

**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:

***2113362 Ontario Limited/Trinity Properties Alberta 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: 200768604

LOCATION ADDRESS: 11616 Sarcee Trail N.W.

HEARING NUMBER: 61075

ASSESSMENT: \$25,140,000

This complaint was heard on Thursday, the 1st of September, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

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:

At the commencement of the hearing, the Complainant requested that all the evidence and argument with respect to capitalization rates from hearing 61076 be carried forward to the present hearing. There being no objection from the Respondent, the Board agreed with the request on the basis that the aforementioned evidence from both parties would be considered as brought forward without further mention. The Respondent then objected to the admission of evidence on certain pages of the Complainant's rebuttal document on grounds that the impugned evidence should have been included in the Complainant's initial evidence, i.e., the document marked C-1. The Board agreed to exclude the evidence on pages 15, 16, 20, 21, 22, 23, 24, and 25 of the Complainant's Rebuttal document.

Property Description:

The subject property is a retail "power centre" at 11616 Sarcee Trail NW. The subject property is part of a retail aggregation known as *Beacon Hill Centre*. The site area of the subject property is 7.19 acres, with rentable space of 75,874 sq. ft., and tenants including Rogers Wireless, Starbucks, SportChek/Coast Mountain Sports, and Mark's Work Warehouse.

Issues:

1. Has the subject property been wrongly assessed as a result of the application of a capitalization rate ("cap rate") of 7.25%?
2. Is the assessed rate of \$22.00 per sq. ft. for the subject property's Jr. Big Box space equitable?

Complainant's Requested Value: \$19,610,000

Summary of the Complainant's Position

The cap rate used to assess the subject property is in error. Based on our analysis of sales of similar properties, the correct cap rate is 7.75 percent. The Board should place no weight on the sales of 16061 Macleod Trail SE and 95 Crowfoot Crescent NW in the Respondent's cap rate analysis. This is because 16061 Macleod Trail SE sold on August 1st, 2008, well before the valuation date of July 31st, 2010, and the sale of 95 Crowfoot Crescent NW is *ex post facto* the valuation date (the sale occurred on December 13th, 2010). Furthermore, the Respondent has refused to provide information with respect to its time adjustments. Sales of properties comparable to the subject property, i.e., 800 Crowfoot Crescent NW, 20 & 60 Crowfoot Crescent NW, and 140 Crowfoot Crescent NW, have been analyzed. These sales occurred on February 12th, 2010, August 1st, 2009, and July 30th, 2009, respectively. Based on actual rents, the analysis indicates that the cap rate of 7.25% used in the assessment of the subject property is in error, and that the correct capitalization rate is 7.75%.

Now to the Jr. Big Box space. Leases in the Beacon Hill complex indicate rental values averaging \$19.80 per sq. ft., with an overall median of \$20.00 per sq. ft. Despite the fact that Jr. Big Box space is classified city-wide, the Respondent appears to be using dated, site-specific leases to support its assessed rate, contrary to the Respondent's own mass-appraisal methodology. The assessed rate of Jr. Big Box space in other power centres runs \$17.00 per square foot throughout.

Summary of the Respondent's Position

The Complainant has used actual rents to support their requested cap rate of 7.75 percent. To apply that cap rate to assessments based on typical rents simply does not work. The cap rate must be derived from typical rental rates, not actual. The Complainant has mixed and matched. As stated by the Supreme Court of British Columbia in the West Coast Transmission case: *Thus it makes no sense to develop a capitalization rate based 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 a previous complaint with respect to the assessment of a strip shopping centre at 3708 17th Avenue SW, the Complainant's representatives argued for a cap rate of 7.50 percent. Now, in the present case, they're arguing for a cap rate of 7.75 percent for a retail Power Centre. Why would a power centre have a higher risk factor than a strip centre? Our power centre cap rate was derived from an analysis of typical rents and the sales of four power centres, those at 16061 Macleod Trail SE, 20, 60, and 140 Crowfoot Crescent NW, 800 Crowfoot Crescent NW and 95 Crowfoot Crescent NW. Even if 95 Crowfoot Crescent NW, which has an *ex post facto* sale date, was left out of the analysis, the analysis supports the cap rate with a median of 7.33 percent, and an average of 7.21 per cent. Furthermore, third party evidence from reliable sources indicate capitalization rates for power centres of 6.50 percent to 7.00 percent.

With respect to rental rates for Jr. Big Box space, Beacon Hill is the newest Big Box power centre. In preparing the assessments, we did not look outside the individual centres. Instead, we looked at each power centre individually because they each contain a large array of stores. Three properties in the Beacon Hill Centre supported the assessed \$22.00 per sq. ft. rate for Jr. Big Box space.

The Complainant's Rebuttal

Banks and Jr. Big Box space are both classified on a city-wide basis. What happened in this case is the same thing that happened to the banks at Country Hills Towne Centre when the Respondent assessed them based on site-specific lease values. This runs counter to the Respondent's own mass-appraisal methodology, as noted in decision CARB 0989/2011-P. The Respondent has provided equity comparables from Deerfoot Meadows, but how they came up with the rates they did when all Jr. Big Box space either falls under the \$12.00 per sq. ft. rate or the \$17.00 per sq. ft. rate is a mystery, and there are no recent leases in Deerfoot Meadows with which to perform a site-specific study. The Respondent did a city-wide analysis for Jr. Big Boxes with recent leases, and even if the Jr. Big Box leases from the subject property added in, the result would still be a median of \$17.00 per sq. ft.

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

The Complainant's evidence included a cap rate analysis based on sales of three power centres, i.e., at 800 Crowfoot Crescent NW, 20 & 60 Crowfoot Crescent NW, and 140 Crowfoot Crescent NW. These same sales were found in the Respondent's cap rate analysis, but in the Complainant's analysis, the actual rents for each power centre were used, as modified by "typical" vacancies and other allowances, to arrive at a net operating income.

Actual rent or "contract" rent is generally not relevant to the fee simple interest, and it is the fee simple interest, i.e., the totality of all interests, that must be assessed. Actual rent reflects only the owner's interest, hence ignores the interests of others, in particular, tenants. Deriving a cap rate from actual rents would contravene the requirements of section 2 of AR 220/04, i.e., that an assessment of property must be prepared using *mass appraisal*, must be an estimate of the value of the *fee simple estate* in the property, and must reflect *typical market conditions* for properties similar to that property [Board's emphasis throughout]. Furthermore, to apply a cap rate derived from actual rents to the income of a property based on typical rents, as the Complainant purports to do in the present case, runs counter to the ruling of Mr. Justice Cumming in the West Coast Transmission case:

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.

The governing principle is consistency, i.e., it's either all one, or all the other, you can't mix and match.

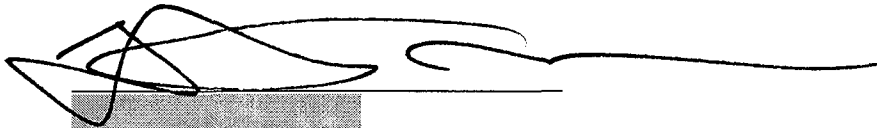
The Board finds that the Respondent's approach, with "typical" inputs, results in an estimation of value that is in accordance with the requirements of AR 220/04. With the *ex post facto* sale at 95 Crowfoot Crescent NW left out of the Respondent's analysis, the cap rate average is 7.21 percent, and the median 7.33 percent. These figures amply support the Respondent's cap rate. Furthermore, third party evidence from reliable sources indicate cap rates for power centres in the range of 6.50 percent to 7.00 percent. On a balance of probabilities, the Board finds the Respondent's evidence with respect to the cap rate issue persuasive

The evidence of the Respondent is that only three leases, all from the Beacon Hill Centre and

with leases dating from 2008, were relied upon to support the \$22.00 per square foot rate for Jr. Big Box space in the Beacon Hill Centre. Two of these leases showed lease rates of \$20 and \$23 per sq. ft., the other a lease rate of \$26.50 per square foot, for an average of \$23.00 per sq. ft. Can this be said to be mass appraisal? The Board thinks not. The Complainant's evidence, on the other hand, included eight Jr. Big Box leases in Beacon Hill Centre with an overall median of \$20.00 per sq. ft., a rate somewhat less than the assessed rate. Also, the Complainant adduced conclusive evidence that, city-wide, lease rates for Jr. Big Box space are in the \$17.00 to \$18.00 per sq. ft. range, and further, that assessed rates are at \$17.00 per square foot everywhere but in Beacon Hill Centre. The Board finds that the Complainant has equity on its side in the matter of the second issue.

The Board's Decision: Based on the reduction of the Jr. Big Box space to \$17.00 per sq. ft., with all other variables remaining the same, the assessment is adjusted to \$21,890,000.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF NOVEMBER 2011.



Presiding Officer

Exhibits

C-1, Complainant's Evidence 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	Power Centre	Income Approach	Capitalization Rate

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.*