

## **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:

***First Capital Holdings (ALB) Corporation (as represented by Altus Group Ltd.),***  
**COMPLAINANT**

and

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

before:

***K. Thompson, Presiding Officer***  
***B. Bickford, Board Member***  
***R. Cochrane, Board Member***

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 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>149147118</b>
<b>LOCATION ADDRESS:</b>	<b>1221 Canyon Meadows Dr SE</b>
<b>FILE NUMBER:</b>	<b>72177</b>
<b>ASSESSMENT:</b>	<b>\$44,260,000</b>

This complaint was heard on 25th day of September, 2013 at the office of the Assessment Review Board located at Floor # 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

**Appeared on behalf of the Complainant:**

- B. Neeson Agent, Altus Group Ltd
- B. Soulier Observer, AEC Property Tax Solutions

**Appeared on behalf of the Respondent:**

- S. Turner Assessor, City Of Calgary
- C. Yee Assessor, City Of Calgary

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

[1] The Complainant and Respondent requested that all evidence and argument be carried over from file #72578. The Board accepted that request.

**Property Description:**

[2] The subject property known as Deer Valley Marketplace is located in a Community Centre in the community of Deer Ridge. This property is assessed as A- and A2 quality buildings and is sited on a parcel size of 19.76 acres. The property consists of 188,883 square feet (sf) and consists of four buildings including a gas bar:

	Area	Market Net rental rate
ATM	100 sf	\$45.00 per square foot (psf)
Bank	11,801 sf	\$42.00 psf
Big Box 80,001+ sf	82,687 sf	\$10.00 psf
CRU 0 -1000 sf	2,250 sf	\$30.00 psf
CRU 1,001- 2,500 sf	15,145 sf	\$28.00 psf
CRU 2,501- 6,000 sf	10,238 sf	\$27.00 psf
CRU 6,001 – 14,000 sf	8,445 sf	\$24.00 psf
Pad 2,501 - 6,000 sf	3,086 sf	\$27.00 psf
Supermarket	55,130 sf	\$15.00 psf
Gas Bar	1	\$105,000.00

[3] The subject property is assessed based on the Income Approach to Value with a capitalization rate of 7.00% and has an assessed value of \$44,260,000.

**Issues:**

- [4] Issue One – The rental rate for Big Box space 80,001 sf+ should be \$8.00 psf.
- [5] Issue Two – CRU 6,001 – 14,000 should be reduced to \$18.00 psf based on City

recommendation.

[6] The Complainant indicated that they were not going forward with any of the other issues mentioned on the Complaint Form.

**Complainant's Requested Value:** \$41,270,000

**Board's Decision:** The assessed value is reduced to \$43,590,000 based on the recommendation by the City to revise the rental rate of the CRU 6001-14,000 sf space.

**Legislative Authority, Requirements and Considerations:**

[7] The *Municipal Government Act*, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in Subsection 460 (1)(a).

**Position of the Parties**

**Complainant's Position:**

Issue One - Rental Rate for Big Box 80,001+ sf

[8] The Complainant presented a rental rate analysis for Big Box space 80,001 sf or greater which results in a typical rental rate of \$8.00 psf [pg. 4, C-4]. There are seven leases included in this analysis, four of which the City used in their analysis to determine typical rental rates.

[9] One additional lease was brought forward by the Complainant but not used in their analysis (this lease was used by the City in their analysis). This lease was for the Rona at Creekside which was signed in 2007; the year the improvement was constructed, but was vacated in June of 2012. The Complainant did agree that this lease was negotiated originally as a market lease and this lease was in place until 2027 with Rona on the hook for the rent until that time. Information on this property was included in the evidence [pg.159 -172, C-4] including the rent roll showing it to be vacated by Rona June 24, 2012. Rental rate shows as \$14.50 for 99, 650 sf with a lease period of November 2007 to November 2027.

[10] The Complainant provided photographs, site plans, redevelopment plans if applicable, rent rolls, Assessment Summary Reports and calculations, and calculated the op costs for the lease properties in their study [pg. 5-89, C-4].

[11] The Complainant added three additional leases to the City's analysis:

- 1) 1221 Canyon Meadows Dr [pg. 5-13, C-4] – the tenant rent roll [pg. 8, C-4] indicates a new lease with a September 23, 2011 start date for a five year term for 82,687 sf, a base rent of \$4.60 psf and CAM costs of \$2.11. The Complainant indicated that this was a small space for Walmart, however they took over the former Zellers space. The rent rolls were provided to support this [pg. 14-17, C-5].

- 2) 901 64 Av NE [pg. 48-80, C-4] – plans and marketing documents were presented by the Complainant to show that this regional mall intends to convert to an open air power centre in the future. The Complainant contends that the Walmart improvement is the first step in that process as it moved out of the enclosed mall and onto a separate building pad on the site. The 2011 ARFI [pg. 60, C-5] shows the lease period from January 2004 to January 2024 for 133,521 sf with a base rent of \$6.85 psf and op costs of \$0.88 psf. The Complainant stated that Walmart was given an option to expand the improvement on their own dime for a consideration of zero rent for that space. Walmart exercised this option. Assessment records show that there is 168,521 sf.
- 3) An example was given to show that pad sites for Fast Foods space was analysed by the City on a city wide basis using all types of shopping centres, including regional malls. [pg. 81-92, C-4].
- 4) 1200 37 St SW [pg. 93-115, C-4] - this Walmart is attached to Westbrook Mall but does not have direct access to the mall's interior. The lease based on the rent roll submitted by the Complainant is for 20 years effective in January of 2003 for \$7.47 psf.

[12] The Complainant submitted evidence on two of the leases that were used by both parties. The parties essentially differed on the commencement dates of the leases:

- 1) Signal Hill Centre lease – A RioCan rent roll was provided by the Complainant [pg. 18, C-4] which shows the lease commencing September of 1997, ending September of 2017 with a rent step in May of 2011 for \$8.00 psf. The City's ARFI stated the lease started in September of 1997 for 15 years [pg. 20, C-4] for \$8.00 psf with op costs of \$1.88. The tenant was Zellers. The Complainant stated that this lease had an option negotiated for an additional five years.
- 2) The Target lease in Shawville - the Complainant submitted two tenant rolls, one in 2010 and one for 2012, [pg. 30 and 32, C-4]. The 2010 RioCan rent roll stated that the lease commenced in 1996 and ended in 2011. The lease was for 122,616 sf with a rental rate of \$7.00 psf with Zellers as the tenant. The 2012 RioCan record states the lease commenced in 1996 and ends in 2016 at \$7.00 psf with Zellers as the tenant. The Complainant argued this shows a new lease was negotiated in 2011 for \$7.00 psf for a five year term. The Complainant stated that this is an issue with how RioCan reports, they do not change the start date if the tenant remains the same.

[13] The Complainant gave a number of examples where the City used enclosed shopping centre information along with neighbourhood open air centres to derive cap rates [C-5].

#### Issue Two – CRU

[14] The Complainant requested that the Board accept the new rate of \$18.00 psf, this rate was also recommended by the City.

**Respondent's Position:**

Issue One - Rental Rate for Big Box 80,001+ sf

[15] The Respondent presented its Big Box analysis which includes five leases. These leases ranged in value from \$7.00 psf to \$14.50 psf with a median rate of \$10.00 psf and a mean of \$10.80 psf [pg. 102, R-1].

[16] In response to the Complainant's three additional leases:

- 1) Deer Valley Shopping Centre Walmart [pg. 70-77, R-1] the Respondent submitted a lease agreement for the assumption and transfer of a lease from Zellers to Walmart at the Deer Valley location, this lease transfer was signed September 23, 2011. The original Zellers lease was dated November 1981. The Respondent submits that this makes this lease very dated and not representative of the market as of July of 2012.
- 2) 901 64 Av NE – the Deerfoot Outlet Walmart [pg. 78-81, R-1] – The Respondent stated that the Walmart at Deerfoot Outlet Mall is part of a Regional Mall and Regional Malls lease differently than other shopping centres. Often the anchors get a reduction as the CRU's receive a benefit from them being there. The Walmart on this site must trade with the entire property of Deerfoot Mall. The City analyzes this space in a separate analysis from other Big Box spaces and the rental rate of \$7.00 psf for this Big Box anchor shows a different outcome from those in power centres. The Respondent provided the assessment calculations to show this. The Respondent also questioned the lease amount for this space as the lease states it is \$6.85 psf for 133,521 sf however the store has almost an additional 34,000 sf that has no rental value. The Walmart was allowed to build the additional square footage at their cost and were not charged rent for that square footage. The Respondent questioned the terms of this arrangement and what value this would add to the rental rates.
- 3) 1200 37 St SW, the Walmart in Westbrook Mall [pg. 82-85, R-1] – the Respondent provided the Assessment calculation showing that the Big Box space at the Westbrook Mall was assessed at \$7.00 psf. This Big Box is attached to the Mall and leases differently than those in a Power Centre. This property would also have to trade with the entire mall. Analysis of regional and enclosed malls was done separately from the Big Box analysis in power centre and community malls.

[17] The Respondent provided evidence on the two leases used by both parties in their analysis, but with different lease start dates.

- 1) Respondent submitted a RioCan lease summary [pg. 92-94, R1] showing the lease at Shawnessy on June 6 2011, which was a consent to assign the lease to Target and sublet to Zellers. Target has a commencement date of June 2011. The lease was dated for the period of May 2011 to May 2016 at \$7.00 psf. An email [pg. 95, R-1] is also provided where the management company confirm that there is no new lease for Target, the terms on Zellers lease remain.
- 2) The Respondent referenced the Complainant's evidence [file #72578 pg. 18,

C-4] that indicates the May 2011 date for the rental rate is a rent step. The original lease was signed in September of 1997.

[18] The Respondent submitted marketing information on the Rona site in Creekside [pg.98-100, R-1] where the lease asking rate is \$14.72 psf with \$3.29 op costs. This information was pulled off the website late in 2012. Along with the marketing information the Respondent submitted an email from the agent showing confirmation that Rona is currently responsible to pay the rent on this property.

[19] The Respondent provided 42 equity comparables showing the consistent application of the \$10.00 psf rental rate for Big Box space 80,001+ sf [file #72578 pg. 67-68, R-1].

[20] The Respondent provided CARB (including CARB 72525-2013) and LARB Decisions that confirmed the rental rates.

#### Issue Two – CRU

[21] The Respondent requested the Board to accept its recommendation to lower the rental rate to \$18.00 psf from \$24.00 psf. A calculation sheet was provided to show the change in assessed value [R-2].

#### Board's Reasons for Decision:

##### Issue One - Rental Rate for Big Box 80,001+

[22] Both parties shared five leases in common ranging from \$7.00 psf to \$14.50 psf.

[23] The Complainant had included the Rona lease as a test on the market but did question its inclusion into the analysis as it was atypical to include a vacant property. The Board finds the fact that Rona vacated this premises does not negate the lease. Although a vacant space is not typical in a rental analysis, given the circumstances this one is acceptable as the Leasee brokered the deal in good faith and continues to pay the rent even though the space is vacant. The marketing information shows there is an attempt to sub lease at a similar rate as they are currently paying.

[24] With regard to two of the additional leases produced by the Complainant, that of Westbrook Mall and the Deerfoot Outlet Regional Mall, the Board accepts the Respondent's position that separate analysis is done on these types of properties as they attract different types of clients. Lease information was not provided to show how these two properties acted and leased in the same market as a Power Centre.

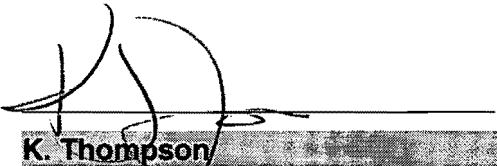
[25] The third lease added to the analysis by the Complainant, Deer Valley Shopping Centre had conflicting evidence as to whether it was a new lease or an assumption of a dated lease. The Board found that the evidence was not clear with respect to the lease commencement dates. The fact the lease rate remained unchanged leads the Board to believe this may have been an assumption rather than a current negotiated market lease. Evidence showed that this complex was undergoing extensive renovations after the signing of the lease and this further supports this may not be a good representation of typical market. There is sufficient question on this lease to exclude it from the analysis. Further, the Board finds that the inclusion of this lease does not arrive at a value that supports the Complainant's request of \$8.00 psf.

[26] The Board finds the Complainant has not met the onus of proof and that the Respondent's rental rates are a reasonable representation of typical market and have been equitably applied and therefore confirms the rental rate for this category at \$10.00 psf.

Issue Two - CRU space

[27] The Board accepts the requested rental rate change to the CRU space 6,001 – 14,000sf.

DATED AT THE CITY OF CALGARY THIS 30<sup>th</sup> DAY OF October 2013.



K. Thompson

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C4	Complainant Disclosure from file 72578
3. C6	Complainant Rebuttal from file 72578
4. R1	Respondent Disclosure
5. R-2	Respondent Disclosure

*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.*

Property Type	Property Sub-Type	Issue	Sub issue
Retail	Power Centre	Income Approach	Lease rates