

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:

IKEA PROPERTIES LIMITED, COMPLAINANT
(as represented by Altus Group Limited)

and

The City Of Calgary, RESPONDENT

before:

BOARD CHAIR: P. COLGATE
BOARD MEMBER: B. JERCHEL
BOARD MEMBER: P. MCKENNA

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: 200383404

LOCATION ADDRESS: 8000 11 STREET SE

FILE NUMBER: 72360

ASSESSMENT: \$47,990,000 (Amended at Hearing by Mutual Consent)

This complaint was heard on 6rd day of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1 (Relocated to Boardroom 12).

Appeared on behalf of the Complainant:

- *Brendan Neeson, Altus Group Limited*

Appeared on behalf of the Respondent:

- *Brenda Thompson, City of Calgary*
- *Eliseo D'Altorio, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

[2] The preliminary matter raised in File Number 72428, Roll Number 200533982 at 3633 Westwinds Drive NE was a request for the presentations on the Big Box rental rate, the resulting questions and the decision is carried forward to six hearings before the Board. This request was made by the Complainant with the support of the Respondent. The parties agreed the evidence to be presented was consistent for the eight hearings

[3] The Board accepted the request of the Respondent and the Complainant and will carry forward the evidence and the questions on the Big Box rental rate received for the hearing File Number 72428 to the following six hearings:

File	Roll Number	Address
72254	010095206	7020 4 Street NW
72275	049010614	3575 20 Avenue NE
72360	200383404	8000 11 Street SE
72689	049007495	2853 32 Street NE
72826	201358751	9630 MacLeod Trail SE
73675	129181103	10505 Southport Road SW

[4] The Board noted the carrying forward of evidence and decision on the Big Box rental rate does not mean the final decision will be the same for each hearing, for there may be additional issues placed before the Board.

[5] In the interest of continuity, the Complainant's submissions identified as C4, C5 and C6 received for this hearing are also carried to the seven referenced hearings.

[6] A second preliminary issue was raised by the parties with respect to Issue Number 3, the area of the IKEA premises. In discussions before the hearing commenced an agreement was reached by the parties to correct the square footage of the premises to 308,601 square feet. The change resulted in a correction of the assessment to \$47,990,000.

[7] The Board accepted the change to the assessment and used it as the current assessment in its deliberations.

Property Description:

[8] The subject property is assessed as a freestanding retail Big Box property (CM0206) operating as IKEA Canada. The premises have an area of 308,601 square feet (corrected at hearing). The property is assessed on an Income Approach at a rate of \$10.00 per square foot, vacancy and non-recoverable rate of 1.0% and an operating cost of \$8.00 per square foot. The capitalization rate was set at 6.25%.

Issues:

[9] At the hearing the Complainant amended the issues and the requested assessment reflective of the following -

Issue 1: The correct rental rate for 'Big Box' premises,

Issue 2: The capitalization rate for premises in a Power Centre,

Issue 3: The correct size for the IKEA premises. (This issue resolved in preliminary portion of the Decision)

Complainant's Requested Value: \$35,480,000.00 (Revised at the hearing)

Board's Decision:

[10] The Board, upon review of the evidence submitted by the Complainant and the Respondent, found insufficient evidence was provided to justify a change to the assessment of the property under complaint.

[11] The Decision of the Board was to revise the assessment to **\$47,990,000.**

Legislative Authority, Requirements and Considerations:

[12] 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.

[13] 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 Valuation Reports.

[14] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, the Board is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

ISSUE 1: Big Box Rental Rate**Position of the Parties****Complainant's Position:**

[15] The Complainant placed the argument before the Board that the rental rate for Big Box retail space should be \$8.00 per square foot instead of the currently assessed rental rate of \$10.00 per square foot. In support of the argument, the Complainant submitted the "Altus Group: 2013 Retail Anchor Rental Rate Analysis (80,001 sq. ft.+) table: (C1, Pg. 60)

Address	Tenant	Community	AYOC	Shopping Centre	Subproperty Use	Land Use	Quality	Leased Area (SF)	Start Date	Leased Rate	Op. Costs and Taxes	Term
1221 Canyon Meadows Dr SE	Wal-Mart	Deer Ridge	1980-2011	Deer Valley Shopping Centre	Community	C-C2	A-	82,687	23-Sep-11	\$4.60	\$4.10	5
5696 Signal Hills Ce SW	Target	Signal Hill	1997	Signal Hill	Power Centre	C-R3	A2	112,488	1-May-11	\$8.00	\$4.03	5
275 Shawville Bv SE	Target	Shawnessy	1996	Shawnessy	Power Centre	C-R3	B	122,616	25-Mar-11	\$7.00	\$2.95	5
11938 Sarcree Tr NW	Canadian Tire	Sherwood	2008	Beacon Hill	Power Centre	DC	B	95,423	5-Mar-08	\$14.50	\$3.96	20
901 64 Ave NE	Wal-Mart	Deerfoot Business Centre	2003	Deerfoot Outlet Mall	Regional – Stand Alone	C-R3	C+	133,521	29-Jan-04	\$6.85	\$2.24	20
1200 37 St. SE	Wal-Mart	Rosscarrok	1972	Westbrook Mall	Community	DC	B	158,022	1-Dec-03	\$7.47	\$2.15	20
8888 Country Hills Bv NW	Wal-Mart	Royal Vista	2003	Royal Oak	Community	C-C2	A-	132,228	2-Oct-03	\$10.00	\$3.24	20
									Mean			
									Median			
Additionally	Reviewed	(80,001+	Sq. Ft.)	A-	Typical	Lease						
12300 Symons Valley Rd NW	RONA	Evanston	2007	Creekside	Community	DC	B+	99,650	24-Nov-07	\$14.50	\$6.82	20
									Mean	\$9.12		
									Median	\$7.74		

[16] The Complainant argued the analysis supported a reduction in the rental rate to \$8.00 per square foot.

[17] The Complainant argued the lease for 12300 Symons Valley Road NW was questionable as the tenant, RONA, had vacated the space in July of 2012 after a 4.5 year tenancy. The Complainant did agree a lease was in place until November 2027 which RONA continues to pay. (C4, Pg. 159-172).

[18] The Complainant submitted extensive information on each of the big box leases presented in the form of photographs, site maps, tenant rent rolls and City of Calgary Non-Residential Property – Income Approach Valuations. (C4)

[19] The Complainant submitted a document from First Capital Holdings (ALB) Corporation which indicated a lease for the Wal-Mart premises at 1221 Canyon Meadows Drive SE commencing September 11, 2011 for a five (5) year term. (C4, Pg. 8) The document indicated a lease rate of \$4.60 per square foot.

[20] The Complainant submitted the RioCan Signal Hill Centre, at 5696 Signal Hill Centre SW, document indicating the lease was \$8.00 per square foot commencing May 31, 2011. The document indicated it was a rent step occurring within the term of the lease commencing September 8, 1997 for a 20 year term. (C4, Pg. 18) There appeared to be confusion as this did not agree with the Assessment Request for Information (ARFI) which indicated the same commencement date but for a fifteen (15) year term. (C4, Pg. 20) The Complainant indicated the lease was negotiated for an additional five years at the same lease rate.

[21] For the Wal-Mart leases at 275 Shawville Boulevard SE, the Complainant submitted two Tenant Rent Rolls from July 2010 and May 2012. The 2010 roll indicated a fifteen year lease commencing March 25, 1996 at a rate of \$7.00 per square foot. The Complainant argued a new lease, at a rate of \$7.00 per square foot, was negotiated in 2011 for a five year term. This was not supported by the 2012 roll which indicated a start date of 1996. (C4, Pg. 30 and 32)

[22] The Complainant argued the discrepancies were a result of the RioCan method of not changing the start dates until the space was vacated.

[23] The Complainant noted the Complainant's and Respondent's analysis share five leases in common with only one lease where a difference in lease start date occurs – 5696 Signal Hills Ce. SW. (C4, Pg. 178)

[24] Respondent Position:

[25] The Respondent submitted the City of Calgary's "2013 Box Store Rental Rate Analysis (80,001SF+)" table, using five leases to establish the rental rate of \$10.00. (R1, Pg. 258)

Address	Lease Area (square feet)	Lease Commencement Date	Lease Rental Rate	Lease Term
11938 Sarcee Tr NW	95,423	03/05/2008	\$14.50	20
12300 Symons Valley Rd NW	99,650	11/24/2007	\$14.50	20
8888 Country Hills Bv NW	132,228	10/02/2003	\$10.00	20
5696 Signal Hill Ce SW	112,488	09/08/1997	\$8.00	20
275 Shawville Bv SE	122,616	03/25/1996	\$7.00	20
		Median	\$10.00	
		Mean	\$10.80	
		Assessed Rate	\$10.00	

*Does not include Enclosed Malls, Regional Malls, Downtown or Beltline

[26] The Respondent noted the analysis did not include Big Box stores located in Enclosed Malls or Regional Malls, or those located in the Downtown or Beltline areas.

[27] The Respondent submitted a table of forty-two (42) 2012 Equity Comparables of 80,000+ square feet to establish a fair and consistent application of the \$10.00 assessment rental rate. (R1, Pg.259-260)

[28] The Respondent submitted the issue before the Board was the same as argued in 2012, the rental rate being reduced from \$10.00 to \$8.00 per square foot. The Respondent submitted a table of twenty-one (21) hearings before the Local Assessment Review Board which

[27] The Respondent submitted the issue before the Board was the same as argued in 2012; the rental rate being reduced from \$10.00 to \$8.00 per square foot. The Respondent submitted a table of twenty-one (21) hearings before the Local Assessment Review Board which confirmed the rate at \$10.00. The list included the subject property at 3633 Westwinds Drive NE. A copy of one of the decisions from 2012, LARB 1564/2012 was entered into evidence. (R1, Pg.268-275)

[28] The Respondent submitted CARB 2005/2012-P, a decision on the subject property, with respect to the rental rate applied, which confirmed the rental rate at \$10.00 per square foot. (R1, Pg. 262-267)

[29] The Respondent submitted a list of "Big Box Rental Decision 2013" from the Local Assessment Review Board. The Respondent noted the LARB confirmed the business assessment rate at \$9.00 per square foot for fourteen (14) complainants. Allowing for the \$1.00 Lease Hold Improvement Allowance, the rate was confirmed at \$10.00 per square foot. (R1, Pg. 276-277) The Respondent submitted the decision LARB 73616B-2012, a complainant decision confirming the business rate at \$9.00, on the subject property. (R1, Pg. 278-284)

[30] The Respondent argued three of the leases presented by the Complainant should be excluded from consideration – 1221 Canyon Meadows Drive SE, 901 64 Avenue NE and 1200 37 Street SW.

[31] The Respondent argued the lease for 1221 Canyon Meadows Drive SE was a dated lease, originally signed November 27, 1981, between Qualico Developments Limited, Zeller's (Western) Limited and Zeller's Limited. On September 23, 2011 an "Assignment and Assumption of Lease Agreement" was signed between Zellers Inc. and Wal-Mart Canada Corp. (R1, Pg. 291 - 298) The Respondent argued Wal-Mart had only assumed an existing lease and not signed a new lease at then current market rental rate. The agreement stated: "The Assignor has agreed to assign and transfer to the Assignee the leases described on Schedule 'A' Hereto ..."

[32] The Respondent noted the Deer Valley Shopping Centre had undergone extensive renovations in recent years, converting the centre from an enclosed mall to a strip community shopping centre. The upgrade of the mall quality was not reflected in the dated lease of 1981.

[33] The Respondent objected to the inclusion of two leases which stemmed from premises considered to be dissimilar to those properties assessed within the category of "2013 Box Store Rental Analysis (80,001 SF) which specifically excluded premises described as or located in "Enclosed Malls, Regional Malls, Downtown or Beltline".

[34] The Respondent argued the lease for the Wal-Mart at 901 64 Avenue NE should be excluded as the Wal-Mart formed part of the Deerfoot Outlet Mall, a **regional shopping centre** which are excluded from the analysis of Big Box rental rates. The Respondent acknowledged the Wal-Mart was a free standing structure, situated within the property limits of the Deerfoot Outlet Mall, which paid rent to the Mall. The Respondent further noted the lease area for the Wal-Mart, at 133,521 square feet was smaller than the assessable area at 168,521 square feet. The difference was a result of Wal-Mart being allowed to expand its building envelope at Wal-Mart's expense with no change to the leasable area. The Respondent submitted a "2013 Amended Assessment Explanation Summary" for the Deerfoot Outlet Mall, noting the premises of Wal-Mart and Sears represented approximately 50% of the entire retail area. (R1, Pg. 304)

[35] The third property the Respondent wanted excluded was for the Wal-Mart located at 1200 37 Street SW, Westbrook Mall. The Respondent submitted that the Big Box analysis did not include units located within enclosed malls as their rental market was different from the

freestanding Big Box retail units.

[36] While using two premises presented also by the Complainant, the Respondent presented into evidence documents which disputed the lease start dates provided by the Complainant.

[37] The Complainant submitted in its table the lease for 275 Shawville Boulevard SE commenced March 25, 2011 and the Respondent submitted a commencement date of March 25, 1996. The Respondent submitted documents which indicated Target had assumed the lease from Zellers effective May 27, 2011 at a rate of \$7.00 per square foot. The original lease had a commencement date of March 25, 1996. The assumption of the lease appeared to be effective May 27, 2011. (R1, Pg. 285 – 290)

[38] With respect to the leases at 5696 Signal Hills Ce SW, the Respondent noted the Complainant had shown a commencement date of May 1, 2011. The Respondent noted this was not supported by the Complainant's own evidence (C4, Pg. 18) which indicated it was a rent step, adding an additional five years at the same lease rate of \$8.00 per square foot.

[39] The Respondent argued the lease at 12330 Symons Valley Road NW was valid even though the tenant, RONA, had vacated the premises. In an email from Paul Sullivan of BC Appraisers answering the inquiry from Brenda Thompson of the City of Calgary, it stated that RONA was still paying on the leases for the vacated space. (R1, Pg. 299) Documents were provided showing RONA was actively seeking a sublease tenant for the vacated space at a rate commencing at \$14.72 plus operating costs. (R1, Pg. 300-301)

[40] The Respondent noted the eight leases submitted by the Complainant were identical to the evidence submitted for the 2012 Business and Property complainants and the 2013 Business complaints. The Respondent again noted the submission of a summary from the decisions for 2012 and 2013 hearings, with the full decisions from some of the hearings.

Complainant Rebuttal

[41] With respect to the Wal-Mart located at 1221 Canyon Meadows Drive SE, the complainant restates its opinion the lease was a new lease, commencing September 23, 2011. In support the Complainant submitted the Tenant Rent Rolls for July 1, 2010 indicating the leases for Zellers ending September 15, 2011 and the lease for Wal-Mart commencing September 23, 2011. (C5, Pg. 14 – 17)

[42] The Complainant submitted argument that the City of Calgary Assessment Business Unit was inconsistent in its application of distinguishing what premises would be included in an analysis; specifically the exclusion of Big Box retail premises situated in enclosed or regional malls. The Complainant noted that while the Big Box spaces are excluded, the City of Calgary used spaces from enclosed and regional malls to establish city wide rates for other premises, with reference to banks, pad restaurants, supermarkets and retail space. (C5, Pg. 19 – 91)

[43] The Complainant submitted argument as to the City of Calgary's inconsistent inclusion or exclusion of dated leases, dependent upon the assessors' interpretation of the leases start dates and ruling leases as stale dated. The Complainant introduced analysis of leases for grocery stores, retail spaces and CRU premises in support of the inclusion of older and renewed leases. (C5)

Board's Reasons for Decision Issue 1:

[44] The Board, in making its decision on the appropriate rental rate for the Big Box premises, must determine which leases should be utilized in the determination of the rate.

[45] The Board found the parties shared five leases in common for their analyses of the lease rate, allowing for minor differences in commencement dates. The leases rates ranged from \$7.00 to \$14.50 per square foot.

[46] The Complainant questioned the inclusion of the leases for the RONA premises at 12300 Symons Valley Boulevard NW as the tenant had 'gone dark' and vacated in July of 2012. The Board found there was sufficient evidence submitted to show the lease was valid and RONA continues to pay the lease rate on the space. The fact RONA has vacated the space does not negate the lease and as such is acceptable for the rental analysis.

[47] The Board in its deliberation reviewed the three leases not utilized by the Respondent – 901 64 Avenue NE, 1200 37 Street SW and 1221 Canyon Meadows Drive SE.

[48] With respect to the leases at 901 64 Avenue NE and 1200 37 Street SW, the Board accepted the position of the Respondent that the analysis was conducted separately for premises located in enclosed malls or associated with regional malls. The evidence submitted shows different rates have been applied to the Big Box units in the noted locations. The Board excluded the two leases from the analysis.

[49] The third lease at 1221 Canyon Meadows Drive SE presented the Board with more difficulty. The Board was presented with conflicting information with respect to the leases commencement date; as the information provided by the owner was not consistent as to whether it was a new lease or an assumption of an older lease with an extension. The fact the lease rate was unchanged further added to the confusion. Additionally, the Board was presented with a shopping complex that has undergone extensive renovation resulting in an enclosed mall being converted in design to a strip mall. The Board found the complex, being upgraded and modernized with the addition of new premises, would command a higher rate than the \$4.60 per square foot in the Wal-Mart leases. The Board found the \$4.60 per square foot was not reflective of current market values, suggesting its exclusion.

[50] The Board, in its deliberation, looked to the effect of the exclusion or inclusion of the Wal-Mart lease. If the lease was excluded, the result would be the submission made by the Respondent with a median of \$10.00 per square foot and an average of \$10.80 per square foot. The Board found the inclusion of the Wal-Mart lease would produce a median of \$9.00 and an average of \$9.77 per square foot, a result that would not support the Complainant's request for \$8.00 per square foot.

[51] The Board further found the rental rate for the Big Box stores in excess of 80,000 square feet had been applied in a consistent manner as established by Justice Cumming in *Westcoast Transmission Company Limited v. Assessor of Area 9 – Vancouver* (SC 235 *Westcoast Transmission Co. Ltd. v. AA09*).

[52] The Board confirms the Big Box rental rate at \$10.00 per square foot.

ISSUE 2: Capitalization Rate (Power Centre)**Position of the Parties****Complainant's Position:**

[53] The Complainant submitted the correct capitalization rate should be 6.75%, not the current capitalization rate of 6.25% utilized by the City of Calgary.

[54] The Complainant submitted there were only three valid arms length sales in the past 30 months upon which to base a capitalization rate for the Power Centres. All three sales occurred in the Crowfoot Power Centre. The Complainant presented two methods for the determination of the requested capitalization rate. (C2, Pg 1)

2013 Altus Power Centre Capitalization Rate Summary – Method I

Roll Number	Address	AYOC	Shopping Centre	Quality	Registration Date	Sale Price	Sale Year Assessable Area (sq.ft.)	Sale Year NOI	Capitalization Rate
200388189	95 Crowfoot Cr NW	1997	HSBC Bank	B	12/13/2010	\$2,638,000	7,256	\$209,420	7.94%
016203507/ 016203606	20/60 Crowfoot Cr NW	1985	Crowfoot Village	B	4/30/2012	\$31,250,000	60,6121	\$2,118,208	6.78%
175036508	140 Crowfoot Cr NW	1981-1991	Crowfoot Corner	B	5/25/2012	\$35,500,000	51,048	\$1,820,286	5.13%
								Mean	6.62%
								Median	6.78%

2013 Altus Power Centre Capitalization Rate Summary – Method II

Roll Number	Address	AYOC	Shopping Centre	Quality	Registration Date	Sale Price	Sale Year Assessable Area (sq.ft.)	Sale Year NOI	Capitalization Rate
200388189	95 Crowfoot Cr NW	1997	HSBC Bank	B	12/13/2010	\$2,638,000	7,256	\$208,613	7.91%
016203507/ 016203606	20/60 Crowfoot Cr NW	1985	Crowfoot Village	B	4/30/2012	\$31,250,000	60,6121	\$2,107,227	6.74%
175036508	140 Crowfoot Cr NW	1981-1991	Crowfoot Corner	B	5/25/2012	\$35,500,000	51,048	\$1,892,009	5.33%
								Mean	6.66%
								Median	6.74%

[55] The Complainant disputed only one of the sales presented by both parties, 95 Crowfoot Crescent NW, the sale of the HSBC bank property. Specifically the Complainant argued the rental rate of \$40.00 per square foot was more appropriate to the determination this premises Net Operating Income (NOI) for 2011 as it reflected typical city-wide leases, the process used by the City of Calgary in 2009, 2010 and 2012, as opposed to the centre-specific rate used in 2011. It was the Complainant's position that the use of a consistent methodology had been applied for 2011; the resulting rental rate would have been \$40.00 per square foot, with a higher

capitalization rate.

[56] The Complainant submitted two methods to establish the requested capitalization rate of 6.75%. Method I applied the typical market income approach as submitted by the City of Calgary, but utilizing the \$40.00 rental rate which a city wide typical as determined by leases from not only the subject power centre, but other power centres located across the City of Calgary. (C2, Pg. 27) The Complainant stated only the sale for the HSBC Crowfoot differs from the evidence submitted by the City of Calgary which has an indicated capitalization rate of 7.94% versus the City of Calgary rate of 6.35%, resulting from the adjusted NOI. The overall capitalization rate analysis indicated a mean of 6.62% and a median of 6.78% for the three sales. The Complainant accepted all other components of the City of Calgary's NOI calculation.

[57] To establish the requested rental rate of \$40.00 per square foot, the Complainant submitted an analysis of seven leases commencing between July of 2008 and May of 2009. The mean city wide was \$38.29 and a median of \$40.00 per square foot. (C2, Pg. 27) The complainant submitted the 2013 Bank Lease analysis to show the calculations were done in a similar manner.

[58] The Complainant submitted the analysis for 20 & 60 Crowfoot Crescent NW – the Village – and 140 Crowfoot Crescent NW – The Corner, to show the City of Calgary applied a city wide analysis to determine the rental rate for the properties sold in 2012 with resulting NOI and capitalization rates determined differently from those of the 2010 sale. (C2, Pg. 48-94)

[59] For Method II the Complainant followed the Alberta Assessors Association Valuation Guide (AAAVG) in the determination of a typical capitalization rate. Using the AAAVG, the Complainant determined a rental rate based upon the criteria of the 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 premises; or older leases with active overage rent clauses.

[60] For the HSBC Crowfoot premises the Complainant used the actual lease rates in place at the time of the sale - \$38.00 per square foot for the bank space and \$8.00 per square foot for the basement space. Utilizing these rates and the City of Calgary rates for the remaining elements – vacancy, operating costs, non-recoverable – the Complainant determined a capitalization rate of 7.91%.

[61] The Complainant applied a similar approach to determining the NOI and capitalization rate to the remaining two sales in their Method II analysis. The resulting individual Capitalization rates were 6.74% and 5.33%, respectively. The resulting overall capitalization rate had a mean of 6.66% and a median of 6.74%

[62] The Complainant reviewed the 2011 Historic Bank Lease Analysis Crowfoot Power Centre submitted for a 2013 assessment complainant. (C3, Pg. 5) The document indicated a total of six premises; three were owner occupied and had no leases; two leases were 1997 or older; and one was a 2009 lease. The Complainant submitted the City of Calgary relied on the one lease to establish the rental rate for the banks in the Crowfoot Crossing Power Centre.

[63] The Complainant submitted a table of fifteen (15) 2010 Power Centre Bank Leases. The Complainant noted eight of the leases commenced in 2005 to 2007 and would be excluded under the City of Calgary methodology. Further noted was exclusion by the City of Calgary of a Westhills RBC lease for \$40.00 per square foot in 2009 and an incorrect lease rate applied to the Westhills ATB at \$32.00 when the rent roll indicated a lease rate of \$44.00 per square foot. (C3, Pg 6)

[64] The Complainant submitted a 2011 'Power Centre' Retail Bank Analysis of eight leases

with commencement dates in 2008 and 2009. The analysis results indicated an average lease rate of \$37.25 per square foot and a median of \$36.50 per square foot. (C3, Pg. 7)

Respondent's Position:

[65] The Respondent submitted the 2013 Power Centre Capitalization Rate Summary with three sales from the Crowfoot Crossing Power Centre. (R1, Pg. 67 & 162) The City of Calgary used the typical rental rates, operating costs, vacancy rates and non-recoverable rate in the year of the sale to establish the NOI for each of the sales to develop the typical capitalization rate. Based upon the analysis the capitalization rate was set at 6.25%

2013 Power Centre Capitalization Rate Summary

Roll Number	Address	Actual Year of Construction	Registration Date	Sale Price	Sale Year Assessable Area (sq. ft.)	Sale Year Assessed Net Operating Income (NOI)	Capitalization Rate
200388189	95 Crowfoot Cr NW	1997	2010-12-13	\$2,638,000	7,256	\$167,560	6.35%
016203507 & 016203606	20 & 60 Crowfoot Cr NW	1985	2012-04-30	\$31,250,000	60,612	\$2,118,208	6.78%
175036508	140 Crowfoot Cr NW	1991	2012-05-28	\$35,500,000	51,048	\$1,820,286	5.13%
						Median	6.35%
						Average	6.09%
						Assessed	6.25%

[66] The Respondent speaking to the Complainant's submission stated the 2009 methodology submitted was not the method currently utilized by the city of Calgary. The Respondent stated that the City of Calgary does not use lease rates from regional or neighbourhood malls to develop the lease rates for Power centres as each mall is site specific in a separate market niche with their own market leases.

[67] The Respondent challenged the Complainant's use of an outdated AA AVG guide as the basis for establishing the Method II capitalization rate. (R1, Pg. 87-93) Quoting from the August 2012 revised guide, the Respondent noted the guide states that "current economic or market rents are used to form the basis of the valuations opposed to actual rents, because in some cases, actual rents reflect historical revenues derived from leases negotiated before the valuation date".

[68] Further, the guide went on to state that "in determining gross potential income, the valuator is not bound by the contractual rent between landlord and tenant, but should determine rental income on the basis of what typically should be paid in the market at the time of valuation. This rent is known a "market" or "economic" rent." The Respondent noted the statement from the guide that "... in order to reflect fee simple value of the property, market rents (as of the valuation date) rather than actual rents should be used in the valuation of shopping centres".

[69] The Respondent argued the Complainant in its Method II analysis attempted to use an actual lease from the sale at 95 Crowfoot Crescent NW to establish the capitalization rate. The Respondent submitted the Complainant was utilizing both actual site specific and typical rates to establish the higher NOI and capitalization rate. (reference C2, Pg. 151) The Respondent argued the Complainant's use of a single lease was a misinterpretation of the revised AA AVG.

Board's Reasons for Decision Issue 2:

[76] The Board reviewed the evidence submitted by both parties in arriving at its decision. The Board in its deliberation found more weight was placed on certain evidence as it was found to be more relevant and it is to this evidence the Board will restrict its comments.

[77] The Board found the basis for the capitalization rate applied to the seven Power Centres relied on three sales in the Crowfoot Crossing Power Centre,

[78] The Board reviewed the evidence as submitted by the Complainant, for the burden of proof must be satisfied for the complaint to proceed.

[79] The Board found the Complainant had argued two approaches to determining the requested capitalization rate – Method I and Method II.

[80] The Board found Method II was flawed in that it relied on the application of both site specific and typical elements – rental rate, operating costs, vacancy rate and non-recoverable rate – in the development of the NOI and the resulting capitalization rate. The Board did not accept this mixing of the elements and accordingly rejects the Method II approach to determining the capitalization rate. This decision was supported by past CARB decisions.

[81] The Board on its review of the Method I approach was again faced with flaws, which in the opinion of the Board significantly lowers the weight to be placed on the result.

[82] From the evidence submitted, it appeared the Complainant placed weight on the median value when determining its calculation. Normally this statistical methodology is a valid and accepted approach. However, when there are only three sales as the basis for the analysis a median value has significantly less weight than the mean value, unless both values fall within a very tight range. In the case before the Board the capitalization rate mean was 6.38% and the median was 6.78%. The Board found the mean was closer to the current 6.25% capitalization rate than the requested 6.75% rate, whereas the median supported the Complainant's requested capitalization rate.

[83] The Board turned its deliberation to the requested rental rate of \$40.00 per square foot, which was amended to \$36.50 in rebuttal, in the calculation of the NOI and the capitalization rate for the HSBC Bank premises.

[84] The Board took note that the Complainant asked the Board to look back and effectively change the rental rate applied in the year of the sale, although at the time the Complainant had argued the rental rate on the property should be at a rental rate of \$30.00. The Complainant argued the Board should go back and change the methodology applied for the 2011 assessments to support the Complainant's position. The Board found it did not have the authority to retroactively change a methodology applied in a given year. The time to argue the methodology had long past. Decisions were rendered at the time supporting the methodology.

[85] The Board reviewed the Complainant's Method II approach to determining the capitalization rate for the HSBC Crowfoot premises and again found more questions. The Complainant's requested rental rate was based upon a city wide review of bank leases to arrive at the \$36.50 requested rate per square foot at the time of sale. However, the Complainant then asked the Board to accept the use of the typical for the Crowfoot complex in the balance of the calculation – vacancy, operating costs and non-recoverable. The Board found the argument was not supported by any evidence that this was the case, as documents submitted indicated these elements varied across the City. The Board found the Complainant should have submitted city wide analysis of vacancy rates, operating costs and non-recoverables found in all the power centres.

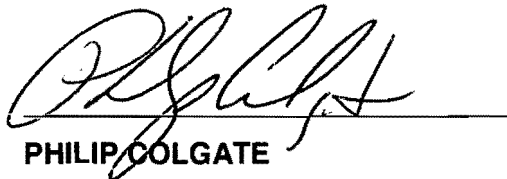
[86] The Board found the Complainant had presented insufficient evidence to support a change to the capitalization rate for the subject property.

BOARD DECISION:

[87] Based upon the decisions of the Board for each of the issues, the Board found insufficient evidence to support an adjustment to the assessment based upon requested changes to the capitalization rate or rental rate. The Board accepted the revised assessment provided by the parties as a result of the correction in the area of the premises.

[88] The Board revised the assessment to **\$47,990,000.00**

DATED AT THE CITY OF CALGARY THIS 6th DAY OF November 2013.



PHILIP COLGATE
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 Rebuttal
6. C6	Complainant Rebuttal
7. C7	Complainant Disclosure
8. 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.*

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,

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.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone Big Box	Income Approach	-Capitalization Rate -Net Market Rent/Lease Rates