

**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: 200768679**

**LOCATION ADDRESS: 11458 Sarcee Trail N.W.**

**HEARING NUMBER: 64398**

**ASSESSMENT: \$22,330,000**

This complaint was heard on Thursday, the 1<sup>st</sup> 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:**

No procedural or jurisdictional matters were raised.

**Property Description:**

The subject property at 11458 Sarcee Trail NW is part of the Beacon Hill retail power centre. Site area of the subject property is 6.87 acres, with 82,906 sq. ft. of rentable space. Tenants include Michaels, Golf Town, the Royal Bank, TD Bank, and Goodlife Fitness. The amount of rentable Jr. Big Box space is 41,805 sq. ft.

**Regarding Brevity**

In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect the evidence presented and examined by the parties who appeared before the Board at the time of the hearing.

**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:** \$17,720,000 (revised from \$17,480,000 based on a vacancy correction)

### **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 1<sup>st</sup>, 2008, well before the valuation date of July 31<sup>st</sup>, 2010, and the sale of 95 Crowfoot Crescent NW is *ex post facto* the valuation date (the sale occurred on December 13<sup>th</sup>, 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 12<sup>th</sup>, 2010, August 1<sup>st</sup>, 2009, and July 30<sup>th</sup>, 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 of Jr. Big Box space from all quadrants of the City that range from 14,001 sq. ft. to 50,000 sq. ft. indicate a mean value of \$18.39 per sq. ft., and a median of \$17.30 per sq. ft. In the Beacon Hill complex, Jr. Big Box rental values average \$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, but in Beacon Hill, Jr. Big Box space is assessed at \$22.00 per sq. ft.. We are requesting \$16.00 per square foot as an equitable assessment for the Jr. Big Box in the subject property.

### **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 17<sup>th</sup> 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, is left out of the analysis, the analysis supports a cap rate median of 7.33 percent, and an average of 7.21 per cent. Furthermore, third party evidence from reliable sources indicates 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 as it is sometimes called, is generally not relevant to the fee simple interest in property, 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 the property, tenants in particular. Deriving a cap rate from actual rents contravenes 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]. 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 finding of the B.C. Supreme Court in the West Coast Transmission case. That finding was based on consistency, i.e., it's either all one, or all the other, you can't mix and match.

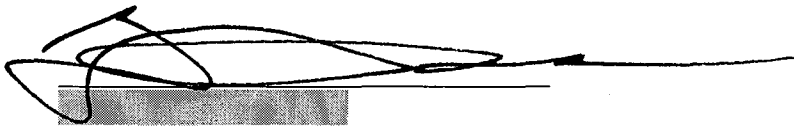
The Board finds that the Respondent's approach, with "typical" inputs, results in an estimation of value that is in accordance with the requirements of AR 220/04. With the *ex post facto* sale at 95 Crowfoot Crescent NW left out of the Respondent's analysis, the cap rate average is 7.21 percent, and 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 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. The Complainant also adduced conclusive evidence that City-wide, assessed rents for Jr. Big Box space are in the \$17.00 to \$18.00 per sq. ft. range, and further, that assessed rental 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 \$19,500,000.

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.

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<b><u>Appeal Type</u></b>	<b><u>Property Type</u></b>	<b><u>Property Sub-Type</u></b>	<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>
CARB	Retail	Power Centre	Income Approach	Capitalization Rate

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*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.*