

**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(4), Revised Statutes of Alberta 2000 (the Act).

**between:**

***Woodbine Shopping Centre Ltd., COMPLAINANT,  
as represented by Colliers International Valuation & Advisory Services***

**and**

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

**before:**

***T. Helgeson, PRESIDING OFFICER  
E. Reuther, MEMBER  
D. Steele, 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: 144001609**

**LOCATION ADDRESS: 2525 Woodview Drive S.W.**

**HEARING NUMBER: 64596**

**ASSESSMENT: \$19,100,000**

This complaint was heard on Friday, the 5<sup>th</sup> of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *M. Uhryn*

Appeared on behalf of the Respondent:

- *R. Ford*

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

Shortly after the outset of the hearing, the Complainant brought up the issue of vacancy rates, in particular 20% for the subject property, and the Respondent objected on grounds that vacancy rates weren't mentioned in the Complainant's documents. Upon reviewing the Complainant's documents, the Board noted that "vacancy allowance" was mentioned in the reasons for complaint. For the Respondent, Mr. Ford informed the Board that there is invariably so much "boilerplate" in the stated reasons for complaint that he no longer relies on them to gauge what the Complainant will put in evidence at the hearing. The Board then recessed the hearing for ten minutes and went *in camera* to deliberate.

In reviewing the Complainant's documents, the Board noted that a vacancy rate of 20% was used in the Complainant's requested assessment, but there was no mention of vacancy rates in the Complainant's summary of evidence. In the Board's view, if a Complainant intends to contest a particular aspect of an assessment, the reason or reasons for doing so, and any evidence in support, should be clearly set out in the Complainant's written material. That way, the Respondent will be better able to gain an understanding of the Complainant's case without engaging in speculation. In the result, the Board disallowed the Complainant's evidence on vacancy rates.

**Property Description:**

The subject property is a retail centre located at 2525 Woodview Drive S.W. in the community of Woodbine. Assessed as a neighbourhood shopping centre, the subject's rentable area is 89,384 sq. ft. on a site area of 6.6 acres. 13,050 sq. ft. of the rentable area is classified for assessment purposes as recreational space.

**Issues:**

1. Is the capitalization rate ("cap rate") used in the assessment of the subject property correct?
2. Is the assessed rate of \$12 per sq. ft. for recreational space correct?

**Complainant's Requested Value:** \$13,460,000, subsequently amended to \$15,970,000.

### **Summary of the Complainant's Submission**

Sales of four properties comparable to the subject property, i.e., properties that meet the ICSC definition of neighbourhood shopping centres, at 1725 32<sup>nd</sup> Avenue NE, 5220-5010 4<sup>th</sup> Street NE, 920 36<sup>th</sup> Street NE, and 1440 Braeside Drive SW, have been analyzed and normalized to demonstrate that the Respondent has used an incorrect income parameter in calculating the assessment. These sales were used in deriving a typical cap rate summary for the subject property. The resulting cap rate is 8.0%. Also, the recent lease of the recreational space in the subject property presently occupied by Marc Gagne's gym indicates that the assessed rent for the space is too high, i.e., an actual lease rent of \$3.36 per sq. ft. compared with an assessed rate of \$12 per sq. ft. No national retail store or gym wants to rent this space.

### **Summary of the Respondent's Submission**

The subject property is obviously a neighbourhood shopping centre. It includes a Safeway and a Scotiabank. Despite this, the Complainant has produced a cap rate study based on four sales used in the Respondent's strip commercial centre capitalization rate study, and in doing so appears to have adjusted the rental rates so as to increase the net operating incomes ("NOI's"). The adjustments appear to be based on actual rents, i.e., rents currently in place. This ignores the fact that property assessment in Alberta must be an estimate of the fee simple estate. The Complainant has failed to perform a capitalization rate analysis that conforms to legislated requirements, and has ignored differences between fee simple and leased-fee estate definitions. Assessment-to-sales ratios will demonstrate the untoward effect of the cap rate requested by the Complainant. The Complainant also requests a rental rate of \$3.36 per sq. ft. for the recreational space on the subject property. That is the actual rate for the space. Evidence will show, through a chart of current lease comparables and equity comparables, that the assessed rate of \$12 per square foot is justified.

Eight comparable properties, all neighbourhood or community shopping centres, indicate that the cap rate averages 7.10% when based on typical NOI's, and 7.02% when based on actual NOI's. If the Complainant's cap rate of 8.0% percent were used to value the Complainant's four strip mall "comparables," the average assessment-to-sales ratio ("ASR") would be .90, less than the lower limit of the median assessment ratio stipulated in AR220/2004, the *Matters Relating to Assessment and Taxation Regulation*. Furthermore, the Complainant's own "CANADA: CAP RATE REPORT" for 2010 shows cap rates from 6.75% to 7.50% for community shopping centres.

### **Summary of the Complainant's Rebuttal**

The Respondent has altered the definition of neighbourhood shopping centres to suit its purposes. The Respondent has ignored the difference between neighbourhood shopping centre and community shopping centres. The cap rate study done by the Respondent to support a typical cap rate for neighbourhood shopping centres includes community shopping centres. If portfolio sales are removed from the Respondent's analysis, i.e., 1221 Canyon Meadows Drive SE, 873 85<sup>th</sup> Street SW, and Quarry Park Boulevard SE, the median of the Respondent's

"typical" cap rates becomes 7.92%, and the average, 7.64%. That supports a cap rate of 8.0%. Factoring the rental rate of \$ 3.36 per sq. ft. for the recreational space into potential gross income results in an NOI of \$1,277,909. At a cap rate of 8.0%, the result is an assessment of \$15,970,000.

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

From the evidence, the Board finds that the subject property has all the usual earmarks of a neighbourhood shopping centre, including an anchor tenant, i.e., the Safeway store. In the result, the Board concluded that the subject property is in fact a neighbourhood shopping centre. The Respondent described the Complainant's four comparables as strip shopping centres, not neighbourhood or community shopping centres. The Board notes that the tiny photographs of these comparables in the Complainant's material appear to portray strip centres, and there is little else in the Complainant's material to indicate otherwise. The Board therefore concludes that the Complainant's comparables are strip shopping centres, hence not comparable to the subject property. That rules out the Complainant's cap rate analysis, and accordingly the Respondent's cap rate is confirmed.

In rebuttal, the Complainant removed three properties from the Respondent's 2011 Neighbourhood, Community Centre Capitalization Rate Study, on grounds that they were portfolio sales. The properties removed are 1221 Canyon Meadows Drive SE, 873 85<sup>th</sup> Street, and a property described as "Various, Quarry Park BV SE". However, the only property with documentary evidence of such a sale was the Quarry Park SE property. With Quarry Park SE removed, the median cap rate is 7.58% and the average 7.40%, figures marginally nearer the Respondent's cap rate of 7.25% than the Complainant's requested 8.0%. Furthermore, the Complainant's own CANADA CAP RATE REPORT for 2010 indicates cap rates of 6.75% to 7.25%. In the result, the Board finds the evidence insufficient to warrant an adjustment to the cap rate.

As for the recreational space, the actual rent does seem abnormally low. Nevertheless, the area of the recreational space is near the lower end of the Respondent's recreational space comparables, which range from 7,655 sq. ft. to 32,452 sq. ft., so size does not explain the low actual rent. An assessment must be an estimate of the fee simple estate of property: section 2(b), *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004. The fee simple estate is the entire "bundle of rights" in a property, and that means the assessment must reflect both the owner's interest, as well as that of any tenant or tenants. The tenant's interest, known as the leasehold interest, has value if the rent payable by the tenant is less than market rent. It follows from this that if the valuation of property is based on rent that is less than market rent, the value of the leasehold interest is ignored. This is why the use of "typical" rents will almost invariably result in a better estimate of market value.

The Complainant invited the Board to conclude that the recreational space is incapable of commanding a higher rent simply because it is presently renting at \$3.36 per sq. ft. In the absence of any evidence of characteristics, physical or otherwise, that would assist the Board in understanding why the recreation space is unable to command higher rents, the Board declined

the invitation. The Respondent's valuation of the recreational space at \$12 per sq. ft. will not be disturbed.

**Board's Decision:** The assessment of the subject property is confirmed at \$19,100,000.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF September 2011.



T. Helgeson  
Presiding Officer

Exhibits:

C-1, the Complainant's Submission

R-1, The Respondent's Assessment Brief

C-2, the Complainant's 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.*