

**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
P. Charuk, MEMBER
S. Rourke, 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: 200768620

LOCATION ADDRESS: 11690 Sarcee Trail N.W.

HEARING NUMBER: 61077

ASSESSMENT: \$22,580,000

This complaint was heard on Friday, the 2nd 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:

- *K. Fong*

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 asked that all the evidence and argument with respect to capitalization rates from an earlier hearing on file 61076 be brought forward. There was no objection from the Respondent, and the Board agreed with the request on the basis that the Board would consider the aforementioned evidence and argument of both parties brought forward without further mention. This decision is the final decision permitting the bringing forward of evidence and argument from file 61076 to a hearing on another file.

Property Description:

The subject property is a retail "Power Centre" at 11690 Sarcee Trail NW., within what is known as Beacon Hill Centre. The site area of the subject property is 315,393 sq. ft., and its retail floor area is 90,558 sq. ft.

Issues:

1. Was the subject property erroneously assessed through use of a capitalization rate of 7.25 percent?
2. Is the assessed rate of \$22.00 per sq. ft. for the subject property's Jr. Big Box space inequitable?
3. Is the assessed rate of \$14.00 per sq. ft. for the subject property's Big Box space supportable?

Complainant's Requested Value: \$19,230,000.

Summary of the Complainant's Submission

The simple fact is that the assessment of the subject property is in excess of its market value. The assessed capitalization rate ("cap rate") is in error. Our analysis of sales of similar properties will demonstrate that the cap rate for the subject property should be 7.75 percent. Furthermore, the assessment of the subject property is not fair and equitable in relation to the

assessed values and classifications of comparable properties. Rental rates applied to the subject property's CRU spaces are inequitable when compared to other Power Centres. The assessed rate of the Jr. Big Box should be \$16.00 per sq. ft., not \$22.00. Furthermore, the assessed rate of \$14.00 per sq. ft. for the 50,000 to 100,000 sq. ft. Big Box is not supported by the leasing at the subject property. The assessed rate should be no higher than \$12.00 per sq. ft.

The difference between Potential Gross Income based on assessed rates versus actual rental rates for the Bank, Winners, CRU 2501-6000, CRU 6001-14000 and the Jr. Big Box is \$173,095. This difference results in an extra \$1.3 million of assessed value. Jr. Big Boxes are assessed at \$17.00 per sq. ft. in these Power Centres: Crowfoot, Country Hills, South Trail, Shawnessy and West Hill/Signal Hill. Only in Beacon Hill are Jr. Big Box stores assessed at \$22.00 per sq. ft. When it comes to Big Box stores, five lease comparables, two of which are from Beacon Hill Centre, indicate a mean rate of \$14.43 per sq. ft. and a median rate of \$14.50 per sq. ft.

Our cap rate analysis of three Power Centres, Crowfoot Square (800 Crowfoot Crescent NW), Crowfoot Village (20 & 60 Crowfoot Crescent NW), and Crowfoot Corner (140 Crowfoot Crescent NW), indicate cap rates from 7.28 percent to 8.35 percent, for a mean of 7.80 percent, and a weighted mean of 7.95 percent. These results amply support the requested cap rate of 7.75 percent. With the requested cap rate, a Big Box rental rate of \$13.00 per sq. ft., a Jr. Big Box rental rate of \$16.00 per sq. ft., and appropriate vacancy allowances, vacant space shortfalls, and non-recoverable allowances, the assessment would be \$19,230,000, for a per sq. ft. value of \$212.35.

Summary of the Respondent's Submission

The Respondent's 2011 Power Centre Capitalization Rate Summary will demonstrate that the correct capitalization rate is 7.25 percent. With respect to the Jr. Big Box space, leasing activity for all of Beacon Hill, including dated leases, show a median rate of \$20.00 for Jr. Big Box space. Evidence will include Big Box (50,001 to 100,000 sq. ft.) lease comparables with a median of \$14.00 per sq. ft., also same-size Big Box equity comparables assessed at \$14 per sq. ft. Composite Assessment Review Board decision 2110/2010 found that the rental rates for the CRU subcomponents of the subject property were fair and reasonable, and reflected fair market value. The Board confirmed the assessment.

The Complainant's Rebuttal

Jr. Big Box are classified city-wide, and using dated site-specific leases to support the assessed rate contradicts the Respondent's own method of mass appraisal. The Respondent has provided equity comparables from Deerfoot Meadows, but it is not clear how the Respondent came up with the rates when all Jr. Big Box space either falls under the \$12.00 rate or the \$17.00 rate, and there are no recent leases in Deerfoot Meadows to support a site-specific study. A 2010 ARB decision (CARB 2173/2010) reduced the Jr. Big Box rent at Beacon Hill to \$15 per sq. ft.

The Board's Reasons:

With respect to the first issue, the Complainant's argument is that the cap rate as assessed is incorrect, hence should be replaced with another, in this case a cap rate of 7.75 per cent. The

Board finds that the Complainant used actual rents in its analysis of the three Power Centres at 800 Crowfoot Crescent NW, 20 & 60 Crowfoot Crescent NW, and 140 Crowfoot Crescent NW. Actual, or "contract" rent, is generally not relevant to the fee simple interest. Nevertheless, 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, to the exclusion of the interests of others, e.g., tenants' interests. 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.

Accordingly, in dealing with the first issue, the Board considered whether a cap rate derived from actual rents would, when applied to the typical rents in an assessment, likely result in an estimate of the value of the fee simple estate of the subject property, and reflect typical market conditions for properties similar to the subject property. The Board looked to the decision of the Supreme Court of British Columbia in the West Coast Transmission case for guidance. In that case, Mr. Justice Cumming found that it did not make sense to mix and match:

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 Board agrees with the finding of the learned Justice. Consistency is key. Without it, an assessment is of doubtful lineage, and *prima facie* cannot be relied upon to accurately reflect the value of the fee simple estate. In all of the circumstances, the Board finds that the Respondent's assessed value, based on typical rents and typical inputs, meets the requirement of the *Matters Relating to Assessment and Taxation Regulation*, that the assessment be an estimate of the value of the fee simple estate of the subject property. With the *ex post facto* sale at 95 Crowfoot Crescent out of the cap rate analysis, the cap rate average becomes 7.21 percent, and the median 7.33 percent, results which support the Respondent's cap rate of 7.25 percent. The Respondent's cap rate is further bolstered by third party evidence from reliable sources indicating cap rate for power centres in the range of 6.50 percent to 7.00 percent. In the result, the Board finds that there was insufficient reliable evidence to support the requested adjustment in the cap rate.

With respect to the Big Box issue, the Complainant produced evidence of five leases, two of which were from Beacon Hill Centre. The other leases were from 12300 Symons Valley Road NW (area 99,650 sq. ft. at \$14.50/sq. ft.), 4155 126 Avenue SE (area 60,534 sq. ft. at \$15.00/sq. ft.) and 388 Country Hills Boulevard NE (area 72,053 sq. ft. at \$16.65/sq. ft.). One of the leases from the Beacon Hill Centre was the *Winners* store from the subject property (51,043 sq. ft. at \$11.50/sq. ft.), the other was from 11938 Sarcee Trail NW (95,423 sq. ft. at \$14.50/sq. ft.). The mean per sq. ft. value of these five leases was \$14.43, the median \$14.50. The only lease of the five that would support a lower assessed rate was the lease for the *Winners* store itself. This Board deemed this lease to be an outlier. In the result, the Board found that there was insufficient evidence to support the requested reduction in the assessed rate for the Big Box space.

The Jr. Big Box space was a different story. The Complainant's equity comparables indicated that of the five power centres mentioned in the Complainant's evidence, only one Jr. Big Box store, i.e., the Jr. Big Box store in the subject property, had an assessed rate of \$22.00 per sq.

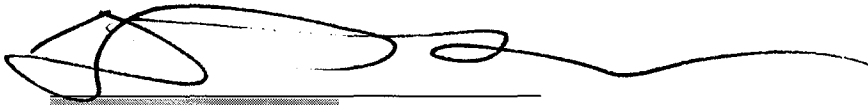
ft. All others exhibited an assessed rate of \$17.00 per sq. ft. The Respondent argued that a 2010 ARB decision (CARB 2110/2010-P) found that since the subject property is the newest Power Centre in the City, it was unique, making it very difficult to compare its assessed rental rates to those of other Power Centres. The Respondent also adduced evidence that eight other Jr. Big Box stores in the Beacon Hill Centre were assessed at \$22.00 per sq. ft. The Complainant countered that the only rate that was applied consistently in all the other power centres was the rate of \$17.00 per sq. ft. for Jr. Big Box space, and that in one particular case, i.e., West Hill, one of the oldest power centres, the rate for Bank space is considerable higher than in newer centres.

Although the panel that decided the complaint on the 2010 assessment of the subject property was of the view that it would be difficult to compare the subject property's assessed rates to those of other power centres, the panel did not say it would be impossible. In the Board's view, "newness" *per se* does not necessarily imply higher typical values. When it comes to equity, the Board must be cautious about refusing to accord the values of otherwise comparable properties due weight, particularly when the reason for such refusal is tenuous at best. In equity matters it is generally better to cast a wide net than a narrow one. In the result, the Board finds that the assessed rate for the subject property's Jr. Big Box store is inequitable, hence the assessed rate is adjusted to \$17.00 per sq. ft.

The Board's Decision:

Based on a rate of \$17.00 per sq. ft. for the 16,339 sq. ft. of Jr. Big Box space, the assessment is adjusted to \$21,470,000.

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



Presiding Officer

Exhibits

C-1, Complainant's Evidence Submission

C-2, Complainant's Rebuttal Evidence Submission

R-1, Respondent's Assessment Brief

<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.*