

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:

Loblaw Properties West Inc. (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:

ROLL NUMBER:	085128403
LOCATION ADDRESS:	5858 Signal Hill Ce SW
FILE NUMBER:	72259
ASSESSMENT:	\$21,100,000

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

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 #73015 and file #72578. The Board accepted that request.

Property Description:

[2] The subject property known as Superstore is located in The Westhills Power Centre in the community of Signal Hill. This property is assessed as an A2 quality building and is sited on a parcel size of 11.49 acres. The property consists of 122,127 square feet (sf) and consists of three buildings including a gas bar:

	Area	Market Net rental rate
Big Box 80,001+ sf	115,675 sf	\$10.00 per square foot (psf)
Pad 6,001-14,000 sf	6,451 sf	\$25.00 psf
Gas Bar	1	\$45,000

[3] The subject property is assessed based on the Income Approach to Value with a capitalization rate of 6.25% and has an assessed value of \$21,100,000.

Issues:

[4] Issue One - The assessed value would better represent Market Value if the capitalization rate was 6.75%.

[5] Issue Two – The rental rate for Big Box space 80,001 sf+ should be \$8.00 psf.

Complainant's Requested Value: \$16,180,000

Board's Decision: The assessed value is confirmed at \$ 21,100,000

Legislative Authority, Requirements and Considerations:

[6] 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 - Capitalization Rate**

[7] Reviewing the City's calculations show the subject property's capitalization rate of 6.25% to be fifty bases points too low. It should be 6.75% and the resulting value would better represent the market value of July 1, 2012.

[8] The Complainant submits there are only three valid arms length sales transactions in the past 30 months with which to arrive at a capitalization rate for the Power Centres. A chart with these three sales and pertinent information was submitted by the Complainant [pg. 1, C-2]. Of these three, only one is in contention by the Complainant, the 2010 sale of HSBC bank property at 95 Crowfoot Cres NW. It is not the sale that is at issue, but rather how the City calculated the Net Operating Income to arrive at a capitalization rate for this sale. The 2011 rental rate for the Bank square footage of this property representing value as of July 1, 2010, should be at \$40.00 psf not the \$32.00 psf used by the City. The \$32.00 psf used by the City was the typical rental rate based on analysis of this specific location. The net operating income for the other two sales, both 2012 sales, was arrived at based on a city wide analysis of rental rates of this type of properties. The Complainant contends this is inconsistent and if the Bank space in Power Centres had been done city wide in 2011, as it was in 2012, the rental rate would have been \$40.00 psf and the resulting capitalization rate much higher. The overall median for the three sales capitalization rates would then be 6.75% not 6.25%.

[9] The Complainant presented two methods of analysis to determine the capitalization rate, both methods result in a median capitalization rate of 6.75% [pg. 1, C-2]. These methods are:

- 1) Capitalization Rate Method 1: The application of typical market income as prepared by the City of Calgary Assessment Business Unit but using the typical rental rate of \$40.00 psf for the bank area [pg. 3-94, C-2].
- 2) Capitalization Rate Method 2; the application of typical market income as prescribed by the Alberta Assessors' Association Valuation Guide (AAAVG) and Principles of Assessment 1 for Assessment Review Board Members and the Municipal Government Board Members [pg. 95-168, C-2].

[10] Method 1 – The Complainant presented a 2013 Power Centre Capitalization Rate Table which included three sales from the Crowfoot Business area. These sales are common to the City of Calgary's analysis and the Complainant stated that two of the sales, the sale of Crowfoot Village and Crowfoot Centre, are uncontested in this study. The Complainant states that the third sale of the HSBC bank property should have a different net operating income (NOI) using a rental rate of \$40.00 psf instead of the \$32.00 psf used by the City. This will result in a different capitalization rate for the bank sale, (7.94% capitalization rate) and producing an overall median capitalization rate of 6.78% for the three Power Centre properties in the study. All other

components of the City's NOI calculation were accepted by the Complainant. RealNet, Land Titles, Assessment Summaries and Corporate Search documents were included as evidence for this sale.

[11] The bank sale occurred in 2010/12/13 for \$2,638,000. Seven leases of Power Centre Bank properties, occurring between July of 2008 and May of 2009, were supplied by the Complainant showing a median value of a city wide analysis of this property type would be \$40.00 psf, with a mean of \$38.29 psf [pg. 27, C-2]. The Complainant submitted the City of Calgary 2013 Bank Lease Analysis: Power Centres study to show that its analysis was done by the same method. Rent rolls and Property Assessment Summary Reports were provided to support the 2011 lease information.

[12] Similar information was submitted for the other two sales used in the capitalization rate study, namely Crowfoot Village and Crowfoot Corner, to show the City used a city wide approach to determine rental rates for these 2012 sales and thus the resulting NOI and capitalization rate were prepared different than the 2010 sale value.

[13] Method 2 - The Complainant offered a second method to arrive at the typical capitalization rate for the subject property, which was to follow the Alberta Assessors' Associations Valuation Guide (AAAVG). The resulting median capitalization rate of this approach was 6.74% and the mean 6.66%. Portions of the AAAVG and lease documents were included in the evidence.

[14] Based on the AAAVG's direction, rental rates should be determined by looking at Market Rents as of the Valuation date. The base rents best source would be; actual leases signed on or around the valuation date; actual leases within the first three years of their terms as of the valuation date; current rents for similar types of stores in the same shopping centre; or older leases with active overage rent clauses. A secondary source of rental information or a check on the rents derived from the actual rent rolls would be rents established from similar shopping centres.

[15] The Complainant took actual rents from the HSBC Crowfoot Lease document and applied these to the income calculation. Rental rates of \$38.00 psf were used for the bank space and \$8.00 psf for the basement space. The resulting capitalization rate was 7.91%.

[16] A chart was produced by the Complainant to show the results of following the direction of the AAAVG guide. Review of rental information available by order of descending importance was presented to determine the typical rental rates for each space type. The order was; actual rents in the past 12 months, then actual rents in the past 36 months, and finally step-up rents. The Complainant only used data from a single category.

[17] Calculations for the Bank property's NOI and capitalization rate for this method were introduced with a resulting capitalization rate of 7.91%. The Complainant also submitted similar analysis and calculations for the other two sales in the capitalization study-method 2. The resulting individual capitalization rates were 6.74% and 5.33% respectively.

[18] The Complainant produced and reviewed the 2011 Power Centre Bank Lease Analysis for the Crowfoot Power Centre by the City of Calgary [pg. 5, C-3]. This showed six leases of which three were owner occupied and two were dating back to 1997/1998. This left one lease that the City relied on to value banks in Crowfoot Crossing Power Centre. The Complainant also introduced the 2010 Power Centre Bank Lease Study which showed seven valid city wide leases and eight leases that dated from 2005-2007 (these would not have been analysed).

[19] The Complainant submitted that the City excluded a valid RBC lease from Westhills for \$40.00 psf signed in 2009 and had the incorrect value for the ATB space in Westhills indicating

\$32.00 psf when the rent roll shows \$44.00 psf. With the corrections to the City's analysis the median is \$36.50 psf which supports the request for a 6.75% capitalization rate. The Assessment Request for Information (ARFI) and all calculations were provided. The 2013 Bank Lease Analysis for Power Centres was submitted to show if the City had analysed by Power Centre it would have had to rely on only one lease for the subject property and the resulting values would be very inconsistent as six of the nine leases are from two Power Centres [pg. 6, C-3].

[20] Excerpts from the City of Calgary's Retail Capitalization Process from 2009 were included.

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

[21] 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.

[22] 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.

[23] 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].

[24] 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 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.

[25] 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, 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.

[26] 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].

Respondent's Position:

Issue One - Capitalization Rate

[27] The Respondent presented its 2013 Power Centre Capitalization Rate Summary using three sales from the Crowfoot Business area [pg. 34 & 146, R1]. The City uses typical rental rates to develop its typical capitalization rates, as directed a number of times by the Boards. Further, the Respondent stated, it used market triple net leases from January 1, 2010 to June 30, 2012 to develop the typical rental rates.

[28] In response to the Complainant's evidence, the Respondent stated that the information put into evidence on the 2009 methodology was not the current methodology used by the City. The Respondent was also very clear on the fact that it does not use regional or neighbourhood mall lease information to develop rates for Power Centres. The Respondent contends that Regional malls are very site specific and rent achieved in one will not be typical for any of the others. Regional Malls also have a large number of leases with which to establish site specific typical rents. The City will go site specific on Power Centres if there is enough data available. This better reflects the individual nature of each centre. Often the data is not available.

[29] The Respondent stated that the Complainant used the outdated AAVG guide to determine the Method 2 capitalization rate. The Respondent submitted the most current AAVG shopping centre valuation guide revised in August 2012 [pg. 37, R1]. This guide states that current economic or market rents are used to form the basis of the valuation as opposed to actual rents because, in some cases, actual rents reflect historical revenues derived from leases

negotiated before the valuation date. The guide went on to say that in determining the gross potential income, the valuator is not bound by the contractual rent but should determine rental income on the basis of what typically should be paid in the market place at the time of valuation. This will reflect the fee simple interest in the property.

[30] The Respondent concluded that, in the Complainant's analysis using Method 2, the Complainant is attempting to use a singular lease from the subject property with which to demonstrate the capitalization rate. The Respondent presented Board Decision LARB 0325/2011-B and pointed to the Board's conclusions where it is made clear that one lease is insufficient to establish a foundation for determining the 'typical net annual rental value' for the subject premises. The Respondent contends the Complainant is using the subject lease to establish market and is misinterpreting the guide. The Respondent also showed evidence where the Complainant was mixing one actual rate with the rest of the City's derived typical rates which results in an inflated NOI and therefore a higher capitalization rate.

[31] With regard to the recalculation of the sale at 95 Crowfoot Cres NW the Respondent pointed out that in the 2011 Calgary Assessment Review Board hearings the Complainant requested the \$32.00 psf rate for the banks to be reduced to \$30.00 psf, the \$37.00 psf bank rental rate to be reduced to \$32.00 psf [pg. 45, R-1]. The Respondent stated that now the Complainant is requesting it be increased to \$40.00 psf to be used in a typical capitalization rate analysis for the 2013 assessed value. Excerpts from CARB Decisions 1273/2011P; 1499/2011P; 1508/2011P along with a number of others were submitted into evidence to show this request.

[32] The Respondent produced a chart of all the 2010 Power Centre leases to show that the median rental rate was \$32.00 psf when only the 2008 and newer leases were analysed [pg. 53 R-1]. The 2011 Power Centre Capitalization Rate Study was submitted into evidence to show the overall capitalization rate was 7.25% [pg. 54, R-1]. Historic leases of bank sites [pg. 55, R-1] were submitted to show that a \$40.00 psf rent has not been achieved by any bank building located in the Crowfoot Power Centre.

[33] 2011 income calculation sheets from several Power Centres across the city were provided to show different rental rates, thereby showing they were done site specific not city wide in that year. The Respondent stated that if there is enough information available to value Power Centres on a site specific basis, it typically results in a more accurate value. This was the case for the 2011 analysis.

[34] Information was submitted by the Respondent on sales at 60/20 Crowfoot Cr and 140 Crowfoot Cr, providing rent rolls and area corrections for the Complainant's method 2 calculations [pg 63-104, R-1].

[35] The Respondent resubmitted the Complainant's 2011 Power Centre Bank Analysis with inclusion of four missing leases [pg. 111, R-1]. While not agreeing with the Complainant's analysis method or results, the Respondent pointed out that the study was incomplete as there were four valid leases that were in the 30 month time frame and not used by the Complainant. The resulting median rental rate would be \$37.50 psf not \$40.00 psf if these leases had been included.

[36] The Respondent submitted the CBRE reports on capitalization rate, a chart of Power Centre decisions, and a number of Board Decisions, CARB and LARB confirming the bank rental rate and therefore the capitalization rate. The Respondent presented CARB 72525P 2013 at the hearing.

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

[37] 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. 122, R-1].

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

- 1) Deer Valley Shopping Centre Walmart [pg. 131-138, 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. 144, 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 – 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.

[39] 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. 126-128, 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 [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.

[40] The Respondent submitted marketing information on the Rona site in Creekside 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 [pg. 139-143, R-1].

[41] The Respondent provided 42 equity comparables showing the consistent application of the \$10.00 psf rental rate for Big Box space 80,001+ sf [pg. 123-124, R-1].

[42] The Respondent provided CARB and LARB Decisions that confirmed the rental rates.

Board's Reasons for Decision:

Issue One - Capitalization Rate

[43] The Board reviewed all the evidence presented by both parties. The nature of the submissions dictate that in some instances certain evidence will be deemed more relevant than others so the Board will restrict its comments to the evidence it deemed relevant. Little regard was given to the partial excerpts from hearing evidence, third party reports or old process documents.

[44] There are seven Power Centres across the City with three anchors or more. Sales for the capitalization rate of these properties are based out of one of these centres, Crowfoot.

[45] The Board reviewed all lease information from 2008 to 2012, looked at the actual HSBC Bank sale, and reviewed the other two sales along with the analysis. The Board went through the typical rent analysis comparing actual to typical, conscious of the fact that typical is what is used to determine value for this property. The Board checked medians, means and calculated weighted means for the rental rates and although not convinced that the Respondent's conclusions were absolute, could not arrive at the Complainant's request.

[46] The Board did not conclude that the rental rate study in 2011 was analysed inconsistently from the rental rate studies for the other two sales as the Complainant contends. The site specific leases used in the 2011 study would better reflect the rental value of the area and should as a result better reflect the market value of the property. It would not be reasonable to say the rental rates should become more general so as to compare better with the other two sales. In review of all the leases presented for the analysis, the Board agreed with the Respondent that future leases, those past the valuation date, would not have been available to be analysed in the study. The most that could be done with leases past the valuation time frame would be to check for reasonability of conclusions. The Board also notes that the HSBC sale was the oldest and smallest property of the three in the analysis.

[47] As a final step, in review of the resulting Market Value of the subject property the Board tested the market and found the subject property's rate per square foot was below the range seen from the sales.

Issue Two - Rental Rate for Big Box 80,001+

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

[49] 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 Lessee 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.

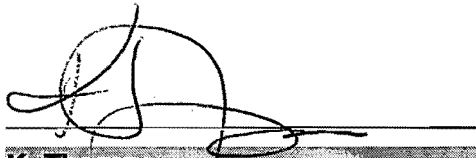
[50] With regard to two of the additional leases produced by the Complainant, that of

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 these two properties acted and lease in the same market as a Power Centre.

[51] 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.

[52] 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.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF October 2013.


K. Thompson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Rebuttal
4. C4	Complainant Disclosure
5. C5	Complainant Disclosure
6. C6	Complainant Rebuttal
7. R1	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	Cap rate and Lease rates