



Complaint ID 0262 1607  
Roll No. 30002044115

COMPOSITE ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: JULY 15, 2022

PRESIDING OFFICER: M. VERCILLO  
BOARD MEMBER: R. IRWIN  
BOARD MEMBER: D. WIELINGA

BETWEEN:

SKYLINE RETAIL REAL ESTATE HOLDINGS INC.  
as represented by Altus Group Limited

Complainant

-and-

CITY OF RED DEER

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30002044115

MUNICIPAL ADDRESS: 6380 50 AVENUE, RED DEER, AB

ASSESSMENT AMOUNT: \$25,733,800

REQUESTED AMOUNT: \$22,047,700

The complaint was heard by the Composite Assessment Review Board on the 15<sup>th</sup> day of July 2022, via videoconference.

Appeared on behalf of the Complainant: Andrew Izard, Altus Group Limited

Appeared on behalf of the Respondent: Jason Miller, City of Red Deer

**DECISION:** The assessed value of the subject property is confirmed.

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## **JURISDICTION**

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 455 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”].

## **PROPERTY DESCRIPTION AND BACKGROUND**

- [2] The subject property is known as Village Mall, which is located in North Central Red Deer. The shopping centre has been developed over various time periods from 1980 to 2013 and includes multiple clusters of development, with various commercial retail unit (CRU) sizes, and numerous major retail anchors and national tenants. The shopping centre consists of two rolls, with the subject containing a total improvement size of 136,633 square feet (sf) of a total 243,720 sf for the entire shopping centre. The subject’s improvements are situated on 9.13 acres of land of a total 19.32 acres for the entire shopping centre.
- [3] The subject is assessed as a “Retail Shopping Centre – Power Centre” (Power Centre) on the Income Approach (IA) to value. The assessor assigns a “market income” to various CRU spaces based on their relative size, rating, and function, by using lease rates (ranging from \$1.00/sf to \$32.00/sf) deemed typical for those spaces. The combined total of that market income determines a Potential Gross Income (PGI) for the entire Power Centre, which is then adjusted for a vacancy allowance of 5.00%, operating costs of \$12.00 per sf, and a non-recoverable allowance of 4.00%. The resulting Net Operating Income (NOI) is then “capitalized” for assessment purposes at a capitalization (cap) rate of 6.50%.

## **PRELIMINARY MATTERS**

- [4] The Presiding Officer confirmed that no Board Member raised any conflicts of interest about matters before them, and that neither party raised any objection to the panel hearing the complaint.
- [5] The Respondent raised an objection to the Complainant’s Rebuttal evidence claiming that several pages (**see Appendix B**) contained evidence that was not proper rebuttal, but rather was new evidence that the Complainant should have provided in its initial disclosure. The Respondent argued that by providing new evidence in the Complainant’s Rebuttal, the Respondent was not afforded proper time to consider the new evidence and is therefore unfair. The Respondent requested that this new evidence be removed and not considered by the Board. The Complainant argued that its rebuttal is proper in that it addresses evidence introduced by the Respondent in defence of its assessment and should be considered by the Board. Given the number of pages involved in the Respondent’s preliminary objection, the Board will address them within its findings under each issue and or within **Appendix B**. However, in general, the Board will allow rebuttal evidence when it responds to evidence introduced by the Respondent and is consistent with the issue(s) raised in the Complainant’s original disclosure. The Board will not allow evidence when it does not respond to evidence introduced by the Respondent or provides an alternative request to the issue that was raised in its original disclosure.
- [6] On a procedural matter, the Complainant and the Respondent requested that all testimony and argument presented at the hearing for Compliant ID: 0262 1563, on the merit issues raised below, be carried forward to this hearing. On this matter, neither party objected to the other party’s

request. No additional preliminary or procedural matters were raised by any party and the hearing proceeded to the merit complaint as outlined below.

### **POSITION OF THE PARTIES**

**Issue 1: The subject's vacancy allowance specific to CRU space under 20,000 sf should be increased to 15.00%.**

#### **Position of the Complainant**

- [7] The Complainant provided a chart of "Power Centre CRU < 20,000 sf Vacancy Analysis" of the six Power Centres within the City of Red Deer. The sample included 111 spaces with a median area of 3,080 sf, encompassing a total area of 495,499 sf of which 75,462 sf was considered vacant, resulting in a 15.23% vacancy rate. This chart formed the basis of the Complainant's requested 15.00% vacancy allowance applied to CRU space under 20,000 sf.
- [8] The Complainant provided a City of Calgary "Retail Market Trends - Power Centre Assessed Rates" brochure that showed that in the City of Calgary, lease rates, vacancy allowances, operating costs, and non-recoverable allowances can differ on a site-specific basis and differ relative to the size of the CRU space within the same Power Centre. The Complainant argued that using a different vacancy rate for a specific group of CRU space (0 to 20,000 sf) is not without precedent.
- [9] In support of its vacancy chart the Complainant provided:
- a) A rent roll for the Gaetz Avenue Crossing (5250 22 Street) Power Centre dated July 1, 2021, showing that 30,851 sf of a total area of 177,388 sf, or approximately 17% was vacant.
  - b) A rent roll for the Southpointe Common (2004 50 Avenue) Power Centre dated July 31, 2020, showing that 16,010 sf of a total area of 151,876 sf, or approximately 10.54% was vacant.
  - c) A rent roll for the Southpointe Plaza (5001 19 Street) Power Centre dated July 31, 2020, showing that no vacant space was available within the approximate total area of 201,026 sf.
  - d) A tenancy schedule of the Gaetz South Plaza (5111 22 Street) Power Centre dated July 1, 2021, showing that one CRU totalling 1,612 sf was vacant.
  - e) A tenancy schedule of the Red Deer Village Mall (6320-6380 50 Ave) Power Centre dated December 31, 2021, showed an unspecified area of vacant space.

#### **Position of the Respondent**

- [10] The Respondent argued that the Complainant is requesting a change in methodology that is not appropriate under the circumstances. Specifically, the Complainant is requesting that a different vacancy allowance (15.00%) be applied to CRU spaces under 20,000 sf. The Respondent's argued that the Complainant's request is without merit and that the current methodology of applying a single vacancy allowance (5.00%) to all spaces within the Power Centre remains appropriate.
- [11] The Respondent provided a chart reviewing the Complainant's vacancy allowance request. It determined that the Complainant's request would result in an overall vacancy allowance that

would vary from 8.8% for Southpointe Plaza to 13.3% for Southpointe Common, with a weighted average of 11.6% for the five Power Shopping Centres (PSCs) under complaint. The Respondent argued that the City's PSCs have never experienced that level of vacancy, is an inequitable application of the vacancy allowance, and is contrasted with its overall vacancy allowance of 5.0% that is applied equitably to all PSCs.

[12] The Respondent provided its "2021 Power Centre Vacancy Analysis". The analysis entails a three-year (2021, 2020, 2019) weighted average study of the six PSCs within the City of Red Deer. The study determined the following:

- a) Gaetz Avenue Crossing had a total area of 177,388 sf consistently throughout the three-year period and had of vacancy rate of 17.4% in 2021, 7.5% in 2020, and 9.6% in 2019, with an average vacancy rate of 11.49% over those three years.
- b) Village Mall had a total area of 254,926 sf in 2021 and 2020 and a total area of 252,220 sf in 2019. It experienced a vacancy rate of 7.2% in 2021, 8.8% in 2020, and 8.1% in 2019, with an average vacancy rate of 8.02% over those three years.
- c) Southpointe Common had a total area of 152,874 sf in 2021 and 2020 and a total area of 152,933 sf in 2019. It experienced a vacancy rate of 10.9% in 2021, 10.5% in 2020, and 4.4% in 2019, with an average vacancy rate of 8.58% over those three years.
- d) Southpointe Plaza had a total area of 224,638 sf consistently throughout the three-year period and had no vacancy over those three years.
- e) Sobey's Centre (1-5, 5111 22 Street) had a total area of 61,481 sf consistently throughout the three-year period and had no vacancy over those three years.
- f) Gaetz South Plaza had a total area of 73,807 sf consistently throughout the three-year period and had of vacancy rate of 2.2% in 2021 and 2020, and 0.0% in 2019, with an average vacancy rate of 1.46% over those three years.
- g) In total the six PSCs had a total area of 945,114 sf in 2021 and 2020 and a total area of 942,467 sf in 2019. The total vacancy rate varied from 7.13% in 2021, 5.64% in 2020, and 4.68% in 2019, with an average vacancy rate of 5.82% over those three years.

The Respondent used the 5.82% average vacancy rate over the last three years of assessment analysis as support for its 5.00% overall vacancy allowance applied to all PSCs' IA valuation.

[13] In support of its vacancy chart the Respondent provided:

- a) A rent roll for Gaetz Avenue Crossing dated July 1, 2021, showed 30,851 sf of a total area of 177,388 sf, or approximately 17% was vacant.
- b) A rent roll for Village Mall dated June 30, 2021, showed 18,279 sf of a total area of 243,892 sf, or approximately 7.49% was vacant.
- c) A tenant schedule for Southpointe Common dated July 31, 2021, showed that four CRUs totalling 16,646 sf were vacant.
- d) A tenant schedule for Southpointe Plaza dated July 31, 2021, showed no vacancy.
- e) A tenancy schedule of the Gaetz South Plaza dated June 30, 2021, showed one CRU totalling 1,612 sf was vacant.

[14] The Respondent provided some evidence concerning the Bone & Biscuit 2012 sf space located in the Southpointe Common Power Centre. The evidence supported the Respondent's decision to

characterize this CRU space as vacant because the space was in construction prior to July 1, 2021, in preparation for the opening of Bone and Biscuit on July 31, 2021. The Respondent deemed the space unavailable on July 1, 2021, and therefore not vacant.

### **Complainant's Rebuttal**

- [15] The Complainant objected to the Respondent's introduction of Strip Shopping Centres (SSCs) in its secondary cap rate analysis (see Issue 2). The Complainant argued that these shopping centres are substantially different from PSCs that are assessed with different market rents, vacancy allowances and cap rates. Accordingly, the Complainant argued that if the Respondent's position is that SSCs are comparable to PSCs, then those income parameters should be changed as requested under this complaint to accommodate a more equitable assessment of the subject. The Complainant provided copies of the Respondent's disclosure from a 2022 complaint concerning its defence of vacancy rates of SSCs. **See Appendix B.** With this evidence, the Complainant suggested that an equitable vacancy allowance as afforded to the assessments of SSC would be appropriate for the subject.
- [16] The Complainant rebutted the vacant space at the Village Mall claiming that the Red Deer Buffet that occupied 6,000 sf was essentially vacant at the time of the mall's assessment. In support of its claim, the Complainant provided correspondence from the mall's owner that on July 15, 2021, the Red Deer Buffet was terminated as a tenant for non-payment of rent. **See Appendix B.** With this evidence the Complainant adjusted the Respondent's vacancy analysis for the Village Mall to 9.2% from the Respondent's calculation of 7.2%.
- [17] The Complainant also provided evidence and argument that the Canadian Tire Garden Centre within the Village Mall should not be included in the calculation of vacant space. The Garden Centre is a unique space that would not be available to other potential tenants in accordance with the Canadian Tire lease. **See Appendix B.** In removing this space from the vacant space calculation, the Complainant further adjusted the actual vacant space of Village Mall to be 10.47%.
- [18] The Complainant rebutted the total vacant space at the Southpointe Common, claiming that the Bone & Biscuit space (2,012 sf) was occupied post-facto (July 31, 2021) and therefore at the time of its assessment should have been considered vacant. With this evidence the Complainant adjusted the Respondent's vacancy analysis for Southpointe Common to 12.2% from the Respondent's calculation of 10.9%.
- [19] The Complainant provided a variety of alternative calculations for the Respondent's overall vacancy allowance space that included the removal of a "pre-Covid" vacancy analysis, which involved removing the 2019 vacancy study from the Respondent's analysis. In essence, turning the Respondent's three-year vacancy study into a two-year vacancy study.

### **BOARD FINDINGS**

- [20] The Board does not accept the Complainant's proposal to consider an equitable vacancy allowance afforded the assessments of SSCs. The Board accepts that SSCs are substantially different than PSC's and although they were used by the Respondent in its secondary cap rate analysis (see Issue 2), the Board finds that this is an alternative vacancy allowance request that was not previously identified by the Complainant in its original disclosure. Instead, it was

introduced in its rebuttal and will therefore not be considered by the Board in its deliberations on this issue. **See Appendix B.**

- [21] The Board accepts the Complainant's evidence on the Red Deer Buffet as support that the space was vacant. The tenancy of the Red Deer Buffet was terminated on July 15, 2021, for non-payment of rent and photos provided by the Complainant in its original disclosure show that the space had been vacated. **See Appendix B.** Similarly, The Board accepts the Complainant's evidence that the Bone & Biscuit CRU space was vacant as at the assessment date (July 1, 2021) and was occupied post-facto on July 31, 2021.
- [22] The Board does not accept the Complainant's proposal to remove the Village Mall's Canadian Tire Garden Centre from the mall's calculation of vacant space. The Board finds that this evidence does not support the Complainant's vacancy issue. Namely, that CRU space under 20,000 sf should be afforded a vacancy allowance of 15.00%. Unlike the Red Deer Buffet 6,000 sf space and the Bone and Biscuit 2012 sf space, the Garden Centre's 11,206 sf space was not considered by the Complainant in its original disclosure, was introduced in its rebuttal and will therefore not be considered by the Board in its deliberations on this issue. **See Appendix B.**
- [23] The fundamental difference between the two parties on this issue is that the Complainant desires a 15.00% vacancy allowance to CRU space under 20,000 sf, while maintaining a 5.00% vacancy allowance to mezzanine space and CRU space over 20,000 sf. This approach is based on a one-year post-Covid vacancy analysis. In contrast, the Respondent wishes to apply an overall vacancy allowance of 5.00% regardless of the size of CRU space or whether its mezzanine space. This approach is based on a three-year vacancy analysis that would tend to minimize large deviations in vacancy in any given year.
- [24] The Board is satisfied that the Complainant has provided sufficient evidence to support its claim that Power Centre CRU space of less than 20,000 sf has experienced a vacancy rate approaching 15.00% within the last assessment year. The Board is also sympathetic to the Complainant's argument that this vacancy may have been a direct result of a post-Covid economy, which in this case is restricted to the last assessment year (July 1, 2020, to June 30, 2021). However, the application of a 15.00% vacancy allowance request specific to a particular size of CRU space, cannot be considered in isolation but must be considered in concert with the other issues addressed below.

**Issue 2: The cap rate applied to the subject's NOI should be increased to 7.25%.**

#### **Position of the Complainant**

- [25] The Complainant reviewed the sale of two comparable shopping centres to determine the cap rate involved in each transaction. The first sale was the Village Mall (6320-6380 50 Ave), which is assessed as a Power Centre that sold on January 15, 2020, for \$65,635,000. The second sale was the Clearview Market (3 Clearview Way), which is assessed as a neighbourhood shopping centre that sold on December 16, 2019, for \$8,500,000. The Complainant analyzed each sale and adjusted the income and/or sale prices of each shopping centre for what it deemed were atypical income or assessed costed components involved in the respective sale.

- [26] A copy of the Village Mall's sales verification questionnaire as requested by the City of Red Deer assessment department was provided. The questionnaire was completed on June 30, 2020, and confirmed the following:
- a) The transfer date of the sale occurred on January 15, 2020, the sale price was agreed to on September 18, 2019, and the closing date of the sale was on December 20, 2019.
  - b) The purchaser was Skyline Retail Real Estate Holdings Inc., and the vendor was First Capital Red Deer Corporation.
  - c) The purchase price was \$65,635,000. The actual NOI at the time of the sale was \$4,931,800, which produces a cap rate of approximately 7.5%.

All the above salient facts were supported by copies of legal documents such as Land Title Certificates and Transfer of Land documents.

- [27] The Complainant produced an income summary of the Village Mall at the time of purchase and determined that as of November 30, 2019, the actual NOI of the Village Mall was \$4,896,713. The actual NOI calculates an actual cap rate of 7.46% when compared to the actual sale price of \$65,635,000. The 2020 assessed NOI of the Village Mall was \$4,280,154 using what the Complainant deemed to be an atypical non-recoverable allowance of 3.00%, which it claimed was increased by 1.00% to account for a "Covid-19 adjustment". The Complainant recalculated the Respondent's 2020 assessed NOI by adjusting the "atypical" non-recoverable allowance down to a more typical 2.00% and then calculated an "adjusted typical" NOI of \$4,325,721. The Complainant determined that the Village Mall's actual NOI at the time of sale was \$570,992 greater than its adjusted typical NOI. Using the actual cap rate of 7.46%, this atypical NOI premium, produced a capitalized value differential of \$7,653,514, which it deemed should be removed from the actual sale price. In doing so, the Complainant determined an adjusted sale price of \$57,981,486 and when compared to the adjusted typical NOI of \$4,325,721, confirmed a cap rate of 7.46%.
- [28] Support for the Complainant's adjustment to the Village Mall's sale price (see above) by its actual NOI differential to typical income was sourced from the following:
- a) Alberta Municipal Affairs' "2020 Alberta Assessment Quality Minister's Guidelines",
  - b) Alberta Municipal Affairs' "2020 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual",
  - c) International Association of Assessing Officers (IAAO)' "Standard on Ratio Studies" approved April 2013, and
  - d) IAAO's "Standard on Verification and Adjustment of Sales", approved November 2010.

These authoritative documents support the concept that in circumstances where the sample size of a sales ratio study is inadequate, sales of income producing properties with atypical incomes could be included in the sample provided that their sales prices are adjusted by their actual incomes when they are deemed atypical. This methodology would involve a comprehensive analysis where long-term leases of at least three years that are deemed to be significantly different from market rent, would adjust the sales price of the income producing property by "the difference between the present worth of the two income streams".

- [29] The Complainant also provided an analysis and supporting documentation of the Clearview Market sale. The 2020 assessed NOI of the Clearview Market was \$571,529, again using what the Complainant deemed to be an atypical non-recoverable allowance of 3.00% to account for the Covid-19 adjustment. The Complainant recalculated the Respondent's 2020 assessed NOI by

adjusting the “atypical” non-recoverable allowance down to a more typical 2.00% and determined an assessed NOI of \$577,606. In this case, the Complainant noted that the Clearview Market’s 2020 assessment of \$9,322,300 included a Marshall and Swift costed value for a “Service Station Kiosk” assessed at \$142,594 and “Gas Bar Equipment” assessed separately at \$386,931. The costed value of the Kiosk and Gas Bar equipment totalled \$529,525. The Complainant offered two options of adjusting the Clearview Market’s sales price by either removing the total costed assessment of the Kiosk and Gas Bar, resulting in an adjusted sales price of \$7,790,475 (Option 1), or removing the costed assessment of the Kiosk only, resulting in an adjusted sale price of \$8,357,406 (Option 2). In doing so, the Complainant determined a cap rate of 7.25% under Option 1 ( $\$577,606/\$7,970,475$ ), and a cap rate of 6.91% under Option 2 ( $\$577,606/\$8,357,406$ ). When combining the analyses of the Village Mall’s cap rate (7.46%) and Clearview’s cap rate (either 7.25% or 6.91%), the average or median of the two derived from their respective adjusted NOIs and sales prices supported the Complainant’s requested 7.25% cap rate.

- [30] Support for the Complainant’s adjustment to the Clearview Market’s sale price was based on a legal opinion stemming from a 2021 assessment complaint, concerning the inclusion of the costed valuation of the Gas Bar and related equipment in the property’s assessment. The opinion was that the IA valuation already included the Gas Bar’s income and therefore captures its valuation appropriately. Any additional costed assessment of the Gas Bar and related equipment would be tantamount to double counting its value. Moreover, the assessment did not reflect the reality that the owner of the property has no reversionary interest in the Gas Bar and related equipment in accordance with the lease in place and the Agreement of Purchase and Sale.
- [31] As further support for its cap rate request, the Complainant provided a post-facto sale of a JSYK Furniture property located at 4960 81 ST. The property was assessed as a “Box Store” and sold on February 2, 2022, at a sales price of \$2,300,000. The NOI at the time of sale was \$222,634, which determine a cap rate of 9.68%. This sale was also supported by copies of legal documents such as Land Title Certificates and Transfer of Land documents. An undated marketing brochure was also provided that showed an asking price of \$4,595,000 for the 1.85-acre property that contained a 35,322-sf building. The Complainant also provided the JSYK property’s 2021 assessment, which was assessed on the IA at \$2,968,300.

### **Position of the Respondent**

- [32] The Respondent explained that its cap rate analysis involves reviewing sales for the past three assessment years. Typical market cap rates are derived by calculating the typical market NOI against the actual sales price of each sale comparable. When limited sales are encountered, a review of other major retail stratifications and/or reviewing sales within the strata beyond three years may be beneficial.
- [33] As its “primary analysis”, the Respondent provided the cap rates derived from three sales of major retail shopping centres, two of which were included in the Complainant’s analysis above. The additional sale included by the Respondent was the Eastview Shopping Centre (assessed as a Neighborhood Shopping Centre) located at 3803 and 3811 40th Ave, which sold on February 7th, 2019. In its analysis, the Respondent found the following:
- a) the Village Mall had an assessed NOI of \$4,234,583 in the year of sale and sold at a price of \$65,635,000 on the sale transfer date of January 15, 2020, deriving a typical cap rate of 6.45%,



- b) the Clearview Market had an assessed NOI of \$578,177 in the year of sale and sold at a price of \$8,500,000 on the sale transfer date of December 16, 2019, deriving a typical cap rate of 6.80%. The Respondent countered the Complainant's removal of costed Gas Bar and related equipment from the purchase price, claiming that the purchase price did not include that equipment and is therefore assessable, and
- c) the Eastview Shopping Centre (3803 – 3811 40 Ave.) had an assessed NOI of \$750,195 in the year of sale and sold at a price of \$13,400,000 on the sale transfer date of February 7, 2019, deriving a typical cap rate of 5.60%.
- d) The median typical cap rate of the above three sales comparables was 6.45%, while the average was 6.28%.

All the above salient facts were supported by copies of legal documents such as Land Title Certificates and Transfer of Land documents as well as sale verification questionnaires.

- [34] As a "secondary analysis" in support of its primary analysis, the Respondent provided two charts of cap rate studies. The first chart explored cap rates derived from multi-tenanted shopping centres that have sold for more than \$2,000,000 in the last three assessment years. The chart of eight sales comparables included the three properties in its primary analysis and five additional shopping centres assessed as SSCs. In this analysis, the typical cap rate ranged from 5.59% to 6.93%, with a median of 6.30% and average of 6.26%. The second chart explored cap rates derived from all Power and Neighborhood shopping centre sales since 2011. The chart of seven sales comparables included the three properties in its primary analysis, two additional shopping centres assessed as PSCs, and two additional shopping centres assessed as Neighborhood Shopping Centres. In this analysis, the typical cap rate ranged from 5.60% to 6.80%, with a median of 6.45% and average of 6.28%. Again, all the above sales were supported by copies of legal documents such as Land Title Certificates and Transfer of Land documents.
- [35] The Respondent argued that the Complainant's approach to challenging the assessment by isolating a few interrelated inputs (rents, vacancy, and cap rates for example) that form the basis of the direct cap IA, without a comprehensive review of the other inputs is not acceptable unless the results are tested and compared to actual values derived in the marketplace. To this end, the Respondent provided an Assessment to Sales ratio (ASR) chart comparing the Complainant's requested valuation of each Power Centre, to the Respondent's assessment value of each power centre, against the actual sale of a Power Centre where available. The following was noted:
- a) 5250 22 Street:
    - i. Requested value of the Complainant; \$39,244,000.
    - ii. Assessment value of the Respondent; \$51,134,500.
    - iii. Sold for \$54,711,000 on September 14, 2012.
  - b) 5111 22 Street:
    - i. Requested value of the Complainant; \$16,177,620.
    - ii. Assessment value of the Respondent; \$20,225,000.
    - iii. Sold for \$21,850,000 on May 4, 2011.
  - c) 6320 - 6380 50 Avenue:
    - i. Requested value of the Complainant; \$50,427,900.
    - ii. Assessment value of the Respondent; \$64,233,600.

iii. Sold for \$65,635,000 on January 15, 2020.

The Respondent concluded that the assessed values were a better reflection actual sales results and therefore, the changes to the inputs requested by the Complainant are not warranted.

- [36] In response to the Complainant's post-facto JYSK property sale, the Respondent claimed that the sale of this property was a duress sale and would not be reflective of the market of which it is a part. The property's owner (Powarco Developments Inc.) had been in financial hardship for several years, facing dissolution in July 2019, and has had a history going back to 2014 of being in arrears on property taxes. In late 2021 a financial restructuring took place whereby the lender paid all outstanding taxes owed while the property was up for sale. All the above facts were supported by various third-party sources.
- [37] In response to the Complainant's adjustment to the purchase price of the Clearview Mall, the Respondent argued that the purchase did not include the purchase of the gas station components as is stated in the lease agreement and as such those components are assessable.
- [38] In response to the Complainant's adjustment to the purchase price of the Village Mall, the Respondent provided an alternative calculation based on an updated IAAO "Standard on Verification and Adjustment of Sales", revised approved April 2020. Unlike the Complainant, the Respondent performed a present value calculation using a discount rate of 10% on individual leases that had a minimum of three years outstanding at the time of sale and were either 10% above or below market typical rents as required by the IAAO standards. The Respondent calculated an adjustment \$920,546 to the purchase price of \$65,635,000, resulting in an adjusted sale price of \$64,714,454. This adjusted sale price would result in an adjusted cap rate of 6.54% based on an assessed NOI of \$4,234,583.
- [39] A few third-party quarterly cap rate reports were provided that showed the following cap rates for Power Centres:
- a) Cushman Wakefield reported that Calgary's cap rate varied from 6.00% to 6.75%, while Edmonton's varied between 5.50% to 6.25% in Q2 2021,
  - b) CBRE reported that Calgary's cap rate varied from 6.25% to 6.75%, while Edmonton's varied between 6.50% to 7.00% in Q1 2021,
  - c) Colliers reported that Calgary's cap rate varied from 5.25% to 6.00%, while Edmonton's varied between 5.75% to 6.75% in Q2 2021,
  - d) Altus Insight reported that Calgary's cap rate was 6.10%, while Edmonton's was also 6.10% in Q1 2021.

In reviewing the above reports, the Respondent argued that the Complainant's cap rate position is not supported in the market.

### **Complainant's Rebuttal**

- [40] The Complainant objected to the Respondent's introduction of SSCs in its secondary cap rate analysis. The Complainant argued that these shopping centres are substantially different PSCs that are assessed with different market rents, vacancy allowances and cap rates. Accordingly, the Complainant argued that if the Respondent's position is that SSCs are comparable to PSCs, then those income parameters should be changed as requested under this complaint to accommodate a more equitable assessment of the subject.

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**BOARD FINDINGS**

- [41] The Board finds that the Complainants' adjustment of the Village Mall's sales price was not done in accordance with IAAO's Standard on Verification and Adjustment of Sales. Despite its mathematical gymnastics, it did little more than confirm that its actual income at the time of sale produced a cap rate of 7.46%. In contrast, it appears that the Respondent did perform the adjustment in accordance with that standard by analyzing each lease to first determine atypical market rents of at least three years and then performing present value calculations on those atypical income streams. At best, the adjustment to the sale price would be \$920,546 or \$64,714,454, producing a cap rate of 6.68% using the Complainant's "Covid adjusted" NOI of \$4,325,721.
- [42] Similarly, the Board finds that the Complainant's adjustment to the sale price of the Clearview Market for costed Kiosk and Gas Bar Equipment appearing in its assessment to be without merit. The Board agrees with the legal opinion provided by the Complainant on this matter in that the purchaser purchased the income of the grocery store and other retail areas, in addition to the Gas Bar and related equipment that according to its assessment had an Effective Gross Income (EFI) of \$30,000. While it is arguable that the costed components should be removed from its assessment, it is not the same argument that they should be removed from its purchase price because the purchase price would theoretically purchase of all income from the property, which include the Gas Bar and related equipment.
- [43] The Board accepts the Respondent's position on the post-facto JYSK sale as a "duress sale". There was an abundance of evidence that suggested the vendor was under considerable financial pressure on this property prior to and at the time of its sale. Therefore, the Board will give its cap rate result little weight.
- [44] The Board notes that the Complainant did not accept the Eastview Shopping Centre in its cap rate analysis claiming that it was a "pre-Covid" sale and therefore less indicative of the current market. On this issue, it appears the Complainant considered the post-Covid economy began on (July 1, 2019).

**Issue 3:           The lease rate applied to the subject's CRU space of 0 – 3,000 sf should be reduced to \$27.50.**

**Position of the Complainant**

- [45] The Complainant provided three charts of 0-3,000 sf CRU space rental analysis within PSCs in the City of Red Deer. The first chart analysed lease rates with lease start dates within the last eighteen months (January 1, 2020, to June 30, 2021). This chart included eight spaces with lease rates that ranged from \$22.00 to \$31.00 per sf, with a median lease rate of \$27.50 per sf. This chart formed the basis of the Complainant's request. The second chart analysed lease rates with lease start dates within the previous eighteen months (July 1, 2018, to December 31, 2019). This chart included seven spaces with lease rates that ranged from \$30.00 to \$38.00 per sf, with a median lease rate of \$34.00 per sf. The third chart analysed lease rates with lease start dates that combined the first two charts. This chart included fifteen spaces with lease rates that ranged from \$22.00 to \$38.00 per sf, with a median lease rate of \$30.00 per sf.

**Position of the Respondent**

- [46] Once again, the Respondent argued that the Complainant is requesting a change in methodology that is not warranted. Specifically, the Complainant is requesting that a lease rate of \$27.50 be applied specifically to CRU spaces under 3,001 sf based on an analysis that restricted the time period to the last eighteen months. The Respondent's argued that the Complainant's request is without merit and that the current methodology of analysing lease rates over a three-year period to all spaces within the Power Centre remains appropriate.
- [47] The Respondent provided a chart analysing lease rates of Power Centre CRU spaces under 3,001 sf with lease start dates over the last three assessment years (July 1, 2018, to June 30, 2021). This chart included eighteen spaces with lease rates that ranged from \$22.00 to \$38.00 per sf, with a median lease rate of \$31.00 per sf. This chart formed the basis of the Respondent's defense in applying a \$31.00 per sf lease rate to CRU space under 3,001 sf.

**Complainant's Rebuttal**

- [48] The Complainant argued that through its three-year lease rate analysis, the Respondent is failing to recognise the effects of Covid on lease rates in the last eighteen months by combining leases with start dates during a pre-pandemic period (prior to January 1, 2020).
- [49] The Complainant provided evidence that the inclusion of the Memphis Blues BBQ CRU space with a lease rate of \$34.00 per sf should be removed from the Respondent's study because it is a dated lease with start date of December 20, 2014, which falls outside its three-year lease rate analysis period.

**BOARD FINDINGS**

- [50] In reviewing the lease rate evidence submitted from both parties, the Board finds:
- a) That the Bone & Biscuit CRU space has a post-facto lease start date (see Board Findings under Issue 1) and therefore, its lease rate of \$31.00 per sf is removed from Respondent's three-year lease rate analysis.
  - b) That the Respondent failed to include a Hakim Optical CRU lease rate of \$30.00 per sf with a lease start date of February 18, 2019, in its three-year lease rate analysis.
  - c) That the Memphis Blues BBQ CRU space is a dated lease and therefore, its lease rate of \$34.00 per sf is removed from Respondent's three-year lease rate analysis.
  - d) That the Complainant failed to include an EB Games CRU lease rate of \$32.40 per sf with a lease start date of January 14, 2020, in its eighteen-month lease rate analysis beginning January 1, 2020.
- [51] In considering the above lease rate findings, the Complainant's eighteen-month lease rate study would now include a total of nine leases with lease rates that ranged from \$22.00 to \$32.40 per sf, with a median lease rate of \$28.00 per sf. The Respondent's three-year lease rate study would now include a total of seventeen leases with lease rates that ranged from \$22.00 to \$38.00 per sf, with a median lease rate of \$30.00 per sf.

- [52] The fundamental difference between the two parties on this issue is that the Complainant based its 0-3,000 CRU lease rate study on an eighteen-month period beginning January 1, 2020, while the Respondent based its study over a three-year period beginning July 1, 2018. As in the first issue, the Respondent's three-year study would tend to minimize the impact that Covid may have had on lease rates during the post-pandemic period, which on this issue is deemed by the Complainant to begin on January 1, 2020.

### **BOARD DECISION**

- [53] A common theme throughout the issues identified above is the Complainant's assertion that Covid has had a dramatic impact on real estate and particularly on smaller CRU spaces. The Complainant insisted that the Respondent has failed to assess that impact through its practice of using a three-year time frame to derive its various income parameters such as vacancy, cap, and rental rates. The Board agrees that the Respondent's practice of using a three-year time to derive its income parameters would tend to minimize the impact of a post-Covid market on smaller CRU spaces within Power Shopping Centres. Conversely, the Respondent insists that its practice of using a three-year time to determine its income parameters is tested against the market and has produced superior results over the long term. The Board does not opine on assessment methodology, it is focused on whether the methodology chosen produces a fair and equitable assessment.

- [54] The problem for the Complainant is that while Covid's impact can be reasonably assumed, and there is some evidence to support that assumption, the evidence surrounding the post-Covid market is inconsistent. Specifically, the Complainant considered post-Covid market to be:
- a) under Issue 1 (vacancy allowance), the last assessment year or period,
  - b) under Issue 2 (cap rate), the last two assessment periods, and
  - c) under Issue 3 (lease rate), the last 1.5 assessment periods.

In addition, the Complainant was inconsistent as to which CRU spaces were affected by Covid. Specifically:

- a) under Issue 1, CRU spaces under 20,000 sf were selected, while
- b) under Issue 3, CRU spaces under 3,000 sf were selected.

This inconsistency was without explanation and compels the Board to believe that the Complainant arbitrarily chose those characteristics simply because it favoured its position.

- [55] Although the Complainant was able to provide some evidence to support its position under Issues 1 and 3, it failed to do so under Issue 2. Under Issue 2, the Board does not accept its adjustments to the purchase price of Village Mall or Clearview Market for the reasons stated in its findings. In addition to the concern over the inconsistent nature of the Complainant's requests, the Board placed equal weight on the Respondent's ASR chart that compared the Complainant's requested valuation of each Power Centre to the Respondent's assessment value of each Power Centre, to its actual sale. Again, the following was noted:

- a) 5250 22 Street:
  - i. Requested value of the Complainant; \$39,244,000.
  - ii. Assessment value of the Respondent; \$51,134,500.
  - iii. Sold for \$54,711,000 on September 14, 2012.

- b) 5111 22 Street:
- i. Requested value of the Complainant; \$16,177,620.
  - ii. Assessment value of the Respondent; \$20,225,000.
  - iii. Sold for \$21,850,000 on May 4, 2011.
- c) 6320 - 6380 50 Avenue:
- i. Requested value of the Complainant; \$50,427,900.
  - ii. Assessment value of the Respondent; \$64,233,600.
  - iii. Sold for \$65,635,000 on January 15, 2020.

In each case, the Respondent consistently assessed each power centre at a lower value than what it sold for. To further decrease the assessment of Village Mall (6320 - 6380 50 Avenue) for example, based on a vacancy allowance specific to CRU spaces under 20,000 sf, and/or a lease rate specific to CRU spaces under 3,001 sf, and/or a cap rate adjustment is simply not supported in the market.

#### **DECISION SUMMARY**

[56] The Board finds that the original assessed value is confirmed.

[57] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 6<sup>th</sup> day of September 2022 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



L. Stubbard, Board Clerk

for:

M. Vercillo, Presiding Officer

*If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).*

**APPENDIX A****Documents presented at the Hearing and considered by the Board.**

<u>NO.</u>	<u>ITEM</u>
1. C1	Complainant's Disclosure – 162 pages
2. C2	Complainant's Disclosure – 2022 Vacancy Rate Analysis – 84 pages
3. C3	Complainant's Disclosure – 2021 Cap Rate Analysis – 314 pages
4. R1	Respondent's Disclosure – 57 pages
5. R2	Respondent's Disclosure – Power Centre Appendix – 231 pages
6. R3	Respondent's Disclosure – Legal Brief – 66 pages
7. C4	Complainant's Rebuttal – Power Centre Sales – pages 1 to 58
8. C5	Complainant's Rebuttal – Power Centre Sales – pages 59 to 121
9. C6	Complainant's Rebuttal – Vacancy and Rent – 246 pages

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**APPENDIX B****Preliminary Matters**

1. C4 – Portion of Page 8: This evidence dealt with the Complainant’s objection to the Respondent’s introduction of using SSC sales in its secondary analysis to support its Power Centre cap rate in its primary analysis. The Complainant argued that these are different types of shopping centres with different vacancy allowances. The Complainant then provided a copy of a 2021 ASR analysis from a prior year’s complaint, where the Respondent analyzed the ASR of SSCs. Within that chart the Respondent objected to the inclusion of a property that was not included in its disclosure under this complaint. The Complainant countered that the Respondent’s disclosure did not include all the sales of SSCs. The Board agrees with the Respondent to remove the one sale it did not introduce in its disclosure.
2. C4 – Pages 25 to 32 and 37 to 57 or portions thereof: This evidence again stems from the Complainant’s objection to the Respondent’s use of SSC sales in its secondary analysis to support its Power Centre cap rate primary analysis. The Complainant argued that these are different types of shopping centres with different vacancy allowances and provided copies of the Respondent’s disclosure from various 2022 complaints concerning its defence of vacancy rates on SSCs. The Respondent objected to the inclusion of a properties that were not included in its disclosure under this complaint. The Complainant countered that its rebuttal was in response to the Respondent equating SSCs to PSCs in its cap rate analysis. The Board will only consider this evidence insofar as the Complainant’s attempt to cast doubt on the Respondent’s use of SSC in its secondary cap rate analysis. The Board will not consider this rebuttal evidence as an alternative vacancy allowance request, based on an equity argument of vacancy allowances that are applied to the assessments of SSCs. This alternative was not presented in the Complainant’s initial disclosure, is not supportive of the vacancy issue as identified in its original disclosure, does not afford the Respondent enough time to rebut, and will therefore not be considered by the Board in its deliberations of the vacancy issue.
3. C5 - Pages 59 to 73 or portions thereof: This evidence is a continuation of the Complainant’s objection to the Respondent’s use of SSC sales in its secondary analysis to support its Power Centre cap rate primary analysis. The Complainant argued that these are different types of shopping centres with different vacancy allowances and provided copies of the Respondent’s disclosure from various 2022 complaints concerning its defence of vacancy rates on SSCs. The Respondent objected to the inclusion of a properties that were not included in its disclosure under this complaint. The Complainant countered that its rebuttal was in response to the Respondent equating SSC to PSC in its cap rate analysis. The Board will only consider this evidence insofar as the Complainant’s attempt to cast doubt on the Respondent’s use of SSCs in its secondary cap rate analysis. The Board will not consider this rebuttal evidence as an alternative vacancy allowance request, based on an equity argument of vacancy allowances that are applied to the assessments of SSCs. This alternative was not presented in the Complainant’s initial disclosure, is not supportive of the vacancy issue as identified in its original disclosure, does not afford the Respondent enough time to rebut, and will therefore not be considered by the Board in its deliberations of the vacancy issue.
4. C5 – Pages 96 to 97: This evidence is a two-page chart of the Village Mall’s tenancy schedule as of July 1, 2020. It listed its tenants, lease information and “rental status comments” about the tenant. The Respondent objected to this schedule as new information that is not rebuttal and



could have been included in the Complainant's initial disclosure. The Complainant stated that this schedule was included as a response to the Respondent's ASR chart that was meant to provide information concerning the mall's tenancy status shortly after its sale. The Board sees little connection to the Respondent's ASR chart and therefore does not consider it proper rebuttal. More importantly, it is a document that could have been included in its original disclosure.

5. C6 – Pages 21 to 28: This evidence dealt with the Complainant's assertion that the Red Deer Buffet's 6,000 sf should be considered vacant. The Complainant deemed the space to be vacant in its original disclosure and upon reviewing the Respondent's evidence determined that the Respondent did not deem the same space vacant. In rebuttal, the Complainant provided a definition of vacancy allowance as defined by the Respondent, and correspondence concerning Red Deer Buffets eviction on July 15, 2021. Accordingly, the Board determines this evidence to be proper rebuttal and is therefore considered in the Board's deliberations of the vacancy issue.
6. C6 – Pages 41 to 50: This evidence challenged the Respondent's inclusion and inequitable use of the Village Mall's (6380 50 AV) Canadian Tire space (60,426 sf) in its vacancy study. The Board finds that this evidence does not support the Complainant's vacancy issue. Namely, that CRU space under 20,000 sf should be afforded a vacancy allowance of 15.00%. It appears that the Complainant wants the Board to consider an alternative proposal to its vacancy issue that was not identified in its initial disclosure. Namely, that the Board should consider modifying the Respondent's overall vacancy allowance because of a deemed inequity to other Big Box spaces over 60,000 sf situated in other types of shopping centres. This alternative was not presented in the Complainant's initial disclosure, is not supportive of the vacancy issue as identified in its original disclosure, does not afford the Respondent enough time to rebut, and will therefore not be considered by the Board in its deliberations of the vacancy issue.
7. C6 – Pages 76 to 81 or portions thereof, and 85 to 150: This evidence challenges the Respondent's consistency in the derivation of the vacancy allowance rate when comparing PSCs to other types of shopping centres. It also provided alternative approaches utilized by the Cities of Calgary and Edmonton. Again, the Board finds that this evidence does not support the Complainant's vacancy issue. Namely, that CRU space under 20,000 sf should be afforded a vacancy allowance of 15.00%. Once again, it appears that the Complainant wants the Board to consider an alternative proposal to its vacancy issue that was not identified in its initial disclosure. Namely, that the Board should consider modifying the Respondent's overall vacancy allowance because of an apparent inconsistency in the derivation of vacancy allowances in comparison to other types of shopping centres, or consider other approaches utilized by different jurisdictions. For the most part, these alternatives were not presented in the Complainant's initial disclosure, are not supportive of the vacancy issue as identified in its original disclosure, do not afford the Respondent enough time to rebut, and will therefore not be considered by the Board in its deliberations of the vacancy issue.