



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Royal West (Crowfoot) Limited, COMPLAINANT
(as represented by Altus Group)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
P. Pask, BOARD MEMBER
J. Pratt, 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 2014 Assessment Roll as follows:

| | |
|--------------------------|---------------------------|
| ROLL NUMBER: | 175101807 |
| LOCATION ADDRESS: | 70 Crowfoot Way NW |
| FILE NUMBER: | 74111 |
| ASSESSMENT: | \$4,410,000 |

This complaint was heard on 11th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *K. Fong, Agent – Altus Group*

Appeared on behalf of the Respondent:

- *S. Turner, Assessor – City of Calgary*
- *B. Thompson, Assessor – City of Calgary*

Procedural or Jurisdictional Matters:

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

[2] Both parties requested that the capitalization rate evidence, rebuttal, all questions and answers and closing statements related to the capitalization rate be carried forward from File No. 75781 to other files being heard subsequent to that hearing. The Board agreed to carry forward all the capitalization rate related evidence and argument from File No. 75781 to the following files, including the subject file.

| File No. | Roll No. | Municipal Address |
|--------------|------------------|---------------------------|
| 74095 | 016202202 | 101 Crowfoot Way NW |
| 74508 | 016203309 | 35 Crowfoot Way NW |
| 75529 | 016203507 | 20 Crowfoot Cr. NW |
| 75530 | 016203606 | 60 Crowfoot Cr. NW |
| 74106 | 016208902 | 46 Crowfoot Cl. NW |
| 74137 | 016213803 | 75 Crowfoot Way NW |
| 74139 | 175034008 | 260 Crowfoot Cr. NW |
| 74112 | 175036607 | 156 Crowfoot Gate NW |
| 74111 | 175101807 | 70 Crowfoot Way NW |
| 74109 | 175102102 | 90 Crowfoot Way NW |
| 74423 | 175154806 | 138 Crowfoot Way NW |
| 74901 | 200388189 | 95 Crowfoot Cr. NW |
| 74130 | 200388197 | 99 Crowfoot Cr. NW |

Preliminary Matters:

[3] The Complainant originally intended to dispute the lease rate applied to the bank space, and began presenting this evidence (Exhibit C1). The Respondent noted that one of the rental rates used as a lease comparable by the Complainant was wrong. The Complainant agreed that the lease rate as presented in Exhibit C1 was an error, and after correcting the error and considering the impact on the evidence, withdrew the bank rental rate as an issue. The hearing continued with the only merit issue being the capitalization rate.

Property Description:

[4] The subject property is located at 70 Crowfoot Way NW, in the Crowfoot Power Centre. The 1.46 acre property consists of one single-storey building constructed in 1995 and used by the Canadian Imperial Bank of Commerce. The property is zoned as "Direct Control District: CM1403 Retail-Shopping Centres – Power" and is in such a use.

[5] 2014 property assessment is done using an Income Approach, applying the factors as shown in the table below. The net operating income (NOI) for this property is calculated as \$264,831. The capitalization rate applied is 6.00%. The resulting assessment is \$4,410,000 (rounded).

| Sub-components | Area (SF) | Rental Rate (\$/SF) | Vacancy Rate % | Operating Cost (\$/SF) | Non-recoverable (\$/SF) |
|----------------|-----------|---------------------|----------------|------------------------|-------------------------|
| Bank | 8,260 | 34.00 | 3.50 | 12.00 | 1.00 |

Issues:

[6] The Complainant raised one issue related to the 2014 Assessment Income Approach Valuation. The Complainant's position is that the 2014 Property Assessment is too high because:

- the 6.0% capitalization rate used in the Income Approach calculation is incorrect. The correct capitalization rate is 6.5%.

Complainant's Requested Value:**\$3,830,000**

Board's Decision:

[7] The 2014 Property Assessment of \$4,410,000 is confirmed. The Board considered the capitalization rate comparables presented by both parties and finds that they support a capitalization rate of 6.0%, as used to prepare the 2014 Assessment.

Legislative Authority, Requirements and Considerations:

[8] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[9] The Board notes that the words "fair" and "equitable" are not defined in the MGA or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: What is the correct capitalization rate?

Complainant's Position:

[10] The Complainant presented Exhibit C1, which summarized its position, as well as presenting a table showing the 2014 Altus Power Centre Capitalization Rate Summary. This table is also presented on page 17, Exhibit C2. Exhibit C2 presents the support information showing how the capitalization rate is calculated for each of the four sales comparables presented on the summary table. This is the evidence the Complainant relies on to support its position that the correct capitalization rate is 6.50%.

[11] The Complainant stated there are only four recent sales involving properties in power centres and all four happen to be in the Crowfoot Power Centre. The four sales used are summarized below.

| Sale No. | Civic Address | Name/Occupant | Registration Date | Sale Price | Cap. Rate |
|----------|-------------------------|--------------------------|-------------------|--------------|-----------|
| 1 | 20 & 60 Crowfoot Cr. NW | Crowfoot Village | 04-2012 | \$31,250,000 | 6.78% |
| 2 | 140 Crowfoot Cr. NW | Crowfoot Corner | 05-2012 | \$35,500,000 | 5.13% |
| 3 | 850 Crowfoot Cr. NW | Community Natural Foods | 05-2012 | \$4,750,000 | 6.03% |
| 4 | 155 Crowfoot Way NW | Harper's Tire/Enterprise | 06-2012* | \$4,100,000 | 8.60% |

*sale date is in dispute.

[12] The Complainant calculated the capitalization rate (cap rate) by applying the typical income factors the City used in preparing the 2013 assessment to the 2012 sale price for Sales 1, 2 and 3. (This is the same method used by the Respondent in calculating its capitalization rate discussed later in this decision.)

[13] The Sale 4 property was assessed using the bare land value plus cost of improvements method in 2013 and prior years, as it was a car dealership. The bare land plus cost approach is the way the municipality (City) assesses car dealerships. This property was subsequently renovated and a portion of the building is currently leased to Harper Tires, with the remainder leased to Enterprise Rent-a-Car. To derive the capitalization rate for Sale 4, the Complainant used the lease rates and other income factors applied to commercial property in the Crowfoot Power Centre used by the City in preparing the 2014 Assessment to derive the net operating income, which was then divided by the sale price to derive the 8.60% capitalization rate.

[14] Based on these four comparable sales, the Complainant demonstrated that the mean capitalization rate is 6.63% and the median capitalization rate is 6.41%. The Complainant argued that this analysis supports a capitalization rate of 6.5%, which is the rate used to calculate the requested assessment.

[15] The Complainant stated that there were few sales of this property type in the City, so it is necessary to use all the information that is available. The Complainant noted that the first two of its comparables are the same as used by the Respondent.

[16] The Complainant presented evidence and argued that Comparable 3 (850 Crowfoot Cr. NW) is a valid sale and can be used to indicate a capitalization rate by calculating a net operating Income using the appropriate 2013 Assessment Income Approach factors used by the City. Such a calculation results in a valid indicator for the capitalization rate.

[17] The Complainant presented evidence and argued that Comparable 4 (155 Crowfoot Way NW) is a valid sale and can be used to indicate a capitalization rate. In rebuttal (Exhibit C3), the Complainant presented more evidence to support the rental rates used to calculate the capitalization rate from 2014 Income Approach Valuation documents for similar properties located in the Crowfoot Power Centre.

[18] In evidence (Exhibit C2) the Complainant provided a RealNet report regarding the sale of 155 Crowfoot Way NW property, the land title, transfer document and rent roll to support the June 2012 sale date. In rebuttal, the Complainant disputed the position of the Respondent that the agreement of sale or at least the price was determined in 2010, and argued that the transaction date does represent the sale date. Furthermore, the Complainant stated that a member of the Altus Group contacted the purchaser of the property, who apparently stated that the sale price reflected the market (no discount or premium was involved).

[19] To support the indicated capitalization rate of 6.50%, the Complainant also presented an "Investment Grade Market Indicator" located at 3320 Sunridge Way NE. The Complainant argued that this location was effectively in or similar to a power centre, as there were a number of big box type retail properties in the area. Based on an analysis of the January 2011 sale of this property, the indicated capitalization rate is 6.55%. This supports the 6.50% capitalization rate indicated by the Complainant's other evidence. This analysis was not presented as a "comparable sale" but as supporting evidence.

Respondent's Position:

[20] The Respondent's position is that the capitalization rate is 6.0%, and based this on two sales comparables, which are Sale No. 1 and 2 as presented by the Complainant. The details for these sales and other support documentation is presented in Exhibit R1.

[21] The Respondent acknowledged that Sale No. 3 is a valid sale but did not use the sale in their capitalization rate study because the property was an owner occupied property prior to and after the sale. The City does not use owner occupied properties in its capitalization rate studies, as a matter of policy.

[22] The Respondent presented land titles and transfer documents for the 155 Crowfoot Way NW property (Sale No. 4) and Corporate Search documents that show that the vendor and purchaser are shareholders in a common company, MAC73 Ltd. The Respondent argued that this indicates that the parties have a business relationship, and therefore the sale is considered non-arms length by the City and not used in its capitalization rate study. Based on the Non Residential Property Sale Questionnaire completed by the purchaser in September 2012, the property was not listed for sale at the time the property was purchased, further suggesting that the transaction was non-arms length.

[23] The Respondent presented a Non Residential Property Sale Questionnaire completed by the purchaser on September 5, 2012 (page 53-56, Exhibit R1). This document states that the price was agreed to on "2010/09/15" and the Offer to Purchase signed on "2010/11/04" (page 53, Exhibit R1). Based on this information, the Respondent stated that the City considers this a 2010 "sale". In this case, the title transfer in June 2012 is not reflective of the "sale" date. This is further reason that this sale is not used in its capitalization rate study.

Findings of the Board

[24] The Board notes that two sales are used by both parties in their capitalization rate analysis (Sale No. 1 and 2). The sales data and indicated capitalization rate for these two sales is identical in both analyses.

[25] The Board considered Sale No. 3 presented by the Complainant and finds that this is a valid sale. The calculation of the capitalization rate by the Complainant is consistent with the methodology used to calculate the capitalization rate for Sale No. 1 and 2 by both parties. The Board is not persuaded by the Respondent that it should not be used simply because it was an owner occupied property at the time of sale.

[26] Regarding the sale date of Sale No. 4, the Respondent presented evidence that indicates that the price was determined and the offer to purchase occurred in 2010, and that the June 2012 date refers only to the date the title transferred. The Complainant did not provide any evidence to the contrary, nor specifically dispute this issue other than to argue that the transaction date is typically used to reflect sale date. Based on the evidence, the Board finds that at the very least, the sale date is uncertain and therefore not a reliable sale comparison.

[27] The Board is mindful of the discussion regarding consistency in methodology contained in *Westcoast Transmission Co. v. British Columbia (Vancouver – Assessor of Area No. 9)* [1987] B.C.J. No. 1273. With regard to Sale No. 4 (155 Crowfoot Way NW) and for the moment accepting that this is a June 2012 sale (notwithstanding the comments above), the Board notes that the capitalization rate presented by the Complainant is not calculated using the same methodology as used to calculate the capitalization rate for Sale No. 1, 2 and 3. The capitalization rate for Sale 4 is done using rental rates used by the City for the 2014 Assessment and applied to a transfer that occurred in June 2012. The other three capitalization rates are calculated using the City's 2013 income factors applied to the respective 2012 sales. Because the methodology used to calculate the capitalization rate for Sale No. 4 is not consistent with the methodology used to calculate the other three capitalization rates, the Board finds the capitalization rate presented for Sale No. 4 unreliable.

[28] The capitalization rates for Sale No. 1, 2 and 3 range from 5.13% to 6.78% with a mean of 5.89% and median of 6.03%. This evidence supports the 6.0% rate used by the City to calculate the 2014 Assessment using the Income Approach for properties located in the Crowfoot Power Centre.

Board's Reasons for Decision:

[29] The Board finds the sale of 155 Crowfoot Way NW (Sale No. 4) to be unreliable due to uncertainty regarding when the sale price was agreed to (sale date) and how the capitalization rate for this sale was calculated (inconsistent with the methodology used to calculate the other three capitalization rates presented). The Board puts no weight on this sale or the capitalization rate derived therefrom.

[30] The Board considered the capitalization rates derived for three of the four sales comparables used by the Complainant in its capitalization rate study (Sale No. 1, 2 and 3) and concludes that this evidence supports a capitalization rate of 6.0%, as is used by the City to calculate the 2014 Assessment using the Income Approach for properties located in the Crowfoot Power Centre.

[31] As the Board confirms the 6.0% capitalization rate used in the Income Approach calculation, and none of the other factors were in dispute, the Board confirms the 2014 Assessment of \$4,410,000 for the subject property.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF June 2014.

A handwritten signature in black ink, appearing to read 'I. Weleschuk', written over a horizontal line.

I. Weleschuk
Presiding Officer

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

| NO. | ITEM |
|------------|---|
| 1. C1 | Complainant Disclosure |
| 2. C2 | Complainant Disclosure – Capitalization Rate Analysis |
| 3. C3 | Complainant Rebuttal – Capitalization Rate Analysis |
| 4. R1 | 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 MGB Administrative Use Only

| Subject | Type | Sub-Type | Issue | Sub-Issue |
|----------------|-------------|-----------------|---------------------|------------------|
| CARB | Commercial | Power Centre | Capitalization Rate | |