

**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.

between:

***Heritage Plaza Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
J. Kerrison, MEMBER
A. Zindler, MEMBER***

[1] 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:	201266228
LOCATION ADDRESS:	8330 MACLEOD TR SE
HEARING NUMBER:	64279
ASSESSMENT:	\$10,500,000

[2] This complaint was heard by a Composite Assessment Review Board on August 16th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

[3] Appeared on behalf of the Complainant:

- *Mr. D. Genereux* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Mr. R. Ford* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] The parties agreed before the Board that a series of hearings, including the subject property, were scheduled for the week of August 15th, 2011. Both parties have utilized the Income Approach to Value (IAV) for the purpose of arriving at market value for assessment purposes. It was agreed to that all hearings, including the subject, included a determination and application of a capitalization rate (cap rate) within the respective valuation positions. The parties proposed to progress their respective cap rate evidence and arguments before the Board once and then, in the interests of succinctness, ask the Board to carry forward said evidence and arguments to all properties scheduled for the week. It was accepted that the Board's findings and decision regarding the cap rate issue would therefore be common to all properties. The Board found this to be an appropriate approach to the matters at hand.

PROPERTY DESCRIPTION:

[6] The subject property is an improved parcel located at the southwest corner of Heritage Drive and Macleod Trail SE, within the Acadia community in SE Calgary. The record shows development is a shopping centre of 64,923 square feet (sf) built circa 1986 on 4.46 acres of land. The land parcel is held by lease from the City of Calgary, said lease included under C-1, pg 181. The lease states that the Lessee is to demolish and remove all improvements within 7 months of the termination of the lease.

[7] The assessment is as per the Income Approach to Value (IAV) based on the classification of the subject property as a neighbourhood/community shopping centre (NCSC). The following inputs are utilized in the valuation:

- Potential Gross Income (PGI): \$1,309,438
- Vacancy rate: 1% for the Jr Big Box; 4% for the remainder
- Operating costs: \$7.00/sf
- Non recoverables: 1%
- Cap rate: 11.75% (based on the NCSC cap rate of 7.25% plus an upward adjustment of 4.5 points to recognize the land lease conditions).

The result is a Net Operating Income (NOI) of \$1,242,001 and an assessed value of \$10,500,000 (rounded).

REGARDING BREVITY:

[8] In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[9] The matter identified by the Complainant as the basis for this complaint is "an assessment amount". While the Assessment Review Board Complaint form (complaint form) also indicates "an assessment class" to be under question, the Complainant indicated at the time of the hearing that there was no objection to the classification of the subject property for taxation purposes.

[10] The Board finds the Complainant has presented the following issues for deliberation:

1. **Does the Complainant's cap rate analysis produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010?**
2. **Does the Complainant's analysis produce an appropriate manner to address the property's site-specific land lease conditions through a cap rate adjustment?**
3. **Do the Assessment to Sales Ratio (ASR) analyses presented by the parties effectively measure the appropriateness of the cap rate analyses undertaken by the parties?**

COMPLAINANT'S REQUESTED VALUE:

[11] The Complainant's request is based on a cap rate revision. There are three components to the request: (i) revising the NCSC base cap rate from 7.25% to 7.75%; (ii) adjusting that upwards by 5 points for "short life", and (iii) adjusting that upwards again by 1.75 points for "leasehold risk premium". The actual request at the time of the hearing was \$8,565,000 (based on an unencumbered cap rate of 7.75%) or \$8,870,000 (based on an unencumbered cap rate of 7.25%). The Complaint form shows \$7,860,000.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[12] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act (MGA)** Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004 (MRAT)** Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)** Division 2 and Schedule 1.
- **The Alberta Assessment Quality Minister's Guidelines (AAQMG)**

[13] Both parties placed numerous technical, professional and academic excerpts before the Board in support of their position. This Board finds that any specific passage or quote (i.e.

excerpt) from a larger document may not capture the true intent of the speaker and or writer. Excerpts are therefore seen by the Board as incomplete material and will be given limited weight.

[14] Both parties also placed a number of Assessment Review Board and Municipal Government Board decisions before this Board in support of their position. While the Board has the utmost respect for the decisions rendered by these tribunals, it is also recognized that these decisions were made in respect of issues and evidence that may be dissimilar to that before this Board. This Board will therefore not give much weight to these decisions unless the issues and evidence are shown to be timely, relevant and materially identical to the subject complaint.

[15] Both parties have placed third party market reports before the Board in support of various assumptions and/or conclusions. The Board finds third party reports may provide general guidance on a matter. The Board is also mindful of the qualifications attached to most third party market reports regarding the intent and limitations of such information. The Board finds third party market reports must be supported by first hand knowledge of the analytical processes undertaken and basis for any opinions/findings expressed if they are to be qualified as factual evidence. Lacking that, this Board will place limited weight on third party market reports.

[16] The Complainant's submission includes evidence regarding various IAV inputs; however that was abandoned as the hearing progressed. The Complainant's request for valuation is solely based on a cap rate amendment which will be addressed in detail below.

[17] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [10] above). The Board is to determine if (within the direction of the **MGA** and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st 2010, should be revised.

[18] With regard to the individual issues identified above the Board's findings are as follows:

1. Does the Complainant's cap rate analysis produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010?

[19] As per [5] above, the parties presented their cap rate evidence and arguments before this Board on August 15th, 2011 within Hearing Number 63627. It was agreed by the parties that the Board's findings on the matter would be consistent throughout the week's hearings and no further evidence or arguments were presented. The parties at the onset of the weeks' hearing in that this was a common issue for a number of properties heard by this Board that week. The Board's findings on the matter are expressed in depth under Decision Number CARB1749/2011P. While this decision includes the same findings, page references have been removed to avoid confusion. In the case of the subject property (as both parties have brought forward unique cap rates to reflect the site-specific characteristics of the property) issue 1. addresses only the "unencumbered" NCSC cap rate.

[20] It was established before the Board that there is divergence in the cap rate analyses undertaken by the two parties. The key variables were established as (i) the market sample; (ii)

the rent parameters utilized within the parties' cap rate analyses, (iii) the valuation parameters/components utilized by the parties within their cap rate analyses, and (iv) the inputs utilized within the parties' IAV calculations.

[21] Notwithstanding the onus on the Complainant to establish a case, the Board undertook a review of the cumulative evidence before it in order to best understand the parties' positions.

➤ **(i) Review of the market sample**

[22] The Complainant's cap rate analysis shows 5 market transactions; the properties are as follows:

#	Address	Identification	Sale Price	Date
1C	2929 Sunridge Way NE	Calgary East Retail Centre	\$19,585,000	12/18/2009
2C	1919 Southland Drive SW	Braeside Shopping Centre	\$15,275,000	12/14/2009
3C	356 Cranston Road SE	Cranston Market	\$32,000,000	10/28/2009
4C	5220 Falsbridge Gate NE	McKnight Village Shopping Centre	\$19,270,000	05/19/2009
5C	306 Glenmore Trail SW	Chinook Station Office Depot	\$6,944,450	01/20/2009

[23] The Respondent's cap rate analysis shows 8 market transactions. All 5 of the Complainant's references as shown above are included and in addition we find:

#	Address	Identification	Sale Price	Date
1R	1221 Canyon Meadows Drive SE	Deer Valley Marketplace	\$31,500,000	08/14/2008
2R	873 85 Street SW	West Springs Village	\$23,500,000	03/16/2009
3R	163 Quarry Park Boulevard SE	The Market at Quarry Park	\$32,000,000	04/06/2010

[24] The Complainant submits the 3 additional transactions referenced by the Respondent are unsuitable references for the following reasons:

- ❖ **(1R) 1221 Canyon Meadows Drive SE – Deer Valley Marketplace**
 - The Complainant contends that the Respondent failed to consider that (i) the property is an enclosed shopping centre and not a typical neighbourhood shopping centre; and (ii) the excess land involved and degree of planned and pending redevelopment within the centre clouds the basis of the transaction.
- ❖ **(2R) 873 – 85 Street SW – West Springs Village**
 - The Complainant contends that the Respondent failed to consider that the transaction was a direct deal between the parties; that the property was not exposed to the market and the transaction price should therefore not be deemed a market indicator.
- ❖ **(3R) 163 Quarry Park Boulevard SE – The Market at Quarry Park**
 - The Complainant contends that the Respondent failed to consider that (i) an associated transaction as per the documentation provided indicates this was a portfolio sale; and (ii) the transaction included an agreement whereby the vendor continued to act as the property manager for the property thereby bringing in question whether this was in fact an arms-length transaction.

[25] In that the market activity considered by the parties was limited the Board would have found market based analysis and first hand knowledge of the 8 transactions in question to be helpful. Unfortunately, little of that was forthcoming and the parties relied primarily on third party reports.

[26] The Board finds the Complainant's position regarding # 1R, 2R and 3R has been supported by documentation and has in no way been refuted by the Respondent. Based on the evidence before us, the Board finds these transactions have been shown to be atypical and therefore not appropriate market indicators for a cap rate analysis. The Board will not consider these properties in the determination of the issues at hand.

[27] Furthermore, upon review of the documentation placed before it, the Board found the following:

- ❖ (4C) 5220 Falsbridge Gate NE – McKnight Village Shopping Centre
 - The reports placed before the Board indicate the transaction involved three addresses/properties for a total price of \$23,150,000. Both parties have utilized a sale price of \$19,270,000 for the purposes of cap rate analysis. The Board finds this price appears in the *AFFIDAVIT RE LAND VALUE* signed by the agent of the transferee; however no documentation was provided to the Board to support or clarify the apportionment as shown on the noted affidavit. The Board has no way of determining the basis or motivation for this apportionment.
- ❖ (5C) 306 Glenmore Trail SW – Chinook Station Office Depot
 - The reports placed before the Board indicate the transaction was followed by a 15 year lease-back agreement between the parties. This brings the nature of the 2008 lease within the subject premises under question. The photograph provided by the Respondent indicates the property was occupied by Office Depot as of February 2009. This suggests the 2008 lease references by the Complainant are not only inconsistent in identifying the tenant but indicate the lease was in fact between related parties - Office Depot International and Canadian Office Depot. No evidence was provided to clarify this matter and the Board finds the basis of this transaction is very ambiguous.

[28] The Board is not prepared to afford much weight to transaction #s 4C and 5C, looking instead to transaction #s 1C, 2C, 3C, as the best supported market evidence.

➤ ***(ii) Review of the rent parameters utilized within the parties' cap rate analysis.***

[29] The parties explicitly established before the Board that they employed dissimilar methodologies in their cap rate analyses. The key differentiation in the approaches was identified as their determination of base income within their respective cap rate analyses - Potential Gross Income (PGI) as per the Complainant and Potential Net Income (PNI) as per the Respondent; both terms identifying income to the property before any adjustments. The Complainant looked primarily to actual income from the property while the Respondent looked to typical income.

[30] In brief, the Complainant submits the actual income flowing from contract rents within the property was in fact typical and the best means of measuring the perceived risk (i.e. cap rate) considered by the investor in purchasing the property. The Respondent contends that utilizing actual income results in a determination of the leased fee interest; in conflict with the direction of

MRAT. It is the Respondent's position that in order to arrive at the fee simple interest one must establish and utilize typical income.

[31] The Board finds the process of preparing assessments is established under Part 9, Division 1 of the **MGA**. The standards of assessment are established under Part 1 of **MRAT**. Without quoting the relevant sections in length, the Board finds the valuation standard is market value; the assessment is to be prepared through mass appraisal principles; establishing the fee simple estate; reflecting typical market conditions for properties similar to the property as of July 1, 2010 and the characteristics and physical condition of the property as of December 31, 2010.

[32] While "market value" is defined under Sec 1(1)(n) of the **MGA** and "mass appraisal" is defined under Sec 1(k) of **MRAT**, the term "fee simple" is not defined. *Black's Law Dictionary* (seventh edition) defines "fee simple" as follows:

"An interest in land that, being the broadest property interest allowed under law, endures until the current holder dies without heirs"

The Complainant quotes *The Appraisal of Real Estate: Second Canadian Edition, Chapter 5:*

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power and escheat".

[33] The Board finds the **MGA** and related regulations establish the assessment process and standards; there is no direction offered for the method of developing data (such as inputs for the IAV approach) to be utilized in the assessment process. The parties have taken different paths in arriving at their respective inputs.

[34] The evidence shows the Complainant has used actual income in its cap rate analysis. The Respondent's position is that by using actual income the Complainant has not qualified the rents as market based nor recognized the value that lessees may hold by virtue of dated lease contracts that may no longer reflect current market value. Furthermore, the Respondent contends that accepting the leases in place contradicts the "broadest", "unencumbered" property interest criteria envisioned in the determination of fee simple.

[35] In adjudicating this complaint the Board must abide by the statutes as listed under [12] and summarized under [31] above. The Board will also look to established jurisprudence concerning IAV and cap rate procedures.

[36] The parties have provided two British Columbia Court decisions within their submissions: **Westcoast Transmission Company Limited v. Assessor of Area No. 9 - Vancouver** [1987] BCSC ("Westcoast Transmission") and **Bentall Retail Services Inc. v. Assessor of Area No. 9 - Vancouver** [2006] BCSC ("Bentall").

[37] The Board finds the following under page 3 of 9 of the "**Westcoast**" decision:

"The term "actual value", or a like expression, is found in assessment statutes all across the country. It is synonymous with "exchange value", "economic value" and "market value", all of which terms are used interchangeably."

The Board finds this clarifies the relationship between "actual value" (the assessment standard for "**Westcoast**" and "**Bentall**"), and "market value" (the assessment standard for the complaint at hand). The Board is therefore satisfied that both "**Westcoast**" and "**Bentall**" and the principles they express are relevant to the complaint at hand.

[38] Furthermore, the Board finds “**Westcoast**” speaks to cap rate analysis and income utilized within such analysis:

“The price at which each building sells in the relevant time period is compared with the income reasonably generated by the building. Income divided by sale price generates a factor called the “capitalization rate”. The various capitalization rates for comparable buildings are analyzed with a view to developing a “typical” capitalization rate for that class of property.” (see page 3 of 9 of the decision).

[39] Under page 4 of 9 of “**Westcoast**” the Court goes on to say:

“...economic net incomes are universally used by appraisers in arriving at a capitalization rate for a building that has sold. This is so even though there are occasions when an appraiser testifies that the actual net income should be used, because it is in fact the best estimate of the economic income of the particular property.”.

[40] The Board concludes the term “income reasonably generated” is distinct from “actual income” or “typical income”. The Board finds it reasonable to expect that the determination of “reasonable” must include some analysis or test to determine what is reasonable. Furthermore, the Board finds support that “economic net income” is the appropriate input for cap rate analyses.

[41] The relevance of “economic” or “market” rents is further addressed with “**Westcoast**” under page 4 of 9 through references to Ontario Court of Appeal decision *Cardinal Plaza Ltd. et al. and Regional Assessment Commissioner No. 19 et al. (1934)* which in turn references *Stevens Building Ltd. v. City of Sudbury (1973)*. While the specifics of these cases are not established, the quoted sections address the significance of economic/market rents in the determination of IAV valuations. This consideration will be fundamental in the Board’s consideration under sub issue (iv) to follow.

[42] The Board finds the Court’s reference to “reasonable” should not be overlooked and finds the best means of determining both economic net income and income reasonably generated is to look to the marketplace.

[43] Upon review of the “**Bentall**” decision, the Board finds it accepts the AAB’s efforts to determine rents in accordance with the “**Westcoast**” decision. The Court found the AAB “affirmed and relied” upon the principles of “**Westcoast**” (see “**Bentall**” paragraph [122]). The AAB reasoned that “... *Westcoast* supports the well established appraisal theory that the best comparable sales evidence demonstrates contract rent closely equated to market rent.” (see “**Bentall**” paragraph [121]). The Court found the AAB “...correctly interpreted and applied the case of **Westcoast Transmission**.”.

[44] Again, though these are limited references within a wider decision matrix, the Board finds the “**Bentall**” decision to be supportive of a determinable relationship between contract rent and market rent as expressed by “**Westcoast**” and acknowledged by the AAB.

[45] Further to “**Westcoast**” and “**Bentall**” the Board finds that income can be “actual” or “contract” or “typical” in so far as it is established as economic and market based. The Board finds this aligns with the assessment criteria as summarized under [31] above.

[46] In light of the above, the Board finds the Respondent’s position as stated under [30]

above is too limiting. The Board reasons that actual income when shown to be market based within the appropriate timeframe is a valid basis for the determination of the fee simple estate. The Board also reasons that typical income when shown to be market based within the appropriate timeframe is a valid basis for the determination of the fee simple estate. The Board's findings will therefore be based on the market evidence before it.

[47] The Complainant's cap rate analyses adopt the following parameters:

#	Address	Income used (PGI)	Basis (actual income)	Rent timeframe	Market analysis
1C	2929 Sunridge Way NE	\$1,523,062	Contract rent	2006 on	No
2C	1919 Southland Drive SW	\$1,182,856	Contract rent (*1)	2007 on	No
3C	356 Cranston Road SE	\$2,458,470	Contract rent (*2)	2009 on	No
4C	5220 Falsbridge Gate NE	\$1,657,181	Contract rent	2003 on	No
5C	306 Glenmore Trail SW	\$625,000	Contract rent	2008	No

(*1) – Unit 102 as per size range average; Unit 101 as per equity analysis

(*2) – Unit D01001A as per size range average

[48] The Board finds the Complainant has provided the properties' rent rolls in support of the actual income used within its cap rate analyses. Variances from that are as follows:

- In the case of # 2C the Complainant has updated the income for two bays as per note (*1). The rent roll shows the lease for Unit 102 expired September 30, 2009 and the Complainant has arrived at a revised rent rate by determining the average rate for other bays in the 1,001 to 2,500 sf range within the subject property. The lease for Unit 101 expired May 31, 2010 and the Complainant has arrived at a revised rent rate by looking at two purported comparable assessments of similarly utilized space.
- In the case of # 3C the Complainant has updated the income for one bay as per note (*2). The rent roll shows Unit D01001A to be vacant and the Complainant has arrived at a rent rate by determining the average rate for other bays in the 1,001 to 2,500 sf range within the subject property.

[49] Having reviewed the income details as provided by the Complainant the Board makes the following observations:

- The Complainant provided but did not comment on the lease start dates for the properties reviewed. The chart under [47] above illustrates the variances in lease start dates – some are as dated as 2003 while others are as recent as 2009.
- The Complainant provided no market rent analysis in support of the contract rent at the referenced properties.
- With regard to # 5C the Board finds (as per [27] above) this not a typical arms-length transaction and does not accept the indicated actual (contract) income as market driven.

[50] The Respondent's cap rate analyses adopt the following parameters:

#	Address	Income used (PNI)	Basis (typical income)	Valuation date	Market analysis
1C	2929 Sunridge Way NE	\$1,739,085	2011 assessment	07/01/2010	No

2C	1919 Southland Drive SW	\$1,324,081	2010 assessment	07/01/2009	No
3C	356 Cranston Road SE	\$2,201,005	2011 assessment	07/01/2010	No
4C	5220 Falsbridge Gate NE	\$1,652,396	2010 assessment	07/01/2009	No
5C	306 Glenmore Trail SW	\$594,440	2010 assessment	07/01/2009	No

[51] Having reviewed the income details as provided by the Respondent the Board makes the following observations:

- The Respondent provided the relevant assessment summaries in support of its income assumptions in that assessment calculations are based on typical income.
- The valuation dates for the provided assessments are post-facto to 4 sales (#s 1C, 3C, 4C and 5C) as per [22] above.
- The Respondent provided no market rent analysis in support of the typical income utilized for the referenced properties.

[52] Having reviewed the income inputs provided by the parties the Board is underwhelmed by the evidence and depth of analysis provided by both parties.

[53] The Board finds the Complainant provided no market support for the contract rents upon which its income determinations (i.e. actual income) are based. The contract rents relied upon are in some cases dated. While the Complainant emphasized its approach was consistent (i.e. reliance on contract rents), the Board finds the overarching requirement to show market relevance has not been met.

[54] In response, the Respondent also provided no market support for the typical rents upon which its income determinations (i.e. referenced assessments) are based. While the Respondent emphasized its approach was consistent (i.e. assessments are based on typical income parameters) it provided no market support, leaving the impression that the analysis leading to the 2011 assessments is based on the 2009 or 2010 assessments. Furthermore, as indicated above, the assessment valuation dates are post-facto to 4 sales.

➤ **(iii) Review of the valuation parameters/components utilized within the parties' cap rate analyses.**

[55] The valuation parameters/components utilized by the parties are as follows: vacancy allowance ("vacancy"), operating costs ("op. costs") and non recoverables ("non. rec."). The inputs within their respective cap rate analyses are as follows:

#	Complainant			Respondent			Common Non. Rec.
	Vacancy (*1)	Op. Costs	Cap Rate	Vacancy (*2)	Op. Costs	Cap Rate	
1C	1% major; 2% CRU	\$8.50/sf	7.54%	1% JrBBox; 6.25% CRU	\$7.00/sf	8.38%	1%
2C	1% major; 2% CRU	\$8.50/sf	7.49%	9% CRU	\$8.50/sf	7.58%	1%
3C	1% major; 3.5% CRU	\$8.50/sf	7.35%	1% supermarket; 7.25% CRU	\$7.00/sf	6.38%	1%
4C	1% major; 2% CRU	\$8.50/sf	8.31%	2% CRU	\$8.50/sf	6.36%	1%

5C	2% CRU	\$8.50/sf	8.66%	1% anchor	\$8.50/sf	8.35%	1%
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(*1) major = major/anchor tenant; CRU = commercial retail unit

(*2) JrBBox = junior big box store; anchor = anchor tenant; CRU = commercial retail unit

[56] A review of the table above illustrates that the parties employed varying financial inputs within their respective cap rate analyses. In particular, the Respondent's inputs do not adopt the 2010 assessment parameters as place before the Board.

[57] No first hand analysis was forthcoming from either party in support of their respective inputs. The third party reports provided were not supported by tangible detail as identified by the Board under [15] above. The Board is not prepared to arbitrate on the varying financial parameters/components with no objective market evidence before it on the matter.

[58] As per [27] above the Board is not prepared to afford much weight to #s 4C and 5C. Upon review of the remaining 3 properties the Board finds the Complainant's evidence does not support its requested cap rate of 7.75% but rather, a median of 7.49, a mean of 7.46% and a weighted mean of 7.44%.

[59] A revision to a cap rate of 7.46% would result in an assessment variance of 2.8%, an adjustment the Board finds to be unwarranted by the mandated quality standard established under Section 10 of *MRAT* as well as the principle espoused within "**Bentall**" decision (see paragraph [114]).

➤ **(iv) Review of the inputs utilized within the parties' IAV calculations.**

[60] At the time of the hearing the Complainant abandoned its argument regarding rents and valuation parameters, accepting those utilized by the Respondent in generating the subject assessment.

[61] The Complainant's requested revision is therefore based on the Respondent's NOI of \$1,242,001 for the subject property and an adjustment to the cap rate from 11.75% to 14.50% (based on the NCSC cap rate of 7.75% plus a total upward adjustment of 6.75 points to recognize the land lease conditions). The detailed inputs leading to the application of the cap rate are as per [7] above:

- Potential Gross Income (PGI): \$1,309,438
- Vacancy rate: 1% for the Jr Big Box; 4% for the remainder
- Operating costs: \$7.00/sf
- Non recoverables: 1%

[62] The Board finds there are inconsistencies between the requested vacancy and operating cost inputs and those utilized within the parties' cap rate analyses as summarized under [55] above.

[63] Once again, the Board finds "**Westcoast**" offers guidance on this matter:

"I stated above that the concepts used, in developing capitalization rates for application to the subject, should be used consistently. Thus it makes no sense to develop a capitalization rate on one set of assumptions about long term vacancy rates, long-term rents, and long-term expenses, and then apply that rate to the

income of the subject property that is not derived in the same way.”

And later:

“All of these factors, for consistency, should be used in the same manner as they were used in the study of comparables which resulted in the development of the capitalization rate. To do otherwise is to offend appraisal theory, and is likely to produce a mistaken result.”

[64] With regard to issue 2, a summary of the Board's findings as expressed above are as follows:

- The market sample is effectively reduced to #'s 1C, 2C and 3C.
- The Complainant's income estimates within its cap rate analyses are documented as contract rent but there is no evidence to evaluate whether these rents are market based.
- The Complainant provides no market support for the valuation parameters within its cap rate analyses.
- The Complainant has taken a different approach in determining PGI between its cap rate analyses (actual income based on contract rents) and its IAV calculation (typical income as developed by the Respondent).
- The Complainant has applied differing valuation parameters in its IAV calculation from those utilized in its cap rate analyses.
- In light of the Board's findings regarding the sample size, the Complainant's request is not supported by its evidence, in fact resulting in a request not supported by the statute or jurisprudence.

[65] In light of the above and the preceding discussion of findings the Board concludes the Complainant's cap rate analyses does not produce an appropriate market value basis for assessment purposes for the subject property as of July 1, 2010. To clarify, the appropriate NCSC cap rate is found to be 7.25%

2. Does the Assessment to Sales Ratio (ASR) analyses presented by the parties effectively measure the appropriateness of the NCSC cap rate analyses undertaken by the parties?

[66] Both parties provided ASR analyses to the Board – the Respondent in an effort to invalidate the Complainant's cap rate conclusions; the Complainant through rebuttal in an effort to refute the Respondent's position.

[67] The Board finds the Respondent's analysis is a comparison of time adjusted sales to 2011 assessments. In that there is no evidence submitted to support the time adjustments the Board finds the analysis to be incomplete and unsupported.

[68] In that there is no evidence presented to support time adjustment of the referenced sales, the Board looked to the Complainant's unadjusted analysis.

[69] The Board has deemed the most appropriate market evidence before it to be sales #s 1C, 2C and 3C. The indicated median ASR for these 3 properties is 1.0 with a Coefficient of Dispersion of 13.6; both within the regulated standard for a group of properties. If one is to include sale #s 4C and 5C the indicated ASR is 1.0 and the Coefficient of Dispersion is 11.4; again both within the regulated standard.

[70] The Board submits this analysis is of limited value due to the narrow sample size and the lack of market evidence regarding potential time adjustments. However, if one is to accept no time adjustments are warranted for retail properties (as represented by the Complainant), the Board finds the ASR analysis supports the Respondent's NCSC cap rate conclusion of 7.25%.

3. Does the Complainant's analysis produce an appropriate manner to address the property's site-specific land lease conditions through a cap rate adjustment?

[71] There is no question before the Board that the land lease conditions restrict the ongoing utilization of the property. Both parties have attempted to recognize the impact of said lease by upwardly adjusting their respective cap rate from that advanced for NCSC assessments.

[72] The Board finds the 40 year term expires in 2025 and any potential extensions are at the "sole discretion" of the Lessee. The Board therefore accepts a demolition date of 2025 for the purposes of this assessment.

[73] Under [11] above the Board expressed the following cap rate adjustments as advanced by the Complainant: (i) revising the NCSC base cap rate from 7.25% to 7.75%; (ii) adjusting that upwards by 5 points for "short life", and (ii) adjusting that upwards again by 1.75 points for "leasehold risk premium". Item (i) has been answered as per [65] above.

[74] In support of its "short life" adjustment the Complainant advanced a process whereby the effect of the land lease conditions are quantified as follows:

Assessed Overall Cap Rate:	7.25%
Investment Recapture Rate:	
100% / 60 year life	<u>1.67% (-)</u>
Assessed Discount Rate:	5.58%

In that the subject development has a remaining life of 15 years:

Assessed Discount Rate:	5.58%
Investment Recapture Rate:	
100% / 15 year life	<u>6.67% (+)</u>
Assessed Overall Cap Rate:	12.25%

[75] In response, the Respondent looks to the ARB 0834/2010P on the subject property whereby the cap rate was set at 12.58% (apparently 4.58 points higher than the shopping centre rate applied for the 2010 assessment). In accordance with that decision the Respondent increased the NCSC rate of 7.25% by 4.5 points (7.25+4.5=11.25%) in setting the cap rate for the 2011 assessment.

[76] With regard to item (ii) the Board finds the Complainant's position is well reasoned and properly reflects both valuation methodology and the characteristics of the subject property. In response, the Respondent's approach does not realize the reality (as per the land lease) that each passing year effectively reduces the remaining life of the subject development.

[77] In support of its position on issue (iii) the Complainant's provides a comparison of last year's assessment cap rates; looking to 8 airport properties in contrast to 5 commercial properties and finding the airport properties show a cap rate 1.75 points higher than the commercial properties.

[78] The Complainant interprets this to be a risk premium in recognition of the tenancy arrangements at the airport and associating that to the risk characteristic of the subject property as imposed by the land lease.

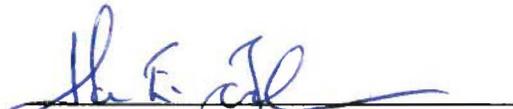
[79] The Board finds a review of dated assessed cap rates is not convincing in that the data is not current and there no market evidence to correlate the valuation dates. Furthermore, the Board finds the conditions imposed by the land lease have been effectively recognized by the adjustment as per issue (ii). That adjustment recognizes the site-specific characteristics of the subject property and no further adjustment is warranted.

[80] In summary, the Board finds the Complainant's analysis is partially successful in addressing the property's site-specific land lease conditions and finds a cap rate of 12.25% (as per [74] above) is appropriate for the subject property.

BOARD'S DECISION:

[81] The Board finds the assessment is to be based on the Respondent's NOI of \$1,242,001 and a cap rate of 12.25%. The assessment is therefore reduced to \$10,130,000 (rounded).

DATED AT THE CITY OF CALGARY THIS 13 DAY OF October 2011.


I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Submission
2. Doc. C-2	Complainant's Rebuttal part 1
3. Doc. C-3	Complainant's Rebuttal part 2
4. Doc. C-4	Complainant's "2011 Capitalization Rate Analysis & Argument"
5. Doc. R-1	Respondent's Disclosure

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.*