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:

LOBLAW PROPERTIES WEST INC.
(As represented by Altus Group)
COMPLAINANT

and

THE CITY OF CALGARY, RESPONDENT

before:

W. Krysinski, PRESIDING OFFICER
Y. Nesry, BOARD MEMBER
P. Charuk, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**200112282**
LOCATION ADDRESS:	**4700 130 Avenue SE**
FILE NUMBER:	**73683**
ASSESSMENT:	**$25,250,000**

This complaint was heard on 1st and 2nd day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom #1.

Appeared on behalf of the Complainant:

- *B. Neeson*
- *K. Fong*

Appeared on behalf of the Respondent:

- *R. Farkas*
- *E. D'Altorio*

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

[1] There were no concerns from either party, respecting the panel representing the Board as constituted.

[2] Both parties requested that all capitalization rate (cap. rate) evidence and argument presented at Hearing #72528 be cross-referenced to the following Hearings: 72358; 72548; 72550; 72655; 72657; 72926; 72927; 72929; 72931; 72933; 72936; 72937; 73682; 73683; 72429; 72427. The Board concurred with the request.

[3] Both parties requested that all Big Box (80,000 square feet+) rental rate evidence and argument presented at Hearing #73683 be cross-referenced to the following Hearings: #73682; #72927. The Board concurred with the request.

[4] As no further jurisdictional or procedural matters were raised at the outset of the Hearing, the Board proceeded to hear the merits of the complaint.

Property Description:

[5] The subject property comprises a B+ quality Retail Power Centre, known as Superstore Southtrail, located 4700 130 Avenue SE. Constructed in 2002, it is situated in the south-east community of East Sheppard. Consisting of three separate buildings, the total net rentable area for the subject property is 158,559 square feet (sf). The improvements are situated on a 14.09 acre parcel of land which is zoned Commercial – Regional 3.

Issues:

[6] The Complainant addressed the following issues at the Hearing:

- The assessment is in error, as the capitalization rate applied in the Income Approach valuation is incorrect at 6.25%. The capitalization rate applied should be 6.75%.
- The assessment is incorrect, as the rental rate for "Retail Anchor greater than 80,000 sf." is too high at $10.00 psf. The correct rate should be $8.00 psf.

Complainant's Requested Value: $19,170,000

Board's Decision

[7] The complaint is not allowed. The Board confirms the assessment at **$25,250,000**.

Legislative Authority, Requirements and Consideration

[8] The Act, Section 460.1(2), subject to Section 460(11), specifies a Composite Assessment Review Board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property referred to in Subsection 460(1)(a).

Position of the Parties

Issue 1: Capitalization Rate

Complainant's Position:

[9] The Complainant argues that the capitalization rate of 6.25% results in an assessment that is not reflective of market value as at July 1, 2012. Altus is requesting that the capitalization rate for the subject be changed to 6.75%.

[10] In support of this position, the Complainant has provided two distinct methodologies of capitalization rate analysis. Capitalization Rate Method I utilizes the application of assessed income as determined by the City of Calgary, while Capitalization Rate Method II calculates typical market income in a manner purported to be prescribed by the Alberta Assessor's Valuation Guide (AAVG) and the "Principles of Assessment" training program.

[11] The Complainant provided two capitalization rate analysis charts of sales that occurred in the period December 13, 2010 through May 28, 2012 [C-2, pg. 1]. The charts respecting analysis Method I and Method II are summarized below:

2013 Altus Power Centre Capitalization Rate Summary - Method I

Power Centre Name	Address	AYOC	Quality	Sale Date	Area	N.O.I.	Sale Price	C/R
HSBC Bank	95 Crowfoot Cr. NW	1997	B	13-12-2010	7,256	209,420	$2,638,000	7.94%
Crowfoot Village	20/60 Crowfoot Cr. NW	1985	B	30-4-2012	60,612	2,118,208	$31,250,000	6.78%
Crowfooot Corner	140 Crowfoot Cr. NW	1981-1991	B	28-5-2012	51,048	1,820,286	$35,500,000	5.13%
							Mean:	**6.62%**
							Median:	**6.78%**

2013 Altus Power Centre Capitalization Rate Summary - Method II

Power Centre Name	Address	AYOC	Quality	Sale Date	Area	N.O.I.	Sale Price	C/R
HSBC Bank	95 Crowfoot Cr. NW	1997	B	13-12-2010	7,256	208,613	$2,638,000	7.91%
Crowfoot Village	20/60 Crowfoot Cr. NW	1985	B	30-4-2012	60,612	2,107,227	$31,250,000	6.74%
Crowfooot Corner	140 Crowfoot Cr. NW	1981-1991	B	28-5-2012	51,048	1,892,009	$35,500,000	5.33%
							Mean:	**6.66%**
							Median:	**6.74%**

[12] It was noted that both Methods I and II incorporated the same three sales as those used in the City Analysis. However, a difference lies in the manner in which the Complainant calculates the Net Operating Income (NOI) for the sale at 95 Crowfoot Crescent NW, as compared to the City's calculated NOI. There is no dispute with respect to the calculated NOI's for the other two sales.

[13] Specifically, the disputed NOI's vary due to differing opinions as to the typical market rent attributable to the sale as of the sale date. The City's NOI calculations are replicated in the Complainants submission [C-2; Pg. 24], indicating an NOI of $167,560, which is predicated on a retail bank rate of $32.00 psf., and basement rate of $2.00 psf. The Complainant's Method I NOI calculations [C-2; Pg.5], reflect an NOI of $209,420, based on a retail bank rate of $40.00 psf. and a basement rate of $2.00 psf. The same Method II calculations [C-2; Pg. 118] yield an NOI of $208,613, predicated on a $38.00 psf. retail bank rate, and an $8.00 psf. basement rate.

[14] In support of the suggested typical rental rates for the referenced sale property of $40.00 psf. (Method I) and $38.00 psf. (Method II) the Complainant references an analysis of 7 retail bank leases [C-2; Pg. 27], from various Power Centres throughout the City. The analysis indicates average and median lease rates of $38.29 psf. and $40.00 psf. respectively. This, the Complainant argues, supports the typical market rents as suggested, in calculating the capitalization rate for the 95 Crowfoot Crescent NW sale.

[15] Further to this, the Complainant referenced a lease [C-2; pg. 149] respecting the sale property that was signed some 18 months after the sale date, wherein the bank space was leased for $38.00 psf. Notwithstanding the fact that the lease was substantially post facto to the sale, it is the Complainant's position that the market had not changed significantly during this period and the lease is a good indicator of value for the space.

[16] The Complainant summarized that Method I reflected a mean capitalization rate of 6.62% and a median capitalization rate of 6.78%, while Method II yielded a mean capitalization rate of 6.66% and a median capitalization rate of 6.74%. Either method, it was argued, indicates a capitalization rate of 6.75% as being appropriate in the calculation of the subject assessment.

[17] Additionally, a document identified as exhibit C-3 Rebuttal Submission was submitted in support of the capitalization rate argument, as well as prior Composite Assessment Review Board (CARB) Decisions, for the Board's consideration.

[18] Based on all the foregoing, the Complainant submits that a 6.75% capitalization rate results in a better market value assessment.

Respondent's Position:

[19] The Respondent provided a document (R-1) in support of the current assessment.

[20] In addition to various maps, photos, etc. of the subject property, Property Detail Reports and Assessment Explanation Supplements were provided for the subject property, as well as for the three sales utilized by the City.

[21] The Respondent provided an analysis chart titled "2013 Power Centre Capitalization Rate Study" [R-1, Pg. 112]. The summary is replicated below:

2013 POWER CENTRE CAPITALIZATION RATE SUMMARY

Roll Number	Address	AYOC	Sale Date	Sale Price	Area	NOI	C/R
200388189	95 Crowfoot Cr. NW	1997	13-12-2010	$2,638,000	7,256	167,560	6.35%
016203507 & 016203606	20/60 Crowfoot Cr. NW	1985	30-4-2012	$31,250,000	60,612	2,118,208	6.78%
175036508	140 Crowfoot Cr. NW	1991	28-5-2012	$35,500,000	51,048	1,820,286	5.13%
						MEDIAN :	**6.35%**
						AVERAGE :	**6.09%**
						ASSESSED :	**6.25%**

[22] The Respondent advised that the three sales listed above were also included in the Complainant's analysis. It was noted that two of the sales are reasonably current, (April and May, 2012), While one (December, 2010), was 18 months from the valuation date. The sales analysis reflects median and average capitalization rates of 6.35% and 6.09% respectively, which support the assessed 6.25% capitalization rate.

[23] Further to this, the Respondent advised that the typical NOI for the sale at 95 Crowfoot Crescent NW was predicated on a $32.00 psf. rental rate, which reflected the typical rates applied by the City for the 2011 assessment year, and consequently, the typical rental rate as at the Dec. 2010 sale date. This, the Respondent explained, was consistent with the way in which the City determines typical NOI's for sales in Capitalization Rate Analyses. The Respondent argued that the Altus methodology was not consistent with the City's methodology of calculating typical NOI's, wherein assessment data from the valuation year of the year of sale is applied (ie: 2010 sale date = 2010 valuation year data from 2011 assessment year). The City further argued that the Altus method was inconsistent within itself, as Altus calculates the typical rental rate, by doing their own city-wide rent analysis, and then, rather than doing city-wide analyses for the other coefficients also, (i.e. vacancy, operating costs, non-recoverables, etc.), they simply adopt the City's typicals for those coefficients.

[24] In support of the $32.00 psf. typical rent rate, the Respondent submitted a chart [R-1; Pg. 45] containing three Leases within the Crowfoot Power Centre, one of which was from the sale property at 95 Crowfoot Crescent NW. The analysis yielded an average rental rate of $31.50 psf. and a median rental rate of $31.50 psf. While the leases were dated, the Respondent explained that the analysis was consistent with the methodology applied in the valuation of all Power Centres for the 2011 assessment year. The analysis, the Respondent submits, supports the $32.00 psf. typical rent used in the sale analysis of 95 Crowfoot Crescent NW.

[25] Additionally, the Respondent submitted a summary chart [R-1; Pg.43] containing a selected list of fifteen bank leases from various Power Centres in Calgary as an indication of typical bank lease rates in Power Centres. It was stressed that the list should not be interpreted as a lease analysis study, but was merely a sampling of what was considered to be "typical" bank leases. While two of the leases were $42.00 psf. and $45.00 psf., the Assessor's point was that thirteen of the fifteen leases were below $40.00 psf., and the median was $32.50 psf. The point here, it was argued, is that the Complainant's suggested typical rate of $40.00 psf. was clearly not supported.

[26] The Respondent referenced Industry Publications: the *CBRE Canadian Cap Rate Survey* as well as the *Altus Insite Investment Trends Survey* [R-1; Pgs. 96 to 99]. The CBRE Report indicated capitalization rates for Power Centres in Calgary to be 5.50% to 6.0%, while the Altus Insite report showed a Power Centre capitalization rate of 5.70%. It was noted that the Industry Reports reflected capitalization rates even more aggressive than those applied by the City.

[27] Additionally, the Respondent argued that the Altus Method II capitalization rate calculations are incorrect, as they are predicated on an out-dated (1999) version of the AAVG manual. They advise that a more current (2012) version of the manual now exists, portions of which are replicated in the respondent's evidence [R-1; Pgs. 27 to 33].

[28] Finally, in support of their position the Respondent references a number of prior year CARB Decisions [R-1; Pgs. 122-147] supporting the City's methodology of determining Power Centre capitalization rates. In addition to this, the Respondent referenced a list of eight 2013 CARB Decisions [R-1; Pg. 121], wherein the 6.25% capitalization rate was confirmed.

Board's Reasons for Decision:

[29] There was insufficient market evidence from the Complainant to convince the Board that a variance to the capitalization rate is justified.

[30] The Board has some concerns with the Complainant's reference to the outdated version of the AAVG. Notwithstanding this, the Board notes that the AAVG is merely a guide for assessors. It is neither regulated nor legislated, and as such, it has no legal bearing.

[31] The Board reviewed in depth the three sales put forward by both the Complainant and the Respondent, and is of the opinion that minimal weight be put on the sale at 95 Crowfoot Crescent NW. The reason being that there was considerable conflicting evidence from the two parties as to the appropriate typical rental rate to be applied in the calculation of the capitalization rate for this sale. Notwithstanding this, the Board considers the small size of this property (7,256 sf.), not to be reflective of typical commercial retail buildings within Power Centres: The cornerstone of capitalization rate analysis is the selection of truly similar sale properties. To do otherwise puts into question the accuracy of the ensuing results. Additionally, the sale is further removed (18 months) from the valuation date.

[32] The remaining two sales, while being less than desirable from a quantity of data perspective, were nevertheless, the only market data available, and are very current, having occurred within two months of the valuation date. The sales, with capitalization rates of 6.78% and 5.13% yielded mean and median capitalization rates of 5.96%. The sales support the assessed 6.25% capitalization rate.

[33] The Board notes that the Industry publications referenced by the Respondent support the assessed 6.25% capitalization rate.

[34] Both parties submitted prior CARB Decisions relative to their respective positions. Having reviewed the Decisions, the Board would advise that it is not bound by previous Decisions. While the Decisions are of interest, and may be beneficial in providing some direction based on the Board's prior findings regarding specific issues, it is the Board's position that its Decisions are ultimately predicated on the evidence and argument as presented at the subject Hearing.

[35] In order for this Board to vary the assessed capitalization rate, it is crucial that the Complainant provide market evidence that the proposed changes result in a better or more accurate assessment. In this instance, no such evidence was put forward.

[36] On review and consideration of all the evidence before it in these issues, the Board finds that there was insufficient evidence to vary the assessment.

Issue 2: Big Box Retail greater than 80,000 sf. Rental Rate

Complainant's Position:

[37] The Complainant is arguing that the assessed rental rate of $10.00 psf. for this retail category is too high. Altus is requesting that the rental rate be reduced to $8.00 psf.

[38] In support of this position, the Complainant has provided a chart titled "Altus Group: 2013 Retail Anchor Rental Rate Analysis (80,000 sq. ft.+)" [C-1; Pg. 24].

Altus Group: Retail Anchor Rental Rate Analysis (80,001 sq. ft+)

Address	Tennant	AYOC	Shopping Centre	Leased Area	Start Date	Lease Rate	Op costs	Term
1221 Canyon Mead. Dr. SE	Walmart	1980	Deer Val. S/C	82,687	23/09/2011	$4.60	$4.10	5
5696 Signal Hill CE SW	Target	1997	Signal Hill	112,488	01/05/2011	$8.00	$4.03	5
275 Shawville BV. SE	Target	1996	Shawnessy	122,616	25/03/2011	$7.00	$2.95	5
11938 Sarcee Tr. NW	Cdn. Tire	2008	Beacon Hill	95,423	08/03/2008	$14.50	$3.96	20
901 64 Ave. NE	Walmart	2003	Deerfoot Mall	133,521	29/01/2004	$6.85	$2.24	20
1200 37 St. SW	Walmart	1972	Westbrook Mall	158,022	01/12/2003	$7.47	$2.15	20
8888 Country Hills Bv. NW	Walmart	2003	Royal Oak	132,228	02/10/2003	$10.00	$3.24	20
					Mean:	$8.35		
					Median:	$7.47		

Additionally Reviewed (80,001 sq. ft+) A- Typical Leases

12300 Symons Va. Rd. NW	RONA	2007	Creekside	99,650	24/11/2007	$14.50	$6.82	20
					Mean:	$9.12		
					Median:	$7.74		

[39] Included in the chart is data respecting seven leases with start dates ranging from 2003 to 2011. Lease rates range from $4.60 psf. to $14.50 psf., with Mean and Median rates of $8.35 psf., and $7.47 psf. respectively. Also included was an eighth lease (RONA), although the Complainant testified that minimal weight should be put upon the lease, as it has been vacant since June 2012. The analysis, in the Complainant's opinion, implies a rate of $8.00 psf. to be more appropriate to this category of property, than the $10.00 psf. applied by the City.

[40] Further to this, the Complainant noted the operating (op.) costs of the eight lease comparables, emphasizing the minimal variance between them, thus reinforcing the similarity of the lease comparables.

[41] The Complainant acknowledged that five of the Altus leases are also included in the City analysis. Additionally, the Complainant opined that the City's rationale for not including the Deerfoot and Westbrook leases, strictly because they were either enclosed or regional malls, was without merit.

Respondent's Position:

[42] The Respondent referenced City of Calgary submission R-1 and more specifically, the rental rate analysis titled "2013 Box Store Rental Rate Analysis" [R-1;Pg.126], as replicated below:

2013 Box Store Rate Analysis (80,001SF+)

Address	Leased Area	Start Date	Lease Rate	Term
11938 Sarcee Tr. NW	95,423	03/05/2008	$14.50	20
12300 Symons Va. Rd. NW	99,650	11/24/2007	$14.50	20
8888 Country Hills Bv. NW	132,228	10/02/2003	$10.00	20
5696 Signal Hill Ce. SW	112,488	08/09/1997	$8.00	20
275 Shawville Bv. SE	122,616	03/25/1996	$7.00	20
		Mean:	$10.80	
		Median:	$10.00	
		Assessed:	$10.00	

[43] The Respondent acknowledged that five leases are also included in the Altus analysis, and that two Altus leases (Deerfoot Mall and Westbrook Mall) were excluded from the City's analysis, because they were either in a regional mall, or an enclosed mall. The Assessor explained that spaces in those types of malls performed differently in the marketplace, than those under review, and therefore were assessed separately to reflect their distinct market qualities. In regards to the Deer Valley lease, the Respondent explained that it was a dated (1981) lease, and should be excluded.

[44] With respect to the Creekside RONA lease, the City was of the opinion that it should be included in the analysis. The lease was an arms-length transaction, and the fact that the space was now vacant, had no bearing on the issue. The lessee was still making lease payments to the owner, and the fact that they were looking to sub-lease was totally irrelevant.

[45] The Respondent submitted a list of forty-two equity comparables [R-1; Pgs. 127, 128], which are all assessed at the same rate of $10.00 psf. and similarly exclude enclosed malls, regional malls and Downtown or Beltline properties.

Board's Reasons for Decision:

[46] The Board is in agreement with the Respondent that the leases in enclosed malls and regional shopping centres comprise a market that is unique to those properties, and should be excluded from the typical big box retail analyses. Consequently, the leases in the Deerfoot Outlet Mall and Westbrook Mall should not be included in the analysis.

[47] In regards to the Walmart lease in the Deer Valley Shopping Centre, the Board is convinced that it is a dated (1981) lease, and therefore, should be excluded from the analysis.

[48] With respect to the RONA lease in the Creekside Shopping Centre, the board is of the opinion that the lease should be included in the analysis. No evidence came forward to suggest that the lease was not arms-length, and the fact that the space is now vacant, is not sufficient argument to warrant exclusion of the lease from analysis.

[49] Both parties submitted prior CARB Decisions relative to their respective positions. Having reviewed the Decisions, the Board would advise that it is not bound by previous Decisions. While the Decisions are of interest, and may be beneficial in providing some direction based on the Board's previous findings regarding specific issues, it is the Board's position that its Decisions are ultimately predicated on the evidence and argument as presented at the subject Hearing.

[50] Based on the foregoing, the Board finds that there is insufficient evidence to vary the rental rate for big box retail greater than 80,000 sf., and the $10.00 psf. assessed rental rate is upheld.

[51] On review and consideration of all the evidence before it in these issues, the Board finds that, with respect to:

- **Issue 1: Capitalization Rate:** There was insufficient evidence to vary the assessment.
- **Issue 2: Big Box Retail greater than 80,000 sf.:** There was insufficient evidence to vary the assessment.

[52] The assessment is confirmed at **$25,250,000.**

DATED AT THE CITY OF CALGARY THIS 1st **DAY OF** November **2013.**

Walter F. Krysinski
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	Respondent Disclosure
3. C-2	Complainant Power Centre Retail – 2013 Capitalization Rate Analysis & Argument
4. C-3	Complainant 2013 Power Centre Cap Rate – 2013 Assessment Review Board - Rebuttal Submission
5. C-4	Complainant 2013 Retail Anchor Analysis: Rental Rate Analysis for Space Greater Than 80,000+sf
6. C-5	Complainant 2013 Retail Anchor Analysis: Rental Rate Analysis for Space Greater Than 80,000+sf – 2013 Assessment Review Board-Rebuttal Submission & Argument

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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Power Centre	• Capitalization Rate • Big Box > 80,000 sf Rent Rate	