



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:

Capital City Shopping Centre Limited (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, M. E. Bruton
Board Member, B. Jerchel***

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: 156163909

LOCATION ADDRESS: 16061 Macleod Trail SE

FILE NUMBER: 74981

ASSESSMENT: \$47,130,000

This complaint was heard on the 18th day of June 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *B. Neeson - Agent, Altus Group*

Appeared on behalf of the Respondent:

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

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

There were no procedural or jurisdictional matters raised by either party.

Property Description:

1) The subject is a multi-tenant, multi-building retail node containing a number of Commercial Retail Units (CRU), "junior big box" store, restaurant, and theatre, within the Shawnessy Power Centre in SE Calgary. The total development contains 124,041 square feet (s.f.). The buildings are classified as "B" quality, all constructed in 1999. The assessable land area is 12.08 acres.

Issues:

- 2) The Complainant brought four issues before the Board.
- 3) The subject is currently assessed using the income approach. In the capitalization calculations, the City has adopted a capitalization rate of 6.00 per cent. The Complainant contends that a rate of 6.5 per cent is more appropriate.
- 4) The assessed rental rate for space in the 2,501 to 6,000 s.f. CRU space is \$30.00 for this particular property. The Complainant is seeking a reduction in the rental rate to \$28.00 per s.f.
- (5) The assessed rental rate for space in the "junior big box" (14,001 to 40,000 s.f.) category of retail space is \$19.50 for this particular property. The Complainant is seeking a reduction in the rental rate to \$16.00 per s.f.
- (6) The theatre space is assessed at a rate of \$20.00 per s.f. The Complainant is seeking a reduction to \$18.00.

Complainant's Requested Value: \$39,980,000

Board's Decision:

7) The assessment is reduced to \$45,750,000.

Legislative Authority, Requirements and Considerations:

(8) This Board derives its authority from section 460.1(2) of the Act.

(9) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;

"An assessment of property based on market value

(a) must be prepared using mass appraisal

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property"

(10) Section 467(3) of the Act states;

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality."

(11) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

(12) The Board notes that the assessment has increased from \$44,780,000 in 2013, to \$47,130,000 in 2014.

Position/Evidence of the Parties

Issue 1; Capitalization rate

(13) The Complainant presented a capitalization rate study of 213 pages. The study centres around four transactions that are summarized on page 27 of exhibit C-1, or page 17 of C-2.

(14) All four of the transactions occurred in 2012. All four properties are located in the Crowfoot Power centre in north west Calgary. The four properties are;

- 20/60 Crowfoot Crescent

- 140 Crowfoot Crescent

- 850 Crowfoot Crescent (Community Natural Foods building)

- 155 Crowfoot Way (Harper's Tire / Enterprize Car Rentals)

(15) In testimony the Complainant stated that the methodology used in the analysis employed the actual selling price, the City Assessment Department's typical rents that were effective on July 1, 2012, and typical vacancies, and non-recoverable expenses that were in effect at that time. The study produced a range in rates from 5.13 to 8.60 per cent. The mean is 6.63 per cent, and the median is 6.41 per cent. The methodology, and the inputs used, were not disputed by the Respondent.

(16) The Complainant also submitted a fifth property transaction that was labelled as "Investment Grade Market Indicator". The property produced a capitalization rate of 6.55 per cent. Because the property was not in a power centre, it was not included in the analysis, but was presented as a market indicator to support the results.

(17) The Respondent's capitalization rate study contains two comparables --20/60 Crowfoot Crescent, and 140 Crowfoot Crescent, both of which are contained in the Complainant's study. The methodology and inputs used are the same as the Complainant's. The results -- 6.78 and 5.13 per cent-- are the same for both parties. The median produced by the two indices produced a median of 5.96 per cent, which the City rounded to 6.00 per cent.

(18) The City objected to the other two transactions used by the Complainant.

(19) It was the City's position that the Community Natural foods property at 850 - Crowfoot Crescent was vacant at the time of the sale and therefore did not exhibit any rent from which a capitalization rate could be derived.

(20) The Harper's Tire / Enterprise property is the former Village Honda auto dealership property. As far as this property is concerned, the City maintains that the transaction was non-arms length because of a relationship between the two parties. Corporate searches submitted in evidence revealed that the signing officer for the vendor company, and the signing officer for the purchasing company are both directors of a third company. The third company does not appear to be involved in the real estate transaction in question.

(21) The Harper's Tire property was also excluded from the City's evidence because it was the City's position that the property was a former auto dealership that was assessed by the cost approach because properties of this type rarely sell or lease, and therefore no rent was available for a capitalization rate analysis.

(22) Finally, it was argued that although the Harper's Tire transaction was finalized in 2012, it was actually negotiated in 2010. That assertion was not disputed by the Complainant.

Issue 2; CRU 2,501 to 6,000 s.f.

(23) The Complainant is requesting a rent reduction from the \$30.00 assessed rent, to \$28.00 per s.f. In support of the request, the Complainant submitted 14 lease comparables, (page 32 of C-1). The rent range is from \$20.00 to \$32.95 per s.f.. The average and median is \$26.35 and \$28.00 respectively. All of the leases are from within the Shawnessy Power Centre. Lease start dates are from March, 2010 to February, 2012.

(24) The Respondent presented nine leases from the Shawnessy Power Centre, that produced a range of rents from \$20.00 to \$32.95 per s.f.(page 144 of R-1). The median of the range is \$30.00, hence the City's assessed rent of \$30.00.

Issue 3; Junior Big Box Rent; 14,000 to 40,000 s.f.

(25) The Complainant is requesting a rent reduction from the \$19.50 assessed rent, to \$16.00 per s.f. In support of the request, the Complainant submitted eight lease comparables, including one lease in the subject property (page 25 of C-1). The rent range is from \$12.00 to \$20.00 per s.f.. The average and median is \$16.61 and \$15.69 respectively. All of the leases are from within the Shawnessy Power Centre. Lease start dates are from January, 2009 to October 2010. Indications are that most of these leases are either expired, or are nearing their expiration date.

(26) The Respondent presented 10 leases from a City wide data base, that produced a range of rents from \$6.43 to \$31.00 per s.f.(page 145 of R-1). The median of the range is \$19.50, hence the City's assessed rent of \$19.50. The ten leases include four from the Crowfoot Power Centre, which is a power centre that is regarded highly in the City's hierarchy. The four Crowfoot leases are the highest in the sampling. Also, there is a lease at 5751R-Richmond Road SW, at

\$6.43 per s.f. This lease is clearly an outlier from the typical range. Excluding these five leases, the rent range is from \$14.85 to \$20.00. The mean and median are \$17.13 and \$16.75.

Issue 4 (Theatre rental rate)

(27) According to testimony supplied at the hearing, the subject is a modern theatre with all of the modern amenities, including stadium seating, up to date sound systems, and modern concession and bathroom facilities..

(28) The Complainant submitted three comparable theatre rents on page 45 of C1 for the Board's consideration.

<u>Location</u>	<u>Type</u>	<u>Quality</u>	<u>Area S.F.</u>	<u>Rate</u>	<u>Start date</u>
- Westhills	Power centre	A	51,903	\$22.50	9/20/2009
- Crowfoot	Power centre	A	51,151	\$15.90	10/1/2008
- Cross Iron	Regional	A		\$17.00	1/1/2010

(29) The average of the three comparables is \$18.47, and the median is \$17.00.

(30) Based on testimony, the Westhills theatre rent was \$16.00 per s.f. for the period August 1, 2006, to July, 2016. Cineplex Theatres and the landlord of the shopping centre entered into a new lease commencing December 20, 2009 and ending on December 31, 2024. Under the terms of the agreement, Cineplex agreed to renovate the theatre to provide more modern theatre facilities, as well as a number of building upgrades. In exchange, the landlord would pay Cineplex a tenant improvement allowance of \$2,595,000. In return, Cineplex agreed to increase the annual minimum rent to \$22.50 per s.f. for years one to five, \$24.50 per s.f. for years six to 10, and \$26.00 per s.f. for years 10 to 20. The overall average rent over the term of the lease is \$24.33 per s.f.

(30) The Respondent presented six theatre leases, including what is referred to as a second run theatre at 13226 Macleod Trail SE. This theatre appears to have little commonality with the subject.

(31) The remaining five leases submitted by the Respondent include the Westhills and Crowfoot Crossing theatre used by the Complainant. The rents range from \$31.40 per s.f. at 388 Country Hills Boulevard, to \$15.90 at Crowfoot Crescent. The mean rent is \$22.89, and the median is \$22.50.

(32) The Respondent failed to include the Cross Iron Mills theatre on the grounds that Cross Iron Mills is situated in the Municipal District of Rockyview, which is a different jurisdiction than Calgary.

Findings and Reasons for Decision:

1. Capitalization Rate

(33) The Board does not accept the Respondent's position regarding the Community Natural Foods property in the Complainant's capitalization rate study. Simply because there is no actual rent in place does not negate the validity of this comparable for the purpose of estimating a capitalization rate. The purpose of establishing a capitalization rate is to estimate the fee simple interest in a property. That process requires the use of typical, or market level, rents in the analysis. If actual rents are used, the result could be a representation of the value of the lessor's

interest, but not necessarily the fee simple estate. That would violate Part 1, section 2(b) of the MRAT. That is the primary reason why typical rents prevailing at the time of the sale are adopted, and the actual rents in place are disregarded. The same principle should hold true whether there is no rent, or an actual rent that is disregarded.

(34) As far as the arms length nature of the Harper's Tire building is concerned, the Board found no compelling evidence to indicate it was not an arms length transaction. The Board recognizes the fact that the two parties are connected by virtue of common directorship in a third company. However, there is no evidence to suggest that the purchase price of the property in question was affected by this common directorship.

(35) Notwithstanding the Respondent's position relative to the negotiation date of the Harper's Tire transaction, there is no written evidence to indicate that the sale was actually negotiated two years prior. The transfer document is dated June 22, 2012, and the price indicated on the Affidavit is the same as the price used in the analysis. The Board accepts the 2012 acquisition date as being the correct date.

(36) This Board also recognizes that the Harper's Tire transaction involved two properties and the \$4,100,000 stated price is actually a price allocation and should be accorded the least amount of weight in the final analysis.

(37) Although the Board accepts the Harper's Tire transaction as a valid comparable, the capitalization rate analysis produced a result that is a full 262 basis points (46 per cent) removed from the median of the three remaining indicators. In the view of this Board, an outlier of that magnitude should either be removed from the analysis, or accorded less weight. The mean and median of the remaining three are 5.98 and 6.03 per cent. The Board accepts the Respondent's 6.0 per cent capitalization rate.

2. CRU 2,501 to 6,000 s.f.

(38) During testimony it was revealed that the City draws rent information from two sources. These were outlined in testimony as follows;

Site specific, or Centre specific base

- CRU space up to 1,000 s.f.
- CRU space 1,001 to 2,500 s.f.
- CRU space 2,501 to 6,000 s.f.
- CRU space 6,001 to 14,000 s.f.
- Banks, restaurants, fast food outlets

City wide base

- Junior Big Box - 14,000 to 40,000 s.f
- Big Box stores- 40,001 to 80,000 s.f.
- 80,000 s.f. plus
- Super markets

The chief reason for this division was given as the availability of data. Where there is an adequate sampling available, the City uses the site or centre specific rents. Where an adequate data base does not exist, the City expands the data base to include City wide properties.

(39) For issue 2,(CRU 2,501 to 6,000 s.f.) the Board finds that the Respondent's nine comparable leases are more current than the Complainant's 14 leases. The Board also finds that, based on the sample grouping in other space categories, nine is a sufficient number upon which to base a valid conclusion for mass appraisal purposes. On this issue, the Board finds for

the Respondent.

3. Junior Big Box; 14,001 to 40,000 s.f.

(40) For the "junior big box" category, the eight lease comparables submitted by the Complainant were all drawn from the Shawnessy Power Centre. These eight leases represent a larger data base than the sampling used by the City in other space categories. Moreover, the Board is of the opinion that eight site specific leases are more representative of a specific location than the City's more general city wide sampling. The Board accepts the Complainant's evidence with regard to the rent for the " junior big box" category, being 14,001 to 40,000 s.f. The rent is reduced from \$19.50 to \$16.00 per s.f.

4. Theatre

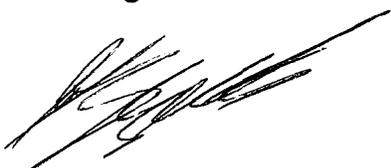
(41) The Board does not accept the Respondent's position relative to the Cross Iron Mills theatre lease. The fact that the property is located in a different jurisdiction should not automatically disqualify it as a comparable, without specific reasons. Although some unfounded speculation and conjecture was offered, nothing specific to justify its exclusion was presented. Indeed, from a practical perspective, this board wonders whether some theater goers from the City even know that the theatre is out of the City. Furthermore, Cross Iron Mills is closer to many north Calgary nieghborhoods than many theaters in the south parts of the City.

(42) As far as the Westhills theatre is concerned, the evidence is clear that the rent increase to \$22.50 (or higher) resulted from theatre and building upgrades that brought the property to the approximate equivalent level as the subject.

(43) If the Cross Iron Mills lease is included in the analysis, along with all of the leases presented by both parties, (excluding the second run theatre lease at Canyon Meadows), the overall average rent is \$21.91 and the median is \$21.58. Both still exceed the current assessed rent of \$20.00 per s.f. The Board accepts the Respondent's theatre lease rate.

(44) With the revised rent for the junior big box lease rate to \$16.00 per s.f. , the assessment is reduced and truncated to \$45,750,000.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF July, 2014.
Presiding Officer


Jerry Zezulka

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****NO. ITEM**

1. C1 Complainant Disclosure
2. C2 Power Centre 2014 Capitalization Rate Analysis
3. C3 2014 Power Centre Pair Responses
4. C4 Complainant's Rebuttal Submission
5. 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.*

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<i>Subject</i>		<i>Issue</i>		
<i>Decision No.</i>	<i>Type</i>	<i>Issue</i>	<i>Detail</i>	<i>Issue</i>
CARB	Power Centre retail Theatre space	Market Value	Income Approach	Rental Rate & cap. rate