

**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:

***BCIMC Realty Corporation
c/o Bentall Retail Services LP
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
A. Wong, MEMBER
J. Rankin, 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: | 415015809 |
| LOCATION ADDRESS: | 450 Country Hills Blvd. NE |
| HEARING NUMBER: | 62816 |
| ASSESSMENT: | \$11,130,000 |

This complaint was heard on June 14 - 15, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- K. Fong, A. Izard

Appeared on behalf of the Respondent:

- D. Zhao, E. Lee

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

The Respondent raised a jurisdictional matter with respect the Complainant's rebuttal document marked exhibit C2. The Respondent argued that the information was available to the Complainant at the time of the disclosure of evidence and argument, and should have been included therein, thus allowing the Respondent to prepare a response.

The Complainant argued that the evidence disclosed in exhibit C2 is directly related to the Respondent's evidence, therefore it is proper rebuttal evidence that should be before the Board.

Decision: Jurisdictional matter

The Board finds that pages 1 – 4, and page 6 of exhibit C2 are proper rebuttal and are allowed to be entered as evidence before the Board in this matter. Page 5 of exhibit C2 is found to be new evidence relating to an issue, specifically "business tax assessment rates", that was neither referenced, nor identified as an issue in the Complainants submission of evidence and argument, and is therefore disallowed as evidence before the Board in this proceeding.

Property Description:

The subject property is a 123,143 sq.ft. (2.83 Ac.) parcel of land, improved with two shopping centre structures constructed in 1999, totalling 27,741 sq.ft. Along with two other adjacent parcels, the subject forms the power centre known as Country Hills Town Centre.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment amount
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount. The Complainant set out 8 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$8,580,000; however, at the hearing the Complainant withdrew grounds 3,7 and 8. As set out in the Complainant's evidence and submissions at C1 p.4, only the following issues are identified to be in dispute:

Issue 1. "The Rental rate of \$37.00 for the CRU Bank space is inequitable to similar premises within similar Power Centres – an equitable rate of \$32.00 psf should be applied." {Ground 6}

Issue 2. "The cap rate of 7.25% applied to the subject is not supported by market sale - a cap rate of 7.75% should be applied." {Ground 5}

Complainant's Requested Value: \$9,090,000 [C1, p.4].

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

Issue 1. "The Rental rate of \$37.00 for the CRU Bank space is inequitable to similar premises within similar Power Centres – an equitable rate of \$32.00 psf should be applied."

The Complainant argued that the subject property has been inequitably assessed in relation to similar properties. In support of that argument, the Complainant submitted the market rent coefficients applied to twelve comparable properties, displaying a range of \$30.00 to \$32.00 per sq.ft. in contrast to that applied to the subject of \$37.00 per sq.ft. [C1, pp.58-69]. The Complainant further submitted the current rent roll from the power centre, illustrating the two premises occupied by bank tenants were originally leased in 1999 at a rent rate of \$27.80 per sq.ft. Those leases remain in place today, although the rent rate has been amended from time to time through "step-ups" to the current rents of \$31.50 and \$36.50 per sq.ft. [C1, pp.48-55]. The Complainant argued that as these rent rates were negotiated in 1999, they could not be considered as evidence of current market rent rates.

The Respondent argued that the market rent coefficient of \$37.00 applied to the bank premises in the subject property is equitable with similar properties. In support of that argument, the Respondent provided a summary list of five other bank premises in the immediate vicinity of the subject that were also assigned a \$37.00 market rent coefficient [R1, p.29]. This market rent coefficient was established from two recent lease agreements, at \$37.50 per sq.ft. within a nearby property located at 388 Country Hills Blvd. [R1, p.28].

Decision: Issue 1.

The Board finds that the market rent coefficient applied to the subject's premises occupied by bank tenants is inequitable with that applied to similar premises within similar power centres.

Although the two leases provided by the Respondent indicate that \$37.00 per sq.ft. may be the current market rent rate for bank premises within a power centre, the Complainant's evidence indicates that a market rent coefficient of \$30.00 to \$32.00 per sq.ft. appears to have been applied rather consistently to the municipality's inventory of bank premises, with the exception of the properties located in the vicinity of 388 Country Hills Blvd. where recent leases were available.

The Board was not persuaded by the Respondent's argument that the \$37.00 per sq.ft. market rent coefficient applied to the subject is warranted as the subject property is superior to the Complainant's comparables. This contention is unsupported when a comparison of the market rent coefficients applied to other space types common to the subject and the comparables is examined. (e.g. CRU spaces of 2,501 – 6,000 sq.ft.)

| | Bank Rent Rate | CRU 2501-6000 |
|------------------------------|-----------------------|----------------------|
| Subject | \$37.00 | \$24.00 |
| 11690 Sarcee Tr [C1, p. 58] | \$32.00 | \$30.00 |
| 303 Shawville Bv [C1, p. 58] | \$32.00 | \$28.00 |
| 250 Shawville Bv [C1, p. 58] | \$32.00 | \$28.00 |
| 70 Shawville Bv [C1, p. 58] | \$32.00 | \$28.00 |
| 4916-130 Av SE [C1, p. 58] | \$32.00 | \$25.00 |

Issue 2. “The cap rate of 7.25% applied to the subject is not supported by market sale - a cap rate of 7.75% should be applied.”

The Complainant submitted a 4 page analysis titled “2011 Power Centre Retail Capitalization Rate Analysis 2011 **Leased Fee Estate (LFE) Valuations**” [C1, pp.41-44]. At the presentation of the evidence, the Complainant advised the Board that the subtitle “Leased Fee Estate (LFE) Valuations” should be replaced by “Market Valuation”, as a clerical error had occurred during the preparation of the submission. The analysis consisted of one 2010 sale, and a 2009 multi property sale of two shopping centre parcels located within the municipality, that exhibit a range of capitalization rates from 7.28% to 7.95%, and mean and weighted mean capitalization rates of 7.65% and 7.76% respectively. The Complainant indicated that the median capitalization rate of 7.72% was not statistically viable due to the small sample size of the sales.

The indicated capitalization rates were calculated by dividing the actual NOI (net operating income), as adjusted, by the sale price of each property. The Complainant submitted that only the following adjustments were made to the actual NOI of the sales:

1. Vacant space, and leased spaces with leases set to expire within 12 months of the sale date, were assigned a rent rate consistent with the average of actual lease rates at which similar spaces in the property were leased, to establish the property's PGI (potential gross income);
2. The municipality's typical allowances for vacancy, vacant space shortfall, and non recoverable expenses were applied to the PGI, to determine the property's NOI.

For each of the sales, the Complainant provided a summary of the average (actual) lease rate in place (as adjusted above), for the total area of each particular space type.

The Complainant argued that the assessor's methodology of applying typical market rent rates not specific to the property yielded inaccurate results as the typical incomes used in the capitalization rate calculations were understated, resulting in indicated capitalization rates that were therefore incorrect.

The Respondent argued that the capitalization rate methodology properly employed by the assessor was to relate the “typical” income levels as applied in the preparation of assessments, to the sale price of the property to determine a “typical” capitalization rate. In support of that argument, the Respondent submitted an analysis of three shopping centre sales that transferred between August 2008 and February 2010, (which included the Complainant's sales), exhibiting a range of capitalization rates from 6.67% to 7.97%, and median and mean capitalization rates of 7.31%. A further analysis, established by including an additional sale of a shopping centre that occurred subsequent to the valuation date resulted in median and mean capitalization rates of 6.99% and 7.07% respectively [R1, p.27].

The Respondent further submitted an analysis of the 2011 ASR (assessment / sale ratio) for the four sales, indicating a range of time adjusted ASR's from .88 to 1.06, with a median of 0.95. A further analysis using the Complainant's requested 7.75% capitalization rate illustrated a range of time adjusted ASR's from .82 to 1.00, with a median of 0.89 [R1, p.350].

The Respondent argued that the analysis confirmed that the Complainant's requested capitalization rate of 7.75% would clearly result in an underassessment of the market indicators, and therefore of the shopping centre inventory as a whole, in contravention of the quality standards set out in section 10, *Matters Relating to Assessment and Taxation Regulation AR 220/2004*

In rebuttal argument, the Complainant submitted that although the assessor is bound by the quality standards set out in *Matters Relating to Assessment and Taxation, AR 220/2004*, the Board is not; therefore the Respondent's ASR evidence should be afforded little weight by the Board.

Decision: Issue 2

The Board finds that there is insufficient evidence to conclude that the capitalization rate of 7.25% applied to the subject is incorrect.

Notwithstanding the purported clerical error in the subtitle of the Complainant's analysis, the Board finds that the Complainant's approach and calculations are generally reflective of the leased fee estate of the property, and not the fee simple estate of the property. Providing merit to the analysis though, is that the sale price would also be reflective of the leased fee estate of the property and not the fee simple estate of the property; consequently the final capitalization rate conclusions may accurately reflect the capitalization rate associated with the leased fee estate of the property. However, as the legislation requires that it is the fee simple estate of a property that must be valued, an adjustment would be required to the Complainant's leased fee estate capitalization rate conclusion to reflect the lower risk of maintaining an income stream influenced by contract rents that are at levels below current market rates, as a result of dated lease agreements in place. The Board notes that the Complainant has made no adjustment to the 7.75% capitalization rate conclusion.

Further, although the Complainant has provided a calculation of the average rent rate for each space type to arrive at their capitalization rate conclusion for each sale, the Board was not provided with any supporting documentary evidence, such as rent rolls or specific leases the Complainant relied upon to draw conclusions regarding appropriate lease rates to apply to vacant spaces, etc.

The Board also notes that if the assessor had understated net operating incomes in the calculation of capitalization rates, applying the Complainant's capitalization rates (derived from higher levels of net operating income) to the assessor's understated net operating incomes would effectively compound the error, if there is one. Notwithstanding, the Board finds there was inconclusive evidence to support the Complainant's contention, as in the sale of 800 Crowfoot Cr. NW relied on in both analyses, the NOI used in the Respondent's capitalization rate calculation was higher than that of the Complainant [R1 p.27 and C1 p.46].

Although the Board had some concern with some of the Respondent's capitalization rate calculations identified during cross examination, the ASR evidence submitted by the Respondent was found to be persuasive evidence that a 7.25% capitalization rate results in a level of assessment that is a fair representation of market value within the context of mass appraisal.

The Board was not persuaded by the Complainant's argument that the Board is not bound by the quality standards set out in *Matters Relating to Assessment and Taxation AR 220/2004*. The Board's jurisdiction with respect to decisions of the Board is set out in section 467(3) of the *Municipal Government Act*.

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

It appears clear that the Board is bound to the same valuation and other standards and procedures set out in the regulations as the assessor; including the quality standards requirement set out in section 10 of *Matters Relating to Assessment and Taxation AR 220/2004* as there is no specific reference to its exclusion. Further, it would make little sense if the Board was able to demand a higher standard of an assessment at the complaint stage, than is required by the legislation in the preparation of the assessment.

Board's Decision:

The market rent coefficient applied to the bank premises within the subject property is revised from: \$37.00 per sq.ft. to: \$32.00 per sq.ft.

The assessment is revised from \$11,130,000 to **\$10,710,000**.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF JULY, 2011.


J. Krysa
Presiding Officer

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

| NO. | ITEM |
|------------|--|
| 1. C1 | Complainant's Disclosure |
| 2. R1 | Respondent's Disclosure |
| 3. C2 | Complainant's Bank Rent Rate Issue Rebuttal |
| 4. C3 | Complainant's Capitalization Rate Issue Rebuttal |
| 5. | MGB Board Order 046/10 |
| 6. | MGB Board Order 132/08 |
| 7. | MGB Board Order 123/10 |
| 8. | MGB Notice of Decision – Roll 065078404 (2009) |
| 9. | ARB Notice of Decision – Roll 200261774 (2010) |
| 10. | ARB Notice of Decision – Roll 081184301 (2010) |

Items 5 through 9 were presented in support of the parties' positions at the hearing referenced in decision CARB-0973/2010-P, with the parties' request that consideration of those documents be carried forward to this matter.

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.*