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:

970742 Alberta Ltd./Saigon Pharmacy (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 a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	**072 033 905**
LOCATION ADDRESS:	**4710 – 17 Avenue SE, Calgary AB**
HEARING NUMBER:	**64023**
ASSESSMENT:	**$8,990,000**

This complaint was heard on the 11th, 12th and 13th 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:

- *R. Ford & H. Yau (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 this file plus five other files (#63984, #63985, #64188, #63939, #63370) 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 will be retained in File 63984. The evidence and argument regarding capitalization rate was heard on October 11 and 12, 2011.

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 all of the rebuttal evidence.

Property Description:

The property that is the subject of this complaint is a neighbourhood/community shopping centre in the Forest Lawn district of southeast Calgary. On the 4.86 acre site are three buildings. The larger building is a strip of retail bays containing a total area of 41,568 square feet. The second building is a 3,803 square foot freestanding restaurant (Pizza Hut) building and the third is a 4,200 square foot freestanding automotive service building (Speedy Brake & Apollo Muffler). The year of construction for the retail and automotive buildings is 1974. The restaurant building was added in 1991.

The 2011 assessment of $8,990,000 was determined by the income approach. Rental rates from $12.00 to $18.00 were assigned to various retail occupancies, $14.00 to the automotive space, $2.00 to storage space and $26.00 to the freestanding restaurant. A junior big box retail store (Giant Tiger) is reduced by 1.0% for potential vacancy losses while all other occupancies are given a 7.25% vacancy allowance. Typical operating costs are $7.00 per square foot for the property and a 1.0% non-recoverable expense allowance is made. The resulting net operating income amount of $652,383 is converted by a 7.25% capitalization rate to the $8,990,000 assessment ($181.36 per square foot of rentable area).

Issues:

The Assessment Review Board Complaint form filed March 4, 2011 had check marks in boxes No. 3 (Assessment amount) and No. 4 (Assessment class) in Section 4 (Complaint Information). For Section 5 (Reason(s) for Complaint), an attachment to the form listed nine grounds for appeal.

At the hearing, the Complainant argued two issues:

Issue 1: Should the capitalization rate be increased from 7.25% to 7.75%?

Issue 2: Should the following areas and rental rates be revised?

Space Type	*Assessed Area*	*Requested Area*	*Assessed Rent Rate*	*Requested Rent Rate*
Automotive	*4,200 SF*	*4,200 SF*	*$14.00*	*$17.00*
Basement Storage	*700 SF*	*1,535 SF*	*$ 2.00*	*$ 2.00*
Retail 0-1,000 SF	*2,877 SF*	*2,042 SF*	*$18.00*	*$12.00*
Retail 1,001-2,500 SF	*8,011 SF*	*6,360 SF*	*$15.00*	*$10.00*
Retail 2,501-6,000 SF	*11,980 SF*	*13,651 SF*	*$14.00*	*$10.00*
Jr. Big Box	*18,000 SF*	*18,000 SF*	*$12.00*	*$ 6.00*
Restaurant	*3,803 SF*	*3,803 SF*	*$26.00*	*$17.00*
TOTAL AREA	*49,571 SF*	*49,591 SF*		

Complainant's Requested Value: $5,450,000

Party Positions on the Issues:

Complainant's Position:

Issue 1: Should the capitalization rate be increased from 7.25% to 7.75%?

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 and Alberta Government and Alberta Assessors Association materials 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 is 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 assessments for this class of shopping centre). Results are summarized in the following table:

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.

Issue 2: Should the floor areas and rent rates be changed?

The Complainant argues that the subject property consistently performs at the low end of the range for shopping centres of its type. Forest Lawn and 17 Avenue SE in particular has a high concentration of similar retail development and the subject is just one of many similar retail centres.

The April 2010 rent roll for the property shows that the rent for the automotive building was set at $17.00 per square foot in a lease that commenced April 1, 2006. Although the lease is dated, it suggests that the assessed typical rent rate of $14.00 per square foot is low. The requested revisions to the assessment calculations are based on actual performance of the property so if the request is for other rents to be reduced then it is fair that this automotive space rent rate be increased to reflect the actual lease rate.

There were only four leases in place that can be said to be current. Two are September 1, 2008 leases on a 1,528 square foot retail store where the rent was set at $10.00 per square foot and a 4,900 square foot store where the rent was set at $9.00 per square foot. Two April 2010 leases provided for rents of $9.00 per square foot for a 4,200 square foot rental area and $12.00 per square foot for a 1,671 square foot bay. The remaining leases are dated (start dates from October 1991 to May 2007) but none specify rents greater than $13.50 per square foot.

For the 3,823 square foot freestanding restaurant, the Complainant provides one comparable. A 6,944 square foot freestanding restaurant at 28 Street and 2 Avenue SE had the lease renewed on January 1, 2011 at a net rental rate of $17.00 per square foot.

The Complainant organizes the rent roll by rental area and calculates the requested assessment based on these rental areas.

Respondent's Position:

Issue 1: Should the capitalization rate be increased from 7.25% to 7.75%?
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 assumed to be leased up at 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%

Issue 2: Should the floor areas and rent rates be changed?

The Respondent described the assessment methodology wherein the application of the income approach is based on typical rent rates and typical vacancy and operating costs.

Assessment Request For Information (ARFI) returns dated April 2010 and April 2011 in Respondent's evidence show rents and lease terms for tenants as shown in the rent roll provided by the Complainant. For 2011, there are some changes but these are not applicable to the current assessment.

Tables of rental data show average rent rates of $17.00 to $18.04 per square foot for retail spaces from 0 to 1,000 square feet. Lease dates were from January 2008 to March 2010. For spaces from 1,001 to 2,500 square feet, rents averaged $16.00 per square foot. In this latter size category, there were no leases newer than October 2008. For spaces from 2,501 to 6,000 square feet, rents averaged from $13.63 to $13.75 per square foot. One of these leases was for a property on 17 Avenue SE and that September 2009 lease had rent set at $11.00 per square foot. Leases for junior big box stores in Class A and B properties averaged from $17.05 to $18.11 per square foot. Class C and D properties showed an average rent rate of $13.25 per square foot. Three leases for Class A or B freestanding restaurant buildings specified rents of $21.00, $27.00 and $30.00 per square foot. The lowest rate was from a June 2010 lease of a property on a large shopping centre in Deer Run, another southeast Calgary community.

When questioned about comparability of the rental data to the recent leasing in the subject property, the Respondent conceded that rents in the subject were at the low end of the ranges for retail spaces between 1,001 and 6,000 square feet.

Board's Decision:

The 2011 assessment of this property is reduced to $6,320,000.

Reasons for the Decision:

Issue 1: Should the capitalization rate be increased from 7.25% to 7.75%?

The Respondent provides sales summary reports from Realnet and/or Alberta Data Search for each of the eight properties in its study as well as land titles documentation and corporate search returns. In a few cases, a portion 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 now 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 potential was recognized by the parties to the transaction and 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) produces 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 is in the Respondent's evidence ($2,035,727 versus +/-$2,700,000). All leases in the property have commencement dates that are contemporaneous with the valuation date so it must be assumed, based on the information provided, that actual rents are 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 provides a table summarizing the capitalization rate derivations from the eight sales that were analyzed. There is no support or explanation of the typical net operating income amounts used in the analysis. Copies of ARFI's and/or rent rolls are in the evidence. However, the total amounts do not match with the typicals used in the analysis. Net operating income is a key component of the capitalization rate derivation formula. The Respondent provides no compelling evidence to support its net operating income estimates for the sale properties in its analysis therefore the Board does not give weight to those capitalization rates.

Braeside Centre (1919 Southland Drive SW) is analyzed using a 9.0% vacancy rate which is 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, is not corrected for this hearing. In the capitalization rate analysis, 2010 parameters are used to analyze the Sunridge Centre (2929 Sunridge Way NE) sale and 2009 parameters are 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 indicates 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 are based on time adjusted sales prices for the comparables. There are inconsistencies in the time adjustment rates that the Respondent is unable to explain. For example, Braeside Centre and Sunridge Centre sold just four days apart in December 2009. The Braeside sale price is adjusted upwards by 4.50% while the Sunridge Centre price is 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 at other 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. These reports might have been useful in supporting conclusions from studies completed by the Respondent but that was not the case. The Board does not make its decisions based on discrepancies in evidence or requests made in 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.

Issue 2: Should the floor areas and rent rates be changed?

The tenant summary as at April 2010 showed total leased areas in the various size categories that varied from those shown in the assessment record. There was no other evidence before the Board regarding building or bay sizes. Typically, factual data such as floor areas can be established by dialogue between the parties and it should not be left to a CARB to determine. The Board recognizes that building areas do change when space is measured for a new tenant or a new lease and it is the responsibility of the property owner/manager to provide that new information to the assessor in order to have it recognized in the assessment. Based on the evidence, the Board will not change the size category areas.

The Board finds that properties such as the subject are to be assessed using typical rents, vacancies and so on. Perusal of the subject property tenant summary clearly shows that recent rents in the property are at the low end of ranges of rental data provided by the Respondent. While the Respondent's evidence might have been the best available, it was not entirely from properties that are in a similar class to the subject. For the most part, the Respondent's rent rate data pertains to properties in higher classes. Actual rents for the subject are between 20% and 35% less than the rates used in the assessment calculations. Available evidence is supportive of the Board decision to reduce rent rates by 25% in the retail unit and junior big box categories. The Complainant's evidence supports a reduction in the pad restaurant rent rate to $17.00 per square foot. The assessment is revised to reflect the following rents:

Automotive	4,200 SF	$14.00/SF
Basement cold storage	700 SF	$ 2.00/SF
Retail 0-1,000 SF	2,877 SF	$13.50/SF
Retail 1,001-2,500 SF	8,011 SF	$11.25/SF
Retail 2,501-6,000 SF	11,980 SF	$10.50/SF
Junior Big Box	18,000 SF	$ 9.00/SF
Pad Restaurant	3,803 SF	$17.00/SF

When these rent rates are input into the income approach formula, along with typical vacancy rates, operating costs and non-recoverable expense allowances and a capitalization rate of 7.75%, the assessment is reduced to $6,320,000.

DATED AT THE CITY OF CALGARY THIS 23rd **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	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2A	Part 1 Complainant Rebuttal
4. C2B	Part 2 Complainant Rebuttal
5. C3	Part 3 Complainant Cap Rate Rebuttal

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 Rent/Lease rates