

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of **two complaints** against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

COMPLAINT A

**CALLOWAY REIT (CALGARY) INC.
As the assessed person**

Represented by Altus Group Ltd, (Agent) - COMPLAINANT A

COMPLAINT B

**WAL-MART CANADA CORP
As a taxpayer**

**Represented by AEC INTERNATIONAL INC., (Agent)
with
Wilson Laycraft LLP - (Solicitor) – COMPLAINANT B**

and

The City Of Calgary, represented by I. McDermott - RESPONDENT

before:

**D. H. Marchand, PRESIDING OFFICER
J. Massey, MEMBER
R. Roy, MEMBER**

These complaints to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	LOCATION ADDRESS:	ASSESSMENT:	HEARING NUMBER:
200094522	4705 130 Av.SE	45,230,000	63686 and 64066

Complaint A was heard on the **4th day of July, 2011** at the office of the Assessment Review Board

located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, and Boardroom 8.

Complaint B was heard on the **21st day of July, 2011** at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, and Boardroom 8.

Appeared on behalf of the **Complaint A:** *B. Neeson, (Agent's Representative)*

Appeared on behalf of the **Complaint B:** *B. Dell (Lawyer), B.Soulier, (Agent's Representative)*

Appeared on behalf of the Respondent: *I. McDermott (City of Calgary Assessor)*

Description and Background to the Property under Complaint:

The subject is identified with a sub-property use code CM1403-ShoppingCentres - Power. The subject is best known as South Trail Crossing with a land use designation of Commercial – Regional 3. The site area consists of 868,676 sq. ft. or 19.94 acres and is improved with 242,483 square feet of rentable space summarized as follows:

Big Box Space (Wal-Mart)	160,183 sq. ft.
CRU less than 1,000 sq. ft.	800 sq. ft.
CRU between 1,000 & 2500 sq. ft.	7,665 sq. ft.
CRU between 2,501 & 6,000 sq. ft.	13,515 sq. ft.
CRU between 6,001 & 14,000 sq. ft.	18,637 sq. ft.
Jr. Big Box 14,001 to 50,000 sq. ft.	39,145 sq. ft * (London Drugs)
Plus pad site of	<u>2,538 sq. ft.</u>
	242,483 sq. ft.

* This size was agreed to at the hearing.

Prior to the opening of the hearing **Complainant A** advised that only 3 issues of the 16 points filed as Grounds for Appeal within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* would be argued at this hearing. They have been reworded and restated as follows:

- 1. The market rental rate for CRU space between 1,000 & 2500 sq. ft. should be revised from \$31 to \$27, CRU space between 2,501 & 6,000 sq. ft. should be revised from \$25 to \$24, CRU space between 6,001 & 14,000 sq. ft. should be revised from \$23 to \$20, the London Drug junior big box space should be revised from \$17 to \$15 and the Wal-Mart space should be revised from \$10 to \$8.*
- 2. The vacancy rate applied to all the CRU and pad site space should be revised from 1% to 2.5%.*
- 3. The capitalization rate for the property should be revised from 7.25% to 7.75%*

Complainant A's revised assessment request is **\$35,720,000 or alternatively \$39,770,000***, *if the market rental rate of \$10 is not altered by the CARB.

Prior to the opening of the hearing the **Complainant B** advised that only 2 issues of the 5 points filed

as Reason's for Complaint within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* would be argued at this hearing. They have been reworded and restated as follows:

1. *The market rental rate for the Wal-Mart space should be revised from \$10 to \$8.*
2. *The capitalization rate for the property should be revised from 7.25% to 7.75%*

Complainant B's revised assessment request is \$38,260,000.

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

The CARB will be issuing only one decision as to the assessment of roll number 200094522 after giving consideration to the two complainants' positions.

Issue 1: the market rental rate for the subject's CRU space requested by Complainant A.

Complainant A provided the CARB with market lease rate comparables from the adjoining property, under Roll Number 711102004 for three size ranges, 1000 - 2,500 sf., 2501 – 6000 sf., and 6001 – 14,000 sf.

The Respondent provided the CARB with market lease rate comparables from the subject, and from the same adjoining property for the same three size ranges.

The following summarizes Complainant A's data for CRU space of 1,000 to 2,500 sq. ft.:

From Complainant A					From Respondent				
Roll number	Space area	Lease start	Term	Rate /sf.)	Roll number	Space area	Lease start	Term	Rate /sf.)
711102004	1348	Apr. 07	5	\$26	200450039	1001	Feb 09	10	\$33
711102004	1348	Oct.08	5	\$27	200450039	1000	Jun.08	10	\$34
711102004	2483	Jul. 09	10	\$27	200450039	1000	Feb 09	5	\$33
		Median		\$27	711102004	1348	Oct.08	5	\$27
					200450039	1500	Jul 08	10	\$32
					200450039	1533	Oct.08	10	\$33.50
					200450039	1547	Jun.08	10	\$33
					200450039	2063	May 08	7	\$32
					711102004	2483	Jul 09	10	\$27
							Choose		\$31.00

The following summarizes Complainant A's data for CRU space of 2,501 to 6,000 sq. ft.:

From Complainant A					From Respondent				
Roll number	Space area	Lease start	Term	Rate /sf.)	Roll number	Space area	Lease start	Term	Rate /sf.)
711102004	3909	Sept 08	8	\$24	711102004	3006	Sept 08	10	\$24.22
711102004	4586	Sept 08	8	\$24	711102004	3414	Oct 09	10	\$23.61
711102004	3006	Sept 08	8	\$24.22	200450039	3903	May 08	10	\$28
711102004	4587	Sept 08	5	\$25	711102004	3909	Sept 08	8	\$24
711102004	4542	Oct. 08	10	\$24	711102004	4542	Oct 08	10	\$24
711102004	3414	Oct .08	10	\$23.61	200613909	4471	Jul 09	5	\$27
711102004	4815	Mar. 09	10	28	711102004	4586	Sept 08	10	\$24
		Median		\$24	711102004	4587	Sept 08	10	\$25
					711102004	4815	Mar 09	10	\$28
							Choose		\$25.

The following summarizes Complainant A's data for CRU space of 6,001 to 14,000 sq. ft.:

From Complainant A					From Respondent				
Roll number	Space area	Lease start	Term	Rate /sf.)	Roll number	Space area	Lease start	Term	Rate /sf.)
711102004	7,057	Sept 08	10	\$19.84	711102004	7,057	Sept 08	10	\$20
711102004	10,578	Jan 09	10	\$22	200450039	7,161	Jun 08	10	\$31
711102004	12,195	Mar 10	11	\$17	201451085	8,522	Jun 10	10	\$22
		Median		\$19.84	711102004	10,578	Jan 09	10	\$22
					711102004	12,186	Mar 10	11	\$17
							Choose		\$23.

Complainant A argues that their analysis of the adjacent property's rate for the various size ranges is the best indicator of the subject's typical rate as the adjacent property is similar in location, site development, and in a power centre configuration.

The Respondent defended the rates applied to the three size ranges by explaining how the Municipality relies on the annual returns of rental information request forms (ARFI's). Based on these returns typical rental rates are established.

Board's Decision in Respect of the market rental rate for the subject's CRU space:

Complainant A's evidence is not persuasive in attempting to have the rates changed, for the three size ranges complained against. The CARB appreciates that the adjacent property is a valid and supportive property from which one can garner lease rates. However weight must be given to the lease rates indicated from the subject itself and any other similar property. The Municipality is incorporating the subject's and adjacent lease rates in their analysis.

The rate of \$31.00 for CRU space between 1,000 & 2500 sq. ft., the rate of \$25.00 CRU space between 2,501 & 6,000 sq. ft., and the rate of \$23 for CRU space between 6,001 & 14,000 sq. ft. remains unchanged.

Issue 2: the market rental rate for the subject's Junior Big Box space requested by Complainant A.

Complainant A provided a summary of leasing data for junior box stores in the range of 20,000 sq. ft. to 50,000 sq. ft. and the list contains 55 entries of lease rate from the years 1986 to 2009. The list includes stores similar to the subject's London Drugs from various locations throughout the City of Calgary. The Median lease rate of the entire data set is \$15.00 for a median size of 26,792 sq. ft. Complainant A is requesting this median rate of \$15.00 as the applicable rate for the subject.

The Respondent presented the leasing data from three supporting comparables. They are all from a neighbouring property identified with a sub-property use code: CM1403-ShoppingCentres - Power. They are ten, to 15 year leases, signed in mid-2009. The size of the lease spaces are 18,089 sq. ft., 20,000 sq. ft., and 33,659 sq. ft. with lease rates of \$18.25, \$18.50, and \$17.00 respectively. A rate of \$17.00 was applied to the subject's 39,145 square feet. The CARB received a listing of some 66 equity comparables for retail space in the range of 14,001 sq. ft. to 50,000 sq. ft. where the rate of \$17.00 was also applied in the development of their assessments.

Board's Decision in Respect of the market rental rate for the subject's Junior Big Box space:

Complainant A's evidence is not persuasive in its attempt to have the rates changed from \$17.00 to \$15.00 for the subject's junior box store. The comprehensive list of junior box leasing rates is an excellent resource. It can be used to sort year to year leasing activity and lease signing. It could also be used to identify location of difference or similarities.

The CARB notes that list contains the same August, 2009 South Trail Crossing lease for 33,659 square feet at the rate of \$17.00 per sq. ft. This data set is considered to provide the most weight for the subject's lease rate. The subject's rate of \$17.00 remains unchanged.

Issue 3: the market rental rate for the anchor space requested by Complainant A and Complainant B

Complainant A chose not to provide any evidence to the CARB in support of the requested revision of the market rental rate for the anchor space of 160,183 square feet from its \$10.00 rate to an \$8.00 rate. They advised that their requested revision was in keeping with the Complainant B's requested change.

Complainant B provided the CARB with the subject property details. Wal-Mart's interest in the property is as "a taxpayer" and Complainant B focused the CARB's attention to large freestanding retail building,. The original 2002 size was 130,032 square feet. The addition of 38,151 square feet was complete in 2010 and was added to the assessment for the first time in 2011.

The CARB was advised that of the total site of 19.94 acres, 11.11 acres were under lease to Wal-Mart. Copies of the subject's lease were not made available to the CARB.

Complainant B provided the CARB with a series of leases; 5 from within the City of Calgary, 2 from within Lethbridge, 2 from within Edmonton, and 1 from within St. Albert. The indicated face rents shown are in a range from \$4.00 to \$10.00 per sq. ft. The average face rent being \$7.64 and the median being \$8.00. The face rents were reviewed and some of the leases include architectural/cash inducements and limits on common area maintenance. Once all the cash allowances and expense limits were accounted for the average net rent is \$6.74 and the median rent is \$7.05 per sq. ft. Complainant B submitted that there was no evidence that would justify an increase to the historic rental rate of \$8.00 per sq. ft; the current rate requested.

The Respondent in response to the position of Complainant A and B provided the CARB with two lease comparables; both comparables have space in excess of 100,000 square feet. The first comparable is at 6880–11 St. SE and contains 124,243 square feet. The lease is dated September of 2009 for a 5 year term at a rate of \$9.59 psf. The second comparable presented is at 8888 Country Hills BV. NW and contains 132,228 square feet. This lease is dated October of 2003 for a 20 year term at a rate of \$10.00 psf. The median of the two indicators is \$9.80. Also provided was a listing of some 33 equity comparables all being over 100,000 sq. ft. and all have a rate of \$10.00 per. sq. ft. applied in the development of their assessments.

Board's Decision in Respect of the market rental rate for the subject's anchor space:

The CARB gave consideration to all the lease data provided and gives most weight to the lease rate indicated by at 8888 Country Hills BV. NW which contains 132,228 square feet compared to the subject's 160,183 square feet. The lease signing is current and with a typical term. This comparable was submitted by both parties as an indicator of the rental rate.

The party relationship and short term associated with the data at 6880–11 St. SE gives concern to the CARB and less weight is accorded this indicator. The leases outside of Calgary were provided without a measure of the relationship between the municipalities. The remaining lease rate indicators are very dated and lack similarity to the subject.

Issue 4: the vacancy rate applied to the CRU and pad site space requested by Complainant A.

Complainant A is requesting equity with every other Power Centre located in the City of Calgary. Complainant A provided the details of the income approach variables used in the development of 23 client's 2011 assessments. The vacancy allowances ranged from 1.25% to 4.75%. The median vacancy allowance establish from the list of 23 is 2.50%. From an equity standpoint an allowance of 2.5% is requested regardless of location.

The Respondent presented a list of eight Power Centre locations with the amount of CRU/Pad area available at each location and the actual amount of vacant CRU/Pad site there was in 2011, all based on properties that had returned 2011 ARFI requests. The conclusion reached from this analysis was the various Power Centres have varying CRU/Pad site vacancies and that all the allowances given in the development of the assessment vary with the different locations. The subject's location had an actual CRU/Pad site vacancy of 0.62%, which was rounded to the 1% applied to the subject.

Board's Decision in Respect of the vacancy rate applied to the CRU and pad site space:

The CARB accepts the explanation of the different vacancy allowances are based on the actual vacancy of the Power Centre from various locations. The allowance is deemed typical for the Power Centre from which the subject is found.

Issue 3: The capitalization rate for the subject Power Centre requested by Complainant A and Complainant B

Complainant A provided a table summarizing their capitalization rate analysis and conclusion. It includes an analysis of the same sales, 800 Crowfoot Crescent NW and 20, 60, 140 Crowfoot Crescent NW (data shown as comparables 1 and 2 by the Respondent.)

Complainant A advised that the actual income for the property at the time of sale was applied. Vacant space or space with less than one year left in its term were leased up to 100% by applying a market rental rate to the vacant space. An allowance rate for vacancy and non-recoverables as well as the operating cost allowance rate is the same as those applied by the municipality.

For the sale of 800 Crowfoot Crescent NW a cap rate of 7.28% was concluded.

Complainant A chose to analyse the property at 20, 60 Crowfoot Crescent NW separately and without consideration of 140 Crowfoot Crescent NW. The cap rates concluded were 7.95% and 7.72% respectively. The average of the three indicators is 7.65%, the median is 7.72% and the weighted mean is 7.76%. Based on these conclusions a capitalization rate of 7.75% is requested.

Complainant B also provided a table summarizing their capitalization rate analysis and conclusion. The data relative to 8 sales from the various quadrants to the City are shown. The capitalization rates presented are all taken directly from a third party source, RealNet. The range of capitalization rates presented is from 7.3% to 8.7%. The average rate is 8.0% and the median of the eight indicators is 8.1%. Complainant B concludes that it is recognized and reasonable that potential tenants for spaces over 100,000 square feet in area are not as prevalent as smaller tenants. Consequently, the ability to lease larger spaces is limited and the risk associated with investing in larger spaces naturally increases significantly. The conclusion is stated as:

Upon consideration of the capitalization rate survey and our analysis of risk it is concluded that the appropriate capitalization rate for the valuation of the subject property is 7.75%.

The Respondent supplied the CARB with a summary of the 2011 capitalization rates:

First, a snapshot of capitalization rates based the hierarchy of shopping centre types - freestanding, strip, neighbourhood, community, power and regional's A, B, C. The lowest capitalization rate is 6.50% which is assigned to the A type Regional Malls. The next is 6.75% assigned to the B type Regional Malls. The rate of 7.25% is assigned to the C type Regional Malls, neighbourhood, community, and power centres. The highest capitalization rates are 7.50% which are assigned to the strip and freestanding centres.

Second, a table of the 2010 second quarter published Capitalization Rates by CBRE, Colliers, and Altus InSite. The rates published are: CBRE – 6.75% to 7.25%, Colliers – 6.50% to 7.00%, and Altus InSite – 6.50%.

Third, a summary of 4 Power Centre sales was provided in support of the 7.25% used in preparation of the assessment. Comparables 1- 3 were used in the analyses and the post facto sale was for trending or checking purposes. The CARB was advised that the potential gross income was the product of the various leasable spaces at the typical rental rate for the defined space and leased up to 100% capacity less the typical vacancy allowance for the type of space and location, a 1% non-recoverable allowance, and typical operating cost allowances.

The Respondent submits that the development of the typical capitalization rate was consistent with the manner in which the Income Approach's direct capitalization method was applied in the preparation of the assessment.

Table showing Respondent's data:

	Comp. 1	Comp. 2	Comp. 3	Comp. 4
Address	16061 Macleod Tr.	20, 60, 140, Crowfoot Cr NW	800 Crowfoot Cr NW	95 Crowfoot Cr NW
Reg. date of sale	2008-08-01	2009-07-31	2010-02-12	2010-12-13
Sale Price	\$42,650,000	\$45,000,000	\$7,150,000	\$2,638,000
Area (sq. ft.)	122,938	113,756	19,693	3,549
AYOC	1999	1986	1998	1997
Pot. Gross Income	\$2,913,153	\$3,409,781	\$613,136	\$180,982
Vacancy Allowance	1%	2%	4.75%	4.75%
Non-Recoverable	1%	1%	1%	1%
Operating Cost	\$10.00	\$9.00	\$9.00	\$9.00
NOI	\$2,542,887	\$3,287,696	\$569,753	\$167,560
Cap. Rate	6.67%	7.31%	7.97%	6.35%
Assessment (2011)	\$37,9410,000	\$41,230,000	\$7,850,000	\$2,310,000
Time Adj. sale price	\$40,079,235	\$48,185,496	\$7,380,064	\$2,638,000
ASR (based on 7.25) Median ASR is .95	.95	.91	1.06	.88
ASR (based on 7.75) Median ASR is .88	.88	.86	1.00	.82

Board's decision as to capitalization rate for the subject Power Centre requested by Complainant A and Complainant B

The CARB gave consideration to all the sales data provided and gives most weight to the property sales involving similar Power Centre uses and location. All parties presented the 20, 60, 140, Crowfoot Cr NW sale as an indicator. The RealNet provided cap rate of 8.7% for the sale is given little weight. A review of the supporting documents states that: *"The aggregate income at the time of sale for both properties in the portfolio was approximately \$3,928,000 representing a going in yield of 8.7%."* The foundation of the RealNet rate could not be explained. The municipality's mandate is to use typical market conditions for properties similar to that property. The actual market conditions can be equal to the typical market conditions, Complainant A used and applied the same typicals as the Municipality expect for the typical income to be applied to the 20, 60, 140, Crowfoot Cr NW sale. The use of the actual income in this case does not capture the full fee simple estate of the property.

Final Decision: the assessment is confirmed at \$45,230,000.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF September 2011.


D. Marchand
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING on July 4th
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant A's Disclosure for Roll: 200094522
2. C2	Complainant A's Rebuttal Submission
3. C3	Complainant A's 2011 Capitalization Rate Analysis & Argument
4. R1	Respondent Disclosure for Roll 200094522

**DOCUMENTS PRESENTED AT THE HEARING on July 21st
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant B's Disclosure for Roll: 200094522 (49 pages)
2. C2	Complainant B's Support and Background (201 pages)
3. C3	Complainant B's Legal Analysis
4. C4	Complainant B's Rebuttal Submission
5. R1	Respondent Disclosure for Roll 200094522 (450 pages)
6.	Copy of CARB 0988/2011-P
7.	Joint reply: Assessment recalculation based on AEC request

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.*