sales remain a mystery.

In our 2011 cap rate analysis for community-neighbourhood shopping centres, we have relied on the approach described above. In arriving at "market" cap rates, we used the actual rents for five neighbourhood shopping centres, i.e., Calgary East Retail Centre at 2929 Sunridge Way NE, Braeside Shopping Centre at 1919 Southland Drive, Cranston Market at 356 Cranston Road SE, McKnight Village Mall at 5220 Falsbridge Gate NE, and Chinook Station Centre at 306 Glenmore Trail SW. For balance, we developed a "typical market rent" cap rate analysis based on median rents (from 12 months of income and the past 36 months of income) from the same five neighbourhood shopping centres. Our market capitalization rate analysis resulted in a mean cap rate of 7.87 percent, and a weighted mean of 7.71 percent, results which amply support our requested cap rate of 7.75 percent. Applying that cap rate to the net operating income of the subject, i.e., \$536,439.49, results in our requested assessed value of \$6,920,000.

Summary of the Respondent's Submission

The Complainant understood that the subject property was part of the community centre. The Complainant developed a cap rate study using the leased fee estate valuation to support their requested cap rate of 7.75 percent. The Complainant has not used typical rental rates. Furthermore, the Complainant has used dated rental rates. The correct cap rate is the typical community/neighbourhood cap rate of 7.25 percent. The purpose of property assessment is not to reflect one sale price, but to assess similar property at a similar value. The cap rate must be derived from typical rental rates, not actual. Our neighbourhood/community centre cap rate study with eight sales demonstrates that the cap rate for neighbourhood/community shopping centres is 7.25 percent.

Summary of the Complainant's Rebuttal

The cap rate for retail properties should reflect, at least to the extent possible, the market rental incomes generated. The Respondent has incorrectly employed "equitable income" in place of typical market income. This inconsistent method of determining typical income has failed to capture market value, and has led to the creation of a fictitious typical capitalization rate. As emphasized in *Bentall Retail Services et al v. Assessor Area 09 – Vancouver* it is important to emphasize how:

... actual decisions of vendors and purchasers [were] affected by contemporary market forces. To change the income to a calculated level distinct from that which was in the minds of the parties involved in the actual transaction is to arrive at a fictitious capitalization rate, which was not indicative of the then-current market conditions.

The rent rolls demonstrate disparities in income generated, and what has been determined to be "typical income" for the property. The Complainant cannot adequately determine, based on the evidence provided by the Respondent, how the case is to be met. The Respondent has not

demonstrated how properties were determined to be comparable, what adjustments were made, etc. The Complainant will address these issues and arrive at a "typical market rent" as a reflection of market value.

Furthermore, the Respondent has included closed market transactions, e.g. *West Springs Village*, in its cap rate study, and by doing so has included properties which do not meet the definition of market value. *West Springs Village* was not exposed to competitive market forces. Also, the sale of *Deer Valley Market Place*, formerly known as *Deer Valley Shopping Centre*, was finalized prior to July 1st, 2008, which reflects a different market time frame. The sale also included additional development opportunities which the Respondent failed to account for in their cap rate, and captured in their annual assessment, thus the Respondent's assessment-to-sales ratio ("ASR") fails to meet the guidelines of the Province. The Respondent has provided no clear indication, rationale, or explanative evidence for how they arrived at or applied their unsupported time adjustment figures which led to their ASR calculations. By including sales that have physically changed since the time of sale, and include more than the price indicated and in addition include closed market transactions, the Respondent's ASR analysis is misleading and does not appropriately reflect market value. The Respondent's cap rate is in error, and, based on our sales analysis of similar properties between January 2009 and July 2010, the correct cap rate is 7.75 percent.

The Respondent has included portfolio sales within its cap rate study. If portfolio sales are removed from the Respondent's comparables, i.e., 1221 Canyon Meadows Drive SE and Quarry Park Boulevard SE, the median of the Respondent's "typical" cap rates becomes 7.92%, and the average, 7.55%. That supports a cap rate of 8.0 percent.

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

In the Board's view, the fact that the subject property and the adjoining retail strip centre have separate roll numbers does not prevent the two properties from functioning as a neighbourhood shopping centre.

The Respondent derived its cap rate of 7.25 percent from an analysis of eight neighbourhood/community shopping centres. The eight shopping centres were those at Canyon Meadows Drive SE, 306 Glenmore Trail SW, 873 85th Street SW, 5220 Falsbridge Drive NE, 356 Cranston Road SE, 1919 Southland Drive SW, 2929 Sunridge Way NE, and 400 & 1200 163 Quarry Park Boulevard SE. The Respondent used "typical" rents as opposed to market or "contract" rents to arrive at the various net operating incomes in its cap rate analysis. The result was a median cap rate value of 7.04 percent, and an average cap rate value of 7.10 percent, results that support a cap rate for assessment purposes of 7.25 percent.

The Complainant challenged the selection of neighbourhood/community shopping centres in the Respondent's cap rate analysis on grounds that the Respondent had not shown how they were comparable to the subject property. The Complainant's evidence was that several of the neighbourhood/community centres in the Respondent's analysis were questionable. According to the Complainant, 1221 Canyon Meadows Drive SE, with only 23 percent site coverage, has the opportunity for additional development, and further, its sale took place in August of 2008, a different market time frame from the other properties in the Respondent's analysis. The Complainant went on to challenge the inclusion of 873 85th Street SW on grounds that the sale price did not reflect market value because the sale had not been brokered. Similarly, 400 &

1200 163 Quarry Park Boulevard SE was challenged because its sale had been a portfolio sale between the developer and the purchaser.

The Complainant developed its own cap rate studies, one using actual rents, and another using median rents, which the Complainant describes as "typical." The Respondent must have done a reasonable job of choosing properties comparable to the subject property for its cap rate analysis, because five of those properties were included in both the Complainant's cap rate studies, in fact they comprised the whole of the Complainant's cap rate studies. The result of the Complainant's studies supported the requested cap rate of 7.75 percent. The Respondent then applied that cap rate to the subject property, with all other inputs remaining as they are in the assessment.

Leaving aside the seemingly never-ending argument regarding actual versus typical rents, the Board had reference to the decision in the *West Coast Transmission* case, and the oft-quoted words of Justice Cumming:

I stated above that 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 property that is not derived in the same way.

In other words, if you calculate income in a certain way to develop a cap rate, then you must treat income the same way for a property to which you are going to apply that cap rate. The Board accepts this principle of consistency. In the present case, the Complainant applied its cap rate, whether derived from actual rents or the median of actual rents, to the net operating income of the subject property derived from typical rents, to arrive at its requested assessment. This method cannot be said to be consistent, therefore whether the requested assessment is a reasonable approximation of market value cannot be determined. Furthermore, if the Complainant's method were applied to the assessments of the five properties in the Complainant's cap rate analysis, the median ASR would drop from .98 (as assessed) to .90, hence the Complainant's values would be below the standard median of .950 specified in Section 10(3) of AR 220/2004, the *Matters Relating to Assessment and Taxation Regulation*. The Board has no reason to doubt that the application of the Complainant's cap rate would exhibit a similar effect had the subject property a sale value.

Board's Decision: The assessment is confirmed at \$7,390,000.

DATED AT THE CITY OF CALGARY THIS 30 DAY OF NOVEMBER 2011.



T. Helgeson
Presiding Officer

Exhibits**C-1, Complainant's submission****R-1, Respondent's Assessment Brief****C-2, Complainant's Rebuttal**

| <u>Appeal type</u> | <u>Property type</u> | <u>Property sub-type</u> | <u>Issue</u> | <u>Sub-issue</u> |
|---------------------------|-----------------------------|---------------------------------|---------------------|-------------------------|
| CARB | Retail | Neighbourhood Mall | Income approach | Land value |

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.*