

**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:

***RIOCAN HOLDINGS INC., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The CITY OF CALGARY, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member P. PASK
Board Member Y. NESRY***

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 2011 Assessment Roll as follows:

ROLL NUMBER: 201570314

LOCATION ADDRESS: 2909 SUNRIDGE WAY NE

HEARING NUMBER: 65092

100 % ASSESSMENT: \$5,220,000.00

NUMBER OF MONTHS: 9

**PRORATED
ASSESSMENT: \$3,915,000.00**

This complaint was heard on 13th day of February, 2012 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:

- Brendan Neeson – *Representing Altus Group Ltd.*
- Doug Main – *Representing Altus Group Ltd.*

Appeared on behalf of the Respondent:

- Shelly Turner – *Representing the City of Calgary*
- Brenda Thompson – *Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

The Board makes note at this point, the matter before it was in respect to a 2011 Supplementary Property Assessment of the subject property. The 100% supplementary assessment presented was for \$5,220,000.00, which was prorated for 9 months of 2011 for the prorated assessment of \$3,915,000.00. The number of months for the supplementary was not under complaint before the Board. Copies of documents, provided to the Board, indicate a prior 2011 Property Assessment Notice for \$11,300,000.00 was mailed January 04, 2011. Testimonial evidence indicated the original Notice represented the land value and a partial value for the building. A complaint was not filed on this notice. The combined assessments for the property were \$16,520,000.00.

Property Description:

The subject property, identified as Lowe's Home Improvement, is located at 2909 Sunridge Way NE, Calgary in the economic zone of Saddleridge. The subject property contains a freestanding 'Big Box' structure of 126,649 square feet (122,759 square feet of main floor and 3,890 square feet of mezzanine area) on a land parcel of 11.76 acres. The Land Use Designation is Direct Control District.

Issue: The Complainant, through submission, has raised two issues with respect to the property assessment for the Board to render decisions -

1. The rental rate is incorrect and should be adjusted to a rate of \$8.00 per square foot.
2. The capitalization rate is incorrect and should be increased to 7.75%.

Complainant's Requested Value: The 100% supplementary assessment reduced to \$1,054,528.08 – prorated for 9 months to \$790,000.00. (C1, Page 43)
The Board notes the Complainant submitted an alternative request for the Board's consideration based upon only an adjustment to the capitalization rate to 7.75%. The resulting request was for the 100% supplementary assessment reduced to \$4,159,459.59, prorated for 9 months to \$3,110,000.00. (C1, Page 45)

The Board found the submission of an alternative request confused the issues and gives the appearance the Complainant is unsure of their belief in the requested assessment. The Board therefore chose to give no weight to the alternative request.

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

In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

Both parties also placed Assessment Review Board Decisions before this Board in support of their positions. While the Board has respect for the Decisions rendered by those tribunals, it is also recognized that those Decisions were made in respect of issues and evidence that may be dissimilar to the evidence before this Board. The Board will therefore give weight to those Decisions shown to be timely, relevant and materially identical to the subject complainant.

The Respondent raised two arguments concerning the requested assessment by the Complainant, which the Board will briefly address.

Firstly, the Respondent submitted an argument against a reduction in the assessment by submitting the Complainant's requested market value of \$12,354,528.00 would result in a land value of \$250,384.00 an acre. (R1, Pg. 21) Evidence submitted indicated large vacant parcels sell for significantly higher value, with one in the Northeast quadrant selling for \$732,625.66 per acre. (R1, Pg. 22)

Secondly, the Respondent stated the Complainant had not filed a complaint against the original assessment so by default had approved the land value originally assessed to the parcel.

The Respondent's argument with respect to the resulting land value raised interest for the Board, but no evidence was provided as to the intended use of the vacant land parcels and the comparable parcels were zoned for Industrial use. The Board is unable to place great weight on the argument as the subject parcel is zoned for Commercial development. Additional evidence and similarly zoned parcels would have better supported the Respondent position.

The second argument that the Complainant indirectly accepted the land value was not supported by fact. The City of Calgary is on a Market Value assessment, which does not specify separate values for the land and the building. The original assessment notice, as provided in the Respondent's submission, indicated a single value. It is possible to assume the owner believed this was a final assessment of the market value and therefore had no objection to the amount. It was not until the supplementary notice was issued the owner raised a concern with respect to the assessment placed upon the property. The Board is not receptive of the argument that a lack of action by an owner is validation of a value placed upon a property.

Accordingly, the Board placed little weight on the arguments and addressed the evidence submitted on the two issues to render decisions.

ISSUE 1: The rental rate is incorrect and should be adjusted to \$8.00 per square foot.**Complainant's Evidence:**

The Complainant submitted four leases of 'Big Box' retail buildings over 100,001 square feet in support of the requested \$8.00 rate: (C1, Pg. 41)

Tenant	Address	Centre	Area	Start Date	Lease End	Face Rent Rate
Wal-Mart Canada	901 64 Ave NE	Deerfoot Outlet Mall	133,521	29-Jan-04	28-Jan-24	6.85
Wal-Mart Canada	1200 37 Street SW	Westbrook Mall	158,022	1-Dec-03	30-Nov-23	7.47
Wal-Mart Canada	888 Country Hills Blvd NW	Royal Oak Centre	132,228	2-Oct-03	1-Oct-23	10.00
Zellers	5696 Signal Hill Centre SW	Signal Hill Centre	112,488	8-Sept-97	30-Aug-12	8.00
					Median	7.74
					Mean	8.08
					Weighted Mean	8.05

The Complainant submitted lease documents for the Wal-Mart stores at 90 164 Avenue NE and 8888 Country Hills Boulevard NW. (C1, Pg. 47-125)

The Complainant submitted evidence as to retail tenant allowances for numerous properties in the City of Calgary. (C1B, Pg. 129-132) The information pertained to 'Junior Big Box' stores and anchor tenants of 50,000 square feet or less. With respect to the 'Big Box' stores of greater than 100,000 square feet, evidence was submitted on two properties – 901 64 Avenue NE and 8888 Country Hills Boulevard NW. It was the position of the Complainant the tenant allowances, identified as construction allowances, should be removed from the face rent when determining the rental rates to be applied. The Complainant submitted lease documents in support of the position to remove the construction allowances. (C1B, Pg. 138-185)

The Complainant submitted equity comparables located at Westbrook Mall and Deerfoot Mall (C1B, Pg. 192-205) which supported a lower rental rate.

Respondent's Evidence:

The Respondent submitted two leases of 'Big Box' retail buildings over 100,001 square feet:

Address	Leased Area (square feet)	Lease Date	Rate (\$ per square foot)	Term
6880 11 Street SE	124,243	2009-09-01	9.59	5
8888 Country Hills Blvd NW	132,228	2003-10-02	10.00	20
		Mean	9.80	
		Median	9.80	

It was agreed by both the Complainant and the Respondent the lease at 6880 11 Street SE was not a valid indicator and should be excluded due to it being a non-arms-length transaction. (R1, Pg. 29). Therefore, only one lease was presented to support the rate of \$10.00 per square foot.

The Respondent submitted five leases for 'Big Box' retail buildings in the 50,001 to 100,000 square foot range:

Address	Lease Area (square feet)	Lease Date	Rate (per square foot)	Term
11938 Sarcee Trail NW	95,423	2008-03-05	14.50	20
12300 Symons Valley Road NW	99,650	2007-11-24	14.50	20
11690 Sarcee Trail NW	51,403	2006-09-14	11.50	10
4155 126 Avenue SE	60,534	2005-10-19	15.00	15
388 Country Hills Blvd NE	72,053	1999-11-04	16.65	20
			14.43	
			14.50	

It was the Respondent's position the leases for the 50,001 to 100,000 square foot range indicated a hierarchy of lease rates, which supported the \$10.00 rate applied to the subject. (R1, Pg. 30) The theory holds that the assessed rental rate for the subject, a larger property, should be lower than for those of smaller sized properties.

The Respondent provided a listing of 32 equity comparables of 'Big Box' operations in excess of 100,001 square feet, which are assessed at the same rate of \$10.00 per square foot. (R1, Pg. 27-28)

Additionally, a total of 22 ARB hearings for 2011 were submitted by the Respondent which confirmed the rate of \$10.00 per square foot. (R1, Pg. 48)

The Respondent contends the question raised with respect to the construction allowance should not be allowed as this information had not been disclosed to the City on the Assessment Request for Information (ARFI) returned by the owners. The Respondent cited Section 9(3) of the Matters Relating of Assessment Complaints Regulation, which restricts the Board from hearing evidence from the Complainant if not disclosed under Section 294 or 295 of the Municipal Government Act. The Respondent submitted copies of ARFI request forms to the owner's, which were returned without the information being provided. (R1B, Pg. 172-265)

Findings of the Board in the Issue of Rental Rate

Complainant's Submission:

Upon review of the leases provided, the Board was unable to accept the use of the lease located at 1200 37 Street SW – Westbrook Mall. The subject property is a freestanding structure, whereas the Wal-Mart located at Westbrook Mall is an attached store to the mall and has direct access into the mall, serving as the south end anchor.

The Board found that while the Complainant introduced the argument with respect to construction allowances the requested rental rate was based upon an analysis of rates, which did not take the allowance into consideration. The Board, while noting the information, did not take it into consideration the construction allowance when reaching the decision on the rental rate.

Respondent's Submission:

The Board, while appreciating the difficulty in establishing typical market rent rates for information for 'Big Box', finds the reliance on a single lease to establish market value less than reliable. The Board notes the Complainant was able to provide additional leases in the greater than 100,000 square feet strata. The use of smaller sized properties to establish a hierarchy did tend to support the use of different strata of rental rates for the various strata, but the lack of quantity to justify the rental rate continued to concern the Board.

The Board found the Respondent rested their position on the rental rate primarily on equity comparables and the number of Board Decisions that confirmed the rental rate.

ISSUE 2: The capitalization rate should be increased to 7.75%.**Complainant's Evidence:**

The Complainant submitted an analysis of five shopping centres to determine a capitalization rate. (C1C, Pg. 233) The analysis resulted in Capitalization rates with a mean of 7.91%, a weighted mean of 7.74% and a median of 7.81%. Sales and lease information was submitted on the five properties. (C1C, Pg. 235-273).

In response to a question from the Board, the Complainant states the best comparable to the subject property was the Calgary East Retail Centre located at 2929 Sunridge Way NE, adjacent to the subject, which had a calculated capitalization rate of 7.81%.

Respondent's Evidence:

The Respondent submitted the 'Neighbourhood, Community Centre Capitalization Rate Assessment to Sales Ratios' summary. The analysis of eight properties indicated a median capitalization rate of 7.04% and an average capitalization rate of 7.10%. The Respondent testified the City of Calgary uses a capitalization rate of 7.25%. (R1B, Pg. 264)

Based upon the capitalization rate of 7.25% the Respondent provided the Assessment to Sales Ratios indicating a median value of 0.97 and an average value of 0.91. The resulting median fell within the legislated range of 0.95 to 1.05 as set out in the Matters Relating to Assessment and Taxation Regulation. The Respondent put forward the argument the capitalization rate requested by the Complainant for 7.75% would result in an Assessment to Sales Ratio which fell below the threshold for the legislated range with a median of 0.87.

The Respondent submitted a list of sixty ARB decision for 2011, which they stated confirmed the capitalization rate at 7.25 % for Neighbourhood and Community Shopping Centres. (R1, Pg.34)

The Respondent submitted a 2011 Summary Capitalization Rates table, which provided the capitalization rates utilized for the different property types. For the categories Neighbourhood and Community, the capitalization rate was set at 7.25%. Also included was a summary of third party agencies and their respective published capitalization rates for 2010. For the second quarter of 2010 the capitalization rates ranged from 6.75% to 7.30% (R1, Pg. 31)

Findings of the Board on the Issue of Capitalization Rate

Complainant's Submission:

The Board finds the Complainant has continued to employ a technique, which prior Boards have deemed to be an unacceptable methodology, notably CARB 2849/2011-P, CARB 1638/2011-P. The mixing of actual lease rates for a project with typical rates as provided by the City of Calgary is not an appropriate approach to determining the capitalization rate. The Board does not accept the calculations used by the Complainant as it is derived from factors and rates obtained from different methodologies.

Respondent's Submission:

The Board found the lack of supporting documentation and a presentation of the methodology for determining the capitalization rates disappointing as the Board was unable to determine the values employed in the calculation. This lack of data makes it very difficult for the Board to compare the capitalization rates and methodology used by the Complainant and the Respondent to establish their respective rates. The Board is not prepared to accept on face value the rates submitted in the summary page provided.

The list of decisions confirming the capitalization rate at 7.25% was informative but lacked in details to show how they related to the subject property with respect to total area, comparable sized structures, total assessments or how many individual structures were involved in the assessment. The inability to compare the properties characteristics limited the value to the Board. The lack of information on the individual cases rendered comparison process impossible.

Decision of the Board

With respect to the rent rate applied to the subject the Board finds there is insufficient evidence to support a change. While the Complainant has demonstrated that a limited population may indicate a lower rent rate, they also must prove the rate is a better representation of the typical market rates as applied by the City of Calgary. With a small population on which to base a change the Board is bound by the dictates of the Municipal Government Act and its Regulations, specifically

- 467(3)** An assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the assessment of similar property or businesses in the same municipality.

The Board must answer the two questions of fairness and equity. Both the Complainant and the Respondent submitted arguments and evidence to support their positions the rate should or should not be altered. Both parties presented Board Decisions to support their respective positions and the fairness of the rent rate.

To the question of equity, the Respondent has shown the rate has been applied to all similar properties and has only varied when adjusted by Board Decisions

It is the decision of the Board the argument to reduce the rental rate has not met the burden of proof and the rate is not altered.

During deliberations, the Board found concern with the methodology employed by the City of Calgary designating the subject property as a component of a neighbourhood shopping centre. Under questioning by the Board, it was stated by the Respondent the subject property was a freestanding,

individually titled property. Examination of the evidence indicated there is no direct connection between the subject and the adjacent properties. In fact, it is necessary to leave the site to gain access to adjacent properties rather than use an internal road system as found in shopping centres, whether neighbourhood or power centres.

Examining the submission, '2011 Summary Capitalization Rates', by the Respondent the Board finds a classification of 'Freestanding', which in the opinion of the Board, better describes the subject property. The capitalization rate for the category of 'Freestanding', given as 7.50%, was applied to the subject property. (R1, Pg. 31)

Board's Decision:

The Board alters the assessment to reflect the change to the capitalization rate to 7.5%.
The new supplementary assessment for the subject is –

100% Assessment	\$ 4,670,000.00
Number of Months	9
Prorated Assessment	\$ 3,500,000.00

Finally, the Board in its decision directs the City of Calgary Assessment Business Unit to undertake a review for the Assessment Request for Information forms mailed out annually. Based upon this and previous hearings, the argument with respect to construction allowances provided to new construction will be raised again. In the opinion of the Board, the City of Calgary should endeavour to collect this information and determine the impact on assessment market values.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF February 2012.


PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure, Pages 1 thru 99
2. C1-B	Complainant Disclosure, Pages 100 thru 200
3. C1-C	Complainant Disclosure, Pages 201 thru 341
4. C2	Complainant Rebuttal
5. R1	Respondent Disclosure, Pages 1 thru 144
6. R1-B	Respondent Disclosure, Pages 145 thru 268

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	Stand Alone Big Box Store Neighbourhood	Income Approach	- Lease Rate - Capitalization Rate

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

Division 2**Decisions of Assessment Review Boards****Decisions of Assessment review board**

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.

467(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 assessment of similar property or businesses in the same municipality.

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) “assessment year” means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.