

**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:

**RIOTRIN PROPERTIES INC. c/o RIOCAN MANAGEMENT INC.
(represented by: ALTUS GROUP LTD.), *Complainant***

and

THE CITY OF CALGARY, *Respondent*

before:

**J. KRYSA, *Presiding Officer*
R. DESCHAIINE, *Member*
B. BICKFORD, *Member***

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	085129104
LOCATION ADDRESS:	5989 Signal Hill Centre SW
HEARING NUMBER:	68562
ASSESSMENT:	\$27,820,000

The complaint was heard on October 23, 2012, in Boardroom 6 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- **B. NEESON** (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- **R. FORD** (The City of Calgary)

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

At the commencement of the hearing, the Respondent conceded to one of the Complainant's issues in respect of the \$29.00 per sq.ft. market rent rate assigned to the subject's CRU (Commercial Retail Unit) premises in the 6,001 – 14,000 sq.ft. size range. The Respondent recommended that the Board revise the assessment from \$27,820,000 to \$26,250,000, reflecting a market rent rate of \$25.00 per sq.ft.

Decision: The Board accepts the Respondent's recommendation in respect of the Complainant's market rent rate issue.

During the course of the hearing, both parties requested that the evidence and argument in respect of the capitalization rate issue, presented at the earlier hearing of File 67857 (Tax Roll 156163909), be carried forward and considered by the Board in this matter without further mention.

Decision: The Board agrees to the parties' request. The evidence and argument presented at the hearing of File 67857 (Tax Roll 156163909) in respect of the capitalization rate issue, will be considered by the Board in this matter without further mention.

Property Description:

The subject property is a 7.71 acre parcel of land improved with three "A2" quality retail structures with a total net leasable area of 64,650 sq.ft. (square feet). The structures were constructed in 1999 and form part of the Signal Hill Power Centre development.

Issues:

The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount
4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter number 4, and led evidence and argument only in relation to matter #3, an assessment amount. The Complainant set out five grounds for the complaint in section 5 of the complaint form with a requested assessment of \$26,370,000; however, as a result of the Respondent's recommendation noted above, only the following issue remained in dispute before the Board:

- What is an appropriate overall capitalization rate applicable to the subject property?

Complainant's Requested Value:

At the hearing, the Complainant requested an assessment of \$24,560,000.

Parties' Positions

[1] The Complainant argues that the 7.25% capitalization rate coefficient in respect of 2012 power centre assessments is excessively low and not reflective of typical market conditions as at the legislated valuation date. The Complainant submits that a typical market capitalization rate of 7.75% is evident from the two valid market transactions of power centre properties.

[2] The Complainant provided the following two methods of analysis in support of the requested 7.75% capitalization rate.

Capitalization Rate Method 1 The application of the assessed income as prepared by the City of Calgary Assessment Business Unit.

Capitalization Rate Method 2 The application of typical market income as prescribed by the "Alberta Assessor's Association Valuation Guide", and the "Principles of Assessment 1", for Assessment Review Board and Municipal Government Board members.

[3] The Complainant submits that Capitalization Rate Method 1 is identical to the analysis prepared by the Respondent for the two sales transactions; however, the Complainant argues that the Respondent erred by including an additional, inappropriate sale in their analysis.

[4] The Complainant argues that Capitalization Rate Method 2, as prescribed by the Alberta Assessor's Association Valuation Guide and set out in the provincial training materials for board members, is the most appropriate method to derive market capitalization rates as it relates the typical NOI (net operating income) specific to each property to the sale price of that property. The Complainant maintains that this method mirrors the motivations of market participants in contrast to the Respondent's methodology which simply relates the property's assessed net operating income in the year of the sale to the sale price of the property.

[5] In support of the methodology applied in Capitalization Rate Method 2, the Complainant provided an excerpt of the Alberta Assessor's Association Valuation Guide, "Determining Market Rents as of the Valuation Date", as follows:

Base Rent

To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):

1. For most tenants, the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):
 - Actual leases signed on or around the valuation date.
 - Actual leases within the first three years of their term as of the valuation date
 - Current rents for similar types of stores in the same shopping centre.
 - Older leases with active overage rent or step-up clauses.
2. As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.
3. If comparable lease information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be.

[6] The two properties analyzed by the Complainant are set out below:

Property	Address	Sale Date	Sale Price
Crowfoot Village (20& 60) / Crowfoot Corner (140)	20,60,140 Crowfoot Cr NW	31-Jul-09	\$ 45,000,000
Crowfoot Square	800 Crowfoot Cr NW	12-Feb-10	\$ 7,150,000

[7] The Complainant's Capitalization Rate Method 1 analysis, founded upon the assessed net operating income in the year of the sale derives a range of capitalization rates from 7.33% to 7.97%, with average and median capitalization rates of 7.65%, as set out below:

Capitalization Rate Method 1

Property (Address)	Sale Date	Sale Price	Assessed NOI	Capitalization Rate
Crowfoot Village / Corner (20,60,140 Crowfoot Cr NW)	31-Jul-09	\$ 45,000,000	\$3,297,992	7.33%
Crowfoot Square (800 Crowfoot Cr NW)	12-Feb-10	\$ 7,150,000	\$ 569,753	7.97%
			Average	7.65%
			Median	7.65%

[8] The Complainant's Capitalization Rate Method 2 analysis, founded upon the typical net operating income in the year of the sale as established from each property's rent roll, derives a range of capitalization rates from 7.91% to 9.24%, with average and median capitalization rates of 8.57%, as set out below:

Capitalization Rate Method 2

Property (Address)	Sale Date	Sale Price	Calculated NOI	Capitalization Rate
Crowfoot Village / Corner (20,60,140 Crowfoot Cr NW)	31-Jul-09	\$ 45,000,000	\$4,158,015	9.24%
Crowfoot Square (800 Crowfoot Cr NW)	12-Feb-10	\$ 7,150,000	\$ 565,355	7.91%
			Average	8.57%
			Median	8.57%

[9] In cross examination, the Complainant conceded that some of the "typical" rent rate conclusions in the Capitalization Rate Method 2 analysis were excessive and unsupported, resulting in somewhat inaccurate cap rate conclusions; however, the Complainant maintains that the corrected capitalization rates of 8.84% and 7.86% support an increase to the capitalization rate coefficient when adjustments for the inaccuracies are made.

[10] In conclusion, the Complainant submits that both parties have included the same two sales in their analyses; and in respect of Capitalization Rate Method 1, both parties agree on the sale prices, the net operating incomes, and the resultant capitalization rates exhibited from the two sales. The Complainant contends that the only dispute in respect of Capitalization Rate Method 1 is whether the sale of 95 Crowfoot Crescent NW, with an indicated capitalization rate of 6.35% should be included in a power centre capitalization rate analysis.

[11] The Complainant argues that power centre properties are typically larger, multi-tenanted properties, and the Respondent's sale of 95 Crowfoot Crescent NW is an inappropriate market indicator for power centres due to its relatively small total area (7,256 sq.ft.), and its single-tenant characteristic. The Complainant maintains that the indicated 6.35% capitalization rate of this sale demonstrates the lower risk associated with a small, single-tenanted property, and the 130 basis point capitalization rate differential between this property and the 7.65% average capitalization rate of the Respondent's other power centre properties demonstrates that this property is not a "typical" power centre property.

[12] The Complainant further argues that both parties have adjusted the actual net operating incomes of the transferred properties to derive their capitalization rates; however, only the Complainant's evidence illustrates the adjustments made in respect of the Capitalization Rate Method 2 analysis. The Complainant further argues that the Respondent has provided no market evidence to refute the Complainant's Capitalization Rate Method 2 analysis, or to demonstrate that the "assessed" rents in the Respondent's analysis relate to the market rents each property is able to achieve.

[13] In support of the assessed 7.25% capitalization rate coefficient, the Respondent provided a capitalization rate analysis founded on three properties, two of which are common to the Complainant's analyses, as set out below (in corresponding order to the Complainant's evidence for ease of reference):

Property	Address	Sale Date	Sale Price
Crowfoot Village (20& 60) / Crowfoot Corner (140)	20,60,140 Crowfoot Cr NW	31-Jul-09	\$ 45,000,000
Crowfoot Square	800 Crowfoot Cr NW	12-Feb-10	\$ 7,150,000
Crowfoot Towne Centre (HSBC)	95 Crowfoot Cr NW	13-Dec-10	\$ 2,638,000

[14] The Respondent's capitalization rate analysis, founded on the assessed net operating income in the year of the sale derived a range of capitalization rates from 6.35% to 7.97%, with average and median capitalization rates of 7.22% and 7.33% respectively, as set out below:

2012 Power Centre Capitalization Rate Summary

Property (Address)	Sale Date	Sale Price	Assessed NOI	Capitalization Rate
Crowfoot Village / Corner (20,60,140 Crowfoot Cr NW)	31-Jul-09	\$ 45,000,000	\$3,297,991	7.33%
Crowfoot Square (800 Crowfoot Cr NW)	12-Feb-10	\$ 7,150,000	\$ 569,753	7.97%
Crowfoot Towne Centre (HSBC) (95 Crowfoot Cr NW)	13-Dec-10	\$ 2,638,000	\$ 167,560	6.35%
			Average	7.22%
			Median	7.33%

[15] With respect to the sale of 95 Crowfoot Crescent NW, the Respondent argues that there is no valid reason to exclude the sale from a power centre capitalization rate analysis. The Respondent maintains that notwithstanding the property's size and single-tenancy characteristics, the sale is a valid power centre transaction as the property is located within a power centre development, and therefore shares an identical risk level as other properties in the same development.

[16] In response to the Complainant's Capitalization Rate Method 2 analysis, the Respondent submits that he does not disagree with the Complainant's (corrected) market rent rate conclusions and resultant capitalization rate. However, the Respondent argues that the approach is inconsistent with the application of the resulting capitalization rate.

Board's Decision in Respect of the Issue

[17] The Board finds that 7.75% is an appropriate overall capitalization rate applicable to the subject property.

[18] The Board did not find the evidence and capitalization rate conclusions of either party to be compelling evidence of a typical "market" capitalization rate, and as a result, based its decision on the totality of the market evidence before the Board. The Board notes that the

capitalization rate conclusions of both parties were founded on dissimilar “allowances”, which were inconsistent with the allowances provided in the application of the capitalization rate, for the preparation of the 2012 assessment, as set out below:

Property (Address)		Vacancy Allowance	Operating Costs	Non Recovery Allowance
Crowfoot Village / Corner	(20,60,140 Crowfoot Cr NW)	2.00%	\$9.00	1.00%
Crowfoot Square	(800 Crowfoot Cr NW)	4.75%	\$9.00	1.00%
Crowfoot Towne Centre (HSBC)	(95 Crowfoot Cr NW) (R1)	4.75%	\$9.00	1.00%
2012 Allowances	(Subject Property)	1.00%	\$8.00	1.00%

[19] The Board further notes that both parties adjusted the contract rents of the transferred properties to derive a capitalization rate, with the apparent assumption that the sale price of a property would remain constant regardless of its rent rates (and net operating income), and only the capitalization rate (rate of return) would vary. The Board finds this approach inappropriate, as it establishes an artificial number that has no relationship to the market transaction from which it is derived.

[20] The Board finds that the rent roll and ARFI (Assessment Request for Information) evidence in the Complainant's Capitalization Rate Method 2 analysis demonstrates that the assessed capitalization rate is problematic. The Board notes that the Respondent failed to provide any market evidence to refute the Complainant's Capitalization Rate Method 2 analysis; nor did the Respondent contest the Complainant's (corrected) market rent rate conclusions and resultant capitalization rate conclusion. Notwithstanding the above, the Board put little weight on the Complainant's “typical” capitalization rate conclusion, as the Complainant failed to include a valid power centre sale (95 Crowfoot Crescent NW) in the analysis. Further, during cross examination the Complainant conceded that some of the market rent rate adjustments were excessive and unsupported; and although some corrections to the analysis were provided, the Board is not persuaded that the Complainant's market rent adjustments are appropriate throughout the analysis, and consequently the Board finds that the analysis is inconclusive.

[21] The Board also afforded little weight to the Respondent's capitalization rate conclusion, as there was no market evidence presented to demonstrate that the assessed rents relied on in the capitalization rate calculation relate in any way to the incomes of each of the properties. On the contrary, the Board finds that the rent roll and ARFI (Assessment Request For Information) evidence of the Complainant (and of the Respondent in respect of 95 Crowfoot Crescent), is compelling evidence that demonstrates the Respondent's capitalization rate conclusions are founded upon rental incomes below the properties' current levels in respect of Crowfoot Village / Crowfoot Corner, and the Crowfoot Towne Centre properties. A summary of the net operating incomes and capitalization rates evident in the parties' submissions is set out below:

Source	Crowfoot Village / Corner (20,60,140 Crowfoot Cr NW)	Crowfoot Square (800 Crowfoot Cr NW)	Crowfoot Towne Centre (95 Crowfoot Cr NW)
Respondent's Analysis	\$ 3,297,991 7.33%	\$ 569,753 7.97%	\$ 167,560 6.35%
Complainant's Analysis #2	\$ 4,158,015 9.24%	\$ 565,355 7.91%	
RealNet (C2 pp.7-12)	\$ 3,928,000 8.70%		
RealNet (C2 p.20)		\$ 534,080 7.50%	
A.D.S. (C2 p.57)		\$ 574,000 8.02%	
Sale ARFI (R1 p.50)			\$184,825 7.00%
Rent Roll/ARFI (*Base Rent)	*\$ 3,757,910	*\$ 562,258	

[22] In respect of the disputed sale of 95 Crowfoot Crescent NW, the Board finds the sale is a valid market indicator of power centre properties, for the reason that power centres are generally comprised of a number of improvements which often include single-tenanted "pad" sites in the size range of 95 Crowfoot Crescent NW. Accordingly, the Board accepts the Respondent's argument that there is no valid reason to exclude this sale from a power centre capitalization rate analysis.

[23] The Board however, does not accept the Respondent's estimated \$167,560 net operating income and resultant 6.35% capitalization rate conclusion in respect of this sale. The Sale ARFI response [R1, pp.48-51], prepared by the purchaser of the property indicates that the sale price was based on the property's \$184,825 net operating income at the time of sale; resulting in a capitalization rate of 6.9% based on an "adjusted" sale price of \$2,677,570 (inclusive of a 1.5% agency fee), and a "market" capitalization rate of 7.0% based on the sale price (exclusive of the agency fee). It is unclear to the Board why the Respondent would ignore this valid market evidence, and in its place, "estimate" the property's net operating income at approximately 10% less than the market evidence indicates.

[24] In respect of the collective sales of Crowfoot Village / Crowfoot Corner for \$45,000,000, the Board finds the rent roll and ARFI documents [C2 pp. 49-54], compelling evidence that demonstrates the Respondent's estimated rent rates are well below the contract rents that were purchased in the sale transaction. The Board notes that the evidence indicates that contract rents for small to mid-sized CRU's and restaurant areas range from \$4.00 to \$7.00 per sq.ft. higher than the Respondent's "typical" assessed rents relied on in the capitalization rate calculation; and the Gas Bar contract rent is 22% greater than the Respondent's assessed Gas Bar rent rate. The Board finds that this discrepancy is significant and serves to refute the Respondent's 7.33% capitalization rate conclusion for this sale. Whereas the Board has some concern with the Complainant's rent rate adjustments that derive a capitalization rate of 9.24%, (revised to 8.84% at the hearing), the Board accepts the capitalization rate of 8.70% as indicated on the RealNet documents at pages 7 to 12 of exhibit C2 is a more representative market return for this sale.

[25] In respect of the sale of Crowfoot Square, the Board finds that both parties' estimates of net operating income are generally supported by the rent roll evidence and third party reports, and the resultant capitalization rate conclusions are within a reasonable tolerance of each other. The Board accepts that this sale exhibits a market capitalization rate of approximately 8.00%.

[26] From the above sales transactions, the Board finds a range of "market" capitalization rates from 7.00% to 8.70%, and median and average rates that are supportive of the Complainant's requested 7.75% capitalization rate.

The assessment is **REVISED** from: \$27,820,000 to: **\$24,560,000**.

DATED AT THE CITY OF CALGARY THIS

10th

DAY OF DECEMBER, 2012.


J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (155 pages)
2. C2	Complainant's Submission (219 pages)
3. C2(a)	Complainant's ARFI Evidence (9 pages)
4. C2(b)	Complainant's ARFI Evidence (4 pages)
5. C2(c)	Complainant's ARFI Evidence (8 pages)
6. C2(d)	Complainant's ARFI Evidence (4 pages)
7. R1	Respondent's Submission (174 pages)

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	Income Approach	Capitalization Rate