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:

Herman & Kifer Holdings Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
R. Cochrane, MEMBER
D. Steele, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBERS:	**1) 201 272 945** **2) 201 272 952**
LOCATION ADDRESSES:	**1) 3919 Richmond Road SW, Calgary AB** **2) 3737 – 37 Street SW, Calgary AB**
HEARING NUMBERS:	**1) 63984** **2) 63985**
ASSESSMENTS:	**1) $12,450,000** **2) $8,750,000**

This complaint was heard on the 11th and 12th days of October, 2011 at the office of the Assessment Review Board located at Floor No. 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *A. Izard & K. Fong (Altus Group)*

Appeared on behalf of the Respondent:

- *H. Yau & R. Ford (Assessment Business Unit)*

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

One of the issues in this complaint was the capitalization rate to be used in the application of the income approach. The Complainant prepared a "Capitalization Rate Study." That study pertained to these two files (63984 and 63985) plus four other files (#64188, #63939, #63370, #64023) that were to be heard as part of the agenda for the week. It was agreed by the parties and accepted by the Board that the Complainant would present the capitalization rate evidence just once and that it would be carried forward to the other hearings where the capitalization rate is an issue. The Respondent incorporated its capitalization rate analysis and rebuttal into the disclosure brief for each file but chose to address that issue just once and then carry forward all evidence and argument to the other affected hearings. The Complainant agreed and the Board accepted this proposal. The Complainant's rebuttal to the Respondent's capitalization rate analysis was provided in three parts that were marked as Exhibits C2A, C2B and C3. One copy of those submissions was provided to the Board and they are filed in File 63984.

The Respondent objected to the admission of the Complainant's rebuttal evidence on the ground that it was different than rebuttal evidence disclosed in other hearings. The Complainant argued that it was essentially the same material and that it had been properly disclosed within the timelines prescribed by the regulations. The rebuttal document comprising 535 pages was filed in three parts and given its size, the Board's initial decision was to postpone any objections until the point in the hearing where the Complainant addressed that evidence. At that point in the hearing, the Respondent again raised some objections as the rebuttal evidence was being presented. The Board found that the rebuttal disclosure had been in accordance with the requirements of the regulations, none of the material was new evidence and none of it was unrelated to the issue. The decision of the Board was to admit the entire rebuttal evidence package.

Property Description:

The two files that are the subjects of this complaint hearing are for both parts of a community shopping centre known as Glamorgan Shopping Centre. The shopping centre is assessed to two roll numbers. The retail store section (strip of stores plus a freestanding bank and restaurant building) is assessed to roll 201 272 945 (ARB File 63984) while the Canada Safeway supermarket that adjoins the strip is on roll 201 272 952 (ARB File 63985). The strip centre was constructed in 1959 (48,863 square feet) and the 6,010 square foot freestanding building was added in 1977. It occupies a 2.59 acre site. Surface parking is located in front of the strip of stores. The Safeway supermarket was originally a sporting goods store but in 2006 it was totally renovated for the supermarket occupancy. Floor area is 38,829 square feet and the site area is 2.93 acres. More parking is in front.

Both properties are assessed using the income approach. A $17.00 per square foot rent rate is applied to the Safeway store and rates from $15.00 to $28.00 are set for the retail, bank and restaurant spaces. $9.00 per square foot is applied to a basement bowling lanes tenant area. The Safeway store receives a 1.0% allowance for vacancies while the strip centre gets a 4.0% allowance. For both components, typical operating costs are $7.00 per square foot and a 1.0% non-recoverable expense allowance is made. The net operating income is capitalized at 7.25% to yield the assessed values. The retail centre assessment of $12,450,000 equates to $212.31 per square foot of building area. For the Safeway store, the $8,750,000 assessment equates to $225.35 per square foot.

Issues:

The Assessment Review Board Complaint forms, filed March 4, 2011, had check marks beside boxes 3 (Assessment amount) and 4 (Assessment class) in Section 4 (Complaint Information). For Section 5 (Reason(s) for Complaint), there was an attachment listing ten grounds or reasons.

At the hearing, the only issue pursued by the Complainant is: *What is the correct capitalization rate to apply in valuing this neighbourhood shopping centre for the 2011 assessment?*

Complainant's Requested Values:

1) $11,650,000 (strip centre)
2) $ 8,180,000 (supermarket)

Party Positions on the Issue:

Complainant's Position:

The subject property and others in its class are assessed by the Respondent using the income approach with the capitalization rate set at 7.25%. A "*Community-Neighbourhood Shopping Centres: 2011 Capitalization Rate Analysis*" conducted by Altus Group (Altus Cap. Rate Study) is based on shopping centre sales that occurred in January 2009 or later and it concludes that the correct capitalization rate for this group of properties is 7.75%.

The Complainant cites numerous court and assessment tribunal decisions as well as appraisal textbooks that support the practice of deriving capitalization rates using actual income and actual sale price for each property being analyzed in a capitalization rate study. Further, the evidence contains materials produced by the City of Calgary in years past that described this extraction method as being the most appropriate method. That is generally the procedure used in the Altus Cap. Rate Study wherein two capitalization rates are derived from sales – one based on "typical" income and one based on "market" income. In the study, it was found that there was not a wide discrepancy in the rates from the two derivation methods utilized (typical or market rental income).

One of the documents presented by the Complainant was from the Alberta Assessors' Association Valuation Guide setting out valuation parameters for the assessment of income producing properties. On the issue of determining base rent, the following portion of the guide is highlighted:

Base Rent
To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):

1. *For most tenants the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):*
- *Actual leases signed on or around the valuation date.*
- *Actual leases within the first three years of their term as of the valuation date.*
- *Current rents for similar types of stores in the same shopping centre.*
- *Older leases with active overage rent or step-up clauses.*
2. *As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.*
3. *If comparable information is not available, it may be necessary to analyze the existing leases and interview the owner and tenant(s) to determine what the current rent on the space should be.*

Altus followed these guidelines in its analysis of each shopping centre in its study. Five sale transactions were examined using typical parameters for vacancy, operating costs and non-recoverable expense (these are the typical parameters used by the Respondent in making shopping centre assessments). Results are summarized below:

PROPERTY:	**2929 Sunridge Way NE**	**1919 Southland Drive SW**	**356 Cranston Road SE**	**5220 Falconridge Gate NE**	**306 Glenmore Trail SW**
Sale Date	18-Dec-09	14-Dec-09	28-Oct-09	01-May-09	20-Jan-09
Sale Price	$19,585,500	$15,275,000	$32,000,000	$19,270,000	$6,944,450
Typical PGI	$ 1,578,842	$ 1,216,777	$ 2,454,272	$ 1,602,643	$ 624,162
Typical NOI	$ 1,530,441	$ 1,177,450	$ 2,348,706	$ 1,546,503	$ 600,509
CAP. RATE	7.81%	7.71%	7.34%	8.03%	8.65%
Mean Cap.			**7.91%**		
Wt. Mean Cap.			**7.74%**		
Market PGI	$ 1,523,063	$ 1,182,856	$ 2,458,470	$ 1,657,182	$ 625,000
Market NOI	$ 1,475,770	$ 1,144,540	$ 2,352,717	$ 1,600,847	$ 601,322
CAP. RATE	7.54%	7.49%	7.35%	8.31%	8.66%
Mean Cap.			**7.87%**		
Wt. Mean Cap.			**7.71%**		

Legend: PGI = Potential Gross Income; NOI = Net Operating Income;
CAP. RATE = Capitalization Rate; Wt. Mean Cap. = Weighted Mean Capitalization Rate

Rents were obtained from actual leases in place at the time of sale and from new leases in similar shopping centres within the market area of each property.

Respondent's Position:

The Respondent argued that consistency demands that capitalization rates be derived in similar fashion to the way in which they are applied in valuing a property. That is that typical factors, including rents must be applied to a property when analyzing its sale. The analyst must be careful to apply those typical rates and factors that were applicable as at the time of the sale.

The Respondent analyzed eight shopping centre transactions to obtain the 7.25% capitalization rate that is applied to community-neighbourhood shopping centres in making their assessments:

Address	Sale Date	Sale Price	Typical PGI	Typical NOI	Typical Cap.	Actual Cap.
1221 Canyon Meadows Drive SE	14-Aug-08	$31,500,000	$2,150,233	$2,048,692	6.50%	5.82%
306 Glenmore Trail SW	20-Jan-09	$ 6,944,450	$ 594,440	$ 580,084	8.35%	8.79%
873 – 85 Street SW	16-Mar-09	$23,500,000	$1,549,942	$1,493,781	6.36%	6.77%
5220 Falconridge Drive NE	19-May-09	$19,270,000	$1,652,396	$1,590,481	8.25%	7.87%
356 Cranston Road SE	28-Oct-09	$32,000,000	$2,201,005	$2,041,266	6.38%	7.14%
1919 Southland Drive SW	14-Dec-09	$15,275,000	$1,324,081	$1,157,940	7.58%	6.49%
2929 Sunridge Way NE	18-Dec-09	$19,585,500	$1,739,085	$1,640,846	8.38%	7.34%
400 & 1200, 163 Quarry Park Bv SE	06-Apr-10	$40,637,317	$2,195,977	$2,035,727	5.01%	5.94%
Median Cap. Rate					7.04%	6.95%
Average Cap. Rate					7.10%	7.02%

Legend: PGI = Potential Gross Income; NOI = Net Operating Income;
Cap./Cap. Rate = Capitalization Rate

The Respondent's methodology involves estimating typical income which is income generated by a property using typical market rental rates. Vacant spaces are leased up using the typical market rental rates. Five of the sales were also included in the Altus Cap. Rate Study but the calculated capitalization rates differed in every one:

Property	**2929 Sunridge Way NE**	**1919 Southland Drive SW**	**356 Cranston Road SE**	**5220 Falconridge Gate NE**	**306 Glenmore Trail SW**
Complainant Typical Cap.	7.81%	7.71%	7.34%	8.03%	8.65%
Respondent Typical Cap.	8.38%	7.58%	6.38%	8.25%	8.35%

Board's Findings and Decision:

The Respondent provides sales summary reports from Realnet and/or Alberta Data Search for each property as well as land titles documentation and corporate search returns. In a few cases, portions of an Assessment Request For Information (ARFI) return is provided. In some cases, copies of disclosure documents filed by Altus Group as part of assessment complaints against those properties are provided along with the argument that Altus had asked for certain rates during their handling of complaints but were applying different rates in analyzing those same properties for capitalization rate derivation.

The Board excludes two of the sales relied upon by the Respondent and takes a cautious approach to a third sale.

The Deer Valley Shopping Centre (1221 Canyon Meadows Drive SE) was sold to an investor who undertook a major redevelopment of the property soon after taking possession. The Respondent provides data to the effect that development permits were not in place at the time of the sale but that is a moot point. The usefulness of this sale depends on the motivations of the parties at the time of the sale. If there was consideration given to land upon which additional retail building could take place then that would probably have brought a higher price than is indicated by analysis of the existing income. Realnet, in reporting the sale, stated that the purchaser intended to demolish a standalone building and redevelop a portion of the property with approximately 60,000 square feet of retail space. Realnet would have received their information from the purchaser or an agent so it is probable that the additional development was recognized by the parties to the transaction thus the price would not have been based on existing income alone. In any event, the motivations of the parties are not clear so the sale cannot be relied upon.

The Quarry Park shopping centre (400 & 1200, 163 Quarry Park Boulevard SE) produced a very low capitalization rate in the Respondent's analysis. The net operating income based on the Respondent's typical rents is significantly lower than total rent indicated by the rent roll that was in the Respondent's evidence ($2,035,727 versus +/-$2,700,000). All leases in the property had commencement dates that were contemporaneous with the valuation date so it must be assumed, based on the information provided, that rents were similar to market or typical rents. In any event, the details of the sale and property operations are insufficient to provide a meaningful analysis. The very low capitalization rate of 5.01% is so much below the range from other properties that it cannot be given any weight.

The Complainant raises doubt about the West Springs Village (873 – 85 Street SW) sale. There was no broker involvement and there was reportedly some income guarantees made by the vendor. Nevertheless, the Board finds that the sale may have been market driven even though it may not have been thoroughly exposed to the market.

The Respondent provided a table summarizing the capitalization rate derivations from the eight sales that were analyzed. There was no support or explanation of the typical net operating income amounts used in the analysis. Copies of ARFI's and/or rent rolls were in the evidence. However, the total amounts did not match with the typical used in the analysis. Net operating income is a key component of the capitalization rate derivation formula. The Respondent provided no compelling evidence to support its net operating income estimates for the sale properties in its analysis therefore the Board did not give weight to those capitalization rates.

Braeside Centre (1919 Southland Drive SW) was analyzed using a 9.0% vacancy rate which was a holdover from its former classification as a strip centre. Typical vacancy for southwest quadrant community/neighbourhood shopping centres is 4.0%. The error, which had apparently been discovered some time ago, was not corrected for this hearing. In the capitalization rate analysis, 2010 parameters were used to analyze the Sunridge Centre (2929 Sunridge Way NE) sale and 2009 parameters were used for the analysis of Braeside, yet the two sales occurred just four days apart in December 2009.

An Assessment to Sale Ratio (ASR) analysis in the Respondent's evidence indicated that the median ASR for the five sales in the Complainant's evidence would be 0.97 using a 7.25% capitalization rate and 0.91 using the requested 7.75% capitalization rate. For assessment quality purposes, the ideal range of ASR's is from 0.95 to 1.05. These ASR's were based on time adjusted sales prices for the comparables. There were inconsistencies in the time adjustment rates that the Respondent was unable to explain. For example, Braeside Centre and Sunridge Centre sold just four days apart in December 2009. The Braeside sale price was adjusted upwards by 4.50% while the Sunridge Centre price was adjusted upwards by 3.86%.

The Board finds that the Complainant's capitalization rate study is researched and supported by market evidence. The calculated capitalization rates are credible and they are accepted by the Board as the superior market derived capitalization rates.

The Respondent's evidence comprises a table showing capitalization rate derivations from sales, documentation to support sale prices, copies of market survey reports by Colliers International and CB Richard Ellis and a substantial amount of documentation showing where Altus Group has provided varying information on complaint hearings for various properties. There is insufficient evidence to directly support the capitalization rate conclusion of 7.25%. The Board gives no weight to the market survey reports because those reports are prepared and published as marketing tools by those real estate brokerages and there is no explanation of how surveys are conducted or how thoroughly they cover the market. The Board does not make its decisions based on discrepancies in evidence or requests on past hearings on other properties. It is the evidence and argument before this current Board that is weighed. The Board has read and considered decisions rendered by prior CARB's but gives them limited weight because it is not clear whether those prior decisions were made on the same evidence as is before this Board.

With the Deer Valley and Quarry Park properties removed from the Respondent's study, the remaining six sales produce median and mean capitalization rates of 7.92% and 7.55%, respectively. These rates support the requested rate of 7.75% more than the 7.25% assessment capitalization rate.

Final Decision:

The capitalization rate for the 2011 assessment of the Glamorgan Shopping Centre property is set at 7.75%. The assessments for the two roll numbers are reduced to:

201 272 945	**3919 Richmond Road SW, Calgary AB**	**$11,650,000**
201 272 952	**3737 – 37 Street SW, Calgary AB**	**$ 8,180,000**

DATED AT THE CITY OF CALGARY THIS 16th **DAY OF** November **2011.**

W. Kipp

W. Kipp
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1 Roll 201 272 945	Complainant Disclosure
2. C1 Roll 201 272 952	Complainant Disclosure
3. C2A	Part 1 Complainant Rebuttal
4. C2B	Part 2 Complainant Rebuttal
5. C3	Part 3 Complainant Rebuttal
6. R1 Roll 201 272 945	Respondent Disclosure
7. R1 Roll 201 272 952	
8. R2	Colour Photos from R1

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:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighbourhood Mall	Income Approach	Capitalization Rate