

**CALGARY  
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:**

***Loblaw Properties West Inc., as represented by Altus Group Limited, COMPLAINANT***

**And**

***The City Of Calgary, RESPONDENT***

**Before:**

***S. Barry, PRESIDING OFFICER***

***B. Jerchel, MEMBER***

***J. Kerrison, MEMBER***

This is a complaint to the Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>085128403</b>
<b>LOCATION ADDRESS:</b>	<b>5858 Signal Hill CE S.W. Calgary, AB</b>
<b>HEARING NUMBER:</b>	<b>64659</b>
<b>ASSESSMENT:</b>	<b>\$18,610,000</b>

This complaint was heard on the 2nd day of November, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *B. Neeson, Altus Group Limited*
- *K. Fong, Altus Group Limited*

Appeared on behalf of the Respondent:

- *E. Lee, City of Calgary*

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

The Parties advised that the arguments made by both the Complainant and the Respondent on the requested 2011 Power Centre Capitalization Rate (Cap Rate) would apply to all the Complaints to be heard in Boardroom 3, during the week commencing October 31, 2011. Both Parties requested that all the Cap Rate evidence, argument, questions, answers and summaries be carried forward to all the files. The Board agreed. At each of the subsequent seven hearings, the Parties again agreed that the Cap Rate arguments could be carried forward despite there being different representatives of the Complainant's Agent and the Respondent at some of those hearings. Accordingly, the written and oral testimony with respect to the Altus Power Centre Cap Rate Study (the Study) and the Respondent's 2011 Power Centre Capitalization Rate Summary (City Study) will apply to the following Complaints:

<b><u>Roll No.</u></b>	<b><u>File No.</u></b>	<b><u>Address</u></b>	<b><u>CARB Decision</u></b>
085051407	64329	5551 Richmond Rd S.W.	2791/2011-P
085501506	64326	5551R Richmond Rd. S.W.	2793/2011-P
085051605	64303	5751R Richmond Rd S.W.	2792/2011-P
085051704	64647	5751 Richmond Rd. S.W.	2794/2011-P
085067908	64650	121 Stewart Gr S.W.	2795/2011-P
085128205	64656	5986 Signal Hill CE S.W.	2796/2011-P
085128908	64662	5661 Signal Hill CE S.W.	2797/2011-P
085128403	64659	5858 Signal Hill CE S.W.	2841/2011-P

#### **Property Description:**

The property under complaint is an 11.5 acre parcel located in the Signal Hill Centre near the north-west corner of the site. It is a commercial property, located within a power shopping centre, built between 1996 and 1998 and has a number of improvements on it; specifically: a Real Canadian Superstore, classified by the Respondent as a big box store in excess of 100,000 square feet (sq.ft.); a liquor store and a gas bar. The property is assessed using the income approach to value with the following typical parameters: rental rate for the 115,675 sq.ft. Superstore - \$10 per sq.ft.; rental rate for the 6,451 sq.ft. liquor store \$29 per sq.ft.; and, the gas bar is assessed at \$45,000. The vacancy rate is 1% for the Superstore and 1.25% for each of the other components; the operating costs are \$9.00 per sq.ft., the non-recoverable expenses are 1%. For the assessment, the cap rate is 7.25%.

**Issues:**

The Complainant accepted the rates for the liquor store and the gas bar as assessed. A previous issue with respect to the liquor store rental rate was withdrawn at the outset of the hearing. The Complainant declined to argue a proposed \$7 rental rate for the Superstore but wished to pursue an \$8 per sq.ft. rate for that property. The Complainant also accepted the vacancy rates, operating costs and allowance for non-recoverable expenses. There are two issues still before the Board.

1. Does the assessed rental rate of \$10 per sq.ft. for the big box Superstore correctly reflect typical rents for these types of establishments?
2. Does the application of a 7.25% cap rate for power centres produce the best indicator of market value for the property under complaint?

**Complainant's Requested Value:** The assessment requested on the Complaint Form was \$14,830,000. This request was revised at the hearing to \$14,480,000 based on rental rate of \$8 for the big box (Real Canadian Superstore) and a proposed 7.75% cap rate.

**Board's Decision in Respect of Each Matter or Issue:**

1. Real Canadian Superstore rental rate:

First, the Board notes that, outside of an over-abundance of CARB and LARB (Local Authority Review Board) decisions that were not indexed or otherwise annotated to provide guidance as to their relevance, there was a paucity of evidence. Many of the noted decisions were LARB business assessment decisions which the Board is not prepared to deal with on their face. We are aware business assessments are provided for differently in the legislation and are subject to bylaws of the City of Calgary, none of which was in evidence at this hearing. Other Board decisions can be helpful in articulating and defining principles that can be applied to other situations; however, the evidence before one board is not necessarily the evidence that comes before another board and may not be argued in the same way. The fact situations are often quite different from the property under complaint. Without some good, written analysis of these decisions, developed by the Parties to guide the Board, other decisions, by themselves, are often less than helpful.

Secondly it is clear that the City has developed an assessment model that stratifies large retail stores by, among other things, size, purpose – as in grocery stores, for example - and whether they are free-standing or serve as an anchor in a regional or enclosed mall. The Respondent was able to demonstrate, by reference to some of the decisions submitted, that those large stores that had lower rents were, primarily, anchors in enclosed malls where, typically, anchor rents are lower because they tend to attract business to the other enclosed, smaller retail operations. The main indicator for this argument was found in a table provided by the Complainant on p.62 of C1. The Respondent was also able to show a rental rate break point at 100,000 sq.ft. of space.

The Complainant argued that the City had shown only one valid lease at \$10 in its lease comparables chart on p. 66 of R1 but has, himself, provided virtually no direct evidence of freestanding big box stores, over 100,000 sq.ft., that achieve less than \$10 per sq.ft. The Complainant may not like the way the Respondent stratifies these types of properties but he has failed to show the Board that is either inequitable among similar properties or results in an assessment in excess of the valuation standard of market value under the mass appraisal requirements.

There is no evidence to support a reduction in the Superstore rental rate and, therefore, the complaint failed in this respect.

#### Capitalization Rate:

In developing the Altus Study, the Complainant relied on three sales from power centres located in north-west Calgary: 800 Crowfoot Cres. in Crowfoot Square; 20 & 60 Crowfoot Cres. in Crowfoot Village; and 140 Crowfoot Cres. in Crowfoot Corner. The sales information was supported by Alberta Data Search reports and the rents are supported either through actual rent rolls or through ARFI responses. The Complainant's income analysis used actual net rents that would have been in place at the time of sale. Vacant space was treated as if leased up at market rents. Time of sale typical values for vacancy, vacant space shortfall and non-recoverable expenses were applied to calculate the net operating income (NOI). The resulting NOI were divided by the unadjusted sales prices to achieve a cap rate for each property, the median of which was 7.75% and the mean or average of which was 7.8%. The Board accepts the methodology for preparing the Study as being consistent with the Respondent's process as laid out on pages 72 through 75 of C1: actual rents are applied to the appropriate leased areas with vacant space leased up at rates to be found within the total leased area. Typical vacancies and other allowances are applied to achieve the NOI which is then divided by the sales price. The median capitalization rate is then to be applied to the population "in a consistent manner".

The Respondent raised issues with some of the Complainant's comparables, as did the Complainant with some of the Respondent's comparables in its City Study which is summarized on p.20 of R1. The Board heard and noted the arguments on leased fee versus fee simple estates, whether properties should be treated as one or multiple sales and so on. However those issues were not germane to the Board's decision and their validity, or otherwise, do not speak to the heart of the Board's decision; they will not be resolved here.

One of the deciding issues, in the Board's opinion, is the applicability of the Altus Study using sales solely from north-west power centres to demonstrate a cap rate for a south-west power centre. It is recognized that the Respondent also used north-west properties in the City Study in responding to the Complaint. However, the responsibility is still on the Complainant to demonstrate the applicability of his requested rate to the area under complaint. In responding to questions from the Board, the Complainant did not attempt to demonstrate the similarity of these specific shopping centre areas. His justification for using the north-west area was that there were no sales in the south-west. That may be but it doesn't mean that there aren't other methods of establishing the relevance of using one area of the City to support a cap rate in another.

The primary issue for the Board is the way the results of the Study are applied to the subject area. The Respondent raised, among other precedents, *Westcoast Transmission v. Assessor*

for Area 9 (Vancouver) 1987 BCSC 235. The Board's interpretation of that decision is, simply, whatever methodology is used to derive a cap rate, that same methodology must be used in determining the value of the subject property for assessment purposes. Having used actual rents and typical values for the other inputs to create the requested cap rate in the Study, the Complainant must then apply the derived cap rate to the same value types for the subject. In this case the Complainant used typical rents, instead of actual rents, to create an assessed value. The approach used by the Complainant is inconsistent with the *Westcoast* test and therefore fails.

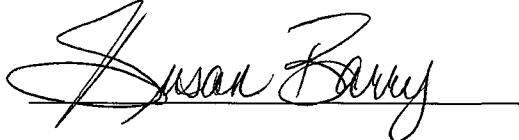
In summary, the Complainant failed to demonstrate that the requested cap rate is applicable to the subject area or that he has correctly applied the methodology that underpins that requested rate.

The Board did not accept the Complainant's request for an adjustment in the rent rate for the big box Superstore and rejected the requested cap rate. The assessment is confirmed.

**Board's Decision:**

The 2011 assessment is confirmed at \$18,610,000.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF November 2011.



S. Barry, Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure, in part
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal, Part 1

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|-------|---|
| 4. C3 | Complainant's Rebuttal, Part 2                                      |
| 5. C4 | 2011 Requested Shopping Centre Assessment<br>Valuation (\$8/7.75\$) |
| 6. C5 | 2011 Requested Shopping Centre Assessment<br>Valuation (\$8/7.25    |

*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.*