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:

Riocan Holdings Inc. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
J. Joseph, MEMBER
J. Lam, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	**711102004**
LOCATION ADDRESS:	**4307 – 130 AV SE**
HEARING NUMBER:	**66578**
ASSESSMENT:	**$99,310,000**

This complaint was heard on 17th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 8.

Appeared on behalf of the Complainant:

- *Mr. B. Neeson – Altus Group Limited*
- *Mr. D. Hamilton – Altus Group Limited*
- *Mr. R. Brazzell – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. I. McDermott - Assessor – City of Calgary*
- *Mr. N. Irving – Legal Counsel – City of Calgary*
- *Mr. K. Gardiner - Assessor – City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

Matter #1

[2] Prior to the commencement of the hearing the parties jointly advised the Board that pursuant to recent discussions between them, a previous challenge by the Complainant under Section 299 of the Municipal Government Act had been withdrawn. Therefore they requested that all written argument and materials pertaining thereto be struck from the parties' respective submissions to the Board.

Board's Decision Re. Matter #1

[3] The Board accepted the submissions of the parties and struck all materials pertaining to the previous challenge/response under Section 299 of the MGA.

Matter #2

[4] At the point in the hearing where both parties had presented their disclosure documents and asked/responded to questions of each other, and the Complainant's rebuttal document (labelled C-3 at the commencement of proceedings) was about to be presented, the Respondent Mr. Irving advised the Board of a concern.

[5] The Respondent argued that the City is prejudiced in its position because it received the Complainant's 150 page Rebuttal document only 7 days prior to the hearing. He noted that while the 7 days was within statutory requirements, nevertheless the Respondent has had little time to respond to the document and it felt compelled to do so. He argued that C-3 speaks to the central issue in this hearing, that being the details of a particular market sale at 95 Crowfoot

CR NW that the City has used in its power centre cap rate analysis, but the Complainant has not. He argued that it is a fundamental principle of law that the Respondent "must know, and be able to respond to the case before them" Therefore, he argued, the Respondent has prepared a Rebuttal Document to the Complainant's 150 page Rebuttal Document C-3, which he proposed to enter into the record at this point in the hearing.

[6] The Respondent argued that section 8(2)(c) of *"Matters Relating To Assessment Complaints Regulation" – "Alberta Regulation 310/2009" (MRAC)* does not prohibit the Respondent from submitting a "Rebuttal Document" in response to a "Rebuttal Document" (C-3) submitted by the Complainant. Section 8 in its entirety, and section 8(2)(c) state as follows:

Disclosure of evidence

8(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

[7] The Complainant argued that section 8(2)(c) of MRAC does not contemplate a further written submission or potentially "continuous exchange of rebuttal documents" as proposed by the Respondent. He argued that section 8(2)(c) of MRAC is clear that a rebuttal document must be exchanged from the Complainant to the Respondent at least 7 days prior to the hearing, and the Complainant has done this.

[8] The Complainant argued that in section 8(2)(c) of MRAC there are no other mandatory dates between the 7 days prior to the hearing, and the hearing date, by which any further rebuttal to the rebuttal information must be exchanged between the parties. Therefore, he argued, the Regulation (MRAC) does not contemplate any further formal exchange of documents from 7 days prior to the hearing, to the hearing itself.

[9] The Complainant argued that to permit the Respondent to introduce a new rebuttal document that the Complainant has not seen, just prior to the hearing, to rebut the Complainant's rebuttal document, would clearly distort the long and well-established process followed by the Board in these hearings and lead to the Complainant being prejudiced as a result. The Complainant noted that the Board has long maintained as part of its process, that only one written rebuttal document – that being the Complainant's, is permitted to be entered into evidence pursuant to 8(2)(c) of MRAC.

[10] The Complainant argued that under long-established Board procedures, the Respondent has always been able to argue any point(s) he wishes to advance respecting a Complainant's rebuttal document, during the "summary/argument" phase of a Board hearing. The Complainant requested that the Board not allow the City's proposed written "rebuttal" to the Complainant's rebuttal document C-3 to be entered into the hearing.

Board's Decision Re. Matter #2

[11] The Board concurs with the Complainant that the Respondent's proposed written "rebuttal" to the Complainant's rebuttal document C-3, does not comply with section 8(2)(c) of MRAC and is therefore barred from this hearing. Pursuant to the Board's long-standing procedures, the Respondent is not barred from making any verbal argument regarding the Complainant's written rebuttal document C-3 during the 'summary/argument" phase of this hearing.

[12] The Board's reasoning is as follows:

1. The Respondent has acknowledged receiving the Complainant's disclosure documents C-1 and C-2 within the 42 day statutory time frame as set in MRAC, and has reviewed them extensively.
2. The Respondent has acknowledged receiving the Complainant's rebuttal document C-3 within the 7 day statutory time frame as set in MRAC, and has reviewed it.
3. The Complainant's case is well-documented in C-1 and C-2 with many pages of argument, including references to reliance on two of the three market sales used by the City to develop the City's Power Centre Cap rate, and a RealNet report of the contentious 95 Crowfoot CR NW sale.

4. The Respondent did not object to any of the 95 Crowfoot CR NW material in either C-1 or C-2 when the Complainant presented it during the hearing.
5. The Respondent asked only one question of the Complainant regarding the 95 Crowfoot CR NW material in C-1.
6. The Board would expect that as a matter of course, the Respondent would prepare to defend the three sales it used to calculate the cap rate used for assessing power centres, particularly when noting in C-1 and C-2 that the Complainant has used all but one (95 Crowfoot CR NW) of the Respondent's market sales to establish its own version of a power centre cap rate.
7. The Board would expect that the Respondent would address any issue it found in the Complainant's disclosure documents during the Respondent's own presentation and/or during questioning of the Complainant or during his own summary/argument.
8. The Board's procedures provide the Respondent an opportunity to question the Complainant after the latter's Rebuttal document has been presented.
9. The Board does not read 8(2)(c) of MRAC as permitting a further written rebuttal to a statutorily-submitted rebuttal document, to be entered into evidence, contrary to the assertions of the Respondent.

Matter #3

[13] At the point in the hearing where the Complainant was to submit his rebuttal document C-3 to the Board, the Respondent Mr. Irving argued that C-3 contained new information that should not be allowed to be entered into the hearing. The Respondent identified several pages of evidence in C-3 to which he objected. The Board noted but did not examine those pages.

[14] The Complainant advised the Board that he wished to withdraw C-3 from the hearing.

Board's Decision Re. Matter #3

[15] The Board accepted the request of the Complainant and struck C-3 from the hearing.

Property Description:

[16] The subject is a 30.69 acre portion of the much larger South Trail Crossing (McKenzie Towne) mixed use "Power" shopping centre which occupies broad areas of land situated both south and north of 130 AV SE between Deerfoot Trail SE and 52 ST SE. The subject lies entirely south of 130 AV SE and abutting Deerfoot Trail, and consists of 18 retail units constructed between 1999 and 2008 totalling 313,275 SF. Some units are free-standing pad sites, and others are contiguous multi-tenant buildings. The onsite uses range from automobile service and repair outlets, a gas bar and car wash, to banks, restaurants (fast food and dining), big box retail, mezzanine, and a Co-op supermarket and liquor store. The subject is assessed using the Income Approach To Value methodology at $99,310,000 using a 7.25% cap rate.

Issue:

[17] What is the correct Capitalization Rate to be applied to the subject in an Income Approach to Value calculation of its market value?

Complainant's Requested Value:

[18] $92,900,000 based on a 7.75% Capitalization Rate.

Board's Decision in Respect of Each Matter or Issue:

Complainant's Position

[19] The Complainant clarified that the only issue before the Board is the Capitalization Rate used to calculate the subject's value using the Income Approach to Value methodology, and the basis upon which the cap rate is calculated. He clarified that the City has used three market sales to arrive at a 7.25% cap rate which has been applied to all "Power Centres" in the city. He clarified that because there have been a very limited number of market sales of these properties in the past 2 1/2 years, he has used exactly the same sales as the Respondent, but only two of them, to arrive at a cap rate request of 7.75%.

[20] The Complainant argued that the Respondent's 2010 sale at 95 Crowfoot CR NW, while a valid market sale, is a single-titled stand-alone 7,256 SF bank property on a pad site. He argued that a building of this size is not representative of an entire power centre, and its cap rate at sale should not be used to estimate, for assessment purposes, the market value of every power centre in the city.

[21] The Complainant argued that there is a large difference in risk between a 7,256 SF $2,638,000 building and a 313,275 SF $99,310,000 commercial shopping centre, and this difference should be reflected in different cap rates being applied to each type of property.

[22] The Complainant provided two methodologies to calculate a cap rate for each of his two preferred market sales – one a portfolio sale at #'s 20, 60, and 140 Crowfoot CR NW; and the other sale at 800 Crowfoot DR NW – both sales used by the City. He provided the RealNet and ADS information sheets for the sales, as well as the ARFI and rent roll for the sites. He argued that the City declined to provide current 2012 typical financial data regarding these properties, therefore he secured older information from a variety of sources, including city reports. He clarified that he had used actual twelve month and thirty-six month leases from the properties, but in one instance resorted to obtaining data from another centre.

[23] The Complainant clarified that his "Method one" approach utilized 2011 City of Calgary property records and typical values to calculate individual cap rates of 7.33% and 7.97% respectively for the two sales with an indicated median (and average) cap rate of 7.65%. He considered this to be a "tight range of values". The Complainant argued that his "Method two" approach was prepared as a "check" for his "Method one" calculations. He argued that by using actual income (rent) data for the two sites, a median (and mean) cap rate of 8.57% is produced.

[24] The Complainant clarified that as a further "check" he examined the City's third sale at 95 Crowfoot CR NW on the presumption that if the Board accepts the City's position and decides this sale should be included in this analysis, the Board should be cognizant of his cap rate calculations for it. The Complainant calculated that by using a $32 per SF typical rent for a comparable bank site in Crowfoot square, and, the 7,256 SF of the 95 Crowfoot CR NW site, the indicated cap rate for 95 Crowfoot is 8.18% or 8.2% (rounded) and not the 6.35% calculated by the Respondent. He argued that when all three cap rates (7.33% and 7.97% and 8.18%) are examined, the average cap rate is 7.8% which supports his request for 7.75%.

[25] In response to questions from the Respondent, the Complainant clarified that while it may be that certain areas of a bank may be used for storage, and hence be assessed at a rate less than $32 per SF, he suggested that storage is normally a very small area of any bank and is not considered a major factor in calculating indicated values.

[26] The Complainant provided the RealNet sheets for three additional sales from within the Crowfoot Power Centre – one being 95 Crowfoot CR NW. He argued that all three sales were examined but rejected for inclusion in his cap rate study. He clarified that a property at 21 Crowfoot Circle NW which transacted 2011-12-13, was a "Business Transaction" wherein the real estate and business "goodwill" were considerations in its sale price. Therefore it was not an arms-length transaction. He clarified that another property at 9 Crowfoot Circle that transacted 2011-05-04 was rejected for the same reasons. The Respondent reiterated his earlier-stated rationale for excluding the 95 Crowfoot CR NW sale.

[27] The Complainant argued that the use of both typical and actual values in Income Approach to Value calculations is acceptable practice in certain circumstances where consistent information is limited. He referenced segments of the "Alberta Assessors Association Valuation Guide" and "Principles of Assessment 1 for Assessment Review Board Members and The Municipal Government Board Members" regarding this point.

[28] The Complainant requested that the assessment be reduced to $92,900,000 on the basis of a 7.75% capitalization rate instead of the assessed 7.25%.

Respondent's Position

[29] The Respondent argued that every "Power Centre" is composed of large and small buildings, big box stores, large and small CRU spaces, stand-alone and multi-tenant buildings, containing a large variety of commercial activities, and it is the amalgamation of all of these different types of buildings that comprise a power centre. He argued that every business in the centre benefits from the presence and drawing power of the other businesses located there. Therefore, he argued, all properties large and small that make that power centre what it is, should all be assessed the same, using the same capitalization rate because of the inherent lower risk.

[30] The Respondent argued that the size of a building is not a reason to exclude a property from a power centre analysis, since as argued, all buildings of every size make up a power centre. He argued that it would be inappropriate to exclude a property solely on the basis of size as suggested by the Complainant.

[31] The Respondent argued that Part 1, Sections 2(c) and 10(3) of "Alberta Regulation 220/2004" being "Matters Relating to Assessment and Taxation Regulation" (MRAT) requires assessors under Mass Appraisal to assess a stratum of similar property types similarly, under typical market conditions. Therefore, he argued, the City has consistently, fairly, and equitably used this methodology in each assessment cycle to value individual similar properties in the Crowfoot Centre, and in all other power centres in the city as required under Mass Appraisal.

[32] The Respondent provided the "Safeway Real Estate" marketing sheet; the ADS and RealNet information sheets for 95 Crowfoot Cres. NW. He argued that these documents support his position that the subject is in, and is an important part of, the Crowfoot power centre. He argued that the Complainant has not provided sufficient information and has not demonstrated, other than to focus on building size, why this sale should not be included in a power centre cap rate study.

[33] The Respondent clarified that the parties agree on two Crowfoot Centre sales (#'s 20, 60, and 140 Crowfoot CR NW and 800 Crowfoot DR NW) that both parties have advanced for this hearing. He clarified that the identical valuation and assessment parameters as applied to those two market sale sites, have been applied to 95 Crowfoot CR NW as well. He reiterated that the City has maintained fairness and equity as a result.

[34] The Respondent argued that the Complainant's calculation of an 8.18% cap rate for 95 Crowfoot CR NW is flawed because it does not account for different space types (eg. storage) in the improvement on the site. He argued that neither does the calculation account for the different typical rates applied to those different spaces in an Income Approach to Value calculation when assessing such sites. He argued that typically storage space in banks is assessed at $2 per SF and the office/business areas $32 per SF. He argued that while the parties agree that $32 per SF is a typical rate applied to banks, the Complainant has used $32 per SF for all of the 7,256 SF of bank space at 95 Crowfoot CR NW, regardless of use, which is erroneous.

[35] The Respondent referenced the City's "2012 Power Centre Capitalization Rate Summary" matrix on page 30 of R-1. The matrix contained the three market sales referenced in [20] and [22] above which are prominent in this appeal. He noted that the City has calculated the "Potential Gross Income" (PGI) for 95 Crowfoot CR NW to be $180,982 whereas the Complainant calculates PGI to be $232,192.

[36] The Respondent also noted that the City therefore calculates the "Net Operating Income" (NOI) to be $167,560 and the Complainant $224,065. He argued that the difference in values is directly attributable to the Complainant erroneously applying $32 per SF to all of the bank's 7,256 SF and not accounting for storage space at $2 per SF. The Respondent argued therefore, that the Complainant's reliance on this flawed data renders his calculated cap rate to be flawed and unreliable as well.

[37] The Respondent argued that the City's analysis of the captioned three sales demonstrates cap rates of 7.33%; 7.97%; and 6.35%. He noted that the median cap rate is 7.33% and the average is 7.22% - all of which supports the 7.25% cap rate used to assess the subject and all other power centres in Calgary.

[38] The Respondent provided several Calgary Composite Assessment Review Board (CARB) and Municipal Government Board Orders to support his arguments that the Complainant has used inconsistent inputs, including NOI values, and mixing actual and typical values for example, in his capitalization rate calculations. He referenced key paragraphs in CARB 1342/2011-P; CARB 2262/2010-P; CARB 2795-2011-P; CARB 2224/2011-P; CARB 1801/2010-P; MGB 145/07; and MGB DL 019/10.

[39] The Respondent requested that the assessment be confirmed.

Board Findings

[40] The Board concurs with the parties that the market sale at 95 Crowfoot CR NW is a valid sale, and as such is properly included in the Respondent's Capitalization Rate (cap rate) Study.

[41] The Board disagrees with the Complainant that the market sale at 95 Crowfoot CR NW should be excluded from an analysis of cap rates, based solely on the size of that property.

[42] The Board concurs with the Respondent that a Power Centre is not any one single building, but rather the sum of its components, an amalgam of large and/or small buildings acting in concert to attract business to a definable area. Therefore, to exclude any one component strictly on the basis of its size relative to the other components, is erroneous.

[43] The Board finds that based on the evidence in this hearing the Respondent has, through several assessment cycles, consistently applied its market-based cap rate to each component of a power centre, including the subject, in a fair and equitable manner and in accordance with the legislated principles of Mass Appraisal.

[44] The Board finds that it is not persuaded by the Complainant's calculations of alternate cap rate values for each of the three market sales used by the parties in this appeal, because the Complainant has used incorrect methodologies that previous CARB and MGB Boards have identified and rejected, all as detailed in multiple Board Decisions provided by the Respondent.

[45] The Board finds that in particular it is not persuaded that the Complainant's cap rate calculation for 95 Crowfoot CR NW is valid because it does not consider the different rent rates applied to different components of that site (eg business; storage) and therefore the Complainant's calculation of PGI and NOI is unreliable.

[46 The Board finds that when a "weighted" calculation is applied to the Respondent's three market sales of differing size, a "weighted" cap rate of 7.37% results which supports the assessed 7.25% cap rate.

Board's Decision:

[47] The 7.25% Cap rate is confirmed and the assessment is confirmed at $99,310,000.

DATED AT THE CITY OF CALGARY THIS 4 DAY OF October 2012.

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure
3. 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

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Retail	Power Centre	Market Value	Capitalization rate