

**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:**

***First Capital (Lakeview) Corporation (as represented by Altus Group Limited),  
COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***K. D. Kelly, PRESIDING OFFICER  
J. O'Hearn, MEMBER  
B. Jerchel, 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:

<b>ROLL NUMBER:</b>	<b>104032396</b>
<b>LOCATION ADDRESS:</b>	<b>6449 Crowchild TR SW</b>
<b>HEARING NUMBER:</b>	<b>64239</b>
<b>ASSESSMENT:</b>	<b>\$17,220,000</b>

This complaint was heard on 18<sup>th</sup> day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *Mr. B. Neeson, Altus Group LTD.*

Appeared on behalf of the Respondent:

- *Mr. M. Ryan Assessor, City of Calgary*

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

**Matter #1**

The Respondent argued that the Complainant's Rebuttal package C-2 is largely inadmissible because it purports to rebut the City's Capitalization Rate Study for Neighbourhood Shopping Centres, including the subject. The Respondent argued that the City has not submitted any evidence regarding its Cap Rate Study for Neighbourhood Shopping Centres for this Hearing, and therefore there is nothing for the Complainant to rebut in that regard.

He argued that the Complainant's Case rests primarily on evidence in his Rebuttal document C-2, evidence that should have been in his Brief C-1. He argued that Complainant's brief C-2 is predominantly new evidence and should not be admitted into this hearing.

The Complainant acknowledged that his rebuttal brief C-2 in fact contains a very detailed rebuttal of the City's Cap Rate Study from pages 1 to 284. He argued that since the City used the study to set the Cap Rate for neighbourhood Shopping Centres, as the Complainant he should be able to challenge it.

He noted that from pages 286 to 302 in C-2 the rebuttal material questions the City's Assessment to Sale Ratios (ASR's), and pages 304 to 360 contain Assessment Review Board Decisions regarding similar matters such as are before the Board today. He also argued that the evidence before the other Boards was similar, if not identical to that proposed to be presented to this Board today.

**Board's Decision – Preliminary Matter # 1**

The Board briefly reviewed the materials presented by the Parties and concluded that the Complainant's material contained in pages 1 to 284 of rebuttal document C-2 was new evidence regarding the City's Cap Rate Study for Neighbourhood Shopping Centres. The Board noted that the City had not advanced its Cap Rate Study during disclosure and therefore the Complainant's documentary efforts to challenge it in C-2 are not admissible in this hearing.

The Board decided that the remaining documentation from pages 286 to 360 of C-2 was admissible.

**Property Description:**

The subject is the 5.53 acre Lakeview Neighbourhood Shopping Plaza at 6449 Crowchild Trail SW, just south of Glenmore Trail SW at the intersection of 63 AV SW. It contains 63,192 square feet (SF) of "B+" quality commercial retail unit space (CRU) constructed in 1961, but recently renovated. It also contains 785 SF of "A2" quality office space constructed in 2003. It is anchored by a Sobey's store, a pharmacy, a Scotiabank, and several other CRU spaces of varying sizes. It is assessed at \$17,240,000 based on a "typical" Capitalization Rate of 7.25%.

**Issue:**

The "typical" Capitalization rate used to assess the subject should be 7.75% instead of 7.25%.

**Complainant's Requested Value:** \$16,020,000.

**Board's Review in Respect Of The Issue:****Complainant's Position:**

The Complainant presented his Brief C-1 and briefly outlined his summary of testimonial evidence; identified the particulars of the site; and noted the year-over-year assessment increase from \$14,060,000 in 2010 to \$17,220,000 in 2011. He also provided overhead maps and exterior photographs of the subject and its location in the neighbourhood.

The Complainant briefly referenced excerpts of relevant Legislation applicable to assessment appeals; selected legal precedents and appraisal theory he considered relevant; as well as the City's documented 2009 approach to determining retail capitalization rates. He also provided a selected few pages from each of the "Alberta Assessors' Association Valuation Guide", and "Principles of Assessment 1 for Assessment Review Board Members and the Municipal Government Board Members". He argued that in preparing its various appeals of similar properties, Altus had been cognizant of the principles contained in the foregoing documents.

On page 59 of C-1 the Complainant provided two matrices – each containing the identical five 2009 market sales of Neighbourhood Shopping Centre property comparables from various parts of the city. He argued that analysis of these sales indicates that a 7.75% Cap Rate is appropriate for the subject.

He clarified that Altus had revised its approach to analysis of these five sales. Referencing the matrix at the bottom of page 59 he suggested that in hearings earlier this year Altus had used actual lease values (i.e. contract rents) in its calculations rather than median values. He argued that the former methodology is appropriate for "*appraisal purposes*" but not for "*assessment purposes*". This matrix is sub-titled "Market Capitalization Rate Valuations".

Referencing the matrix at the top of page 59 therefore, he argued that the current methodology is to examine expiring and renewing leases in those same five sales to determine current lease values and identify resultant median values. This matrix is sub-titled "Typical Market Rent (Sic) Capitalization Rate Valuation".

From pages 62 to 100 the Complainant provided extensive details for each of the five property comparable sales in his two, page 59 matrices including - Alberta DataSearch sheets; rent rolls; lease analyses, and related calculations of value. Of particular note were two comparative calculations of value on pages 79 and 80 for the Cranston Market Neighbourhood Shopping Centre.

On page 80 he described a "Lease Fee" analysis representing the Complainant's former valuation methodology, which used "actual" values. On page 79 he illustrated the current "Fee Simple" methodology which used "median" values to identify a "Typical Market Rent Application". He argued that the results of this analysis support his request for a Cap Rate of 7.75% for the subject.

The Complainant referenced a brief excerpt from "Standard on Ratio Studies" from the "International Association of Assessing Officers" on pages 301 and 302 of his rebuttal brief C-2. He argued that the City's calculation of assessment-to-sale ratios (ASR's) – used as a valuation "test", is not necessarily reliable or supportable. He argued in response to questioning from the Respondent that he had not provided any ASR test of his own data calculations because he was not obliged to do so.

Commencing on page 304 of C-2 the Complainant introduced several Assessment Review Board Decisions which he considered supported his position that the Cap Rate for comparable properties should be increased from 7.25% to 7.75%. In particular he referenced Board Decision CARB 2175/2011-P where the assessment was reduced. He argued that the evidence and argument presented in this and other Board decisions was similar if not identical to that presented today. The Complainant requested that the assessment be reduced to \$16,020,000 based on a 7.75% Capitalization Rate.

#### **Respondent's Position:**

The Respondent presented his Brief R-1 and argued that the Complainant's position in this appeal is still fundamentally flawed and his results invalid. He argued that the Complainant's purported "new" methodology still mixes "actual" and "typical" values, which is fundamentally wrong and inaccurate. He argued that several Municipal Government Board and Assessment Review Board Decisions have supported this principle.

He argued that the Complainant's fundamental error is in calculating "typical" income (NOI). He argued the Complainant continues to use an average of actual lease values in selected properties, including one free-standing building (Lowes) - in some cases using 12 months of income and in others 36 months of income. He then mixes the "median actual" rent values from sold properties with typical inputs such as "vacancy allowance", "non-recoverables", etc. He argued that this is a flawed methodology.

The Respondent argued that the evidence in this hearing is not identical to that presented in other hearings as alleged and alluded to by the Complainant. He noted for example that he had not presented the City's Cap Rate Study for neighbourhood Shopping Centres in this hearing as had been done in previous hearings. In addition, he noted that the Complainant has already confirmed that he has revised his presentation from previous hearings. He argued that the Complainant has changed his evidence and approach, but not enough to demonstrate that the City's Cap Rate of 7.25% for the subject is incorrect.

He clarified that in Composite Assessment Review Board Decision CARB 2175/2011-P referenced by the Complainant, where the Board reduced the assessment, that the reduction was based solely on the selling price of the property, and not because of any increase in its Cap Rate as might have been suggested by the Complainant.

The Respondent argued that the Complainant has long been in possession of the City's Cap Rate study, but during disclosure failed to bring it forward, so he did not either. Therefore, it is not before the Board today. He argued that the City tests its analysis of the market by using Assessment To Sale Ratios (ASR) calculations as required under Mass Appraisal. He noted that the Complainant declined to test his calculations because "he is not obliged to". Therefore, he wondered, by what methodology had the Complainant tested his values? He argued that by testing the Complainant's data, his requested 7.75% Cap Rate "falls" outside the acceptable range of values and is hence an "outlier". He reiterated that the Complainant has provided no study or ASR values to authenticate his results.

The Respondent referenced and provided complete copies of numerous Municipal Government Board and Assessment Review Board Decisions. In particular he referenced CARB 2297/2011-P and CARB 1818/2011-P which he argued support the City's arguments regarding valuation methodology and ASR testing procedures.

#### **Board's Decision – Reasons:**

The Board finds that the Complainant's position in this appeal fails for the following reasons:

1. In his Income Approach to Value calculations the Complainant has "mixed and matched" actual and typical valuation parameters in his alternate calculations of assessed value. In his current calculations before this Board, the Complainant has clearly identified and used "median actual" values. However, they are still "actual" values and not "typical" values. The Complainant then mixes these actual values with typical values developed by the City for "vacancy allowance", "non-recoverables", etc. The Board does not accept this methodology.
2. The Board finds that page 5 of recent Composite Assessment Review Board Decision CARB 1302/2011-P as included in the Respondent's brief R-1, addresses the matter of mixing actual and typical inputs as follows:

"The Board understands that calculating the value of a property using the income approach must be based on a consistent methodology. In other words, if "actual" rates are to be used to calculate a value using an income approach, then all factors in that calculation must reflect actual values. On the other hand, if typical rates are used to calculate value using an income approach, then all factors in that calculation must be typical rates. It is not appropriate to calculate the value of a property with the income approach using some factors derived from actual data and some factors derived from typical data. That said, for assessment purposes, typical rates are required.

The Complainant used actual lease rates to calculate its capitalization rate, and then applied that capitalization rate to typical lease rates used by the City in its assessment calculation. The mixing of the two methods is not appropriate.....

The Board does not agree with the calculation used by the Complainant, as it is based on factors

derived using different methodologies. If the Complainant uses the capitalization rate of 7.75%, it also has to use rental rates and other factors derived from actual data. This was not done. The board is not persuaded by the Complainant's analysis or evidence. Since the Board does not agree with the conclusion of the Complainant regarding the assessed value, it has no reason to vary the assessment"

3. The Complainant has argued that the City's Assessment To Sale Ratio (ASR) methodology is unreliable, but did not provide documentary evidence to demonstrate that this is so.
4. The Complainant has argued that there is no need to "test" his calculated alternate assessment values because in his view, there is no requirement to do so. The Board notes that this is in fact a required step in the assessment process under Mass Appraisal, and the City/Respondent has tested its calculated values using Assessment to Sale Ratios. The Complainant has not. Therefore the Board is offered no evidence whatsoever by the Complainant, that his alternate calculations of value are accurate and reliable.
5. The Board finds that based on the foregoing and evidence adduced in this hearing, there is no confirmed basis upon which the Board should increase the Cap Rate for the subject and correspondingly reduce the assessment as a requested by the Complainant.

#### **Board Decision**

The assessment is Confirmed at \$17,220,000.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF November 2011.

  
K. D. Kelly,  
Presiding Officer

#### **APPENDIX "A"**

#### **DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure
2. C-2	Complainant Rebuttal Disclosure
3. R-1	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.*

#### For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Retail	Neighbourhood shopping centre	Cap Rate only	Market sales Comparisons