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:

Canada Safeway Limited (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Board Chair, J. Zezulka
Board Member, B. Bickford
Board Member, E. Reuther

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 2012 Assessment Roll as follows:

ROLL NUMBER: 200685113

LOCATION ADDRESS: 2425 - 34 Avenue SW

HEARING NUMBER: 67269

ASSESSMENT: $11,060,000

This complaint was heard on the 9th day of August, 2012, at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Eight.

Appeared on behalf of the Complainant:

- *A. Izzard*
- *B. Neeson*

Appeared on behalf of the Respondent:

- *R. Ford*

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

(1) At the outset of the hearing, the Complainant objected to the inclusion of certain documents contained in the Respondent's submission, specifically page 11 of the Respondent's Assessment Brief, marked as exhibit R-1, on the grounds that the information had not been disclosed in accordance with Sections 299 and 300 of the Municipal Government Act.

(2) The requests were submitted within the time frames specified in the Act.

(3) Sections 299 and 300 are reproduced as follows;

Access to assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

RSA 2000 cM-26 s299;2009 c29 s5

Access to summary of assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;

(e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6

(4) Section 9(4) of The Matters Relating To Assessment Complaints Regulation (MRAC) leaves no room for discretion on the part of the Board.

> *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

(5) The Complainant did not request additional information to that which was originally

provided, nor did it request a compliance review under section 27.6 of MRAT, which provides a remedy when a taxpayer considers a response to an information request to be lacking or inadequate. However, this proposition has to assume that the Complainant is aware that an inadequacy exists in the first place.

(6) In the opinion of this Board, the wording in Sections 299 and 300 is clear. The Assessor must include all documents, records, and other information relating to the subject property, as well as key factors of the valuation model in responding to a request under these sections. That applies whether or not a piece of information was specifically requested. To do otherwise is a violation of the Municipal Government Act. The Assessor could not provide any reason why the information in question was not provided when it was requested.

(7) Section 9(4) of MRAC is equally clear. The CARB is precluded from considering any evidence that was not provided in accordance with the regulations. Accordingly, page 11 of R-1 is excluded from these proceedings.

Property Description:

(8) The subject is the Garrison Woods Shopping Centre, a neighbourhood class shopping centre, located at 2435 - 34 Avenue S.W.. The assessable building area is 46,060 s.f. The mall consists of a Safeway supermarket, and a Safeway wine and spirits store. The quality classification is A2. The date of construction is 2005. The site area is 4.05 acres.

Issues / Appeal Objectives

(9) The property is currently being assessed using the income approach. The Complainant does not dispute the valuation method. The primary issues in this matter are the capitalization rate used by the City, and the rental rate applied to the liquor store. In the capitalization calculations, the Respondent applies a capitalization rate of 7.25 per cent. It is the Complainant's position that the capitalization rate applied should be 7.75 per cent.

(10) The rent currently being applied to the liquor store is $29.00 per s.f. The Complainant maintains that the rent applied should be $24.00 per s.f.

Complainant's Requested Value: $10,090,000

Evidence / Argument

(11) The Complainant submitted a number of documents relative to capitalization rates. Document C-1 contained the argument specific to the subject. Exhibit C-2 is the 2012 general capitalization rate analysis and argument for neighbourhood shopping centres. The C-2 document is an extensive and thorough analysis that concludes that 7.75 per cent is the appropriate capitalization rate for the valuation of community and neighbourhood shopping centres.

(12) The Complainant's study centered on seven sales. These are as follows;
a. Pacific Place Mall; 999-36 Street NE, sold in May, 2011
b. Sunridge Sears Centre; 3320 Sunridge Way NE., sold in January, 2011
c. Calgary East Retail Center; 2929 – Sunridge Way NE, sold in December, 2009
d. Braeside Shopping Centre; 1919 – Southland Drive SW., sold in December, 2009

e. Cranston Market; 356 – Cranston Road SE., sold in October, 2009
f. McKnight Village Mall; 5220 – Falsbridge Gate NE., sold in May, 2009
g. Chinook Station Office Depot; 306 – Glenmore Trail SW., sold in January, 2009

(13) The Complainant submitted Realnet property reports to verify the sales details, and actual rent rolls or Assessment Request for Information (ARFI) forms to substantiate the rents adopted in the analysis.

(14) There were two methods of analysis employed. Method I used the assessed rent as employed by the City of Calgary Business Assessment Unit to analyse each of the seven properties. This method produced a range of capitalization rates from 6.38 per cent for the Cranston Market, to 8.89 per cent for the Calgary East Retail Centre. The mean capitalization rate was 7.69 per cent.

(15) Method II used the same seven transactions, but employed typical market rents, using the Alberta Assessors Association Valuation Guide (AAAVG) definition of "Typical market rents". According to the Guide, the best source of market rents is derived from "actual leases signed on or around the valuation date". By method II, capitalization rates ranged from 7.34 per cent for Cranston Market, to 8.65 per cent for Chinook Station Office Depot. The mean capitalization rate was 7.80 per cent, and the median was 7.71 per cent.

(16) The Respondent produced a capitalization rate study that contained six transactions, as follows;
a. Cranston Market; 356 – Cranston Road SE.
b. Braeside Shopping Centre; 1919 – Southland Drive SW
c. Calgary East Retail Centre; 2929 – Sunridge Way NE
d. 400 & 1200 163 Quarry Park Blvd. SE
e. Sunridge Sears Centre; 3320 – Sunridge Way NE.
f. Pacific Place Mall; 999 – 36 Street NE

(17) Five of the sale comparables used by the Respondent are common to the Complainant's evidence. All of the Respondent's comparable transactions took place within the 24 month "time window" that the City has adopted as being appropriate for capitalization rate analysis. For that reason, the Respondent's analysis did not include two of the sales used by the Complainant, being McKnight Village Mall and Chinook Station Office Depot. The Respondent took the position that the two 2009 transactions used by the Complainant are invalid for analysis purposes because they occurred outside of the 24 month time frame.

(18) The Respondent argued that the Complainant's treatment of some of the comparables was inconsistent, because some of the centres are classified as"strip" centres rather than "neighborhood" centres, and there should have been a rental rate adjustment in the analysis to account for the different classes.

(19) The Respondent's analysis involved the adoption of typical or assessed rents, rather than typical market rents. However, the Board notes that in some cases, the rents used in the City's capitalization rate analysis do not correspond to the rents used in the preparation of the actual assessment. For example, in the analysis of Cranston Market, the net operating income used in the preparation of the assessment was $1,391,284. but the net income used in the capitalization rate analysis was $1,691,434. The difference is considered significant by this Board. Similarly, the net income used in the assessment of Braeside Shopping Centre was

$1,157,940, but the amount used in the capitalization rate analysis was $1,084, 151.

(20) The City's analysis produced a range of capitalization rates from 5.29 to 8.85 per cent. The low was reflected by Cranston Market, and the high was produced by Calgary East Retail Centre. The average of the six was 6.71 per cent, and the median was 6.77 per cent. Only one comparable reflected a capitalization rate higher than the 7.25 per cent rate being used by the City.

(21) In support of their capitalization rate conclusion, the Respondent submitted the Assessment to Sales Ratios (ASR) produced when the capitalized income based on the 7.25 per cent rate is compared to the time adjusted selling price of the property. The ASR's produced a range from 0.76 to 1.10, with a median of 0.93 and an average of 0.92.

(22) The Complainant argued that the time adjustment used by the City is faulty, resulting in a faulty capitalization rate conclusion. However, the Complainant offered little evidential data to support this contention.

(23) The Complainant argued that one of the transactions used by the Respondent, at 400 & 1200 Quarry Park Blvd. SE., could not be used as a valid comparable because the transaction was complicated, and was affected by a number of extraneous factors. For example, the property contained two buildings, including the shopping centre, and an office building. The "package" also included development approval for a hotel development which included extra land. In addition, the vendor was also the developer, selling agent, and property manager.

(24) The Board finds it interesting that the Complainant's Method I, and the City's analysis are both based on assessed incomes. Yet, the Potential Gross Incomes between the two are different in many instances. Neither party could offer any plausible explanation.

(25) There is no statutory or legislative requirements that limit the time frame for an analysis to a certain time period. As such, the Board finds no valid reason for excluding the Complainant's two 2009 transactions from the capitalization rate analysis.

(26) There are too many extraneous influences affecting the Quarry Park transaction for a capitalization rate analysis analysis to produce any reliable results. In the Board's opinion, this transaction should be excluded from any analysis.

(27) The Board does not agree with the Respondent's position that there should have been a rental adjustment in the analysis because the classification of some of the centres had changed. The market makes no arbitrary rental adjustment for classification differences, and this Board will not either.

(28) The Board finds that the Complainant's Method II analysis, which is based on typical market rents rather than the assessed rents, most realistically reflects actual market reaction, and is therefore the most credible.

(29) The Board finds that the discrepancy between the rents used by the City in the capitalization rate analysis, and the rents used in the actual assessment for Cranston Market and Braeside Shopping Centre causes some concern as to the accuracy of at least one of the sets of conclusions ;i.e. either the capitalization study results are faulty, or the assessments are based on incorrect information. If these properties, as well as the Quarry Park transaction, are

excluded from the City's analysis, the average Capitalization rate reflected is 7.47 per cent.

(30) If the City's three remaining transactions, and all of the Complainant's Method I and Method II results are included, the average capitalization rate reflected is 7.70 per cent. The overall median is 7.71 per cent. These results add support to the Complainant's Method II results.

(31) In support of the rental rate request, the Complainant submitted 11 rent comparables on page 23 of exhibit C-1. Rents range from $20.00 to $28.00 per s.f., with a median of $24.00.

(32) The Respondent's rental evidence was excluded from the hearing for the reason outlined in paragraphs (1) to (7) herein.

Board's Findings

(33) The most reliable information and supporting documentation that the Board could rely on regarding the capitalization rate was submitted by the Complainant. The Board finds that the appropriate capitalization rate should be 7.75 per cent.

(34) The Board has reviewed the rental evidence submitted by the Complainant, and excluded two of the comparables because of age and condition. The median rent remained largely unchanged and supports the Complainant's position.

Board's Decision

(35) The capitalization calculations are amended, and the assessment is reduced to $10,090,000.

DATED AT THE CITY OF CALGARY THIS 4th **DAY OF** October **, 2012.**

Jerry Zezulka
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM

1. C1; Evidence submission of the Complainant
2. C2; 2012 Neighborhood-Community Shopping Centre Capitalization Rate study of the Complainant
3. C3; Complainant Rebuttal Submission to the Respondent's Capitalization Rate Study
4. C4; Rebuttal submission to the Respondent's evidence submission
5. R1 Evidence Submission of the Respondent

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. 1410/2012 - P			*Roll No.* 200685113	
Subject	*Type*	*Issue*	*Detail*	*Issue*
CARB	Retail	Income approach	Capitalization rate and rent	N/A