

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***First Capital (McKenzie Towne Lands), (as represented by Altus), COMPLAINANT***

and

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

before:

***C. McEwen, PRESIDING OFFICER***

***S. Rourke, MEMBER***

***P. Pask, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of the property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as per SCHEDULE A:

**SCHEDULE A**

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	ASSESSMENTS
200349728	48 MCKENZIE TOWNE AV SE	64516	\$ 2,180,000
200349744	49 MCKENZIE TOWNE AV SE	64517	\$ 3,070,000
730062700	33 MCKENZIE TOWNE GA SE	64369	\$ 3,350,000
730062908	18 MCKENZIE TOWNE GA SE	64371	\$ 2,980,000
730063005	26 MCKENZIE TOWNE GA SE	64372	\$ 3,330,000
730063104	40 MCKENZIE TOWNE GA SE	64374	\$14,870,000
730063302	20 MCKENZIE TOWNE AV SE	64375	\$ 8,570,000
730063401	41 MCKENZIE TOWNE GA SE	64377	\$ 2,740,000
730099009	11 MCKENZIE TOWNE AV SE	64378	\$ 8,950,000

This complaint was heard on the 24<sup>th</sup> day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, AB, Boardroom 2.

Appeared on behalf of the Complainant:

- B. Neeson

Appeared on behalf of the Respondent:

- M. Ryan

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

The Respondent raised a preliminary issue regarding the Complainant's rebuttal evidence. The parties agreed to review this matter following presentation of their primary submissions and prior to actual rebuttal.

The Respondent argued that the Complainant's rebuttal submission included new evidence regarding the city's Neighbourhood/Community Capitalization Rate Study which, the Respondent argued, had not been introduced as evidence by either party during primary arguments. The Respondent referred to Matters Relating To Assessment Complaints Regulation (M.R.A.C.) section 8(2)(c) that directs the Complainant to disclose to the Respondent and the Composite Assessment Review Board (CARB) the documentary evidence that

*"... the Complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b)(i)."*

The Respondent also referred to M.R.A.C. section 8(2):

*"A CARB must not hear any evidence that has not been disclosed in accordance with section 8."*

The Board inquired whether the Respondent was requesting that the Complainant's rebuttal be excluded in entirety as the Complainant had argued that sections of the rebuttal package referred to Assessment to Sales Ratio (ASR) information that the Respondent had introduced during primary submission. The Respondent stated that the Complainant's ASR rebuttal evidence was, in some cases, combined with the cap rate information under dispute and, therefore, the Board should exclude the entire rebuttal.

The Board took a brief recess to review the rebuttal documents.

The Board found that the vast majority of the rebuttal evidence was new and, in accordance with the Regulations, would not be heard. Rebuttal evidence dealing with ASR theory and derivation, however, would be allowed as they were central to the Respondent's primary submission.

With the preliminary matter determined, the merit hearing continued.

**Property Description:**

The subject property (comprised of nine roll numbers) known as McKenzie Towne Centre, is a Neighbourhood/Community Shopping Centre located in the McKenzie Towne district of SE Calgary.

**Issues:**

Is the subject property assessed higher than market value and is the assessment, therefore, inequitable to comparable properties? Specifically;

1. Should the capitalization rate used to assess the subject properties be increased from 7.25% to 7.75%?
2. Should the rent rate used to assess the TD Bank located at 49 MCKENZIE TOWNE AVE SE be reduced from \$43 per square foot (psf) to \$32 psf?
3. Should the rent rate used to assess the office space located at 11 MCKENZIE TOWNE AVE SE be reduced from \$20 psf to \$15 psf?

**Complainant's Requested Value:****SCHEDULE B**

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	REQUESTS
200349728	48 MCKENZIE TOWNE AV SE	64516	\$ 2,030,000
200349744	49 MCKENZIE TOWNE AV SE	64517	\$ 2,120,000
730062700	33 MCKENZIE TOWNE GA SE	64369	\$ 3,110,000
730062908	18 MCKENZIE TOWNE GA SE	64371	\$ 2,780,000
730063005	26 MCKENZIE TOWNE GA SE	64372	\$ 3,100,000
730063104	40 MCKENZIE TOWNE GA SE	64374	\$13,920,000
730063302	20 MCKENZIE TOWNE AV SE	64375	\$ 8,020,000
730063401	41 MCKENZIE TOWNE GA SE	64377	\$ 2,560,000
730099009	11 MCKENZIE TOWNE AV SE	64378	\$ 7,920,000

**Board's Findings and Reasons in Respect of Each Matter or Issue:**

1. Should the capitalization rate used to assess the subject properties be increased from 7.25% to 7.75%?

The Board finds a 7.25% cap rate to be both fair and reasonable.

The Board does not accept the Complainant's cap rate methodology and is supported in its view by the Westcoast Transmission Company Limited decision (1987 BCSC 235) that underscores the importance of a consistent approach to both the derivation of a capitalization rate and the application of that rate to the valuation of a property (R1, page 142). The Board finds that the Complainant's methodology, which uses actual and implied rent rates to derive the Net

Operating Income (NOI) and subsequent cap rates of the subject properties, that further derives an 'actual' cap rate for the property stratum (Neighbourhood/Community Shopping Centres, in this case) and that then applies the 'actual' cap rate to a valuation model that calculates NOI using 'typical' lease rates, is inconsistent and, therefore, at odds with the Westcoast decision.

The Board accepts the Respondent's ASR, 7.25% v. 7.75% chart (R1, page 18) as supportive of the Respondent's argument that a consistent derivation and application of a capitalization rate yields a superior valuation result as measured by an ASR analysis of those valuations.

The Board finds the previous Board decision (CARB 1984/2011-P) on the issue of the correct Neighbourhood/Community capitalization rate, of little value as the decision was based upon the flaws inherent within the city's 2010 Neighbourhood/Community Cap Rate Study. That study was not before the Board in this hearing.

In summary, the Neighbourhood/Community capitalization rate of 7.25% is confirmed.

2. Should the rent rate used to assess the TD Bank located at 49 MCKENZIE TOWNE AVE SE be reduced from \$43 per square foot (psf) to \$32 psf?

The Board accepts the parties' recommendation that \$43 psf represents a fair and reasonable rent rate for the subject property.

3. Should the rent rate used to assess the office space located at 11 MCKENZIE TOWNE AVE SE be reduced from \$20 psf to \$15 psf?

The Board accepts the parties' recommendation that \$15 psf represents a fair and reasonable rent rate for the subject property.

**Board's Decision:**

Eight of the subject assessments are confirmed as per Schedule C:

**SCHEDULE C**

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	DECISIONS
200349728	48 MCKENZIE TOWNE AV SE	64516	\$ 2,180,000
200349744	49 MCKENZIE TOWNE AV SE	64517	\$ 3,070,000
730062700	33 MCKENZIE TOWNE GA SE	64369	\$ 3,350,000
730062908	18 MCKENZIE TOWNE GA SE	64371	\$ 2,980,000
730063005	26 MCKENZIE TOWNE GA SE	64372	\$ 3,330,000
730063104	40 MCKENZIE TOWNE GA SE	64374	\$14,870,000
730063302	20 MCKENZIE TOWNE AV SE	64375	\$ 8,570,000
730063401	41 MCKENZIE TOWNE GA SE	64377	\$ 2,740,000

Roll Number 730099009 (11 MCKENZIE TOWNE AVE SE) is reduced to \$8,490,000 based upon a reduction in the rental rate.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF November 2011.

  
C. McEwen  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Respondent Rebuttal

*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**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighborhood Shopping Mall	Income Approach	Capitalization Rate