

**COMPOSITE
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, (MGA) Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Calgary Co-operative Association Limited (as represented by Altus Group Ltd.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
S. Rourke, MEMBER
E. Reuther, MEMBER***

This is a complaint to the *Composite Assessment Review Board* (CARB) 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: 200321156

LOCATION ADDRESS: 917 – 85th Street SW

HEARING NUMBER: 64289

ASSESSMENT: \$19,200,000.

This complaint was heard on 15th day of November, 2011 at the office of the Assessment Review Board located at 3rd Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3 .

Appeared on behalf of the Complainant:

- A. Izard

Appeared on behalf of the Respondent:

- R. Ford

Property Description:

The subject property is, according to the Assessment Summary Report (Exhibit C-1 pg. 12) an "A" Class neighbourhood shopping centre having an assessed area of 67,693 Sq. Ft. The property was originally constructed in 2006 and it sits on a site that is 6.70 acres in size. The assessed value of the subject has been derived through application of the Income Approach to Value with the following inputs:

<u>Space Category</u>	<u>Area (Sq. Ft.)</u>	<u>Assessed Rental Rate</u>
Bank	4,863	\$32/Sq. Ft.
CRU 0 – 1,000 Sq. Ft.	433	\$32/Sq. Ft.
CRU 1,001 – 2,500 Sq. ft.	8,175	\$28/Sq. Ft.
CRU 2,501 – 6,000 Sq. Ft.	3,155	\$24/Sq. Ft.
Gas Bar	1	\$105,000
Non-retail Mezzanine	1,574	\$ 1/Sq. Ft.
Pad 2,501 – 6,000 Sq. Ft.	4,053	\$24/Sq. Ft.
Supermarket	45,439	\$17/Sq. Ft.
Vacancy Rate CRU & Pad		4%
Vacancy Rate Mezz. & Supermarket		1%
Non-Recoverables Allowance		1%
Operating Costs		\$ 7/Sq. Ft.
Capitalization Rate		7.25%

Issues:

There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The capitalization rate applied by the Assessor to derive the assessed value of the subject property is too high and would be accurately reflected at 7.75%.

Complainant's Requested Value: \$17,960,000.

Party Positions:**Complainant's Position**

The Complainant explained to the CARB that this Complaint relates to the applied capitalization rate only and that most, if not all, of the evidence to be introduced has been heard by other CARB panels (including some members of this panel) earlier this year. Accordingly there have been a number of CARB Decisions that have already been released that deal with this issue. In addition to the principle evidence to be submitted by the Complainant, there will also be a number of these Decisions presented for the CARB to consider.

The Complainant has valued the subject property through application of the Income Approach to Value (Exhibit C-1 pg. 157) and in so doing has applied the same rental rates as those applied by the Assessor. All other inputs, with the exception of the applied capitalization rate, utilized in application of the Income Approach remain consistent with those applied by the Assessor; therefore, the Net Operating Income (NOI) produced by both parties is the same. In completing

their Income Approach, the Complainant has applied an overall capitalization rate of 7.75% as opposed to the Assessor's 7.25%. Application of the Income Approach with this capitalization rate results in the Complainant's requested assessed value of \$17,960,000.

In support of their applied capitalization rate the Complainant introduced (Exhibit C-1 pgs. 89 - 91) extracts from *The City of Calgary Assessment 2009 Retail Capitalization Rate Document* in which the *City of Calgary Retail Capitalization Rate Calculation Process* (pg. 90) is outlined as follows:

"The Income and Expense data as returned to The City of Calgary, by the owner (Vendor) through the annual Request for Information as per [MGA 295 (1), (2), (3), (4) Duty to Provide Information] was recorded and analyzed as follows

1. *Contract Income; as reported and collected by the owner;*
 - *Net Rental Rate x Square Footage Area Leased;*
2. *PGI (Potential Gross Income); if there was vacant space in the building at the time of sale, the PGI was calculated based on the leases in place with the assumption that the vacant space will lease up at market rents;*
3. *EGI (Effective Gross Income); calculated by reducing (stabilizing) the PGI by typical vacancy;*
4. *NOI (Net Operating Income); calculated by reducing (stabilizing) the EGI by 1% for non-recoverable expenses and vacancy shortfall;*
5. *The NOI was then divided by the sale price to determine the capitalization rates.*
6. *The median of the capitalization rates is then determined and applied to the population."*

Additionally the Complainant introduced (Exhibit C-1 pgs. 92 – 97) an extract from the *Alberta Assessors' Association Valuation Guide Valuation Parameters – February 1999* a process outline entitled *Determining Market Rents as of the Valuation Date* (pg. 96) that states:

"Base Rent

To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):

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.*
3. *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."*

In consideration of the foregoing the Complainant introduced (Exhibit C-1 pgs 103 – 154) their *Capitalization Rate Analysis* in which five (5) shopping centre sales have been analyzed. The result of this analysis (pg. 104) indicates a weighted mean capitalization rate, using **Market Rent**, of 7.71% and a weighted mean capitalization rate, using **Typical Market Rent** of 7.74%.

The five shopping centre sales analyzed in the above mentioned study are: *Calgary East Retail Centre, Braeside Shopping Centre, Cranston Market, McKnight Village Mall and Chinook Station Office Depot*. Additionally, the Complainant completed a further analysis to include the Market at Quarry Park property, which they acknowledge is an atypical market transaction. The inclusion of this property with the initial five (5) properties analyzed results in a mean capitalization rate, using **Market Rent**, of 7.68% and, using **Typical Market Rent**, a mean of 7.76%.

In addition to the above, the Complainant introduced (Exhibit C-1 pgs 42 -74) copies of five (5) CARB Decisions (# 1984-2011-P, # 1968-2011-P, #1976-2011-P, #1967-2011-P and #1969-2011-P) in which the CARB accepted the evidence and argument of the Complainant and awarded a reduction on the assessed values by applying the Complainant's requested capitalization rate of 7.75%.

The Complainant also introduced an evidence appendix (Exhibit C-2) which points out what the Complainant sees as inconsistencies and/or errors in the way the Respondent derived their capitalization rate. This document also contains (Exhibit C-2 pgs. 27 – 29) an extract from *Retail Valuation Methodologies, Procedures and Definitions* as prepared by the *City of Calgary Assessment Business Unit (ABU)* in which typical income is defined as: "*Income generated by a property using typical market rental rates. Vacant spaces are leased up using typical market rates. Typical Income = Leasable area x Typical Rental Rate*". The Complainant maintains that the foregoing is exactly what they have incorporated into their capitalization rate study. It is the further contention of the Complainant that the Assessor has erred in determining their capitalization rate as is shown on page 44 of Exhibit C-2. The Complainant contends that the Assessor applied the incorrect rental rate of \$5/Sq. Ft. to the *Zellers* space in the 1221 Canyon Meadows Dr. property and if this space were input with a typical rate of \$10 the resulting capitalization rate would be 8.11%. The Complainant also contends that the Assessor included an analysis of the property located at 873 – 85th Street SW but that property was not sold under open market conditions and it should not be included as a result. A further error has been made in that the Assessor applied the "strip centre" variables to their analysis of the 1919 Southland Dr. property, as that was the former category for this property. If the correct 'neighbourhood shopping centre' variables are incorporated the resulting capitalization rate increases from 6.49% to 8.36%. As a result of the foregoing the correct median capitalization rate, the Complainant contends, from the analysis prepared by the Assessor should be 8.25% and the mean rate would be 7.55%, both of which are more supportive of the Complainant's requested 7.75% rate as opposed to the Assessor's 7.25% rate.

Further evidence (Exhibit C-3) in the form of CARB Decision 2607-2011-P released November 10, 2011 and which deals with a complaint against the assessment of a community shopping centre known as Foothills Crossing. This Hearing was, according to the Complainant, provided with the same evidence as is put forth in this Hearing and the issue was the same. In the case of CARB 2607-2011-P, the CARB determined that the Complainant's requested 7.75% capitalization rate was, for reasons given in the decision, more appropriate than the Assessor's applied 7.25% rate.

Respondent's Position

The Assessor has also valued the subject property through application of the Income Approach to Value but, as has been outlined in the Complainant's position, using a different capitalization rate.

The Respondent submitted their brief; however, in transmitting a copy of same to the CARB offices the document was broken down into smaller packages. As a result pages 1 – 67 are marked as Exhibit R-1, pages 68 – 134 are marked as Exhibit R-2, pages 135 – 201 are marked as Exhibit R-3 and the single page 202 is marked as Exhibit R-4. As is explained (Exhibit R-1 pg. 3) the entire brief (Exhibits R-1 through R-4) contain multiple 2011 CARB Decisions stating the methodology utilized by the Complainant in deriving their capitalization rate is incorrect. There is further evidence to support the contention that the Complainant's study inflates incomes for use in the capitalization rate study which results in a lower capitalization rate being generated. Additionally the Respondent provides (Exhibit R-1 pg. 21) an Assessment to Sales Ratio (ASR) study which purportedly suggests the assessed values of neighbourhood shopping centres would not fall within legislated ASR guidelines if the capitalization rate requested by the Complainant were applied. It is the contention of the Assessor that this ASR study provides evidence that the requested assessed values of the Complainant would result in values that are not representative of Market Value.

Complainant's Rebuttal:

The Complainant introduced two rebuttal briefs (Exhibits C-4A & C-4B) for the CARB to consider. In their verbal testimony the Complainant highlighted more recent CARB Decisions, than those introduced by the Assessor, in which the CARB did accept the evidence and argument of the Complainant and did increase the applied capitalization rate, for properties similar to the subject, to the Complainant's requested 7.75%. The Complainant further submitted (Exhibit C-4A pgs. 11 – 20) a copy of a recent CARB Decision (#2293-2011-P) which did grant the Complainant's request for application of a 7.75% capitalization rate for a similar neighbourhood shopping centre and the Complainant pointed out to the CARB that the Complainant's evidence for that Hearing was identical to the evidence provided for this Hearing. The Complainant's rebuttal goes on to highlight several additional recent CARB Decisions which also resulted in the Complainant's request for a 7.75% capitalization rate being granted. In addition, the Complainant referred the CARB to (Exhibit C-4B pg. 320) an extract from the *International Association of Assessing Officers (IAAO) Standard on Ratio Studies* which, under Section 2.3.3 Use of Ratio Studies in Appeals states:

"Assessors, appeal boards, taxpayers and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. However, ratio study statistics cannot be used to judge the level of appraisal of individual parcels. Such statistics may be used to adjust assessments on appealed properties to the common level within the appropriate stratum, provided that such level is outside the range of acceptability specified in Section 14.1. For example, if it is proven by an appraisal that the property under appeal is valued at 10% over market value, but the stratum is provably at no more than 80% of market value, the assessment of the appealed property could be reduced to 80% of market value".

Board's Decision:

The complaint is denied and the assessment is **confirmed** at **\$19,200,000**.

Decision Reasons:

The Complainant has analysed 5 shopping centre sales (Exhibit C-1 pg. 104) in support of their request for a 7.75% capitalization rate. These properties are: 1) Calgary East Retail Centre, 2)

Braeside Shopping Centre, 3) Cranston Market, 4) McKnight Village Mall and 5) Chinook Station Office Depot.

The CARB reviewed the information pertaining to these sales and found that two (2) of these shopping centre sales should be given little or no consideration for the following reasons:

1. The sale of the Chinook Station Office Depot (Exhibit C-1 pgs. 100 – 103) refers to one building only and that does not, in the judgment of the CARB, constitute a neighbourhood shopping centre property. Additionally, reference was made to CARB Decision #2297-2011-P (authored by this Presiding Officer) and a copy of the Decision is reproduced in the evidence before us (Exhibit R-2 pgs. 122 – 128). In Decision #2297-2011-P there was clear evidence that the purchaser of the property reportedly entered into a sale lease-back agreement with the vendor (Exhibit R-1 pg. 311 from CARB 2297-2011-P) and while there is no such evidence in this case, the CARB still notes that information.
2. The McKnight Village Mall sale (Exhibit C-1 pgs. 127 – 139) includes additional properties (refer to Descriptive Remarks in the aforementioned Exhibit C-1) and there is no indication as to how the sale price was affected by same and nor is there any indication that the income produced by these additional properties, which are located across the street from the mall, has been given consideration in the analysis of the sale. The sales summary sheet (Exhibit C-1 pg. 127) refers to the gross size of the property as being 86,025 Sq. Ft. and the rent roll (Exhibit C-1 pgs 128 – 134) also refers to this total area; however, the analysis of the sale (Exhibit C-1 pgs. 138 – 139) refers to 74,152 Sq. Ft., a significant differential.

As a result of the foregoing the CARB concluded that the sales to be considered in this matter consist of: 1) Calgary East Retail (2929 Sunridge Way NE), 2) Braeside Shopping Centre (1919 Southland Dr. SW) and 3) Cranston Market (356 Cranston Rd. SE). The CARB finds the capitalization rates of these three sales, as analyzed by the Complainant (Exhibit C-1 pg.104), indicate a median of 7.71% using the typical market rent and 7.49% using the market rents.

Both the Complainant and the Respondent have included within their evidence numerous previous Decisions of the CARB; however, these Decisions, while a matter of Public Record, do not constitute evidence in the matter before us. Previous Decisions of the CARB are more a matter of argument than they are evidence and while the CARB is concerned with general consistency, there is no guiding principle that dictates that Decisions of the CARB must be consistent, otherwise, where the evidence is the same, there would be little point in having any more than one Hearing per year per issue. Further, while there may be reference to the evidence in previous Hearings as being the same as that presented in this case, that is not always accurate as exemplified by the Chinook Station Office Depot sale which in one Hearing refers to a leaseback agreement but in this case there is no mention of same. As a result of the foregoing the CARB does give deference to previous Decisions but it is not bound by them.

The Respondent maintains that applying the requested capitalization rate of 7.75% to the subject property would result in an assessed value that is not representative of market value. In support of this contention the Assessor has provided (Exhibit R-1 pg. 21) an ASR study pertaining to neighbourhood shopping centres which shows the differential between the requested 7.75% capitalization rate and the applied 7.25% capitalization rate. The Complainant provided (Exhibit C-4B pg. 320) with an excerpt from the IAAO Standard on Ratio Studies which

indicates that "...ratio study statistics cannot be used to judge the level of appraisal of **individual parcels**". The CARB is of the judgment that the ASR study presented by the Respondent does not relate to a specific property (the subject) but rather to a stratum of five (5) neighbourhood shopping centres. This does provide the CARB with a relatively clear indication of the impact of their decision. In the final analysis it is how closely the assessed value of the subject property relates to market value of same that is decision that must be made by the CARB. While there may be a considerable volume of evidence from one party or another that may, in isolation, be somewhat convincing of their position, the responsibility of the CARB is clearly provided in the MGA Section 467. It is the decision of the CARB that, in this case, granting the capitalization rate request of the Complainant would result in a value that would not be representative of Market Value.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF December 2011.



C. A. Griffin,
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant's Brief
2. C-2	Complainant's Typical & Market Cap Handout
3. C-3A	Complainant's Cap Rate Rebuttal Submission
4. C-3B	Complainant's Calgary East Retail Centre Rebuttal Submission
5. R-1	Respondent's Brief in part
6. R-2	Respondent's Brief in part
7. R-3	Respondent's Brief in part
8. R-4	Respondent's Brief in part

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.*