

**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:

Aspen Landing Shopping Centre Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

G. Milne, MEMBER

J. Pratt, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	201202975
LOCATION ADDRESS:	1600 – 85 Street SW, Calgary AB
FILE NUMBER:	68601
ASSESSMENT:	\$85,240,000

This complaint was heard on the 31st day of August, 2012 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *A. Izard & B. Neeson*

Appeared on behalf of the Respondent:

- *B. Thompson & S. Turner*

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

[1] There were several files for retail shopping centre properties where Altus Group represented the Complainants. For all of these files, an issue for the Board to decide was the appropriate capitalization rate to be applied in the income approach. Since the issue was the same for all properties, it was agreed by the parties and accepted by the Board that the capitalization rate issue would be argued once (for File 68412) and then it would be carried forward and become applicable to all of the remaining files where the capitalization rate was an issue. This is one of the files where the capitalization rate evidence and argument have been carried forward.

[2] Another issue that was common to several files, including this one, was a preliminary matter regarding disclosure of evidence. Again, it was agreed amongst all in attendance that each of the parties would present their positions, evidence and argument just once, the Board would render its decision on this preliminary matter and it would be applicable to the other files having the same issue. This is a file where the disclosure issue was raised.

[3] **Complainant's Position on the Preliminary Matter:** The Complainant argued that the Board should exclude a part of the Respondent's evidence disclosure (Exhibit R1). The request to the Board was pursuant to Section 9(4) of the Matters Relating to Assessment Complaints (MRAC) regulation. Specifically, the Board was asked to remove pages 56 and 57 of Exhibit R1. These pages contain information on Lease Comparables and Equity Comparables which had been requested by the Complainant pursuant to Sections 299 and 300 of the Municipal Government Act (the Act) but not provided by the Respondent.

[4] In correspondence dated February 24, 2012 but not delivered to The City of Calgary until March 30, 2012, Altus Group, on behalf of the "assessed person" requested certain information pursuant to Sections 299 and 300 of the Act. The Respondent's reply to that request, dated April 13, 2012, was a tabular summary of the questions asked by Altus in one box with the City's response in an adjacent box. Many of the questions had a standard response to the effect that the Respondent was under no obligation to produce the requested information and in fact, provision of much of that information would breach the confidentiality of various sources of information and is therefore prohibited by law.

[5] **Respondent's Position on the Preliminary Matter:** It is the opinion of the Respondent that the City exceeded the requirements of Section 299 when responding to the Altus request. Section 299 states in part that the municipality must let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property. That was done in the April 13, 2012 response. On June 21, 2012, the City provided more information because a Composite Assessment Review Board (CARB) had ruled against

the Respondent and barred certain information from being entered as part of the Respondent's disclosure. The June 21 additional response included data on office, retail, industrial and land properties. One of the retail related inclusions was a summary of capitalization rates from sales of neighbourhood and community shopping centres. While actual lease data was said to be confidential when the April 13 response was sent to Altus, the June 21 additional response included some rental data on some types of retail space. For data on other types of space, the Complainant was invited to the Assessment Business Unit (ABU) office to see that information.

[6] The Respondent argued that once the June 21 information was received, the Complainant still had 3½ weeks to prepare its case and file its disclosure documentation prior to the July 16, 2012 deadline. If that information was provided to the Complainant too early, the Respondent would be at an "unfair advantage" at the CARB hearing. The requested information is considered by the Respondent to be "intellectual property" not to be provided in its entirety however examples might be released in a disclosure document. It is up to the Complainant to make its case before a CARB and then the Respondent will respond to the Complainant's evidence and argument. The data on pages 56 and 57 of Exhibit R1 has been provided in response to the Complainant's evidence. It is the Respondent's position that if lease data is not provided pursuant to a Section 299/300 request it can be provided in a hearing disclosure filing.

[7] If an assessed person is dissatisfied with a municipality's response to a Section 299/300 request, that person has the right pursuant to Section 27.6(1) of the Matters Relating to Assessment and Taxation (MRAT) regulation to request the Minister of Municipal Affairs to conduct a compliance review. On behalf of several clients, Altus had requested this Ministerial review on many files. A copy of a letter from the Minister to Altus Group Ltd. showed that the City had met the requirements of providing "sufficient information" for a group of 22 roll numbers (not including that of the property that is the subject of this complaint).

[8] For properties assessed using the income approach, the City does provide the assessed person with a copy of the assessment summary. That is sufficient disclosure to let the Complainant prepare for a complaint hearing.

[9] **Board's Decision on the Preliminary Matter:** The decision of the Board is that it does not have jurisdiction to determine compliance with Section 299 or 300 requests. Section 27.6(1) clearly rests that function with the Minister of Municipal Affairs.

[10] With respect to evidence, MRAC 9(4) is clear: "*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.*" It is the Board's decision that it does have jurisdiction to decide on a matter relating to MRAC 9(4).

[11] Matters similar to this have been dealt with by a number of CARB's as well as the Alberta Court of Queen's Bench. One of the more recent Queens' Bench decisions by Madam Justice Sulyma dealt with Section 299 disclosure (Canadian Natural Resources Limited v. The Regional Municipality of Wood Buffalo) and that decision stated that the municipality must, in accordance with the regulations, comply with a request under the Act Section 299(1). Section 299 is designed to facilitate disclosure of all relevant information to the taxpayer so as to avoid "trial by ambush" before the CARB. The disclosure provisions are extremely broad. They effectively require a full report. The Board rejects the Respondent's statement that it would be unfairly disadvantaged by disclosing the information too early in the process. If the Complainant is entitled to that information, as it is in this case, then disclosure following a Section 299/300 request is preferred over disclosure that is not made until the evidence exchange deadline.

[12] This Board finds this Queen's Bench decision, and others, to be compelling. It is obvious that lease/rent data existed in the Respondent's office. The Respondent included some of that

information in its hearing disclosure filed August 7, 2012 after refusing to provide it when the Section 299 request was made in March/April 2012. In the June 21, 2012 information transmittal that was made after a CARB decided pursuant to MRAC 9(4) that the City's disclosure was inadequate, some (but not all) of the requested rental information was provided. This Board is uncertain whether that additional information was specific to this complaint but that is not relevant. The Board finds it interesting and does not understand why some lease data was released on June 21 while other similar data could only be seen by visiting the ABU offices.

[13] When the first refusal was made, the Respondent stated that such disclosure would breach confidentiality and therefore be prohibited by law. No specific law was cited. To the contrary, Section 301.1 of the MGA states that Sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*. This topic received coverage by Justice Lutz in his *Nortel Networks Inc. v. City of Calgary* and the Municipal Government Board decision wherein the judge took a similar position on confidentiality as that taken now by this Board.

[14] The letter from the Minister relating to a compliance review following an alleged insufficient disclosure is of no use to this Board. That letter appears to relate to assessments of property types that are not assessed in the same manner as retail property (i.e., by the income approach). There is no evidence before this Board to say what information was requested and what information was provided. The circumstances may have been substantially different than those surrounding this case.

[15] To conclude, the Board finds that the Act and its regulations are clear in stating that accessibility to assessment information is critical. That has been the finding of other CARBs and courts. The Respondent cannot refuse to disclose information when requested to do so under Sections 299/300 of the Act and then include that evidence in its disclosure just prior to a hearing. The Board strikes pages 56 and 57 from Exhibit R1.

Property Description:

[16] Aspen Landing is a recently developed multi-building community shopping centre intended to serve the growing residential segment of west Calgary. In all, there are 16 one or two storey buildings including a supermarket, a gas bar and multi-tenant retail and office buildings. Year of construction of all buildings was 2009. There is a total rentable building area of 214,325 square feet. The land component comprises a 22.19 acre site on the northeast corner of 17 Avenue and 85 Street SW.

[17] The 2012 assessment of this A+ quality shopping centre is \$85,240,000 or \$397.77 per square foot of building area.

Issues:

[18] In the Assessment Review Board Complaint form, filed March 5, 2012, Section 4 – Complaint Information had check marks in box #3 "Assessment amount" and box #4 "Assessment class."

[19] In Section 5 – Reason(s) for Complaint, the Complainant stated several grounds for appeal but not all of these were addressed at the hearing.

[20] At the hearing, the Complainant pursued the following issues:

Is a 7.75% capitalization rate more reflective of the market than a 7.25% rate?

Is equity achieved by using the Complainant's evidence of rent rates for Commercial Retail Unit (CRU) spaces between 0 and 6,000 square feet?

What is the correct rent rate to be applied to the retail office space?

Complainant's Requested Value: \$73,120,000

Position of the Complainant:

[21] **Capitalization Rate:** The Complainant argued that the 7.25% capitalization rate used by the assessor in making assessments of community-neighbourhood shopping centres is too low and therefore not reflective of market conditions as at July 1, 2011. It was argued that the Complainant's analysis of sales of shopping centres, which was fully supported by backup documentation, generated a 7.75% capitalization rate which should be applied in making the assessments of neighbourhood-community shopping centres. The "Neighbourhood-Community Shopping Centres – 2012 Capitalization Rate Analysis & Argument – Appendix," entered as Exhibit C3 describes two analysis methods:

Capitalization Rate Method I: The Application of Assessed Income as Prepared by the City of Calgary Assessment Business Unit ('ABU')

and

Capitalization Rate Method II: The Application of Typical Market Income as Prescribed by the Alberta Assessors' Association Valuation Guide ('AAAVG') and Principles of Assessment I for Assessment Review Board Members and Municipal Government Board Members ('Principles of Assessment I')

[22] The Complainant analyzed the sales of seven community shopping centres, using each of the two described capitalization rate derivation methods.

<u>Property</u>	<u>Method I Cap. Rate</u>	<u>Method II Cap. Rate</u>
Pacific Place Mall – 999 – 36 St NE	7.00%	7.63%
Sunridge Sears Centre – 3320 Sunridge Way NE	6.55%	7.40%
Calgary East Retail – 2929 Sunridge Way NE	8.89%	7.81%
Braeside Centre – 1919 Southland Dr SW	8.36%	7.71%
Cranston Market – 356 Cranston Road SE	6.38%	7.34%
McKnight Village Mall - 5220 Falsbridge Gate NE	8.25%	8.03%
Chinook Station Office Depot - 306 Glenmore Tr	8.37%	8.65%
Mean of 7:	7.69%	7.80%
Median of 7	8.25%	7.71%

[23] Method I relates the sale price of the property to the assessed income in the year of the sale. For example, if the sale occurred between January and December 2010, the income used in making the assessment of community centres as at the valuation date of July 1, 2010 would be used. The Complainant maintained that this method is similar to that used by the Respondent in its capitalization rate study.

[24] The valuation date for the current (2012) assessment was July 1, 2011. The seven sales in the Complainant's study had sale dates from January 20, 2009 (29 months prior to the valuation date) to May 27, 2011 (one month prior to the valuation date). Five of the sales occurred in 2009 and two in 2011. There were no community-neighbourhood shopping centre sales during 2010.

[25] Method II uses typical rents as at the sale date to determine the income amount to be put into the direct capitalization formula ($\text{Cap. Rate} = \text{Net Operating Income} / \text{Sale Price}$). The recommendations in the 'AAAVG' were followed:

1. *For most tenants the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):*
 - *Actual leases signed on or around the valuation date,*
 - *Actual leases within the first three years of their term as of the valuation date,*
 - *Current rents for similar types of stores in the same shopping centre,*
 - *Older leases with active overage rent or step-up clauses.*
2. *As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.*

If comparable information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be.

[26] Excerpts from the Principles of Assessment I materials were in evidence as were portions of documents produced by The City of Calgary in past years that described the city's capitalization rate extraction method which was similar to that used by the Complainant in this matter.

[27] In the application of Method II, the Complainant examined rent rolls for the individual properties that sold. Rents were also obtained from other properties offering similar space to that in the sale property. "Typical" rent rates were applied in each analysis along with typical vacancy, operating cost and non-recoverable expense rates. The capitalization rates from Method II were not significantly different than those produced in the Method I analysis and all of the mean averages and medians supported the requested 7.75% capitalization rate.

[28] **Equity:** With respect to the equitable rental rates issue, the Complainant compares Aspen Landing to two other A+ community shopping centres (The Market at Quarry Park and Cranston Market), both of which are located in southeast Calgary. Both of these other centres are assessed by the income approach with Commercial Rental Unit (CRU) space rents as follows:

0 to 1,000 square feet @ \$36.00 per square foot (subject is @ \$39.00)

1,001 to 2,500 square feet @ \$35.00 per square foot (subject is @ \$38.00)

2,501 to 6,000 square feet @ \$34.00 per square foot (subject is @ \$36.00)

[29] Part of the comparison of these properties was a chart setting out variances between actual rents and assessed rents for the three CRU size groupings. In the 0-1,000 square foot group, Aspen Landing at \$39.00 is \$2.50 higher than the typical rent rate of \$36.50. Assessed rates for similar space in Quarry Park and Cranston are \$3 to \$4 lower than typical. In the 1,001-2,500 square foot group, the subject is assessed at \$38.00 which is equal to typical rent.

Cranston is assessed at \$35.00 which is \$2.50 lower than its typical and Quarry Park is assessed at \$4.50 lower than its typical. In the larger 2,501-6,000 square foot group, Aspen Landing is assessed at \$36.00 which is \$3.50 above typical. Cranston is assessed at \$0.50 less than typical while Quarry Park is assessed at \$3.50 less than typical. Aspen Landing is consistently assessed at higher than typical rents while the two comparables have almost all space groups assessed at rates that are lower than typical.

[30] Having regard to the centre at 1851 Sirrocco Drive SW which the Respondent claims is also comparable, the Complainant argues that it is not comparable because it is an older property. It is assessed as an A+ centre but its age precludes it from legitimately being in that class.

[31] **Retail Office Space:** Included in the Complainant's rebuttal evidence was a table that had been produced by the Respondent as part of its response in a different complaint hearing. This table, entitled *2012 City of Calgary SW Office Retail Lease Examples*, listed 23 lease examples that included seven from Aspen Landing and two from West Market Square, a community centre at 1851 Sirrocco Drive SW. The median rent rate from the list was \$21 per square foot. The Complainant concluded that the subject office retail space should be assessed at \$21, not \$30 per square foot.

[32] There are leases in the subject retail office space at \$30.00 and \$32.00 per square foot but the Complainant points out that these leases were put into place in 2010 when the shopping centre was new. There have been no new leases since November 2010 and almost 40% of the space remains vacant.

Position of the Respondent:

[33] **Capitalization Rate:** The Respondent used property sales that occurred within 24 months of the valuation date and then studied rent rates going back 30 months from that date. The 24 month sale cut-off date eliminates two properties from the capitalization rate study that were contained in the Complainant's study. These two properties are McKnight Village Mall and Chinook Station Office Depot. One sale not used by the Complainant, The Market at Quarry Park (sale in April 2010), was in the Respondent's study.

[34] The six property sales analyzed by the Respondent sold between October 2009 (20 months prior to the effective date of value) and May 2011 (one month prior to the valuation date).

<u>Property</u>	<u>Cap. Rate</u>
Cranston Market - 356 Cranston Road SE	5.29%
Braeside Shopping Centre - 1919 Southland Drive SW	7.10%
Calgary East Retail - 2929 Sunridge Way NE	8.85%
Market at Quarry Park – 163 Quarry Park Blvd SE	5.47%
Sunridge Sears Centre - 3320 Sunridge Way NE	6.55%
Pacific Place – 999 – 36 Street NE	7.00%
Mean average of 6:	6.71%
Median of 6:	6.77%

[35] The Respondent maintained that a “conservative approach” was taken when the capitalization rate for community – neighbourhood shopping centres was set at 7.25% when the mean and median averages of the sales analysis were 6.71% and 6.77%.

[36] In response to the Complainant’s comment about their Method I being similar to the analysis method used by the city, the Respondent stated that the city has never used or accepted that method.

[37] It was argued the Complainant’s analysis of the Braeside sale was incorrect because it contained a mix of input variables. In prior years, the city had classified Braeside as a “strip” retail centre. In 2010, the classification was changed to “community” centre. It was argued that the Complainant analyzed the sale by using “strip” centre rates but “community” centre vacancy, operating cost and non-recoverable expense rates. This inconsistency generated an incorrect capitalization rate.

[38] The analysis of the Cranston Market sale had been complicated by the fact that this was a new shopping centre. For the first year that it was assessed, there was minimal income data available so it was rated as an A- quality centre. In the next year, when income and sales information was made available, the class was raised to A+. In one capitalization rate analysis, A+ inputs were used while A- inputs were input at other times. Exhibit R1 showed the Respondent’s capitalization rate extraction was related mostly to A+ income amounts.

[39] The Market at Quarry Park, in the opinion of the Respondent, was a legitimate sale and thus it is included in the capitalization rate analysis. The Respondent did offer that in other assessment complaint hearings, some CARB’s have accepted it while others have rejected it. If this sale is removed from the analysis, the mean and median rates still support the 7.25% capitalization rate.

[40] The Complainant’s Method II was criticized as being a mix of actual rents and typical rents in the income analyses. In some cases, only a single rent comparable was used as the basis for a typical rent rate. That is not an accepted mass appraisal procedure. In other cases, rents were used that came from leases that did not commence until after the valuation date. Further, the AA AVG relied upon by the Complainant is not a mandated process to be used in capitalization rate analysis – it is merely a guideline.

[41] In response to criticism from the Complainant about there being several variants of the capitalization rate study produced by the city, the Respondent maintained that errors had been corrected from time to time but the basis of the study had not been altered. In each version of the study, the conclusions always lead to a 7.25% capitalization rate.

[42] The Respondent finds typical rent rates for various types of space in the returns from owners in response to Assessment Request For Information (ARFI) forms that are sent to all property owners or managers each year. Lease transactions that occurred within a 30 month period prior to the valuation date are used. For some more common types of rental space, rent rates for just the subject city quadrant are used. For space types that are more limited in supply (i.e., supermarkets, banks, theatres), a city-wide approach is taken. If a sale occurred in 2010, then typical rents as at the July 1, 2010 valuation date (for the 2011 assessment) were used.

[43] Assessment to sales ratios (ASR’s) were calculated for each of the sale properties using the capitalization rates found by each of the parties. These ASR’s require the application of a time adjustment to historic sale prices and some data was provided in the Respondent’s evidence (Exhibit R1) to support the time adjusted prices. The analysis showed that the 7.25% capitalization rate used by the Respondent produced ASR’s that were more within the acceptable range (0.950 to 1.050) than when a 7.75% capitalization rate was used.

[44] **Equity:** The Respondent introduced an income approach calculation for an A+ shopping centre in southwest Calgary to show that there was consistency in rent rates applied to similar properties within that quadrant. The property, known as West Market Square is located at 1851 Sirrocco Drive SW in the Signature Park community. Rates for CRU space in this centre were the same as those applied in the assessment of the subject.

[45] Maps in the Respondent's evidence showed that West Market Square was much closer to Aspen Landing than either Cranston Market or the Market at Quarry Park. These other two properties are located in the southeast city quadrant, not the southwest.

[46] **Retail Office Space:** The Respondent referred the Board to a table in the Complainant's Exhibit C1. This was a table of rent rates for second level office space. The mean average and median were \$21.14 and \$21.00 per square foot but there were no leases from the subject property in this table. Actual leases in the subject property are at \$30.00 and \$32.00 per square foot.

Board's Decision With Reasons:

[47] The capitalization rate to be applied in the income approach assessment valuation for the subject property is set at 7.75%.

[48] The typical rent rates applied to all groupings of CRU space and to retail office space in the assessment of the subject property are confirmed.

[49] The property sales analysis period was argued. The Complainant used sales as old as 29 months and argued that if the Respondent utilizes lease data going back 30 months, then the same period should be used for sales. The Respondent's position is that it is acting consistently on a year over year basis by using just 24 months of sales history but it uses lease data going back 30 months in order to have pertinent data as at the date of sale. By extending the sales period, the Complainant used two shopping centre sales that were not included in the Respondent's capitalization rate analysis. Other than to point out that these two sales were outside of the Respondent's analysis period, neither of the sales was disputed. It was pointed out that the Respondent uses a longer sales period for other property types such as industrial. The Board finds that there is no set sales analysis period in a capitalization rate study. In any year, there are far fewer sales transactions than there are lease transactions. For this reason, the Board finds that a greater number of sales in an analysis should lead to a better supported conclusion. Accordingly, weight is given to the sales of McKnight Village Mall (5220 Falsbridge Gate NE – Method I Cap. Rate: 8.25%) and to Chinook Station Office Depot (306 Glenmore Trail SW – Method I Cap. Rate: 8.37%).

[50] The Board examined each of the analysis methods put forward by the Complainant. Method I appears to be similar to that used by the Respondent (even though the Respondent denies that it uses that method). Method I uses income as set by the Respondent in making assessments of the individual properties. While there are disagreements over the derivation and amount of income to use in each analysis, there is some consistency in the results of the Complainant's Method I and the Respondent's analysis. Method II was found to be less reliable because it appears to incorporate some market rent data along with typical vacancy and other allowances that have been applied by the assessor.

[51] Turning to the sales that were used by the parties, there were five that were common to both analyses. For three of these five, the input factors were the same or highly similar, resulting in capitalization rates that were the same. This finding relates to the Complainant's Method I capitalization rate analysis. The three property sales were: Pacific Place (7.00% cap.), Sunridge

Sears (6.55% cap.) and Calgary East Retail (8.85-8.89% cap.). The Respondent insisted that its capitalization rate study is conducted in a different manner than that of the Complainant but the fact is that the incomes and thus the capitalization rates were the same or similar for these three property sales.

[52] The Respondent provided some summary support for the income amounts used in the analysis of each sale. Although limited, it did provide the Board with some background that assisted in forming the decisions regarding acceptable sales. The Board did not receive an acceptable explanation of the final 7.25% capitalization rate that came from an analysis where the median rate was 6.77% and the mean average rate was 6.71%. In an assessment regime where capitalization rates are measured in increments of 0.25%, the selection of a rate as much as 0.54% more than the averages is unacceptable unless there is some rational explanation for that variance.

[53] The Board gives less weight to the rates derived for Cranston Market and Braeside Shopping Centre. The Assessment Business Unit (ABU) changed the rating or classification of these two properties from one year to the next. Each of the parties had analyzed these sales using different criteria because of the differing ratings/classifications. The Board finds that neither of the analyses is supported by market evidence to a sufficient extent. The buyers and sellers of these properties probably paid no heed to the ABU ratings or classifications. These market participants would have based their sell or buy decisions on the actual economics and physical states of the properties. None of that market information was provided so the Board reduced the weight given to these sales. It was not possible to determine whether one party's analysis was more realistic or reliable than that of the other party.

[54] The sale of the Market at Quarry Park shopping centre has been entered into evidence at a number of CARB hearings over the past couple of years. Sometimes, it is accepted as an arms-length, open market sale and sometimes it is not. This Board rejects that sale as being representative of an open market sale. The sale was reported as being inclusive of a 100 room hotel which was to be built (it has not been built). A daycare centre was also to be added. A nearby office building had been transferred between the same seller and buyer as the shopping centre and it was not clear whether there was a "package price" or whether each property had been priced on its own merits. Several thousand square feet of lease space was headleased by the vendor but no terms of the headlease were in evidence. The Board finds that this transaction cannot be relied upon as an indicator of a market driven capitalization rate.

[55] There was evidence and argument from both parties regarding Assessment to Sales Ratios (ASR's). The Board finds that there is no satisfactory evidence to support the position of either party so neither ASR analysis is given weight in this decision. On the Respondent's side, it was stated that the time adjustment process involved an analysis of all retail property in the city, not just community or neighbourhood shopping centres. Within the universe of properties included in the analysis could be ones where sales occurred more than two years ago. This practice could tend to weight time adjustments to market conditions that were significantly different than they would have been at the time when a particular property sold. It seemed illogical that the application of a time adjustment was firmly tied to dates. For example, two of the property sales that were in the capitalization rate studies sold just four days apart in December 2009. Each of the sales was given a different time adjustment in bringing the historic price to the July 1, 2011 valuation date. The explanation was that sales that occurred after mid-month were not adjusted for that month whereas sales that occurred prior to mid-month were adjusted for that month. One of the sales occurred December 14, 2009 (one day prior to mid-month) and the other occurred December 18th. Four methods of time adjustment measurement were described. The Respondent used three of the methods while the Complainant used one.

The Respondent calculated mean and median averages for its three rates (one of which was mathematically incorrect) which were impacted by the one method that the Respondent said was the least reliable. The Complainant based its analysis on an income comparison over time, concluding that one time adjustment rate would apply to all of its sales in the analysis. These many unexplained and unfounded analysis techniques and outcomes fell short of convincing the Board that an ASR check on sale prices was useful.

[56] From the five sales that the Board finds are most reliable, the median and mean average capitalization rates are 8.25% and 7.81%. These suggest that the 7.75% rate requested by the Complainant is not overly optimistic or pessimistic.

[57] At issue for the equitable application of rent rates to CRU space was the comparability of properties introduced by the parties. The Respondent argued that Cranston Market and Market at Quarry Park, while quality A+ properties, were in a different city quadrant and therefore not truly comparable. The Complainant argued that West Market Square, while rated A+, is too old to be in that quality class and is therefore not comparable to Aspen Landing.

[58] The Board agrees that age is one factor that is considered in determining building quality however that is only one factor that is to be taken into account. West Market Square has the same CRU rent rates applied in the making of its assessment. Actual rental data in evidence indicates that this property does achieve rents at the same level as the subject. Given the data provided for the A+ shopping centres, the Board was not convinced that West Market Square can not be used as an equity comparable. There is no other compelling evidence to cause the Board to alter the CRU rent rates.

[59] With respect to the retail office space, the Board does not find the rental data provided by the Complainant to be indicative of rents achievable in the subject. In the C1 evidence, the list of rent comparables did not include any from the subject property and the Board was not informed of the relationship of the quality class (A2) of the properties that were in the evidence to that of the subject (A+). In the C5 evidence, there are lease samples from the subject. There are also samples from West Market Square at similar rates. The other properties, which bring the median rent rate downwards, may or may not be in similar quality classes to the subject. The Board heard during evidence presentations that there were three properties that were in the same class (Cranston, Quarry Park and West Market Square). That implies to the Board that others in evidence (Page 56 of C5) are most likely from lower quality classes.

[60] Office space within Aspen Landing does bring rents of \$30.00 and \$32.00 and the leases in place are relatively current. There is a high rate of vacancy in this space type but that is not necessarily a function of the rental rate being asked or charged. The fact that there is vacancy is insufficient evidence to convince the Board that the rental rate should be reduced.

[61] The 2012 assessment of this property is reduced from \$85,240,000 to \$79,740,000.

DATED AT THE CITY OF CALGARY THIS 27th DAY OF September 2012.



W. Kipp
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2 (Common to several files)	April 13 th 2012 City of Calgary ABU Response to 299/300 Request for Information 2012 Assessment Review Board – Reference Appendix Submission
3. C3 (Common to several files)	Neighbourhood-Community Shopping Centres 2012 Capitalization Rate Analysis & Argument – Appendix
4. C4 (Common to several files)	Neighbourhood-Community Shopping Centres 2012 Capitalization Rate Analysis – Rebuttal Submission
5. C5	File 68601 Rebuttal
6. R1	Respondent Disclosure (pages 56-57 removed)

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.*

For Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighbourhood Mall	Income Approach Disclosure Equity	Capitalization Rate Rent Rates