



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:

CP REIT Alberta Properties Limited (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, M. E. Bruton
Board Member, B. Jerchel***

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 2014 Assessment Roll as follows:

ROLL NUMBER: 156164006

LOCATION ADDRESS: 15915 Macleod Trail SE

FILE NUMBER: 74110

ASSESSMENT: \$25,760,000

This complaint was heard on the 17th day of June 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *B. Neeson, Agent, Altus group*

Appeared on behalf of the Respondent:

- *G. Jones, Assessor, City of Calgary*
- *B. Thompson, assessor, City of Calgary*

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

- [1] There were no procedural or jurisdictional matters raised by either party.

Property Description:

(2) The subject is a multi tenant, multi building retail node containing a Superstore, gas bar, and a number of Commercial Retail Units (CRU), within the Shawnessy Power Centre in SE Calgary. The total development contains 153,486 square feet (s.f.). The buildings are classified as "B" quality, constructed in 1998. The gas bar was added in 2005. The assessable land area is 11.34 acres.

Issues:

- (3) The Complainant brought two issues before the Board.
- (4) The subject is currently assessed using the income approach. In the capitalization calculations, the City adopted a capitalization rate of 6.00 per cent. The Complainant contends that a rate of 6.5 per cent is more appropriate.
- (5) The assessed rate for "Big Box " space, which is the 80,001 plus s.f.category, is assessed at \$10.00 per s.f.. The Complainant is requesting \$9.00. The subject's "Big Box" space is a Superstore, with 138,080 s.f.

Complainant's Requested Value: \$21,700,000

Board's Decision:

- (6) The assessment is confirmed.

Legislative Authority, Requirements and Considerations:

- (7) This Board derives its authority from section 460.1(2) of the Act.
- (8) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;
"An assessment of property based on market value
(a) must be prepared using mass appraisal
(b) must be an estimate of the value of the fee simple estate in the property, and
(c) must reflect typical market conditions for properties similar to that property"
- (9) Section 467(3) of the Municipal Government Act states;
"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration
(c) the assessments of similar property or businesses in the same municipality."
- (10) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.
- (11) The Board notes that the assessment has increased from \$24,800,000 in 2013, to \$25,760,000 in 2014.

Position/Evidence of the Parties**Issue 1; Capitalization rate**

- (12) The Complainant presented a capitalization rate study of 213 pages. The study centres around four transactions that are summarized on page 27 of exhibit C-1, or page 17 of C-2.
- (13) All four of the transactions occurred in 2012. All four properties are located in the Crowfoot Power centre in north west Calgary. The four properties are;
- 20/60 Crowfoot Crescent
 - 140 Crowfoot Crescent
 - 850 Crowfoot Crescent (Community Natural building)
 - 155 Crowfoot Way (Harper's Tire / Enterprise Car Rental)
- (14) In testimony the Complainant stated that the methodology used in the analysis employed the actual selling price, the City Assessment Department's typical rents that were effective on July 1, 2012, and typical vacancies, and non-recoverable expenses that were in effect at that time. The study produced a range in rates from 5.13 to 8.60 per cent. The mean is 6.63 per cent, and the median is 6.41 per cent. The methodology, and the inputs used, were not disputed by the Respondent.
- (15) The Complainant also submitted a fifth property transaction that was labelled as "Investment Grade Market Indicator", located at 3320 - Sunridge Way NE. The property produced a capitalization rate of 6.55 per cent. Because the property was not in a power centre, it was not included in the analysis, but was presented as a market indicator to support the results.
- (16) The Respondent's capitalization rate study contains two comparables -- 20/60 Crowfoot Crescent NW, and 140 Crowfoot Crescent NW, both of which are contained in the Complainant's study. The methodology and inputs used are the same as the Complainant's. The results -- 6.78 and 5.13 per cent-- are the same for both parties. The median produced by

the two indices produced a median of 5.96 per cent, which the City rounded to 6.00 per cent.

(17) The City objected to the other two transactions used by the Complainant.

(18) It was the City's position that the Community Natural foods property at 850 - Crowfoot Crescent was vacant at the time of the sale and therefore did not generate any rent from which a capitalization rate could be derived.

(19) The Harper's Tire / Enterprise property is the former Village Honda auto dealership property. As far as this property is concerned, the City maintains that the transaction was non arms length because of a relationship between the two parties. Corporate searches submitted in evidence revealed that the signing officer for the vendor company, and the signing officer for the purchasing company are both directors of a third company. The third company does not appear to be involved in the real estate transaction in question.

(20) The Harpers Tire property was also excluded from the City's evidence because it was the City's position that the property was a former auto dealership that was assessed by the cost approach, and therefore no rent was available for a capitalization rate analysis.

(21) Finally, it was argued that although the Harper's Tire transaction was finalized and registered at the Land Titles Office in 2012, it was actually negotiated in 2010. That assertion was not disputed by the Complainant.

Issue 2: Big Box; 80,000 plus s.f.

(22) The Complainant submitted six lease comparables, including the subject. The lease rents range from \$6.85 to \$14.50 per s.f. The mean and median is \$8.97 and \$7.74 respectively. The subject's lease rate is \$7.00, with a May 1, 2011 start date.

(23) The first comparable lease presented by the Complainant is the Canadian Tire outlet at Beacon Hill Center. The lease is a 20 year contract signed in March, 2008. The contract rent is at \$14.50 per s.f.. According to the Complainant, there are about \$3.00 per s.f. in tenant improvements amortized over the term of the contract. That assertion was not disputed by the Respondent. This outlet is about 12 years newer than the subject.

(24) The second comparable is the Walmart outlet at Deerfoot Mall. This outlet is a free standing building built in 2003. The contract rent is \$6.85 per s.f., with a January, 2004 start date. This building is assessed at \$7.00 per s.f.

(25) The third comparable is a Walmart outlet at the Westbrook Mall. This is an older mall, originally developed in 1972. The store is attached to the balance of the mall, but has separate doors, and a separate entrance. The assessed rent for this premises is \$7.00 per s.f..

(26) The remaining two leases, a Walmart at 8888 Country Hills Blvd. and a Target store in the Westhills power centre, reflect rents of \$10.00 and \$8.00 per s.f. respectively. Both leases are dated, going back to October, 2003, and September, 1997.

(27) The Respondent submitted six leases in support of the assessed rent. Four of the leases are common to the Complainant's evidence. However, the Respondent did not include the Walmart stores at either the Deerfoot Mall, or the Westbrook Mall, arguing that these are anchor tenants at neighbourhood or community shopping centres, which behave differently than power centers.

(28) However, the City included a Rona outlet at 12300 Simons Valley Road NW, which was not in the Complainant's evidence. The Complainant argues that this premises was vacant and had been so for some time, and that fact rendered the rent as invalid for comparison purposes. The City demonstrated that Rona was still paying rent in accordance with the lease.

(29) Both parties agreed that Rona, as well as the property owner were attempting to re-lease the space.

Findings and Reasons for Decision:

(30) The Board does not accept the Respondent's position regarding the Community Natural Foods property. Simply because there is no actual rent in place does not negate the validity of this comparable for the purpose of estimating a capitalization rate. The purpose of establishing a capitalization rate is to estimate the fee simple interest in a property. That process requires the use of typical, or market level rents in the analysis. If actual rents are used, the result could be a representation of the value of the lessor's interest, but not necessarily the fee simple estate. That would violate Part 1, section 2(b) of the MRAT. That is the primary reason why typical rents prevailing at the time of the sale are adopted, and the actual rents in place are disregarded. The same principle should hold true whether there is no rent, or an actual rent that is disregarded.

(31) As far as the Harper's Tire transaction is concerned, the Board found no compelling or conclusive evidence to indicate that it was not an arms-length transaction. The Board recognizes the fact that the two parties are connected by virtue of common directorship in a third company. However, there is no evidence to suggest that the purchase price of the property in question was affected by this common directorship.

(32) Notwithstanding the Respondent's position and assertion relative to the negotiation date of the Harper's Tire transaction, there is no written evidence to indicate that the sale was actually negotiated two years prior. The transfer document is dated June 22, 2012, and the price indicated on the Affidavit is the same as the price used in the analysis. The Board accepts the 2012 acquisition date as being the correct date.

(33) Board also recognizes that the Harper's Tire transaction involved two properties and the \$4,100,000 stated price is actually a price allocation and should be accorded the least amount of weight in the final analysis.

(34) Although the Board accepts the Harper's Tire transaction as a valid comparable, the capitalization rate analysis for this property produced a result that is a full 257 basis points (43 per cent) removed from the median of the three remaining indicators. In the view of this Board, an outlier of that magnitude should either be removed from the analysis, or accorded less weight. The mean and median of the remaining three are 5.98 and 6.03 per cent. The Board accepts the Respondent's 6.0 per cent capitalization rate.

(35) During testimony it was revealed that the City draws rent information from two sources. These were outlined in testimony as follows;

Site specific, or Centre specific base

CRU space up to 1,000 s.f.

CRU space 1,001 to 2,500 s.f.

CRU space 2,501 to 6,000 s.f.

CRU space 6,001 to 14,000 s.f.

Banks, restaurants, fast food outlets

City wide base

Junior Big Box - 14,001 to 40,000 s.f

Big Box stores - 40,001 to 80,000 s.f.

Big Box - 80,001 s.f. plus

Super markets

The chief reason for this division was given as the availability of data. Where there is an adequate sampling available, the City uses the site or centre specific rents. Where an adequate data base does not exist, the City expands the data base to include City wide properties.

(36) As far as the "Big Box" category is concerned, the board agrees with the Respondent with respect to the validity of the Rona lease on Symons Valley Road. The lease appears to have been negotiated in good faith by both parties. The lessee is still paying rent, and nothing turns on the fact that the tenant has chosen to vacate the premises.

(37) If both the Complainants, and the Respondent's lease data in this size category are combined, two of the lowest lease rates are reflected by the two outlets in the community shopping centres. If these are excluded from the analysis, the mean rent appears at \$9.88 per s.f..

(38) If the Rona lease is included in the Complainant's lease sampling, the mean rent is \$9.76 per s.f..

(39) In the final analysis, there is insufficient evidence to prompt the Board to consider a change in the Capitalization rate, or any of the rental rates adopted by the Respondent.

(40) The assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS

21st

DAY OF July, 2014.

Presiding Officer



Jerry Zezulka

APPENDIX "A"

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

NO.

ITEM

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1. C1 Complainant Disclosure
 2. C2 Power Centre 2014 Capitalization Rate Analysis
 3. C3 2014 Power Centre Pair Responses
 4. C4 Complainant's Rebuttal Submission
 5. C5 2014 Retail Anchor Analysis
 6. C6 2014 Retail Anchor Analysis, calculating typical rent for space over 80,000 s.f
 7. 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.*

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Decision No. CARB 74110P/2014			Roll No. 156164006	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Power Centre retail	Market Value	Income Approach	Rental Rate & cap. rate