



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:

CALGARY CO-OPERATIVE ASSOCIATION LIMITED, COMPLAINANT
(as represented by Altus Group Limited)

and

The City Of Calgary, RESPONDENT

before:

BOARD CHAIR: P.COLGATE
BOARD MEMBER: B. JERCHEL
BOARD MEMBER: P. MCKENNA

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 2013 Assessment Roll as follows:

ROLL NUMBER: 037159902

LOCATION ADDRESS: 4122 BRENTWOOD ROAD NW

FILE NUMBER: 72356

ASSESSMENT: \$14,510,000.00

This complaint was heard on 3rd day of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1 (Relocated to Boardroom 12).

Appeared on behalf of the Complainant:

- *Brendan Neeson, Altus Group Limited*

Appeared on behalf of the Respondent:

- *Brenda Thompson, City of Calgary*
- *Eliseo D'Altorio, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2]

Preliminary Matter:

[3] The preliminary matter raised in File Number 72218, Roll Number 201599321, 540 16 Avenue NE was a request for the presentations on the capitalization rate, the resulting questions and the decision be carried forward to seven hearings before the Board. This request was made by the Complainant with the support of the Respondent. The parties agreed the evidence to be presented was consistent for the eight hearings

[4] The Board accepted the request of the Respondent and the Complainant and will carry forward the evidence and the questions on the capitalization rate received for the hearing File Number 72218 to the following seven hearings:

File	Roll Number	Address
72254	010095206	7020 4 Street NW
72275	049010614	3575 20 Avenue NE
72356	037159902	4122 Brentwood Road NW
72428	200533982	3633 Westwinds Drive NE
72689	049007495	2853 32 Street NE
72826	201358751	9630 MacLeod Trail SE
73675	129181103	10505 Southport Road SW

[5] The Board noted the carrying forward of evidence and decision on the capitalization rate does not mean the final decision will be the same for each hearing, for there may be additional issues placed before the Board.

[6] In the interest of continuity, the Complainant's submissions identified as C2 and C3 received for this hearing are also carried to the seven referenced hearings.

[7] There being no additional preliminary matters, the Board proceeded to the merit hearing.

Property Description:

[8] The subject property is assessed as a retail freestanding property (CM0206) and gas bar in the community of Brentwood, located at 4122 Brentwood Road NW. The primary structure has an assessable area of 54,074 square feet distributed as 44,198 square feet of supermarket, assessed at a rate of \$15.00 per square foot, 3,102 square feet of bank area, assessed at a rate of \$32.00 per square foot, 716 square feet of retail (0-1,000 square feet) assessed at a rate of \$25.00 per square foot, 1,585 square feet of retail (1,001-2500 square feet) assessed at \$24.00 per square foot and 4,473 square feet of retail (2,501-6,000 square feet) assessed at \$22.00 per square foot. The gas bar is assessed at a rate of \$45,000.00. The 3,566 square foot, fast food restaurant is assessed at a rate of \$32.00 per square foot. The capitalization rate applied in the Income Approach to determine the assessment was 7.00%. The structures have been rated as B+ quality.

Issues:

[9] At the hearing the Complainant amended the issues and the requested assessment reflective of the following -

- Issue 1: The Capitalization rate is incorrect and should be increased to 7.5% from the current 7.0%.
- Issue 2: The rental rate for supermarkets is incorrect and should be reduced to \$13.00 per square foot from the current rate of \$15.00 per square foot,
- Issue 2: The rental rate for fast food premises is incorrect and should be reduced to \$28.00 per square foot from the current rate of \$32.00 per square foot.

Complainant's Requested Value: \$12,210,000.00 (Revised at the hearing)

Board's Decision:

[10] The Board, upon review of the evidence submitted by the Complainant and the Respondent, found insufficient evidence was provided to justify a change to the assessment of the property under complaint.

[11] The Decision of the Board was to confirm the assessment to **\$14,510,000.00**

Legislative Authority, Requirements and Considerations:

[12] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[13] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Valuation Reports.

[14] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it

is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue 1: Capitalization Rate

Position of the Parties

Complainant's Position:

[15] The Complainant introduced into evidence a 2013 "Freestanding Retail Capitalization Study" of nine (9) sales occurring between January 11, 2011 and April 17, 2012. The analysis produced an average capitalization rate of 7.40% and a median capitalization rate of 7.39%. The table submitted showed: (C1, Pg. 31)

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate
Valuation	Date --	July 1,	2012 --	Assessment	Year 2013				
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	840,500	\$790,000	\$58,845	7.45%
20076255	1323 Centre St. NW	11-Jan-2012	15,469	1972	A-	\$5,040,000	\$4,775,000	\$352,891	7.39%
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	\$1,500,000	\$1,700,000	\$105,532	6.21%
076051309	3515 17 Ave SE	28-Nov-2011	11,700	1960	C-	\$1,160,000	\$1,040,000	\$81,664	7.85%
115010407	7404 Ogden Rd SE	6-Sep-2011	1,530	1955	C	\$1,040,000	\$1,085,000	\$87,802	8.09%
039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	\$1,410,000	\$1,440,000	\$98,826	6.86%
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	\$1,360,000	\$1,425,000	\$95,557	6.71%
Valuation	Date -	July 1,	2011 -	Assessment	Year 2012				
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	\$1,180,000	\$850,000	\$74,854	8.81%
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	\$1,430,000	\$1,400,000	\$101,383	7.24%
								Average	7.40%
								Median	7.39%

[16] The Complainant submitted documentation for the calculation to determine the capitalization rates for each of the sales. (C1, Pg. 33-41) The Complainant noted that for the property at 7404 Ogden Road SE it had to create an Income Approach valuation to determine the capitalization rate as the property was currently assessed on a Cost Approach.

[17] The Complainant submitted an Assessment to Sales Ratio (ASR) analysis based upon a 7.5% capitalization rate which indicted an average ASR of 1.007 and a median ASR of 0.984.

The table submitted showed: (C1, Pg. 44)

Roll Number	Address	Sale Date	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate	Current ASR	Recalculated wit 7.5%	Revised ASR
Valuation	Date --	July 1,	2012 --	Assessment	Year	2013			
08126459	2639 17 Ave SW	17-Apr-2012	840,500	\$790,000	\$58,845	7.45%	1.03	\$784,500	0.99
20076255	1323 Centre St. NW	11-Jan-2012	\$5,040,000	\$4,775,000	\$352,891	7.39%	1.06	\$4,700,000	0.98
069048908	1435 9 Ave SE	20-Dec-2011	\$1,500,000	\$1,700,000	\$105,532	6.21%	0.88	\$1,400,000	0.82
076051309	3515 17 Ave SE	28-Nov-2011	\$1,160,000	\$1,040,000	\$81,664	7.85%	1.12	\$1,080,000	1.04
115010407	7404 Ogden Rd SE	6-Sep-2011	\$1,040,000	\$1,085,000	\$87,802	8.09%	0.96	\$1,390,000	1.28
039035902	6331 Bowness Rd NW	31-Aug-2011	\$1,410,000	\$1,440,000	\$98,826	6.86%	0.98	\$1,310,000	0.91
059077503	321 19 Street NW	26-Jul-2011	\$1,360,000	\$1,425,000	\$95,557	6.71%	0.95	\$1,270,000	0.89
Valuation	Date -	July 1,	2011 --	Assessment	Year	2013			
046043402	126 16 Ave NE	1-Apr-2011	\$1,180,000	\$850,000	\$74,854	8.81%	1.39	\$998,000	1.17
046158101	2803 Centre St. NW	11-Jan-2011	\$1,430,000	\$1,400,000	\$101,383	7.24%	1.02	\$1,350,000	0.96
					Average	7.40%	1.047		1.007
					Median	7.39%	1.021		0.984

[18] The Complainant argued the resulting ASR's, using a capitalization rate of 7.5% produced a better result than the City of Calgary which produced an average ASR of 1.047 and a median ASR of 1.021

[19] The Complainant submitted extensive documentation for each of the sales submitted in the form of photographs, Commercial Edge documents, RealNet Canada documents, City of Calgary Assessment Summary Reports, City of Calgary Non-Residential Properties – Income Approach Valuation reports, Land title documents, transfer documents and Corporate Searches. (C2, Pg. 15-276)

[20] The Complainant submitted argument that the City of Calgary was inconsistent in its rejection of sales presented in the Complainant's submission and that the City of Calgary in fact used sales which fell under their reasons for exclusion.

[21] The first example, 520 17 Avenue SW, was shown to be a non-brokered sale that was purchased by the owner of an adjacent property for the purpose of expansion. The Complainant submitted the "2013 Beltline Retail Capitalization rate Summary" which used the sale in its analysis

[22] The second example was the sale of 90 Cranleigh Drive SE, which the City of Calgary

used in its "2013 Strip Centre Capitalization Rate Summary". The Complainant provided a copy of the City of Calgary 'Non-residential Property Sale Questionnaire' which indicated the sale was not conducted through a broker. (C2, Pg. 307-315)

[23] The Complainant presented three industrial properties, included in the City of Calgary's "Non-Residential Industrial Sales", which showed the inconsistent application of the 'exclusion rules'.

[24] Contrary to the City of Calgary argument for the exclusion of sales which had additional income due to signage, the sale at 5420 53 Avenue SE was determined by the City of Calgary to be a valid sale and used in analysis. This was despite a comment on the RealNet document which states, "Discussions with representatives of the vendor indicated that the property collects approximately \$29,400 in revenue from Telus Towers, and Patterson Sign on contracts that were recently renewed". (C2, Pg. 330-332)

[25] A second sale at 4020 9 Street SE, used by the City of Calgary in its industrial analysis, was shown by RealNet as a non-brokered sale as "this transaction involved the purchase of the property by one of the existing tenants". (C2, Pg. 333-335)

[26] A third sale at 9232 Horton Road SW was stated by RealNet as "At the time of inspection the building was vacant". The Complainant argued this was contrary to the City of Calgary statement that vacant properties should not be utilized in any analysis. (C2, Pg. 336-338)

[27] The Complainant put forward a final argument against the City of Calgary exclusion of a sale which included income from signage. The Complainant entered the City of Calgary "2013 Neighbourhood, Community Centre capitalization Rate Summary", highlighting the sales at 3320 Sunridge Way NE and 999 36 Street NE. Rent rolls for the two properties indicated income from sign rent from the tenants. (C2, Pg. 339-350)

Respondent's Position:

[28] The Respondent submitted a rebuttal to the Complainant's capitalization rate analysis, presenting arguments as to why a number of sales should be excluded or the Complainant used incorrect values in the analysis.

[29] The Respondent argued the sale at 7404 Ogden Road SE should be excluded for a number of reasons. (R1, Pg. 27-35) The Respondent noted the sale was for a gas bar with a Subproperty Use of CM0711 – Vehicle/Accessories – Convenience Store Gas Bar. This designation was different from that of the subject property classified as a CM0201 – Retail Freestanding. The properties were from two different property groups and assessed using a different method, a Cost Approach versus an Income Approach. The Respondent also argued that the Complainant, when creating an Income Approach, had incorrectly applied the typical rate from 2013, at \$95,000.00 for the gas bar, in place of the 2012 gas bar rate of \$70,000.00 which would apply to the property for a sale on September 6, 2011.

[30] The Respondent challenged the use of the sale at 2639 17 Avenue SW for two reasons. The Respondent noted the sale was not conducted through a broker as supported by the RealNet document and response to the "Non-Residential Property Sale Questionnaire". The Respondent further stated the sale should be rejected as there was additional income generated for this property which was not recognized in the Net Operating Income (NOI), specifically income from a lease for the placement of billboards on the roof of the structure. The photograph on the RealNet document showed the billboards and a copy of "Property Lease

Agreement" showed an additional income of \$12,000.00 per year that was not captured in the NOI based on typical rental rates. The Respondent argued this represented an amount equal to 20% of the NOI for the property. The Respondent argued a purchaser would take this additional income into consideration when making an offer to purchase. (R1, Pg.39-68)

[31] For the sale of 1435 9 Avenue SE on December 20, 2011, the Respondent argued the Complainant had used the NOI for roll year 2013 while the City of Calgary used the NOI of roll year 2012. The Respondent stated the procedure used by the City of Calgary was to apply the typical rates and variables determined in which the sale occurred. For the sale of December 2011 the NOI used should be based upon the 2011 typical rates and therefore the NOI for roll year 2012. The Respondent also noted the property had undergone renovations both pre- and post sale of the property, as stated in the RealNet document. (R1, Pg.92-109 and 245-252)

[32] The Complainant's analysis for the sale at 3515 17 Avenue SE was challenged by the Respondent as the analysis was based upon the NOI for roll year 2013, when the sale was November 2011. As previously stated the City of Calgary would use the NOI determined for the roll year 2012. The Respondent also noted the sale did not use a broker and the response to the "Non-Residential Property sale Questionnaire" indicated the sale was not an arms-length transaction. The Respondent notes both these factors raised a flag to the use of the sale. (R1, Pg. 110-132)

[33] The Respondent, while also using the sales at 6331 Bowness Road NW and 321 19 Street NW, disputed the Complainant's use of the NOI for roll year 2013 for the sales occurring in July and August 2011, instead of the NOI for roll year 2012. (R1, Pg.133-165)

[34] The Respondent disputed the use of the sale at 126 16 Avenue NE as the sale did not employ a broker and that RealNet noted, "At the time of sale the building was completely vacant" and "It was our understanding that the Purchaser intended to use this property for their own bridal wear business". The Respondent argued with no tenant and the purchaser intending to occupy the premise the determining factor in the purchase was not as an income property and thus the sale price was not reflective of an income generating property. Further, as an owner occupied premise there was no income on which to base a market value.(R1, Pg.166-185)

[35] The sale at 2803 Centre Street NW was argued by the Respondent as unsuitable for a capitalization analysis. The Respondent argued that as the property was purchased vacant, with the intention of the purchaser was to convert the property to an office from its previous retail use; there was no NOI to add in the establishment of the market value. (R1, Pg. 213-234)

[36] The Respondent submitted a revised capitalization rate study and ASR study based upon the sales submitted by the Complainant. It was the argument of the Respondent that when the correct NOI's and typical rates were used the resulting capitalization rates showed an average rate of 6.87% and a median of 7.24%, which were more supportive of the current rate of 7.00% than the requested rate of 7.5%. (R1, Pg. 244)

[37] The Respondent showed that the resulting ASR's for the Complainant's sales would have an average of 1.047 and a median of 1.021 with a capitalization rate of 7.0%. If the capitalization rate was set at 7.5% the average is 0.997 and the median is 0.984.

[38] The Respondent submitted the three City of Calgary "2013 Freestanding Capitalization Rate Summary" reports. Version one capitalization study consisted of three sales and used the NOI for roll year 2013 for the analysis. Version two capitalization study consisted of the same three sales but changed the NOI to roll year 2012 for two of the sales. The third version and the basis for the Respondent's defence of the capitalization rate consists of four sales using the NOI

for roll years 2012 and 2013, depending upon date of the sale registration. (R1, Pg. 302, 321, 311)

[39] The final version of the Respondent's "2013 Freestanding Cap Rate Study with Sale Year NOI – Including Additional Sale" is presented: (R1, Pg. 322)

Roll Number	Address	Actual Year of Construction (YOC)	Sale Registration Date	Sale Price	Sale Year Assessable Area (square feet)	Sale Year Assessed Net Operating Income (NOI)	Capitalization Rate
059077503	3321 19 Street NW	1945	2011-07-26	\$1,425,000	4,064	\$91,267	6.40%
039035902	6331 Bowness Road NW	1977	2011-08-31	\$1,440,000	15,425	\$100,028	6.95%
200076255	1323 Centre Street NW	1972	2012-01-11	\$4,775,000	15,469	\$352,891	7.39%
069048908	1435 9 Ave SE	1950	2011-12-20	\$1,700,000	7,870	\$73,833	4.34%
						Median	6.68%
						Average	6.27%
						Assessed	7.00%

[40] The Respondent argued the resulting analysis supported the current capitalization rate of 7.00%.

[41] The Respondent submitted an ASR study of the four sales in the City of Calgary capitalization study that determined the ASR was better with a 7.00% capitalization rate than for the 7.50% rate requested by the Complainant. (R1, Pg. 331)

Roll Number	Address	2013 Assessment	Sale Registration Date	Sale Price	Sale Year Assessed Net Operating Income (NOI)	Capitalization Rate	ASR with 7.00% Cap Rate	ASR with 7.50% Cap Rate
059077503	3321 19 Street NW	\$1,360,000	2011-07-26	\$1,425,000	\$91,267	6.40%	0.954	0.985
039035902	6331 Bowness Road NW	\$1,410,000	2011-08-31	\$1,440,000	\$100,028	6.95%	0.979	0.828
200076255	1323 Centre Street NW	\$5,040,000	2012-01-11	\$4,775,000	\$352,891	7.39%	1.055	0.915
069048908	1435 9 Ave SE	\$1,500,000	2011-12-20	\$1,700,000	\$73,833	4.34%	0.882	0.894
					Median	6.68%	0.97	0.90
					Average	6.27%	0.97	0.91

[42] The Respondent submitted into evidence a copy of the Altus Group's "Community-Neighbourhood Shopping Centre Capitalization Rate Analysis" which it was argued used the year of sale typical rates and resulting NOI to determine the requested capitalization rate, unlike the request in their presentation to use future years rates. Specifically the sales in 2012 where

the Complainant used the NOI for roll year 2013. The Respondent argued the Complainant's agency was inconsistent in its approach, changing their methodology to obtain a lower value. The Respondent argued the City of Calgary was consistent in its methodology and the application of the NOI in its analysis. (R1, Pg. 333-356)

[43] The Respondent submitted three alternative analysis of the capitalization rate, using different combination of sales. The Respondent noted all three approaches supported the current rate of 7.00%. (R1, Pg. 384-386)

Complainant Rebuttal:

[44] The Complainant submitted additional evidence for the inclusion of non-brokered sales. The Complainant entered into evidence cases of the acceptance by a Board of a non-brokered sale.

[45] For the sale at 520 17 Avenue SW, shown to be a non-brokered sale that was purchased by the owner of an adjacent property for the purpose of expansion, the Complainant submitted a Composite Assessment Review Board (CARB) decision which accepted the sales as valid and usable in analysis – CARB 72729P-2013. (C3, Pg. 48-54)

Board's Reasons for Decision:

[46] The Board in reaching its decision looked to the evidence submitted by both parties with respect to the sales submitted. The Board noted there were four sales in common for both parties – 1323 Centre Street NW, 1435 9 Avenue SE, 6331 Bowness Road NW and 321 19 Street NW. However, the parties diverge at this point with differences for the NOI and the resulting capitalization rate for three of the sales.

[47] The Board reviewed each of the sales presented in order to determine the suitability of the sale for a capitalization study. As previously stated four sales were common for the two parties and were accepted by the Board. The additional five sales submitted by the Complainant were reviewed – 2639 17 Avenue SW, 3515 17 Avenue SE, 7404 Ogden Road SE, 126 16 Avenue NE and 2803 Centre Street NW.

[48] The Board found the sale at 7404 Ogden Road SE was dissimilar from the other sales as it was a gas bar, currently assessed on a cost approach. The Board looked to the Valuation Approach, Property Use and Subproperty Use designations for each of the sales and found:

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	Valuation Approach	Property Use	Subproperty Use
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	Income	Commercial	CM0201 Retail - Freestanding
20076255	1323 Centre St. NW	11-Jan- 2012	15,469	1972	A-	Income	Commercial	CM0201 Retail - Freestanding
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	Income	Commercial	CM0201 Retail - Freestanding
076051309	3515 17 Ave SE	28-Nov-2011	11,700	1960	C-	Income	Commercial	CM0201 Retail - Freestanding
115010407	7404 Ogden Rd SE	6-Sep-2011	1,530	1955	C	Cost	Commercial	CM0711 Vehicle/Accessories - Convenience

								Store Gas Bar
039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	Income	Commercial	CM0201 Retail - Freestanding
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	Income	Commercial	CM0201 Retail - Freestanding
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	Income	Commercial	CM0201 Retail - Freestanding
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	Income	Commercial	CM0201 Retail - Freestanding

[49] The Board found the sales at 7404 Ogden Road was not a comparable property and not suitable in the capitalization rate analysis presented by the Complainant. The Board noted the property was assessed based upon the Cost Approach and the Complainant was required to determine an assessment for the property using an Income Approach. The Board found the removal of this sale resulted in revised capitalization rates of 7.315% average and 7.125% median, no longer a clear support for the requested 7.5% capitalization rate.

[50] As the onus is on the Complainant to support its position the Board reviewed each of the sales, as presented in the Complainant's table of C1, Pg 31.

- 2639 17 Avenue SW: Sold April 2012. The Board accepted this sale as valid for the capitalization analysis. The Board did not accept the Respondent's argument that a sale should be excluded when a broker was not involved in the transaction. The argument with respect to the income from the signage was not accepted as evidence was presented this was not a unique situation for it was shown to the Board that other properties also generate revenue from signage which is ignored by City of Calgary in its analysis of revenues.
- 1323 Centre Street NW: Sold January 2012. The Board accepted this sale as it was the only sale on which both parties agreed.
- 1435 9 Avenue SE: Sold December 2011. The Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013. The Board found the Complainant's agency was inconsistent in its selection of the roll year for the NOI used in its analysis for determining the capitalization rate. The selection of the roll year NOI would be based on obtaining the lowest value, not on a supportable and consistent approach.
- 3515 17 Avenue SE: Sold November 2011. The Board did not accept this sale as the respondent to the ARFI indicated it was not an arm-length transaction. No evidence was presented to show an error had been made in the selection of a "NO" response.
- 6331 Bowness Road NW: Sold August 2011. As previously stated, the Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013.
- 321 19 Street NW: Sold July 2011. As previously stated, the Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013.
- 126 16 Avenue NE: Sold April 2011. The Board accepts the sale as valid but placed less weight on the resulting capitalization rate as the sale occurred more than a year prior to the valuation date of July 1, 2012.
- 2803 Centre Street NW: Sold January 2011. The Board accepts the sale as valid

but placed less weight on the resulting capitalization rate as the sale occurred almost a year prior to the valuation date of July 1, 2012.

[51] Based on the findings for each sale, the Board determined a capitalization rate based upon the seven accepted sales.

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	840,500	\$790,000	\$58,845	7.45%
20076255	1323 Centre St. NW	11-Jan-2012	15,469	1972	A-	\$5,040,000	\$4,775,000	\$352,891	7.39%
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	\$1,500,000	\$1,700,000	\$73,833	4.34%
039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	\$1,410,000	\$1,440,000	\$100,028	6.95%
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	\$1,360,000	\$1,425,000	\$91,267	6.40%
								Average	6.51%
								Median	6.95%
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	\$1,180,000	\$850,000	\$74,854	8.81%
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	\$1,430,000	\$1,400,000	\$101,383	7.24%
								Average – all sales	6.94%
								Median – all sales	7.24%

[52] The Board found the resulting capitalization rates determined through the two analyses were more supportive of the current rate of 7.00% than the requested 7.50%.

Issue 2: Supermarket Rental Rate

Complainant Position

[53] The complainant argues the correct rental rate for a quality 'B' supermarket should be \$13.00 per square foot instead of the current assessment rate of \$15.00 per square foot. The complainant entered an analysis of six (6) supermarkets utilized in the determination of the requested rental rate. (C1, Pg. 36)

Grocery Leasing Analysis B = Average Stores

Tenant	Address	Shopping Centre	Area (SF)	Rental Rate	Leasing Year	Start Date	Term
Sobeys Capital	8338 18 St. SE	Riverbend Shopping Centre	34,969	\$14.50	2011	1-Dec-11	

Canada Safeway	1200 37 St. SW	Westbrook Mall	47,980	\$6.00	2011	1-Nov-11	
Basha Foods	2717 Sunridge Way NE	Sunridge Commercial District	20,000	\$17.00	2011	1-Mar-11	
Canada Safeway	8120 Beddington Bv NW	Beddington Towne Centre	54,792	\$13.50	2010	1-Nov-10	
Canada Safeway	1600 90 Ave SW	Glenmore Landing	52,465	\$13.00	2010	1-Sep-10	
Sobeys Capital	6449 Crowchild Tr. SW	Lakeview Plaza	19,698	\$9.00	2009	1-Mar-09	
		Median	47,980	\$13.25			
		Mean	42,041	\$12.17			
		Weighted Mean		\$13.01			

[54] The Complainant provided supporting documentation in the form of photographs, site maps, assessment valuation determinations and tenant rent rolls. (C4) The Complainant made note of the commencement date of the leases for a number of the properties. Special note was made with respect to the Canada Safeway at Glenmore Landing with the Complainant arguing it was a new lease commencing September 1, 2010. The prior 25 year lease expired August 2010, with a new lease for five years being signed. The Complainant explained the RioCan REIT does not distinguish a new lease but rather maintains the same start date if the tenant continues to occupy the space. (C4, Pg. 37 and 39)

[55] Documents, pertaining to the leases for the premise at 6449 Crowchild Trail SW, occupied by Sobeys, were submitted by the Complainant to support its position the lease was valid for inclusion in the analysis of the rental rate for supermarkets. (C4, Pg. 40-52) The complainant noted the original lease between 547495 Ontario Limited and Freson Market Limited ran for 15 years commencing March 1, 1994, with options for three – five year renewals. The rental rate varied every five years with the final period being at \$6.25 per square foot.

[56] The Complainant submitted a signed document between the landlord, First Capital (Lakeview) Corporation and the tenant, (Sobeys Capital Incorporated, extending the term of an existing lease at lease rate of \$9.00 per square foot, with the balance of the extension options (2).

[57] Regarding the Calgary Co-operative premise at 1221 Canyon Meadows Drive SE. The Complainant argued the lease should be excluded as the shopping centre had undergone extensive renovations with the complex converting from an enclosed mall to a community strip centre with new structures on the site. The Complainant submitted documents indicating for 2011 the complex was a mix of 'C' and 'B-' quality structures and in 2012 it was upgraded to an 'A-' quality complex. The tenant roll, dated August 31, 2012, indicated the Calgary Co-Op store was leasing for \$15.00 per square foot on a lease commencing September 1, 2011. (C4, Pg. 53-60)

Respondent Position

[58] The Respondent stated the subject property has been assessed correctly as a 'B' quality supermarket with a \$15.00 per square foot rental rate.

[59] The Respondent submitted the "2013 Supermarket Rental Rate Analysis Revised" into evidence to show the determination of the \$15.00 rental rate, with emphasis on the 'B' quality supermarkets. (R1, Pg. 446)

2013 Supermarket Rental Rate Analysis Revised

Address	Leased Area (square Feet)	Lease Rental Rate	Lease Commencement Date (year)	Lease Commencement Date (month)	Lease Term (years)
A - \$18.00					
3625 Shaganappi Tr NW	43,026	\$8.40	2011	07	10
163 Quarry Park Bv SE	45,358	\$26.45	2009	11	20
356 Cranston Rd. SE	41,334	\$19.00	2009	10	20
374 Aspen glen Ld SW	43,916	\$18.50	2009	09	25
100 Anderson Rd SE	76,326	\$15.00	2011	03	5
	3 year Median	\$18.50			
B - \$15.00					
1221 Canyon Meadows Dr SE	55,130	\$15.00	2011	09	10
2717 Sunridge Wy NE	20,000	\$17.00	2011	03	10
8338 18 St SE	34,969	\$14.50	2011	12	5
8120 Beddington Bv NW	54,792	\$13.50	2010	11	5
	3 year Median	\$14.75			
C - \$10.00					
5401 Temple Dr NE	25,488	\$10.50	2011	06	15
3211 17 Av SE	33,550	\$9.00	2010	08	01
	3 year median	9.75			

[60] The Respondent noted the 'revised' analysis included the lease at 8120 Beddington Boulevard NW in the 'B' quality group. The effect of the inclusion was to reduce the median from \$15.00 to \$14.75 per square foot.

[61] In response to the Complainant's initial submission, the Respondent challenged the inclusion of the three leases located at 1200 37 Street SW (Westbrook Mall), 1600 90 Avenue SW (Glenmore Landing) and 6449 Crowchild Trail SW (Lakeview Plaza).

[62] The Respondent argued the lease for the Canada Safeway in Westbrook Mall had a commencement date of November 1, 2006. It was shown the rent rolls provided for Westbrook Mall presented conflicting data. The documents indicated a start date of November 1, 2011 for a 20 year lease expiring on October 31, 2026. The Respondent argued this indicated a commencement in 2006, not the 2011 as presented by the Complainant. The Respondent submitted a page from an Assessment Request for Information (ARFI), dated April 08, 2011, on

which the commencement was listed as November 1, 2006. The responder to the ARFI did not change the lease start date, but did update the annual rental rate to \$5.99 per square foot. This value corresponds to the leases rate as indicated on the rent rolls for November 30, 2012 and March 25, 2013. It was argued this increase was a result of a step-up in the original 2006 lease and not a new lease negotiated at current market lease rates. (R1, Pg. 417-420)

[63] The Respondent argued the lease for Canada Safeway at 1600 90 Avenue SW (Glenmore Landing) was not a new lease, as presented by the Complainant, but only an addition of a five year option to an existing lease. A portion of an ARFI returned to the City of Calgary showed a written note that the leases did not expire until August 2015 and no renewal information was available. The Tenant Rent Roll for July 1, 2012 indicated a lease of 30 years commencing September 1985 at a rate of \$13.00. (R1, Pg.424 – 426) The Respondent noted the lease page provided by the Complainant shows a commencement date of September 1, 1985 with a term of 25 years, at a rate of \$13.00 per square foot. (C4, Pg. 38)

[64] Addressing the lease for Sobeys Capital at 6449 Crowchild Trail SW (Lakeview Plaza), the Respondent submitted two ARFI dated 2011 and 2013 and two rent rolls for January 1, 2010 and December 31, 2012. It was the Respondent's argument the leases had a commencement date March 1, 1994 with a leases rate of \$9.00 for the term of the lease. The documents show the original lease was in effect until 2014

[65] The Respondent acknowledges the shopping complex at 1221 Canyon Meadows Drive SE has undergone extensive renovation with the exception of the Wal-Mart and Calgary Co-Op anchors. The Respondent, in verbal testimony, stated that from personal knowledge the Co-Op had not been renovated on the interior, but had only been renovated on the exterior when it was physically separated from the shopping mall to create a freestanding supermarket and exterior signage. The Respondent stated that while the shopping mall had been reclassified to an 'A-' quality from a 'C' quality the supermarket was currently assessed as being a 'B' quality supermarket, as evidenced by the rate applied in the assessment calculation. (R1, Pg. 434–438) The Respondent argued the change of classification for the shopping centre was separate from the quality class applied to the supermarket and was therefore not grounds for its exclusion from a rates analysis.

[66] The Respondent submitted a listing of thirty-three (33) 2013 Business complainant hearings for supermarkets. The hearings, chaired by Mr. I. Fraser, confirmed the business rates at \$15.00 per square foot, less the \$2.00 attributed to tenant improvements. The Respondent noted the decision, LARB 73175B-2013 on the subject property, addressed the acceptability of three of the Complainant's leases – 1200 37 Street SW (Westbrook Mall), 1600 90 Avenue SW (Glenmore Landing) and 6449 Crowchild Trail SW (Lakeview Plaza). (R1, Pg. 447–457)

Complainant Rebuttal:

[67] The Complainant submitted an extensive rebuttal document restating its use of and rejection of specific leases. (C5)

[68] Of special note by the Complainant were the 2008 and 2010 Supermarket Lease analyses, which included the leases at 1600 90 Avenue SW (Glenmore Landing) and 6449 Crowchild Trail SW (Lakeview Plaza) in both years. (C5, Pg. 18 and 23)

Board Decision:

[69] During deliberation the Board found both parties agreed on three supermarkets being

components in the rental rate analysis – 8338 18 Street SE, 2717 Sunridge Way NE and 8120 Beddington Boulevard NW. There being no dispute with the leases, the Board accepts these properties as submitted.

[70] The Board reviewed the four additional leases presented by the parties to determine their acceptability for the rental rate analysis:

1200 37 Street SW: The Board upon review of the evidence found the commencement date for the lease was November 1, 2006 for a 20 year term, with a starting leases rate of \$5.21 per square foot. It appeared the lease rate increased, after approximately five years, to a rate of \$5.99 per square foot. The confusion with respect to the date of the change to the Lease rate and the details with respect to the lease arrangements have clouded this lease as to its use in an analysis of the rates. The Board therefore exclude the sale from its analysis.

1600 90 Avenue SW: The Board found the lease information was clouded by a confusion of dates. From the documents provided it would appear the original lease, at a rate of \$13.00 per square foot, was for a term of 25 years ended August 31, 2010. However, the July 1, 2012 rent roll reported a lease of 30 years at the rate of \$13.00 per square foot. No evidence was submitted to show if the leases rate was a continuation of the prior lease rate or a newly negotiated rate representing current market rents. Lacking clarity, the Board excluded the sale from its analysis.

6449 Crowchild Trail SW: The Board accepted the lease for inclusion in its analysis of the leases presented. The documents submitted indicated the original lease, with a 15 year term, ended on February 28, 2009. At the time the leases terminated the lease rate was \$6.25 per square foot. The tenants exercised their option and extended the lease to February 28, 2014 at a new lease rate of \$9.00 per square foot. While not a new lease the Board felt it was reflective of the current market rents for the premise.

1221 Canyon Meadows Drive SE: The Board accepted this lease for its analysis of the rental rates for supermarkets. The Board extensively reviewed the evidence presented by both parties with respect to the renovations of the shopping centre and the supermarket, the leases for the premise and its timing in relation to the renovations. The presenting parties agreed the shopping centre had undergone extensive renovations completed by the end of 2012, when the complex was set with an 'A-' quality. The Complainant argued the supermarket was a better quality, since the entire complex had been rated as an 'A-' quality, should therefore be excluded. The Respondent stated the supermarket was rated separately from the shopping centre and rated as a 'B' quality. This was supported by the rental rate appearing on the Non-Residential Properties – Income Approach Valuation form. (R1, Pg. 436-437) The most compelling evidence for the inclusion of the lease was presented by the Complainant with the tenant rent roll for August 31, 2012. The document showed a lease for the Calgary Co-Op commencing September 1, 2011 for a 10 year term at a leases rate of \$15.00 per square foot. The Board found with the lease commenced during the period of the conversion of the shopping centre it was reflective of the market at the time and took into consideration the changes to the shopping centre.

[71] The Board found its review of the five leases produced a result that was not supportive of the requested rate of \$13.00 per square foot. The Board's review produced per square foot rates of average rental rate of \$13.80, median rental rate of \$14.50 and weighted mean of \$14.04.

[72] While the results may indicate a possible lower rental rate per square foot for the

supermarkets, the Board can only deal with the property before it with this complainant. With a median of \$14.50, the board will not disturb the assessment for such a minor amount.

Issue 3: Restaurant – Fast Food Rental Rate

Complainant Position

[73] The Complainant submitted the correct rate for the Fast food premise (Wendy's) should be a result of the analysis of only the 'B' quality properties. The Complainant's review of the leases produced a result supporting the requested rental rate of \$28.00 per square foot. (C1, Pg. 71)

2013 Altus Fast Food B Quality Rental Rate Analysis

Address	Tenant	Community	AYOC	Shopping Centre	Subproperty Use	Land Use	Quality	Lease Area (SF)	Start Date	Lease Rate	Term
723 46 Ave SE	Tim Horton's	Highfield	1980	Blackfoot Centre	Strip	Industrial /Commercial	B	3,090	1-Jul-12	\$28.16	5
723 46 Ave SE	Mary Brown's Chicken	Highfield	2002	Blackfoot Centre	Strip	Industrial /Commercial	B	1,900	1-May-12	\$27.00	5
1555 32 Ave NE	Tim Horton's	South Airways	1991	N/A	Strip	C- cor 3	B	2,600	1-Dec-11	\$37.88	10
8411 Elbow Dr SW	Dairy Queen	Haysboro	1963	Haysboro Centre	Strip	C- cor 1	B	3,000	1-Sep-11	\$24.40	5
10440 Macleod Tr SE	Taco time	Willow Park	1999	Century Park Plaza	Strip	DC	B	1,591	1-Apr-10	\$31.00	10
									Mean	\$29.69	
									Median	\$28.16	
									Assessed	\$32.00	

Respondent Position

[74] The Respondent noted the Wendy's Restaurant lease on the subject property was a 'land lease' only and therefore not used in the analysis of rental rates for fast food restaurants.

[75] The Respondent submitted the "2013 Lease Comparables Fast Food Restaurants Revised" with which the assessed rate of \$32.00 per square foot was established. (R1, Pg. 415) The revision resulted from the exclusion of a lease at 7556 Falconridge Boulevard NE, located in an exempt sports facility. The exclusion of the single lease reduced the median from \$31.00 to \$31.50 per square foot, but the assessed rate was unchanged.

A & B Quality

Address	Quality	Area (Square Feet)	Lease Rate	Lease Year	Lease Month	Lease Term
8338 18 Street SE	A	2600	\$32.00	2012	03	10
4818 17 Ave SE	A	3138	\$22.00	2011	09	5
15425 Bannister Rd SE	A	2524	\$26.51	2011	06	10
2608 39 Ave NE	A	1658	\$43.73	2011	03	5
1130 16 Ave NW	A	3560	\$33.00	2011	03	5

1116 16 Ave NW	A	1890	\$33.00	2011	03	10
20 12 St NW	A	1077	\$32.00	2010	07	5
3708 17 Ave SW	A	3195	\$36.00	2010	05	5
3912 17 Ave SE	A	1984	\$25.20	2010	05	5
3120 17 Ave SE	A	2250	\$36.53	2010	03	15
6500 4 St NE	A	1630	\$31.00	2010	02	5
723 46 Ave SE	B	3090	\$28.16	2012	07	5
723 46 Ave SE	B	1900	\$27.00	2012	05	5
1555 32 Ave NE	B	2600	\$37.88	2011	12	10
8411 Elbow Dr SW	B	3000	\$24.40	2011	09	5
10440 Macleod Tr SE	B	1591	\$31.00	2010	04	10
		Median	\$31.50			
		Assessed	\$32.00			

'Quality' column inserted by Board for clarification in the presented arguments by the parties.

[76] In verbal testimony, the Respondent stated the rate for the quality 'A' and 'B' fast food restaurants was a result of combining the two groups. The Respondent noted the range of leases for the 'A' quality fast food restaurants was from \$22.00 to \$43.73 per square foot and for the 'B' quality the range was from \$24.40 to \$37.88 per square foot. The Respondent argued that the quality of the structure was not the deciding factor in the leases negotiated as the leases range for the 'B' quality fast food restaurants fit within the range for the quality 'A' premises.

Board Decision:

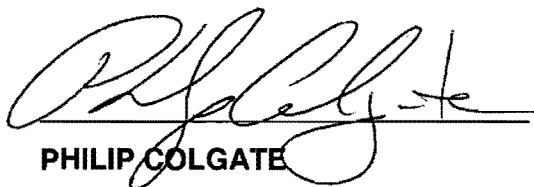
[77] The board did not find sufficient evidence to challenge the City of Calgary's grouping of the 'A' and 'B' quality fast food restaurants into a single category. The Board found the Complainant has reorganized the Respondent's analysis to derive a possible value, but failed to show the methodology utilized by the Respondent was incorrect.

BOARD DECISION:

[78] Based upon the decisions of the Board for each of the issues, the Board found insufficient evidence to support an adjustment to the assessment.

[79] The Board confirmed the assessment at **\$14,510,000.00**

DATED AT THE CITY OF CALGARY THIS 6th DAY OF November 2013.



PHILIP COLGATE
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Rebuttal
4. C4	Complainant Disclosure
5. C5	Complainant Rebuttal
6. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a)the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	-Capitalization Rate -Net Market Rent/Lease Rates -Equity Comparables