Calgary Assessment Review Board

DECISION WITH REASONS

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

between:

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

and

The City Of Calgary, RESPONDENT

before:

M. Axworthy, PRESIDING OFFICER
D. Julien, BOARD MEMBER
T. Usselman, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**200685113**
LOCATION ADDRESS:	**2425 34 AV SW**
FILE NUMBER:	**72806**
ASSESSMENT:	**$12,010,000**

This complaint was heard on 25 day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *A. Izard*

Appeared on behalf of the Respondent:

- *H. Yau*
- *J. Lepine*

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

[1] The Respondent and the Complainant asked that the argument and testimony made in respect of the preliminary issue raised by the Respondent and all evidence, argument and testimony made in respect to CARB 72822/P-2013 with respect to the cap rate and CARB 72449/P-2013 with respect to the Grocery 'A' rental rate be carried forward to CARB 72806/P-2013. The Board agreed with these requests.

[2] The Respondent objected to the inclusion of certain rebuttal evidence in Exhibit C-5, asserting that much of the rebuttal material constituted new evidence and should not be heard by the Board. They stated that most of the evidence included in C-5 had nothing to do with the property type Neighbourhood/Community Shopping Centre. They further indicated that the information contained in C-5 had been provided to the Complainant in advance of its Evidence Submission C-1 as part of a MGA 299/300 request. The Respondent contended that by not including this material in its C-1 submission, the Complainant was attempting to split their argument making it difficult for the Respondent to provide an adequate defence.

[3] The Complainant indicated that while some of the material did not address the property type under complaint, it was relevant because it demonstrated inconsistency in how the Respondent handles the issues of non-brokered and vacant land sales across property types.

[4] The Board considered the procedural issue raised by the Respondent and determined that it was difficult to determine in advance of hearing the matter whether the material was relevant to the subject complaint and constituted new evidence. The Board elected to hear the evidence and determine the appropriate weight to place on the evidence after the Board had heard the arguments by both parties.

Property Description:

[5] The subject property is improved with a total of 46,060 sq. ft. (grocery store and pad liquor store) with a quality rating of A2 on an assessable land parcel of176,534 sq.ft. The subject is assessed using the Income Approach to value.

Complainant's Requested Value:
$9,350,000 revised at the hearing to $9,040,000 (cap rate at 7.5% and reduced rental rates)
OR
$10,180,000 revised at the hearing to $9,850,000 (cap rate at 7.0% and reduced rental rates)

Board's Decision:
[6]

a. The cap rate is confirmed at 7.0%.
b. The assessed rental rate for 'A' quality grocery stores is reduced to $16.00 per sq.ft. from $18.00 per sq.ft.
c. The assessed rental rate for CRU space of 2,501- 6,000sq.ft. is confirmed at $30.00 per sq. ft.

The resulting assessment is $10,850,000.

Legislative Authority, Requirements and Considerations:

[7 The Act, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property, other than property described in subsection 460 (1)(a).

Issues:

[8] The Complainant addressed the following issues at this hearing:

a) The assessed cap rate applied in the Income Approach to value should be increased to 7.50%.

b) The assessed market rental rates applied to Quality "A" grocery stores should be $16.00 instead of $18.00 per sq.ft.

c) The assessed rental rate for CRU space CRU 2,501- 6,000 sq. ft. should be $20.00 or alternatively $23.00 per sq.ft. instead of $30.00 per sq.ft.

ISSUE 1: Should the assessed cap rate, using the Income Approach to value, be increased from 7.0 to 7.50%?

Position of the Parties:

Complainant's Position:

The Complainant provided the following disclosure documents in support of its position:

- C-2 "Community -Neighbourhood Shopping Centre Cap Rate Analysis"
- C-3 A and B "Community- Neighbourhood Shopping Centre Cap Rate Historical Data"

and used the evidence contained in those exhibits to support the following arguments:

[9] The Complainant used two different methods of calculating cap rates to support its proposed cap rate of 7.50%:

a. Cap Rate Method I used the same market rental rates, vacancy rates, operating costs, and non-recoverable rates as the Respondent to develop the assessment; however, in deriving the cap rate, the Complainant divided the assessed NOI by the actual sales price of the respective Neighbourhood /Community shopping centres, rather than by the applicable assessed value, as done by the Respondent. The median rate derived under this methodology was 6.87%, as illustrated in the following table [p. 67 C-1]::

2013 NBHD-Community Shopping Centre Analysis = Capitalization Rate Method I
**** The Application of Assessed Income as Prepared by The City of Calgary ABU ****

Name of Centre	Address	Sale date	Rental rate (/sq.ft.)	Net Operating Income (NOI)	Total Sale Price	Cap Rate (%)
Chinook Station, BMO	6550 MacLeod Trail SW	2013-03-03	$42.00	$271,921.29	$4,250,000.00	6.40%
Southview Plaza	3301 17 Ave & 1819 33 Street SE	2011-12-30	$10.71	$305,510.32	$2,700,000.00	11.32%
MacLeod Trail Plaza	180 94 Ave SE	2011-08-18	$19.90	$2,318,301.19	$33,750,000.00	6.87%
Pacific Place Mall	999 36 Street NE	2011-05-27	$17.96	$3,078,515.68	$44,000,000.00	7.00%
Sunridge Sears Centre	3320 Sunridge Way NE	2011-01-19	$14.41	$825,181.41	$12,600,000.00	6.55%
			Mean	*$1,359,885.98*	*$19,460,000.00*	*7.63%*
			Median	*$825,181.41*	*$12,600,000.00*	*6.87%*

b. Cap Rate Method II used the methodology outlined in the February, 1999 Alberta Assessors Association Valuation Guide (AAAVG) to derive a median cap rate among the five sales. Under this approach, "typical" market rental rates calculated by the Complainant were applied to the various spaces of each of the Neighbourhood/ Community Shopping Centres. The Complainant noted that Method II had been used by Assessment Business Unit (ABU) in 2012 [pp.102-104 C-2].

c. In Cap Rate Method II, the Complainant used the same vacancy rates, operating costs, and non-recoverable rates that were used by the Respondent to develop the assessment. The cap rate on each sale was calculated by dividing the "typical" NOI by the actual sales price of the respective Neighbourhood/ Community Shopping Centres, rather than dividing the assessed NOI by the respective assessed value, as was done by the Respondent. The median rate derived under this method was 7.63%, as illustrated in the following table [p. 67 C-1]:

[10] **2012 NBHD-Community Shopping Centre Analysis = *Capitalization Rate Method II***
*** The Application of Typical Market Income as Prescribed by the 'AAACG' and 'Principles of Assessment' ***

Name of Centre	Address	Sale date	Rental rate (/sq.ft.)	Net Operating Income (NOI)	Total Sale Price	Cap Rate (%)
Chinook Station, BMO	6550 MacLeod Trail SW	2012-03-03	$60.71	$410,717.	$4,250,000.00	9.66%
Southview Plaza	3301 17 Ave & 1819 33 Street SE	2011-12-30	$9.73	$277,858.	$2,700,000.00	10.29%
MacLeod Trail Plaza	180 94 Ave SE	2011-08-18	$18.31	$2,128,680.	$33,750,000.00	6.31%
Pacific Place Mall	999 36 Street NE	2011-05-27	$19.43	$3,355,811.	$44,000,000.00	7.63%
Sunridge Sears Centre	3320 Sunridge Way NE	2011-01-19	$16.33	$932,844.	$12,600,000.00	7.40%
			Median	*$932,844.*	*$12,600,000.00*	*7.63%*
			Weighted Mean	-	-	7.30%

[11] In addition to the five sales comparables in paragraph [9], the Complainant provided five other sales of Neighbourhood /Community Shopping Centres that occurred from January, 2009 to December, 2009 and applied both methods of deriving cap rates to these sales. [pp. 51-53 C-1]

[12] Applying "Cap Rate Method I" methodology to the ten Neighbourhood/Community Shopping Centre sales derived a median cap rate of 7.63% [p. 51 C-1].

[13] Applying "Cap Rate Method II" methodology to the ten Neighbourhood/Community Shopping Centre sales derived a median cap rate of 7.76% [p. 53 C-1].

[14] The Complainant provided documentation surrounding the sale and respective assessments of each Neighbourhood/Community Shopping Centre, including photographs, sales transactions, rent roll, Assessment Request for Information (ARFIs) and assessment explanation supplements.

[15] The Complainant noted that they were in agreement with the Respondent on sales comparables listed as MacLeod Trail Plaza, Pacific Place Mall and Sunridge Sears Centre.

[16] The Complainant argued that Chinook Station BMO should be included in the cap rate analysis as it was not a sale of land only as suggested by the Respondent. They noted that the property had sold on March 3, 2013 when the bank building was substantially completed [pp. 41-48 C-2] and that while the sale was non- brokered, The City had been inconsistent in its use of non-brokered sales as sales comparables for cap rate analysis [pp.3-60 C-5].

[17] The Complainant argued that the sale of Southview Plaza (3301 17 AV SE) should be included in the cap rate analysis for the following reasons:

a. Although the property was vacant at the time of sale, it had been purchased for its income potential as evidenced in the building permit that had been issued for renovations to the former Safeway building [p. 56 C-2]

b. The parcels should not have been re-classified from Neighbourhood/Community Shopping Centre to Retail- Freestanding Big Box and Strip Centre as it was possible that a new anchor tenant would move in.
c. While the Safeway site and the Commercial Retail Units (CRUs) were sold to two different corporate entities, it appeared that they may be related.

[18] The Complainant provided documentation suggesting that the ABU had been inconsistent in its use of non- brokered sales and vacant properties in its various sales analyses, whether retail, industrial or Beltline.

Respondent's Position:
The Respondent provided a 688 page disclosure document, "Exhibit R-1" (see **Note**) and provided the following evidence and argument with respect to this issue:

[19] The sales comparables used by the Respondent to calculate the cap rates are shown in the following table, with a resultant median cap rate of 6.87% [p.152 R-1], assessed at 7.0%:

Name of Centre	Address	Sale Registration Date	Sale Price	Sale Year Assessed Area (sq.ft.)	Sale Year Assessed Net Operating Income (NOI)	ABU Cap Rate
Sunridge Sears Centre	3320 Sunridge Way NE	2011-01-19	$12,600,000.	60,514	$825,181.	6.55%
Pacific Place Mall	999 36 ST NE	2011-05-27	$44,000,000.	188,537	$3,078,516.	7.00%
MacLeod Trail Plaza	180 94 Avenue SE	2011-08-18	$33,750,000.	123,766	$2,318,301.	6.87%
					Median	*6.87%*
					Average	*6.80%*

[20] Chinook Station BMO (6550 MacLeod Trail SW):
a. A copy of an Assessment Request for Information (ARFI) dated April 3, 2013 for the Chinook Station BMO indicating that the BMO lease was a land lease only and therefore should not be used as Neighbourhood/Community Shopping Centre sales comparable for a cap rate study. [pp.18-28 R-1]
b. A copy of the RealNet and Commercial Edge land transaction summary for Chinook Station BMO indicating that the property was being utilized as a surface parking lot by the vendor and was vacant at the time of sale.
c. A copy of a City of Calgary Non-Residential sales Questionnaire indicating that the sale was for vacant land, not brokered, and required $170,000 in utility servicing subsequent to the sale.

Note: There was an error in the electronic pagination of the Respondent's evidence package R-1 which made it very difficult for the Board to use and caused a lot of confusion in the course of the hearing. The page numbers were typed over previous page numbers and were sometimes obscured. The Board attempted to ensure the page numbers referenced in the decision are correct, but this has proved challenging in some cases.

[21] Southview Plaza (3301 17 Ave & 1819 33 Street SE)

a. A copy of the RealNet land transaction summary for Southview Plaza indicating that the property was vacant at the time of sale and continues to be vacant. Therefore, the parcel was valued as land only, not income, and should not be used for a Neighbourhood /Community Shopping Centre cap rate study [pp.88-89 R-1]
b. A copy of the RealNet land transaction summary for Southview Plaza indicating that the two parcels (3301 17 Ave & 1819 33 Street SE) were sold separately reinforcing that they are correctly classified as Retail- Freestanding Big Box and Strip Centre and should not be used in a cap rate analysis of Neighbourhood / Community Shopping Centres.

[22] A 2013 Neighbourhood / Community Shopping Centre Assessment to Sales Ratio (ASR) test comparing a 7.50% cap rate as proposed by the Complainant to a 7.00% cap rate as used by the Respondent [p. 263 R-1]:

a. Using the five post 2009 sales comparables suggested by the Complainant, a 7.00% cap rate produced an ASR of 0.9674, while the 7.50% cap rate produced an ASR of 0.9028.
b. Using the three sales common to both the Complainant and the Respondent, produced the same ASRs as the five post 2009 sales.

[23] With respect to the Complainant's assertion about inconsistencies in the ABU's approach to the use of non-brokered sales and vacant land sales in its sales analyses, the Respondent reiterated its objection to the inclusion in Rebuttal Exhibit C-5 of references to the Beltline, industrial and retail sales. The Respondent stated that comparisons should not be made with other property types.

Board's Reasons for Decision:

[24] The Chinook Station, BMO sale is not accepted as a comparable Neighbourhood /Community Shopping Centre for the purpose of the cap rate analysis because it was un-serviced, vacant land at the time of sale and was not exposed to the open market.

[25] The Southview Plaza sales comparable is not accepted as a comparable Neighbourhood/Community Shopping Centre because the property was vacant at the time of sale and is still vacant. In addition, the two parcels (former Safeway store and adjacent CRUs) were sold off in two separate sales transactions and the buildings are clearly a lesser quality than the subject as acknowledged by the Complainant in his verbal testimony. The cap rates of 11.32% (Method I) and 10.29% (Method II) substantiate this dissimilarity.

[26] The 2009 Neighbourhood/Community Shopping Centre sales should not be used as comparables as they are dated and more recent sales transactions are available.

[27] The ASR analysis conducted by the Respondent is accepted by the Board and indicates that under cap rate Method I, the ASRs achieved using the assessed cap rate of 7.0% produces superior results than the 7.50% cap rate proposed by the Complainant.

[28] The Board placed no weight on the Complainant's evidence with respect to alleged inconsistencies in the ABU's use of non-brokered sales and vacant land sales in its sales analysis as much of the material references property types different from the subject. The Board accepts the Respondent's contention that much of the material included in Rebuttal Exhibit C-5

was available to the Complainant in advance of their submission C-1 and should more appropriately have been included in that submission to enable the Respondent to better address the Complainant's arguments.

ISSUE 2: Should the assessed market rental rates applied to Quality 'A' grocery stores be reduced to $16.00 from $18.00 per sq.ft.?

Position of the Parties

Complainant's Position:

The Complainant provided a 47 page disclosure document Exhibit C-8 "Grocery Leasing "A" = Prime/Good Location-Newer or Renovated Stores" in support of its position and used the evidence contained in that exhibit to support the following arguments:

[29] In support of the requested reduction in rental rate to $16.00 per sq.ft. the Complainant provided a Grocery Leasing Analysis [p. 25 C-1] that included seven properties with rental rates ranging from $8.40 to $26.45 per sq.ft. and leases of 5 to 20 years, dated 2009 to 2011. The median rental rate value for the seven properties is $15.65 per sq. ft.

[30] The Complainant argued that the rental rate for the Aspen Landing Safeway, as listed in their analysis on p. 25 of C-1, should be $16.72 per sq. ft., not $18.50 per sq, ft. as noted in The Respondent's Revised Rental Rate Analysis on p. 284 of R-1. The $16.72 represents a "blended rate" which reflects the fact that the lessee does not pay rent on a portion (5,189 sq.ft.) of the supermarket area [p. 31 C-8] as outlined in a letter and attached rent roll dated April 18, 2013 [p. 31-34 C-8]. from Nilexx Real Estate Services to the City of Calgary.

[31] The Complainant noted that their leasing analysis included four of the five properties used by the Respondent, but included three additional properties namely:

a. Canada Safeway at 70 Shawville BLVD. SE (Shawnessy Village) - $10.47 per sq.ft.

b. Calgary Co-op at 1221 Canyon Meadows DR SE (Deer Valley Marketplace) - $15.00 per sq.ft.

c. Canada Safeway at 9737 Macleod TR SW (Southland Crossing) - $13.50 per sq.ft.

[32] The Complainant asserted that leases should be reviewed over several years to ensure there is no confusion as to the lease end and start date. The Complainant also argued that it was a lack of clarity in how "step-up" and lease extensions were treated by the ABU in its rental analyses. In support of their argument, the Complainant referenced several CARB decisions which speak to this issue and noted that it is difficult for the taxpayer to understand what information is being requested through the ARFI process.

[33] The Complainant asserted that the ABU had been inconsistent in its practice with respect to reviewing leases over several years and cited a number of examples of cases where the ABU had reviewed multiple ARFI submissions for leasing data [C-7].

[34] The Complainant argued that the Safeway stores at Shawnessy Village and Southland Crossing should be included in the rental rate analysis because the Respondent was well aware that the initial lease terms were 20 year in length, ending in 2011 and 2009 respectively. [pp. 16-33 C-8]

[35] The Complainant argued that the Co-op Store at Deer Valley Marketplace was an 'A' quality rating, not a 'B' as identified in the City's 2013 Supermarket Analysis [p. 283 R-1]. The Complainant advised that the Deer Valley Centre had been converted from an interior to an exterior mall and extensively renovated. Photographs and site plans were provided to support this contention [pp. 18-25 C-8].

Respondent's Position:

The Respondent provided a 691 page disclosure document, "Exhibit R-1" and provided the following evidence and argument with respect to this issue:

[36] In support of its assessed rental rate of $18.00 per sq. ft. for Quality 'A' Grocery Stores, the Respondent provided a 2013 Revised Rental Rate Analysis [p. 284 of R-1], which included four properties agreed to by the Complainant that demonstrated a median rental rate value of $18.75 per sq.ft.

[37] The Respondent argued that the Safeway stores at Shawnessy Village and Southland Crossing should not be included in the 2013 rental rate analysis because The City did not have sufficient information to determine if they were current leases. The lease date for the Shawnessy Village Safeway is shown on the rent roll of 04/01/12 as 02/01/91 [p. 287 R-1] and the lease term for the Southland Village Safeway is shown on the July 2012 rent roll as May 15, 1989 to May 14, 2014 [pp. 303-304 R-1].

[38] The Respondent stated that it was not The City's responsibility to go back over a number of years to determine if the information submitted to The City through the ARFI process is correct. The taxpayer knows the importance of the information requested through the ARFI process and the responsibility for accuracy lies with them.

Board's Reasons for Decision:

[39] The Board accepts the five sales offered by The City but agrees with the Complainant that the per sq. ft rental rate for the Aspen Landing Safeway should be adjusted to the "blended rate" of $16.72. The Board also finds that the Southland Crossing Safeway is a new lease and should be included as a comparable lease. The resultant median value of the six lease rates is $15.86 per sq.ft. or $16.00 per sq. ft. as shown in the following table. Therefore, the Board reduces the assessed value to $16.00 per sq.ft. to be more reflective of market value.

Shopping Centre/ Address	Leased area (sq. ft.)	Shopping Centre Name	Lease rental rate ($/sq.ft.)	Lease Start Date (year)	Lease Term (years)
3625 Shaganappi TR NW	43,026	Market Mall	$8.40	2011	10
163 Quarry Park BLVD SE	45,358	Quarry Park	$26.45	2009	20
356 Cranston RD SE	42,334	Cranston Market	$19.00	2009	20
347 Aspen Glen LD SW	53,916	Aspen Landing	$16.72	2009	25
100 Anderson RD SE	76,326	South Centre Mall	$15.00	2011	5
9737 Macleod TR SW	44,293	Southland Crossing	$13.50	2009	5
		3 yr Median	*$15.86*		

[40] The Board does not accept the Shawnessy Village lease as it agrees with the Respondent that it is not clear from the documentation that the rental rate is current.

[41] The Board agrees with the Complainant that the ARFI questionnaire may pose difficulty to taxpayers and that there is a lack of clarity on how "step-up" and lease extensions are treated by The City in its rental rate analysis.

ISSUE 3: Should the assessed market rental rates for the CRU space of 2,501 to 6,000 sq.ft. be reduced from $30.00 per sq.ft. to $20.00 per sq. ft. or alternatively $23.00 per sq. ft..

Position of the Parties

Complainant's Position:
The Complainant provided the following evidence and arguments in support of their requested CRU lease rate reductions:

[42] The Complainant noted that it was difficult to find comparables for this CRU space size in the general area, but provided a 2013 CRU rental rate analysis of CRU space of 2,501 to 6,000 sq.ft. [p. 29, C-1]. The lease rate comparables were located in a variety of property types and had quality ratings ranging from A- to B-. Leases had start dates ranging from June of 2010- February of 2012 with lease rates of $15.00 to $28.00 per sq.ft. and a median value of $19.50 per sq.ft.

[43] The Complainant noted that the liquor store at 3504 19 St. SW was the most comparable in size to the subject and offered an alternate assessment request at $23.00 per sq.ft. [p.113 C-1]

Respondent's Position:
The Respondent along with Exhibit R-1 provided the following evidence and argument with respect to this issue:

[44] The Respondent argued that a number of the comparables used by the Complainant should be excluded because they were from different property types e.g., Strip Centres, Enclosed Neighbourhood/Community Centres or had different quality ratings than the subject which is an A' [p.13 C-1]

[45] The Respondent provided a table using the Complainant's lease comparables of 'A ' quality which showed a median rental rate value of $30.00 [p.295 R-1].

Board's Reasons for Decision:
[46] The Board agrees with the Respondent that lease rates from different property types and quality ratings used by the Complainant are not comparable to the subject. Therefore, the assessed value of $30.00 per sq.ft. is confirmed.

DATED AT THE CITY OF CALGARY THIS 28th **DAY OF** August **2013.**

Mary J. Axworthy

Mary J. Axworthy- Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Garrison Woods Safeway Evidence Submission
2. C-2	Community-Neighbourhood Shopping Centre Capitalization Rate Analysis
3. C-3 A & B	Community-Neighbourhood Shopping Centre Capitalization Rate Historical Data
4. C-5	Rebuttal Submission- Neighbourhood Community Cap Rate Analysis
5. C-7	Rebuttal Submission- Supermarket "A" Group
6. C-8	Grocery Leasing "A" = Prime/Good Location- Newer or Renovated Stores
7. R-1	Respondent 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.

For Administrative Use Only

Municipal Government Board use only: Decision Identifier Codes				
Apppeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighbourhood Mall	Income Approach	Cap rate Market rent/Lease rates