

**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:

***Foothills Crossing Portfolio Inc., (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
D. Julien, MEMBER
J. Pratt, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

Roll Number:	097005805
Property Location:	3619 61 Ave. SE
Hearing Number:	67783
2012 Assessment:	\$10,350,000

This complaint was heard on August 2, 2012 at the office of the Assessment Review Board located at Floor Number Three 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Mr. Andrew Izard – agent*
- *Mr. Doug Hamilton - agent*

Appeared on behalf of the Respondent:

- *Mr. Robert Ford - assessor*

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

A. Procedural Matter – Dealing with a Number of Complaints with Similar Issues

- [1] At the opening of this hearing, both parties agreed that a number of files before this Board have similar issues and that for efficiency, the full set of files should be opened and the common issues addressed at one time. Both parties had evidence that was essentially the same for each of these files on the common issues. The issues common to these files relates to a Section 299/300 preliminary matter, and the capitalization rate evidence and argument for neighbourhood shopping centres. The Board agreed to this process and opened the following files concurrently, to address just the procedural matter related to Section 299/300 and the merit of the capitalization rate evidence/argument. Both these issues are discussed in detail in CARB Decision 1222/2012-P and apply to the subject file.

Roll Number	Owner	Address	File No.
200446730	Investors Group Trust Co. Ltd.	8338 18 St. SE	68593
121055206	Investors Group Trust Co. Ltd.	40 Riverglen Dr. SE	68584
121077208	Investors Group Trust Co. Ltd.	30 Riverglen Dr. SE	68585
114155005	Canadian Property Holdings (Alberta) Inc.	7740 18 St. SE	68464
149147118	First Capital Holdings (ALB) Corporation	1221 Canyon Meadows Dr. SW	68322
052221215	First Capital (TransCanada) Corporation	1440 52 St. NE	68497
097005805	Foothills Crossing Portfolio Inc.	3619 61 Av. SE	67783
133001214	Investors Group Trust Co. Ltd.	11520 24 St. SE	67970
133001701	Investors Group Trust Co. Ltd.	11540 24 St. SE	67967
132053018	Investors Group Trust Co. Ltd.	11566 24 St. SE	67971
201570314	Riocan Holdings Inc.	2929 Sunridge Way NE	68691

- [2] The parties did not object to the panel as constituted to hear this matter. The parties agreed that the Board has jurisdiction to hear the matters before it.

B. Removal of Evidence in the Complainant's Exhibits

- [3] The Respondent raised a preliminary issue related to the contents of the Complainant's evidentiary documents, arguing that certain portions of these evidentiary packages, which were appropriately exchanged, were not relevant evidence and should not be heard. The two parties asked for a recess to discuss the issue, which the Board granted. Upon resuming the hearing, the parties informed the Board that they had addressed the issue raised by the Respondent, and that the Complainant agreed to have certain pages removed from their evidence packages. The exhibits before this Board will be the documents as disclosed, with specific pages removed as agreed to by the parties, as indicated in Appendix A.

C. Procedural Issue: Section 299/300

- [4] The Complainant raised a procedural issue related to Sections 299 and 300 of the Municipal Government Act (MGA). Specifically, the Complainant made a request for specific information relating to this assessment in the manner prescribed by the municipality and was of the opinion that the information requested was not provided. The Complainant requested that certain portions of the Respondent's evidence not be heard because the municipality did not comply with the Section 299/33 information request. After review, the Board concluded that the request was complied with and would hear all the evidence properly disclosed. For a more detailed discussion of this issue, see CARB Decision 1222/2012-P.
- [5] The hearing then proceeded with a consideration of the merits of the complaint.

Property Description:

- [6] The subject is designated as a neighbourhood shopping centre (CM0203 Retail), referred to as Foothills Crossing Shopping Centre located in the Foothills Industrial District of southeast Calgary. This is a unique shopping centre located in essentially an industrial area, serving the businesses in the industrial area. The property has a site area of 4.41 acres with five buildings totalling 40,480 square feet (SF) of assessable area constructed in or about 1998. The tenants include an auto quick service, big box, two pad restaurants and various commercial units. The shopping centre is anchored by Staples.
- [7] The subject is assessed using an income approach, applying the 2012 rates developed by the City for this assessment category, including a 7.25% capitalization rate and rental rates for each sub-category of retail use. The 2012 assessed value is \$10,350,000.

Issues:

- [8] The Complainant raised the following issues, as the basis for the complaint:
1. **Is the subject property correctly assessed? Specifically is the capitalization rate of 7.25% the correct rate to use in the income approach calculation?**
 2. **Is the Auto Quick Service space correctly assessed? Specifically, does the rental rate of \$24/SF used in the assessment reflect market value?**

Complainant's Requested Value: \$9,330,000

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

1. **Is the subject property correctly assessed? Specifically is the capitalization rate of 7.25% the correct rate to use in the income approach calculation?**

[9] The Board considered this issue in detail and provided its conclusions and reasons for those conclusions in CARB Decision 1222/2012-P. The Board concluded that the capitalization rate of 7.25% is appropriate to use in calculating the 2012 assessment for neighbourhood shopping centres.

2. **Is the Auto Quick Service space correctly assessed? Specifically, does the rental rate of \$24/SF used in the assessment reflect market value?**

A. Complainant's Evidence

[10] The Complainant stated that the "auto quick service" sub component category is a new category being used in the 2012 Assessment. It was applied to 4,892 SF of space, occupied by Minute Muffler and Brake (3264 SF) and Lubexx Fast Oil Change (1629 SF). As a result, the Complainant noted that the rental rate for the subject space increased from \$18/SF in the previous year to \$24/SF for the current assessment year.

[11] The Complainant presented a copy of the rent roll, as of December 31, 2010 (pages 45-50, Exhibit C1) that indicated that the lease for the Minute Muffler and Brake was at \$19/SF (June 1, 2009) and the lease for the Lubexx Fast Oil Change was at \$24/SF (December 1, 1998). The Complainant argued that the leases indicate that the \$24/SF rate is above "typical" rates.

- [12] The Complainant presented a table of page 52, Exhibit C1 showing fifteen "typical market rental comparables – automotive space" located across the City. Lease dates ranged from January 2009 to April 2011. It was noted that the Minute Muffler & Brake in the subject property was included in this table and the indicated lease rate was corrected to \$19/SF. The mean for all fifteen leases is \$17.42/SF (as corrected), with the mean of the eight leases for properties located in the southeast quadrant of the City at \$17.50/SF. The Complainant argued that this market information supported their requested rate of \$18/SF.
- [13] Through questions of the Respondent's evidence and in the closing statement, the Complainant indicated that the six auto quick service comparables presented by the Respondent ranged from lease rates of \$9.50 to \$39.10 per SF, a very large range. The Complainant argued such a large range with so few leases did not provide confidence in the resulting mean or median.

B. Respondent's Evidence

- [14] The Respondent stated that the 2012 Assessment introduced the "auto quick service" category, and was derived from the City's market data for automotive service properties. This category includes automotive repair/service space that has drive through capability; in other words overhead doors on either side of the building allowing the customer to drive in, get the service requested and drive out the other side. Based on the City's data base, they noticed that the rental rates for such properties were greater than typical automotive service properties that had entry/exit via one overhead door.
- [15] To support the \$24/SF rate, the Respondent presented a table of six auto quick service comparables located across the City, with leases signed between March 2009 to June 2011. The lease rates range from \$9.50/SF to \$39.10/SF, with a mean average of \$24.50/SF and median of \$24.21/SF.
- [16] Through questions of the Complainant and in the closing statement, the Respondent noted that the Complainant presented only two drive through properties in their fifteen comparables, the subject at \$19/SF and Apollo Muffler Centre (203 58 Av. SW) at \$18/SF. The other thirteen properties were not drive through properties so did not represent market rents for such an assessment category.
- [17] The Complainant and the Board questioned the Respondent as to why their comparables had such a large range, and attempted to explore what other factors may influence the rental rate. The Respondent indicated that he was not sufficiently familiar with this category or the data used to derive the rental rate to comment on whether location, size, age of building or other factors also influenced the rental rate.

C. Board's Conclusion

- [18] The Complainant did not dispute the ability of the municipality to create a new category for assessment purposes, but challenged the information that supports creating the "auto quick service" category and its rental rate. The Complainant presented the rental information for the two subject tenants, as well as fifteen market rental comparables. The Board notes that one of the two subject lease are at \$24/SF. The Board also acknowledges that only two of the fifteen rental comparables are for a "drive through" type of auto service/repair property. Therefore, the evidence presented by the Complainant is not sufficient to demonstrate that the \$24/SF rate used by the City for "auto quick service" space is not correct. The Board concludes that the \$24/SF rental rate applied to the auto quick service portion of the subject property is correct.
- [19] The Respondent's presentation of evidence supporting the creation of the "auto quick service" category and the \$24/SF rental rate was poor. The Board would expect that when introducing a new category for assessment purposes (especially when that new category results in a significant increase in the assessed value) that the City would go beyond the minimum required under the Act and Regulations and be proactive in educating assessed persons with regard to new categories and variables. The Board acknowledges the Complainant's frustration with regard to obtaining information on the "auto quick service" category.

Board's Decision

- [20] Based on the evidence presented (discussed in detail in CARB Decision 1222/2012-P), the Board concludes that a capitalization rate of 7.25% reflects market value. The Board concludes that rental rate of \$24/SF applied to the auto quick service category reflect market value. The Board confirms the assessment of \$10,350,000.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF August 2012.



Ivan Weleschuk
Presiding Officer

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

Exhibit No.	Description	Pages removed from original disclosure package.
C1	Complainant Evidence	98-134
C2	Complainant Evidence - Appendix	
C3	Complainant Rebuttal	10-37, 116-120, 189-202, 208-210, 220-366
C4	April 13, 2012 Website Information Reference Package	
C5	City's June 21, 2012 Information Package	
R1	Respondent Evidence	

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.*