

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

between:

CTDC #1 (Alberta) Ltd (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER

K. Farn, 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: 125090407

LOCATION ADDRESS: 1600 90 AV SW

HEARING NUMBER: 64236

ASSESSMENT: \$43,560,000

This complaint was heard on the 29th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *K.Fong*

Appeared on behalf of the Respondent:

- *M. Ryan*
- *J. Toogood*

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

The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act.

Note: Both the Complainant and the Respondent requested that testimony and evidence provided on Issue #1 below, that was heard in detail under Hearing #64529, be brought forward from that hearing to this hearing.

During the course of Hearing #64529, the Respondent objected to the Complainant's rebuttal document (referenced below under Issue #1) on the grounds that it raised new evidence not previously disclosed by the Respondent.

In accordance with the *Matters Relating to Assessment Complaints (MRAC) Regulation AR 310/2009, Section 8 (c)* "...any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b)...", the CARB ruled that the Complainant's Rebuttal document would be allowed into evidence but the Complainant was cautioned to restrict his argument and evidence to rebuttal evidence that was raised in the Respondent's disclosure.

With this procedural ruling in mind, the CARB then proceeded to hear the merits of the complaint, as outlined below.

Property Description and Background:

The subject property is a neighbourhood shopping centre anchored by a supermarket and known as *Glenmore Landing*. It is located in the "Bayview" community of SW Calgary. The property contains 4 buildings; all built in 1985, with a total net rentable area (NRA) of 149,079 square feet (sf) of which 3,381 sf is occupied by an exempt tenant. The buildings are situated on an assessable land area of approximately 10.40 acres, or 452,960 sf.

The subject property is assessed using the Income Approach to value and includes the following parameters:

- Office space: \$25.00 psf
- Capitalization rate 7.25%

Issues:

The CARB considered the complaint form together with the representations and materials presented by the parties. There were a number of matters or issues raised on the complaint form; however, as of the date of this hearing, the Complainant addressed the following issue:

- 1) The assessed cap rate is incorrect and should be increased to 7.75%.
- 2) The assessed office space rental rate is incorrect and should be decreased to \$15.00 psf.

Complainant's Requested Value:

\$29,560,000 on the complaint form revised to \$30,230,000 and further revised to \$37,370,000 at this hearing.

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

ISSUE 1: The assessed cap rate is incorrect and should be increased to 7.75%.

Note: Both the Complainant and the Respondent requested that testimony and evidence provided on this issue, that was heard in detail under Hearing #64529, be brought forward from that hearing to this hearing.

The Complainant provided a document entitled "Garrison Woods Evidence Submission" that was entered as "Exhibit C1" during Hearing #64529. The Complainant along with Exhibit C1 from Hearing #64529 provided the following evidence with respect to this issue:

- Evidence and discussion on the derivation of cap rates. The evidence suggested that "...by analyzing the relationship between current year income and the sale price, of the purchased property, to determine the overall investment risk or capitalization rate." The Complainant quoted various decisions on the subject including:
 - Westcoast Transmission v. Assessor Area No. 9 (Vancouver). "The price at which each building sells in the relevant time period is compared with the income reasonably generated by the building. Income divided by sale price generates a factor called the capitalization rate. The various capitalization rates for comparable buildings are analyzed with a view to developing a "typical" capitalization rate for that class of property."
 - Bentall Retail Services et al v. Assessor Area No. 9 (Vancouver). "We analyze sales in an income approach to arrive at a market derived yield or capitalization rate. To adjust the sales price based on an opinion of economic rent, merely provides an opinion of what the appraiser thinks the capitalization rate should be. The result is not direct market evidence and in our opinion serves only to complicate the analysis."
- Evidence from a City of Calgary 2009 Retail Capitalization Rate Document. The evidence submitted discussed the City of Calgary's process in the derivation of cap rates in 2009 for retail properties. Once the information was obtained from the owner by request from the City of Calgary, the process outlined the following:
 - Contract income. Net Rental Rate x sf area leased.
 - Potential Gross Income (PGI). If there was vacant space at the time of sale, the PGI was calculated based on the lease in place with the assumption that the vacant space will lease up at market rates.
 - Effective Gross Income (EGI). Calculated by reducing (stabilizing) the PGI by typical vacancy.

- Net Operating Income (NOI). Calculated by reducing (stabilizing) the EGI by 1% for non-recoverable expenses and vacancy shortfall.
- Cap rates. NOI divided by the sale price.
- The median of the cap rates is then determined and applied to the population.
- Excerpts from the Alberta Assessors' Association Valuation Guide. The evidence quoted information for determining market rents. In determining market rents as of the valuation date the following was referenced:
 - The best source of market information is the rent roll. The best evidence of market rent are in order of importance:
 - Actual leases signed on or around the valuation date.
 - Actual leases within the first 3 years of the term as of the valuation date.
 - Current rents for similar types of stores in the same shopping centre
 - Older leases with active overage rent or step-up clauses.
 - As a secondary source of rent information, the rental rates can be compared to the rents established for similar tenants in other similar properties.
- A table of 2011 Shopping Centre Capitalization Rate Analysis was provided using "typical" market rents. The table analyzed 5 retail shopping centres and included the following information:

Using Typical Market Rent

Shopping Centre	Sale Date	Rentable Area (sf)	Rent Rate (psf)	NOI	Sale Price	Cap Rate
Calgary East Retail Centre	18-Dec-09	83,603	\$18.88	\$1,530,441	\$19,585,500	7.81%
Braeside Shopping Centre	14-Dec-09	45,653	\$26.65	\$1,177,450	\$15,275,000	7.71%
Cranston Market	28-Oct-09	81,355	\$30.17	\$2,348,706	\$32,000,000	7.34%
McKnight Village Mall	01-May-09	74,152	\$21.61	\$1,546,503	\$19,270,000	8.03%
Chinook Station Office Depot	20-Jan-09	29,722	\$21.00	\$600,509	\$6,944,450	8.65%
Mean		62,897	\$23.66	\$1,440,722	\$18,614,990	7.91%
Median		74,152	\$21.61	\$1,530,441	\$19,270,000	7.81%
Weighted Median			\$23.77			7.74%

The table above used the actual rent rates of each property established at the time of purchase. Leased spaces with lease start dates that were more than 3 years prior to the valuation date, were adjusted with "typical" lease rates of similar spaces of comparable properties with lease start dates within 3 years of the valuation date. The actual and typical rents were combined to generate an annual PGI. The PGI was then adjusted for typical vacancy, operating costs and non-recoverable allowances to arrive at the NOI. Detailed documentation of each shopping centre sale and rental information was also provided in support of the information reflected in the table.

- Another table of 2011 Shopping Centre Capitalization Rate Analysis was provided. This time actual rents were used. The table analyzed the same 5 retail shopping centres and included the following information:

Using Actual Rent

Shopping Centre	Sale Date	Rentable Area (sf)	Rent Rate (psf)	NOI	Sale Price	Cap Rate
Calgary East Retail Centre	18-Dec-09	83,603	\$18.22	\$1,475,770	\$19,585,500	7.54%
Braeside Shopping Centre	14-Dec-09	45,653	\$25.91	\$1,144,540	\$15,275,000	7.49%
Cranston Market	28-Oct-09	81,355	\$30.22	\$2,352,717	\$32,000,000	7.35%
McKnight Village Mall	01-May-09	74,152	\$22.35	\$1,600,847	\$19,270,000	8.31%
Chinook Station Office Depot	20-Jan-09	29,722	\$21.03	\$601,322	\$6,944,450	8.66%
Mean		62,897	\$23.54	\$1,435,039	\$18,614,990	7.87%
Median						
Weighted Median			\$23.68			7.71%

The table above used the actual rent rates of each property established at the time of purchase. The actual rents generated an annual PGI. The PGI was then adjusted for typical vacancy, operating costs and non-recoverable allowances to arrive at the NOI. Again, detailed documentation of each shopping centre sale and rental information was also provided in support of the information reflected in the table.

- One other shopping centre sale was analyzed and then included in the two tables above. The April 6, 2010 sale of The Market at Quarry Park shopping centre was viewed by the Complainant as an atypical sale. The shopping centre was developed to include a hotel, a day-care centre and was purchased together with an office complex by the investor. The Quarry Park sale derived a typical cap rate of 6.75% and an actual cap rate of 6.73%. With the inclusion of the Quarry Park's typical cap rate in the first table above, the mean typical cap rate was 7.71% and the median typical cap rate was 7.76%. With the inclusion of the Quarry Park's actual cap rate in the second table above, the mean actual cap rate was 7.68%.
- The conclusion of the Complainant based on the analyses above, the cap rate for neighbourhood shopping centres should be increased to 7.75% from the assessed 7.25%.

The Respondent provided a document entitled "Assessment Brief" that was entered as "Exhibit R1" during the Hearing #64529. The Respondent along with Exhibit R1 from Hearing #64529 provided the following evidence with respect to this issue:

- A number of recent 2011 CARB decisions that supported the use of a 7.25% cap rate in the assessment of neighborhood shopping centres. The Respondent objected to the Complainant's cap rate derivation claiming that his methodology is flawed in that he is not using typical rates consistently among properties in his sample and is not changing other inputs in his income approach other than the cap rate.
- A table comparing the assessment to sales ratios of using a 7.25% cap rate versus the requested 7.75% cap rate. The table included the following information:

Cap Rate Assessment to Sales Ratios (ASR), 7.25% vs. 7.75%

Shopping Centre	Sale Date	Sale Price	Typical Cap Rate	Assessment (2011 @ 7.25% cap)	Requested (2011 @ 7.75% cap)	Time-Adjusted Sale Price	ASR (7.25% cap)	ASR (7.75% cap)
Calgary East Retail Centre	18-Dec-09	\$19,585,500	8.38%	\$22,630,000	\$21,160,000	\$20,341,737	1.11	1.04
Braeside Shopping Centre	14-Dec-09	\$15,275,000	7.58%	\$15,350,000	\$14,350,000	\$15,963,099	0.96	0.90
Cranston Market	28-Oct-09	\$32,000,000	6.38%	\$28,150,000	\$26,330,000	\$33,647,449	0.84	0.78
McKnight Village Mall	01-May-09	\$19,270,000	8.25%	\$20,030,000	\$17,970,000	\$20,276,359	0.99	0.89
Chinook Station Office Depot	20-Jan-09	\$6,944,450	8.35%	\$6,800,000	\$6,360,000	\$6,959,896	0.98	0.91
Market at Quarry Park	06-Apr-10	\$40,637,317	5.01%	\$28,070,000	\$26,250,000	\$41,421,862	0.68	0.63
West Springs Village	16-Mar-09	\$23,500,000	6.36%	\$18,500,000	\$17,310,000	\$24,139,768	0.77	0.72
Deervalley Centre	14-Aug-08	\$31,500,000	6.50%	\$29,530,000	\$25,550,000	\$29,601,311	1.00	0.86
Median			7.04%				0.97	0.87

The Respondent concluded from the table above that the 7.25% cap rate produced superior ASRs and a superior median ASR. Therefore, the City of Calgary's Assessment department is justified in using a 7.25% cap rate in assessing neighborhood shopping centres including the subject property.

- During questioning from the Complainant the CARB noted the following:
 - That the time-adjusted sales price of the Calgary East Retail Centre used a factor of approximately 4.50% and the time-adjusted sales price of the Braeside Shopping Centre used a factor of approximately 3.86%. Both properties were sold in December, 2009, just 4 days apart.
 - That the Market at Quarry Park should be considered an atypical sale whose purchase was bundled with an office complex and in which the shopping centre was developed to include a day-care centre and hotel.
 - That the West Springs Village shopping centre should be considered a closed market sale in that it was not exposed to the open market but was negotiated privately between the buyer and the seller.
 - That the 2011 assessment of Deervalley Centre includes new buildings that were not part of the original sale. Therefore the ASR of 1.00, using a 7.25% cap rate, as reflected in the table is misleading and should be lower.

In rebuttal, **the Complainant** provided a document entitled "Shopping Centre Cap Rate Rebuttal" that was entered as "Exhibit C2" in Hearing #64529. The Complainant along with Exhibit C2 from Hearing #64529 provided the following rebuttal evidence with respect to this issue:

- An analysis of the sales and incomes of the various shopping centres outlined in the Respondent's ASR analysis referenced above. The Complainant pointed out discrepancies that included the following:
 - Deervalley Centre. The 6.5% typical cap rate referenced by the Respondent would calculate a \$2,048,692 NOI and a \$2,150,233 PGI. The Complainant provided the City of Calgary 2009 assessment showing the PGI of the property was \$2,291,535. The Complainant also provided the City of Calgary 2009 property detail report showing the PGI of the property was \$2,256,547. In addition, the Complainant showed that the PGIs derived by the Respondent assessed a \$5.00 rental rate to the 82,687 sf Zellers subcomponent or space. Yet, the City of Calgary was using a \$10.00 per sf "typical" rate for similar properties in 2009. The conclusion drawn from this analysis was that the Respondent understated the Deervalley Centre's NOI by \$155,846 in his cap rate analysis.
 - West Springs Village. A RealNet property report of the sale. The report indicated that

no real estate brokers were used in the transaction and that it was a "...direct deal between the vendor and purchaser...". The conclusion drawn by the Complainant is that since the sale was not an open market sale and should be excluded from the analysis.

- Braeside Shopping Centre. According to the Complainant, Braeside was considered a strip mall in the year of its sale and accordingly was assessed that way in 2010 by the Respondent. In 2011, Braeside has been assessed as a neighbourhood shopping centre. Accordingly, the Complainant recalculated the cap rate by using the income and other parameters that would be typical of a neighbourhood shopping centre. In doing so, an 8.36% cap rate was calculated.
- A revised table was offered addressing the discrepancies referenced above:

Shopping Centre	Sale Date	Sale Price	Respondent's Cap Rate	Corrected Cap Rate
Calgary East Retail Centre	18-Dec-09	\$19,585,500	8.38%	8.38%
Braeside Shopping Centre	14-Dec-09	\$15,275,000	7.58%	8.36%
Cranston Market	28-Oct-09	\$32,000,000	6.38%	6.38%
McKnight Village Mall	01-May-09	\$19,270,000	8.25%	8.25%
Chinook Station Office Depot	20-Jan-09	\$6,944,450	8.35%	8.35%
Market at Quarry Park	06-Apr-10	\$40,637,317	5.01%	5.01%
West Springs Village	16-Mar-09	\$23,500,000	6.36%	-
Deervalley Centre	14-Aug-08	\$31,500,000	6.50%	8.11%
Median			7.04%	8.25%

The Complainant concluded that in correcting the discrepancies a revised median cap rate of 8.25% would support the requested 7.75% cap rate.

- A number of recent CARB decisions in support of the requested 7.75% cap rate.

The CARB finds the following with respect to this issue:

- That the Complainant's derivations of cap rates using accepted appraisal principles are reasonable and supported by his evidence.
- That the Respondent's derivations of typical cap rates are unsupported by evidence.
- That the Complainant was successful in pointing out inconsistencies in the Respondent's application of time adjustments to the sale prices of the neighborhood shopping centres used in his analysis.
- That the Complainant was successful in pointing out some discrepancies in the Respondent's derivation of cap rates. The CARB accepts the adjustments or corrections made by the Complainant to the Respondent's cap rate calculation for Deervalley and Braeside shopping centres. The CARB also accepts that the West Springs Village shopping centre was not exposed to the open market when it sold and therefore may not be reflective of market value.
- That the Complainant was successful in pointing out that the Quarry Park shopping centre was an atypical sale. Quarry Park's design and development (including a hotel, and day-care centre) is not typical of what you would find in other shopping centres. Further, the 5.01% typical cap rate and resulting ASR calculated by the Respondent is substantially less than the other typical cap rates and ASRs calculated and likely an outlier falling outside an acceptable range. In addition, the cap rate calculated by the Complainant in the sale of Quarry Park is substantially higher at about 6.75%. This again calls into question, whether the Respondent understated the PGI of the shopping centre in generating its typical cap rate.

ISSUE 2: The assessed office space rental rate is incorrect and should be decreased to \$15.00 psf.

The Complainant provided a document entitled "Glenmore Landing Evidence Submission" that was entered as "Exhibit C1" during the hearing. The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- A table of the subject's office space tenancy information as of July 1, 2010. A summary of that information revealed the following:
 - The total area of the office space was 30,722 sf, with an occupancy range from 495 sf to 5,656 sf.
 - The average rental rate was \$15.92 psf; with a range from \$14.00 psf to \$20.27 psf.
 - A lease start date range from September 15, 1985 (lease rate: \$15.00 psf) to January 1, 2007 (lease rate: \$18.00 psf).
- A number of shopping centre comparables with office space assessments. The assessment rates of those office space comparables ranged from \$15.00 psf to \$20.00 psf.

The Respondent provided a document entitled "Assessment Brief" that was entered as "Exhibit R1" during the hearing. The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- There was no evidence provided on this issue as most of the document dealt with issue #1 above. The Respondent determined that the Complainant had not met onus on this issue and therefore he was not obliged to provide any evidence to support his assessment rate of \$25.00 psf for office space.

The CARB finds the following with respect to this issue:

- That the Complainant provided office space comparables of shopping centres that were considered reasonable equity comparables to the subject. However, the CARB is of the opinion that the office rental rate applied to the subject should be \$20.00 psf.
- That the Complainant had met onus on this issue.
- That the Respondent failed to provide any evidence to support his position on this issue.

Board's Decision:

The complaint is allowed in part and the assessment is revised to \$39,080,000. In calculating the revised assessment, the CARB changed the cap rate to 7.75% and changed the office space rental rate to \$20.00 psf, to the Respondent's Income Approach to value.

The CARB determined the following in arriving at its decision:

- The Complainant provided sufficient evidence and used acceptable methodology in derivation of a median cap rate. The CARB is convinced that the 5 shopping centres used in his analysis either using typical or actual rents as calculated by the Complainant are supportive of the requested 7.75% rate.
- Although the Respondent objected to the Complainant's cap rate calculations he was unable to support his objections with evidence.
- The Complainant was able to point out a significant amount of flaws or discrepancies in the Respondent's ASR analysis. In doing so, the CARB was unable to rely on that analysis.
- In the analysis of the Complainant's equity comparables the CARB is convinced that a

\$20.00 office space assessment rate is warranted. The subject's lease rates have dated lease start dates and most of the subject's more recent leases are at or near a \$20.00 psf rate. In addition, 2 of the Complainant's office space comparables supported a \$20.00 psf assessment rate.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF OCTOBER 2011.



Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Hearing #64529 Complainant Disclosure
2. R1	Hearing #64529 Respondent Disclosure
3. C2	Hearing #64529 Complainant Rebuttal
4. C1	Complainant Disclosure
5. R1	Respondent Disclosure

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.*