

**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: 200768612

LOCATION ADDRESS: 11650 Sarcee Trail N.W.

HEARING NUMBER: 61076

ASSESSMENT: \$14,740,000

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 and K. Fong*

Appeared on behalf of the Respondent:

- *S. Turner*

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

No procedural or jurisdictional matters were raised.

Property Description:

The subject property is a retail "power centre" at 11650 Sarcee Trail NW in a location known as *Beacon Hill Centre*. The site area of the subject property is 5.36 acres. There are six buildings on the site, and the net rentable area is 33,630 sq. ft. The subject property was constructed from 2008 to 2009.

Issues:

Has the subject property been wrongly assessed as a result of the application of a capitalization rate ("cap rate") of 7.25%?

Complainant's Requested Value: \$13,740,000

Summary of the Complainant's Position

In this case, the only issue is the cap rate. The Board should place no weight on the sales of 16061 Macleod Trail SE and 95 Crowfoot Crescent NW. 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), and 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 result of 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%.

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, were left out, the analysis, with a median cap rate of 7.33 percent and an average of 7.21 percent, still supports the cap rate of 7.25 percent. Furthermore, third party evidence from reliable sources indicate capitalization rates for power centres of 6.50 percent to 7.00 percent.

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

The Complainant's evidence included a power centre 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 used in the Respondent's cap rate analysis. In the Complainant's analysis, however, the actual rents for each power centre were used, as modified by "typical" vacancies and other allowances.

Actual rent, or "contract" rent as it is sometimes described, is generally not relevant to the fee simple interest in property. Nevertheless, it is that fee simple interest, i.e., the totality of all interests, that must be assessed. Actual rent reflects only the owner's interest, to the exclusion of the interests of others, most commonly tenants. Section 2 of AR 220/04, the *Matters Relating to Assessment and Taxation Regulation*, requires that an assessment of property must be prepared using mass appraisal, must be an estimate of the fee simple estate in the property, and must reflect typical market conditions for properties similar to the property. The question that arises is how a cap rate derived from actual rents can, when applied to the typical rents in an assessment, result in an estimate of the value of the fee simple estate of the subject property, or reflect typical market conditions. Guidance on this question can be found in the decision in the West Coast Transmission case. In that decision, Justice Cummings of the Supreme Court of British Columbia found as follows:

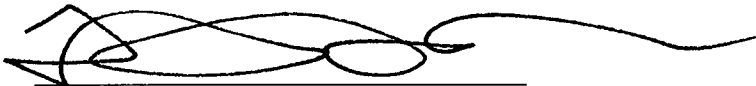
I stated above that the concepts used, in developing capitalization rates for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalization rate on one set of assumptions about long-term vacancy rates, long-term rents, and long-term expenses, and then apply that rate to the income of the subject property that is not derived in the same way.

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

With the *ex post facto* sale at 95 Crowfoot Crescent NW left out of the Respondent's analysis, the cap rate average becomes 7.21 percent, and the median 7.33 percent, results that support the Respondent's cap rate. In the view of the Board, the Respondent's cap rate, having been derived from typical rents, then applied to the net operating income of the subject property based on typical rents, has, in all of the circumstances, resulted in a reasonable, equitable estimate of the fee simple estate. Finally, it is notable that 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 persuasive.

The Board's Decision: The assessment is confirmed at \$14,740,000.

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.

R-2, Composite Assessment Review Board Decisions 1493/2011-P, 1499/2011-P, 1509/2011-P, 1508/2011-P, 1518/2011-P, 1520/2011-P, submitted by the Respondent.

<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.*