

**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.

between:

***First Capital Holdings (ALB) Corporation.,
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
P. Pask, MEMBER
A. Wong, MEMBER***

[1] 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:	201274040
LOCATION ADDRESS:	356 CRANSTON RD SE
HEARING NUMBER:	64339
ASSESSMENT:	\$28,150,000

[2] This complaint was heard by a Composite Assessment Review Board on September 29th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

[3] Appeared on behalf of the Complainant:

- *Mr. D. Hamilton* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Ms. M. Byrne* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] There were no procedural or jurisdictional matters before the Board.

PROPERTY DESCRIPTION:

[6] The subject property is an improved parcel located at the northwest corner of Cranston Avenue and Cranberry Road SE, within the Cranston community in SE Calgary. The record shows development is a shopping centre identified as the Cranston Market, comprised of 81,407 square feet (sf) built circa 2009 on 8.28 acres of land. The assessment is as per the Income Approach to Value (IAV) based on the following inputs:

- Potential Net Income (PNI): \$2,201,005
- Vacancy rate: 1% for the supermarket; 7.25% for the remainder
- Operating costs: \$7.00/sf
- Non recoverables: 1%
- Cap rate: 7.25%

The result is a Net Operating Income (NOI) of \$2,041,266 and an assessed value of \$28,150,000 (rounded).

REGARDING BREVITY:

[7] 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 on the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[8] The matter identified by the Complainant as the basis for this complaint is "an assessment amount". While the Assessment Review Board Complaint form (complaint form) also indicates "an assessment class" to be under question, the Complainant indicated at the time of the hearing that there was no objection to the classification of the subject property.

[9] The Board finds the Complainant has presented the following issues for deliberation:

1. Does the Complainant's cap rate analysis produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010?
2. Does the market evidence at large support the requested revision to the subject assessment?

COMPLAINANT'S REQUESTED VALUE:

[10] \$26,330,000 as per Doc. C-1, pg 108. The complaint form shows \$19,530,000. The Complainant's request is solely based on a cap rate amendment from 7.25% to 7.75%.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act** (MGA) Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004** (MRAT) Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC) Division 2 and Schedule 1.
- **The Alberta Assessment Quality Minister's Guidelines** (AAQMG)

[12] Both parties placed a number of Assessment Review Board and Municipal Government Board decisions before this Board in support of their position. While the Board has the utmost respect for the decisions rendered by these tribunals, it is also recognized that these decisions were made in respect of issues and evidence that may be dissimilar to that before this Board. This Board will therefore not give much weight to these decisions unless the issues and evidence are shown to be timely, relevant and materially identical to the subject complaint.

[13] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [10] above). The Board is to determine if (within the direction of the MGA and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st, 2010, should be revised.

[14] With regard to the individual issues identified above the Board's findings are as follows:

1. Does the Complainant's cap rate analysis produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010?

[15] The Complainant accepted the Respondent's indicated NOI of \$2,041,266 and requested a cap rate of 7.75%. Hence, the central issue before the Board is the determination of the cap rate.

[16] The Complainant's cap rate analysis is summarized under C-1, pg 105. The summary shows 5 market transactions; the properties are as follows:

#	Address	Identification	Sale Price	Date
1C	2929 Sunridge Way NE	Calgary East Retail Centre	\$19,585,500	12/18/2009
2C	1919 Southland Drive SW	Braeside Shopping Centre	\$15,275,000	12/14/2009
3C	356 Cranston Road SE	Cranston Market	\$32,000,000	10/28/2009
4C	5220 Falsbridge Gate NE	McKnight Village Shopping Centre	\$19,270,000	05/01/2009
5C	306 Glenmore Trail SW	Chinook Station Office Depot	\$6,944,450	01/20/2009

[17] The Respondent chose to not advance any clarification regarding its cap rate analysis or conclusions, relying instead on previous CARB decisions supporting the cap rate of 7.25%. The Board was perplexed to find the Assessor chose to provide a limited explanation of the assessment to the Board and little in the way of evidentiary material in response to the Complainant's submission. In light of this, the Board finds the Respondent's efforts (under R-1, pg 3) to draw conclusions from segments of the Complainant's evidence to be unimpressive. Moreover, this Board's position regarding previous ARB and MGB decisions is expressed under [12] above.

[18] The Complainant has presented material in response to the Assessor's purported cap rate assumptions and conclusions but, failing any evidence or first hand knowledge made available by the Respondent, the Board is not prepared to comment or make findings from said material. The basis of the Board's cap rate findings then are the 5 properties advanced by the Respondent as per [16] above.

[19] Upon review of the documentation placed before it, the Board found the following:

- ❖ (4C) 5220 Falsbridge Gate NE – McKnight Village Shopping Centre
 - The reports placed before the Board (see C-1, pg 78) indicates the transaction involved three addresses/properties for a total price of \$23,150,000. The Complainant utilized a sale price of \$19,270,000 for the purposes of cap rate analysis. The Board finds no documentation is provided to the Board to support or clarify this apportionment.
- ❖ (5C) 306 Glenmore Trail SW – Chinook Station Office Depot
 - The Board finds the sale of this 29,775 sf free standing, apparently single tenanted, retail property does not easily fit the determination of cap rate for neighbourhood shopping centres. Furthermore, both parties raised questions regarding the timing of the lease as per C-1, pg 93 and actual tenancy/occupancy involving Office Depot and Bed Bath & Beyond.

[20] The Board is therefore not prepared to afford much weight to transaction #s 4C and 5C, looking instead to transaction #s 1C, 2C, 3C, as the best established market evidence. The Board finds the sale of the subject property (3C) is particularly powerful evidence.

[21] Through the review of the evidence before the Board it appears the Complainant's cap rate analysis includes numerous assumptions (e.g. income, allowances for vacancy, non-recoverables, and vacancy shortfall) that, for the purposes of a property assessment exercise, the Board finds should be market based. These inputs have not been contested by the Respondent yet the Board finds little market evidence to support the Complainant's assumptions and is left uncertain as to their validity.

[22] Furthermore, the Board notes the Complainant's analysis suggests a cap rate of 7.34% for the sale of the subject property. The Complainant looks to blend this with the other referenced properties in the determination of "typical"; however, the Board finds (in light of the uncertainty expressed under [21] above) the subject's analysis should be more heavily weighted than the purported comparable properties.

[23] In addition, the Board finds the Complainant has not adopted the same assumptions in its requested assessment revision, choosing instead to adopt those utilized by the Assessor in calculating the subject assessment. Consequently, the Board finds the Complainant's valuation assumptions to be subjective in nature rather than market based.

[24] In light of the above and the preceding discussion of findings the Board concludes the Complainant's cap rate analyses does not produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010.

2. Does the market evidence at large support the requested revision to the subject assessment?

[25] The market evidence before the Board is summarized under [16] above. The Board notes the sales have not been adjusted for time, nor has any market evidence been placed before the Board to suggest such an adjustment is warranted.

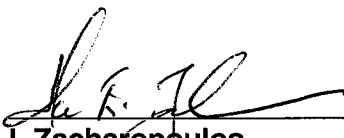
[26] The Board finds the sale of the subject property, dated October 28, 2009, has not been shown to be anything but an arm's-length transaction. In light of the very limited market evidence supporting the Complainant's valuation assumptions and the lack of evidence suggesting any adjustment to the subject's sale, the Board finds this market transaction to be the best evidence of value for the subject property.

[27] Upon consideration of the above, the Board finds the market evidence at large does not support the requested revision to the subject assessment.

BOARD'S DECISION:

[28] The assessment is confirmed at \$28,150,000.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF October 2011.


I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Submission
2. Doc. C-2	Complainant's Rebuttal
3. Doc. R-1	Respondent's 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.*