ROCKY VIEW COUNTY
Cultivating Communities

ROCKY VIEW COUNTY
COMPOSITE 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:

Lowe's Companies Canada, ULC (as represented by Altus Group Limited), COMPLAINANT

and

Rocky View County, RESPONDENT

before

I. Weleschuk, Presiding Officer
D. Berezowski, Board Member
J. Gautreau, Board Member

This is a complaint to the Rocky View County Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of Rocky View County and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	**06409011**
LEGAL LOCATION:	**PLAN 3915211 BLOCK 3 LOT 9**
MUNICIPAL ADDRESS:	**300, 261199 CROSSIRON BLVD.**
ASSESSED VALUE:	**$16,079,700**

This complaint was heard on the 23rd day of July, 2012 at the Rocky View County Municipal Building, located at 911 – 32 Avenue NE, Calgary, Alberta.

Persons appearing on behalf of the Complainant:

- Doug Hamilton (Altus Group Limited)

Persons appearing on behalf of the Respondent:

- John Myers – Assessor

JURISDICTIONAL MATTERS

[1] The parties agreed that the Composite Assessment Review Board had jurisdiction to hear the complaint related to the subject, non-residential property. Neither party objected to the panel as constituted to hear the complaints.

PRODECURAL MATTERS

A. Complaints Considered

[2] At the beginning of the hearing, both parties stated that it would be most efficient if the complaints related to Roll No. 06409003 (Costco Wholesale Canada Ltd.) and Roll No.06409011 (Lowe's Companies Canada, ULC) were heard together, as the issues are the same and the evidence to support the respective party's positions is the same. The Respondent's Disclosure (Exhibit R2) addresses both properties. The Board opened both files and heard both complaints in one hearing. A separate decision is issued for each complaint.

B. Section 295 Issue

[3] The Respondent raised a procedural issue related to Section 295 of the Act for Roll No. 06409003 (Costco Wholesale Canada Ltd.), which the Board addressed. Exhibit R1 is presented to support that matter. No procedural issues were raised with respect to Roll No. 06409011 (Lowe's Companies Canada, ULC) and the hearing proceeded to hear the merits of the subject complaint

PROPERTY DESCRIPTION

[4] The subject property is a 127,940 square foot (SF) enclosed retail building, with about 31,986 SF of outdoor and covered (not enclosed) retail area, and a total of 448 parking stalls on a 13.49 acre parcel. The building is essentially of new construction, and is

considered complete in the 2012 assessment year (as of the December 31, 2011 condition date). The property has exposure from Highway 2 and Highway 566, with access off Highway 566 via Cross Iron Blvd. It is located in the Balzac area of Rocky View County, in the Cross Iron Mills commercial development, about two miles north of the City of Calgary boundary and two miles south of the City of Airdrie boundary. The property is zoned Direct Control 109, is owner-occupied and used as a retail hardware/home improvement center.

[5] The subject property is a "big box" type of retail development typically found in "power centers" which consists of a number of stand-alone, large retail properties with no enclosed common areas between the retail operations. The subject property is part of a larger "regional" commercial development.

[6] The property is assessed using the cost approach, with the building characteristics based on the specifications contained in the plans filed in support of the Development Permit, and unit costs obtained from the Marshall & Swift cost service. The land value is apparently the actual value of the property purchased as bare land. The Assessor has not had the opportunity to inspect the property to verify the as-built condition, as the Assessor has not been able to identify the appropriate individual within the Lowe's organization that can grant such permission, although numerous attempts were apparently made by the Assessor.

ISSUES

[7] The following issues were raised at the hearing:

1. Is the cost approach or the income approach the appropriate methodology to calculate the assessment?
2. Is the assessed value correct?
3. Is the assessment equitable?

COMPLAINANT'S REQUESTED ASSESSMENT

[8] The requested assessment in the Complainant's disclosure (Exhibit C1) is $12,031,500, based on the income approach. During the hearing, and in the closing statement, the Complainant stated if the Board prefers the cost approach, the requested assessment is $13,286,323.

BOARD'S DECISION WITH RESPECT TO EACH ISSUE

1. **Is the cost approach or the income approach the appropriate methodology to calculate the assessment?**

[9] The Complainant argued that because the subject is a retail commercial property, that its value should be based on the income approach. If the subject was put on the market, the price would be based on what a potential purchaser would consider its probable income stream. The subject is an owner-occupied property; therefore the factors used in the income approach calculation were obtained from typical market rates for similar properties. To support this position, the Complainant presented some previous Board decisions and court decisions that concluded that the income approach was preferred in valuing an income producing property (Exhibit C1). The Complainant also indicated that the Cross Iron Mills mall, located immediately south of the subject, was valued for assessment purposes using the income approach, supporting the position that the income approach is the "best" approach for valuing a retail property.

[10] The Complainant stated that while there are few sales of similar properties in Rocky View County that could be used to derive the factors, there are sales in the City of Calgary that are comparable and can be used. The subject property is only two miles outside the City and the Cross Iron Mills retail development is part of the Calgary retail environment. Therefore, rental rates, capitalization rates, vacancy rates, net operating income and other factors used in the income approach are directly applicable.

[11] The Respondent argued that sales data is required to derive the factors used in an income approach. Because of the lack of sales of similar properties in the municipality, the assessor did not have the data to derive the factors necessary to apply an income approach. Given that the subject property is essentially new construction, the cost approach provides a direct indication of market value, with little need for applying depreciation factors.

[12] The Respondent stated that the best comparison of value, for assessment purposes, is the assessed value per square foot. Regardless of how an assessment is calculated, it can be translated into this unit, and this unit can be used to compare other similar properties in adjacent or similar municipalities, to validate the assessed value.

[13] The Board understands that there are three approaches commonly used in deriving an assessment, and that the cost approach and the income approach are two of those three

approaches. The Board notes that the standard of assessment, as stated in Section 4(1)(a) of the Matters Relating to Assessment and Taxation Regulation (MRAT) is market value, which is to be prepared using a mass appraisal methodology in accordance with Section 2 of MRAT. Therefore, there is no one best approach for a defined type of property or property type. Rather, the assessor is free to use any of the three approaches taking into account the data available, provided that the resulting assessed value reflects the market value of the fee simple estate of the assessed property.

[14] The Board's mandate is set out in Section 467 of the Act, which reads in part:

467(1) *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

(3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

- *a) The valuation and other standards set out in the regulation,*
- *b) The procedures set out in the regulation, and*
- *c) The assessments of similar property or businesses in the same municipality.*

Therefore, the real issue is the determination of the approach and calculation that results in an assessed value that best reflects the market value of the property being assessed. The Board considers the evidence provided by the Complainant and the Respondent relating to their respective valuations for assessment purposes and makes its decision based on which value best reflects the market value of the property. The determination of a prescribed valuation approach simply based on property type or use is not required.

2. Is the assessed value correct?

Complainant's Evidence

[15] The Complainant presented an income approach calculation, which resulted in a market value for the subject property of $12,031,500. For this reason, the Complainant took the position that the assessment prepared by the county is too high. The factors used in the income approach calculation were taken from similar properties located in the City of Calgary. The Complainant opined that because of the proximity of the subject to the City of Calgary, it is essentially in the same market area, and therefore rents, capitalization rates, etc. are comparable.

[16] The Complainant presented seven comparable properties, all located in Calgary and all greater than 80,000 SF in size to show the net rental rates being achieved on these properties (summarized on page 58, Exhibit C1). Support data for these properties is also included in Exhibit C1 (pages 59-178). Three of the seven properties are less than 100,000 SF with the other four larger than 100,000 SF. The weighted mean average for all seven comparable properties is $7.82/SF, and the mean average for the four properties larger than 100,000 SF is calculated at about $6.94/SF.

[17] On page 180 of Exhibit C1, the Complainant presented a summary of seven properties used to derive the capitalization rate. These seven properties consist of "community" shopping centers, which are smaller than the subject, ranging in rental area from 29,722-188,537 SF. A number of these properties are multi-tenant commercial properties. The Complainant acknowledged that this type of property is not like the subject, but similar enough to use to derive capitalization rates. Purchasers of these seven properties would be looking for the same rate of return on their investment as potential purchasers for the subject property. The capitalization rate is derived using the other factors or rates that reflect the market conditions at the time for each respective sale. The median capitalization rate is indicated as 8.25%. Information supporting the summary on page 180 is provided on pages 181-246 of Exhibit C1. The Complainant also stated that based on a conversation with the property manager of the Cross Iron Mills mall, the capitalization rate used by the assessor to derive the 2012 assessment for this property using the income approach is just over 8% (page 26, Exhibit C1)

[18] The requested assessment using the income approach is presented on page 248, Exhibit C1. A rental rate of $8/SF is used, based on the seven comparable properties presented on page 58. A capitalization rate of 8.25% is used based on the seven comparable properties presented on page 180 and the rate applied to the Cross Iron Mills mall assessment (page 26). The other factors were typical factors apparently applied by the City of Calgary Assessment Department for similar properties. The resulting assessment is $12,031,500 or $94.07/SF.

[19] The Complainant questioned the Respondent on the evidence the Respondent presented. The focus of the questioning was page 2, Exhibit R2. Through questioning, the Complainant noted that the assessed value of the Lowe's building was $67.42/SF and the assessed value of the Costco building was $81.86/SF, and acknowledged that this was likely due to the different levels of finish. The Costco building has freezers, fridges and other features that were not present in the Lowe's building, and likely explained the cost difference. The Complainant then indicated that the land value assigned the Lowe's property was $559,407/acre while the Costco land value was

$345,681/acre. The Complainant questioned the Respondent on how two properties located in a similar area, within a few hundred meters of one another could be valued so differently.

[20] As a result of the questions above, the Complainant in his final statement stated that if the assessed value using the income approach of $12,031,500 was not accepted by the Board, that the assessed value using a cost approach should be the $8,623,100 of building value estimated by the Respondent (page 2, Exhibit R2), with the land value component being the same as the Costco property of $345,681/acre, resulting in an alternative assessed value of:

Building:	$ 8,623,100
Land: 13.49 ac x $345,680/ac	$ 4,663,223
Requested Assessment (cost approach)	$13,286,323

[21] The Complainant did not disclose nor present any rebuttal evidence.

Respondent's Evidence

[22] The Respondent stated that the assessment is calculated using a cost approach, with the characteristics and dimensions of the subject building taken from the drawings filed in support of the Development Permit, which are available to the assessor. The cost per unit is taken from the Marshall & Swift cost service, and the building calculation is done using the Marshall & Swift software. The actual details of the calculation are not presented, but the resulting building value of $8,623,100 is presented on page 2, Exhibit R2. The land value used in the cost approach is the value that was paid for the property, being $7,546,400 for the 13.49 acre parcel. No support documentation was presented to show this is the price paid, nor the date of purchase. The Respondent stated that standard practice was to obtain the sale price from the Land Titles Documents and he could see no reason to alter that practice. The resulting assessed value is $16,169,500, or a value of 126.42/SF.

[23] The Respondent stated that the cost approach is used because there are no similar properties in the county that sold in the last few years; therefore there is no sales data on which to derive the factors required to use an income approach. Because the building is essentially new construction, the cost approach reflects the value of the building, especially to an owner-occupant. The Respondent stated that their assessment model complied with the Municipal Affairs Department audit (page 27, Exhibit R2).

[24] While the calculated assessment is $16,169,500, the actual assessment is only $16,079,700. The Respondent stated that this lower number is based on a verbal agreement between a member of the Altus Group, who represented the owner in the previous taxation year, and the assessor. According to the Respondent, this agreement included an undertaking by the assessor not to increase the assessment for the 2012 taxation year, compared to the assessment in 2011. Evidence was presented on page 12, Exhibit R2 showing that the 2012 assessment of $16,079,700 is the same as the 2011 assessment.

[25] The Respondent presented a table of comparable properties (page 29, Exhibit R2) located in a number of municipalities outside Edmonton and Calgary showing that the assessed rates ranged from $125/SF to $150/SF, with a median of $137.50/SF. The Respondent noted that the subject assessment was at $126.42/SF, within this range and at the lower end of the range. The Respondent also presented a table (page 41, Exhibit R2) showing seven comparable properties located in the City of Calgary, which showed a range of assessed values of $130 to $144/SF, with a median of $138/SF. One of these properties is a Lowe's retail center located at 2909 Sunridge Way that is assessed at $131/SF. The Respondent stated that this information confirms that the assessment of the subject is correct.

[26] The remainder of the Respondent's evidence rebutted the Complainant's evidence, demonstrating that the properties used to derive the rental and capitalization rate were not comparable properties, for various reasons.

Board's Conclusions

[27] The Board is somewhat troubled by the apparent verbal agreement between the assessor and the owner's agent (Altus Group Ltd.). If there is an agreement in place, the Board would expect both parties to honor the agreement, and therefore, there should not be a complaint regarding the assessment. That said, the Respondent stated that the assessed value of $16,079,700, which is the same assessment as the previous year, still reflects market value (calculated to be $16,169,500). This difference between the calculated and applied assessments is just over one half of one percent, and within the range of a rounding adjustment. As no written evidence was presented showing that such an agreement exists or the details related to the agreement, the Board does not consider itself bound by this apparent agreement in making its decision.

[28] With regard to the income approach presented by the Complainant, the Board has some concerns with the data used in the calculation. No evidence was presented to demonstrate that shopping centers located in Calgary are directly comparable to the subject property located in Rocky View County as far as financial performance. The Complainant asked the Board to accept that such properties are comparable simply because they are located within the same general area.

[29] The Complainant's rental rate data ranged from $4.60 to $12.00 per SF. No explanation was provided as to why this range is so large. The Board notes that one of the comparable properties summarized on page 58 Exhibit C1 is a Rona hardware store (12300 Symons Valley NW) of 99,650 SF that leased in November 2007 at a net rental rate of $12.00/SF. The Complainant stated that Rona is currently in the process of closing this store and relocating, apparently because it is not financially feasible to continue operating at this location, therefore not a good comparable. Regardless, the Board considers this to be the best comparable to the subject. This suggests the rental rate of $8/SF used by the Complainant is not correct.

[30] The Board notes that the capitalization rate was derived from "community" shopping centers, which are not the same type of property as the subject for a number of reasons. They are multi-tenant properties that lease smaller retail areas; therefore there are a number of assumptions and adjustments that are required to derive a capitalization rate appropriate for the subject. No direct evidence was provided to support that the Cross Iron Mills mall assessment was based on a capitalization rate of approximately 8%, but the Board also notes that the mall is a very different type of property than the subject and not directly comparable.

[31] The Complainant did not provide any evidence or support data for the other factors used in the income approach calculation.

[32] It would be useful to have some evidence supporting the land value used in the assessment. The Respondent apparently used the price paid for the bare land as the value of the land component in the cost approach. The Complainant used the Respondent's calculations on page 2 of Exhibit R2 to suggest that the land value is more correctly in the order of $345,680/acre, but no evidence was presented to validate this number, nor demonstrate that the market value is other than what was apparently paid for these respective properties.

[33] The Respondent did not present any evidence showing how the assessment is derived using the cost approach or the rates used in that assessment. However, the Board notes that the comparables presented on pages 29 and 41, Exhibit R2 support the assessed value, using a per square foot basis ($126.42/SF).

[34] The Board is not persuaded that the assessed value calculated by the Complainant reflects market value, because limited and selective comparable market data is presented. The Board does not agree that the rates used are calculated using properties comparable with the subject. The Board prefers the assessed value indicated by the Respondent. While the supporting data is not presented in evidence, the properties presented to support the assessed value on a per square foot basis are comparable to the subject. The assessed value of the subject is within the range of values for both the set of comparable properties from municipalities outside Edmonton and Calgary, and the set of comparable properties from Calgary, as provided by the Respondent

3. Is the assessment equitable?

[35] The Complainant indicated in response to questions from the Board that equity is an issue, and that from an equity perspective, the subject should be assessed using the same approach (income approach) as the Cross Iron Mills mall.

[36] The Respondent presented two sales both of large warehouse properties in the County (pages 23 and 25, Exhibit R2), and suggested that the assessment on those properties indicated equity. Both these properties are assessed using a cost approach.

[37] The Board notes that the test for equity is stated in Section 467(3) of the Act, which indicates that the assessment must be fair and equitable considering the assessments of similar properties in the same county. The Board notes that little equity evidence was presented by either party. Cross Iron Mills mall, presented by the Complainant, is not similar to the subject just because the properties are located adjacent to one another. Furthermore, Section 467(3) refers to the assessment, not the approach used in calculating the assessment. Neither does the Board accept the two equity comparables presented by the Respondent as being comparable to the subject. Therefore, there is no equity evidence before the Board on which to make a decision regarding the equity of the assessment. The Board dismisses this issue.

BOARD'S DECISION

[38] For the reasons discussed above, the Board unanimously concludes that the Complainant's evidence did not persuade the Board to change the assessment. . The Board confirms the 2012 assessment of $16,079,900.

DATED THIS 14th DAY OF AUGUST, 2012, AT THE CITY OF CALGARY, IN THE PROVINCE OF ALBERTA.

Ivan Weleschuk
Presiding Officer

This Decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction pursuant to Section 470 of the Municipal Government Act, RSA 2000, c M-26.

EXHIBITS PRESENTED AT THE HEARING, ENTERED AS EXHIBITS AND CONSIDERED BY THE BOARD:

Exhibit R1	Respondent's Disclosure – Section 295 Matter
Exhibit C1	Complainant's Disclosure Evidence
Exhibit R2	Respondent's Disclosure Evidence