

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:

Canada Safeway Limited (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

I. Fraser, BOARD MEMBER

R. Kodak, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	058213307
LOCATION ADDRESS:	410 10 ST NW
FILE NUMBER:	72370
ASSESSMENT:	\$8,970,000

This complaint was heard on the 21st and 22nd days of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- A. Izard, Altus Group Limited
- K. Fong, Altus Group Limited

Appeared on behalf of the Respondent:

- S. Turner, City of Calgary
- V. LaValley, City of Calgary
- C. Yee, City of Calgary

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

[1] There were no procedural or jurisdictional matters raised. However, the Parties advised that several of the documents submitted for this complaint would also be submitted for a number of other complaints to be heard by this Board during this hearing week. The Parties requested that those documents be carried forward as noted in each complaint and, likewise, that all presentations, questions, responses, summaries and arguments be carried forward. The Board concurred.

Property Description:

[2] The subject is a freestanding, retail grocery store located in the inner city community of Sunnyside at 410 10 St. N.W. and known as the Kensington Market Safeway. It is considered to be an A class building, constructed in 1999 and encompassing 36,084 square feet (sq.ft.) on a 75,242 sq.ft. parcel of land. Its land use designation is Direct Control District and it is assessed using the Income approach to value based on rental rates of \$18 per sq.ft. for the supermarket and a capitalization rate (cap rate) of 7.0 per cent (%).

Issues: The matters identified on the Complaint Form were reduced, at the hearing, to:

[3] Issue Number 1: Should the rental rate used in the calculation of the Net Operating Income (NOI) be amended to \$15 per sq.ft.?

[4] Issue Number 2: Should the capitalization rate applied to the NOI be amended to 7.5%?

Complainant's Requested Value:

[5] The Complainant requested that, if both the rental rate and the capitalization rate are amended as requested, that the 2013 Assessment be corrected to \$6,970,000.

[6] In the alternative, if the Board were to determine that only the rental rate should be amended, the Complainant requested a corrected assessment of \$7,470,000.

Board's Decision:

[7] The 2013 Assessment is confirmed at \$8,970,000.

Position of the Parties:**Issue Number 1: Rental Rate**

[8] For the sake of clarity, the Board produced a chart combining the relevant portions of the rent comparables introduced by the Complainant and the Respondent.

Shopping Centre	Altus Bldg Class	City Bldg Class	Altus Rent Rate	City Rent Rate	Altus Lease Year	City Lease Year
Market Mall	A	A	\$8.40	\$8.40	2011	2011
Shawnessy	A	A	\$10.47	\$12.25	2011	1991
Deer Valley	A	B	\$15.00	\$15.00	2011	2011
South Centre	A	A	\$15.00	\$15.00	2011	2011
Market at Quarry	A	A	\$26.45	\$26.45	2010	2009
Cranston	A	A	\$19.00	\$19.00	2009	2009
Aspen	A	A	\$16.72	\$18.50	2009	2009
Southland Crossing	A	A	\$13.50	\$13.50	2009	1989

Complainant's Position:

[9] The Complainant provided a Grocery Leasing Analysis that charted 8 properties all of which, he contended, are A quality buildings. The rents range from \$8.40 to \$26.45 per sq.ft. The median rent of those 8 properties was \$15 and the mean was \$15.57. These rents, he said, applied to leases commencing in 2009, 2010 and 2011 and this data would support the request to reduce the rental rate. There is no dispute between the Parties with respect to 3, later 4, of the 8 properties: Market Mall, South Centre, Market at Quarry and Cranston. The Complainant provided partial rent rolls for all of the properties and, in a couple of instances, portions of the relevant leases.

[10] The Parties agreed that the Aspen Landing store is an A quality building but differ on the rental rate: \$16.72 put forward by the Complainant against \$18.50 by the Respondent. The Complainant provided documentation dated April 18, 2013 that explained the rent of \$18.50 applied only to the larger part of the building (48,730 sq.ft.) and that no rent was attributed to a smaller portion of 5,186 sq.ft. The Complainant argued that when the total rent payable of \$18.50 on 48,730 sq.ft. was divided by the total area of the building (53,916 sq.ft.), the effective rent was \$16.72 per sq.ft.

[11] The Complainant further argued that, where the rent rolls indicated a start date in the distant past, the rolls also showed terms that extended past the initial lease end date, indicating that renewals or extensions had been negotiated and therefore reflected current market rents. The Complainant noted that rent rolls of several owner/property managers showed the lease start date as the first date the premises were leased to that tenant and were not meant to reflect that there were no subsequent renewals, extensions or negotiations.

[12] The Complainant described the Co-op property within Deer Valley Market Place which had significant renovations to remove a wall and develop a roadway adjacent to it, effectively creating a freestanding grocery store. He pointed out that the City's Assessment Summary report characterized the building as an A quality and the renovations supported that characterization. Accordingly, the \$15 rental rate should be included in the A quality analysis of rents.

Respondent's Position:

[13] The Respondent presented its revised 2013 Supermarket Rental Rate Analysis which contained five A class buildings with rents of between \$8.40 and \$26.45., all of which were included in the Complainant's analysis. This revision was released after the Complaint period but was included in the Complainant's rebuttal. The additional A class property is South Centre which demonstrated rental rates of \$15. The City's analysis only included leases commencing in either 2009 or 2011. The Respondent's analysis also included four B class and two C class buildings of which one B class, Calgary Co-op in Deer Valley, is included by the Complainant as an A building. The City noted that there are layers to the noted Assessment Summary and by expanding the document, it was clear that the A classification applied only to the Walmart store within that development and not to the Co-op which was still a B class. The Respondent noted that there was no value provided by the Complainant with respect to the renovations which, she said, were largely external to the building and not to the store itself. Additionally, the rental rate of \$15 supported that conclusion.

[14] The Respondent agreed that it had received the clarification of rent and lease space with respect to Aspen Landing; however, the rental rate study would have been concluded by late 2012 and the assessments based, in part, on that study. The Respondent noted that to change the rent for one property, based on a 2013 clarification, would affect the whole study and create an inequity for other A properties.

[15] The Respondent stated its concern with the rent rolls and Assessment Request for Information (ARFI) documents provided by the Complainant in that the commencement date of the leases was, in two cases, very old: Southland Crossing at 1989 and Shawnessy at 1991. While the tenants are the same and there is evidence that there had been a continuation of the lease, no new leases were provided or any identification of which were renewals or extensions that were established at the outset of the leases. Without these, the City could not, the Respondent argued, identify which were market rents and which were not. The Respondent stated that its review period for developing typical rents is three years prior to the valuation date for grocery stores.

Issue Number 1: Rental Rate - Board's Findings and Reasons for Decision:

[16] The Board accepted that four of the 8 leases provided by the Complainant are not disputed by the Respondent. Thus four rents of \$8.40, \$15, \$26.45 and \$19 are accepted as market rents.

[17] Of the remaining four, the Board concurs with the Respondent that the information on Aspen Landing comes too late in this year's Assessment process to be considered as other than \$18.50 without creating inequities with other similar properties.

[18] With respect to Deer Valley, the Board decided that there was not sufficient evidence presented to support its being included in the A class buildings. No information about the value

of the renovations was provided specific to the grocery store or other descriptors that would justify moving it from the B class to the A class for consideration in this analysis. Therefore, Deer Valley was excluded from consideration relative to the complaint on rents.

[19] The stale-dated leases created an issue in that the rolls do indicate end dates that are past the original terms of the leases. Portions of leases provide some support to the Complainant's argument. However, *Matters Relating to Assessment and Taxation Regulation* A.R. 220/2004 (MRAT), at s. 2 and ss. 2(a) and (c) direct that the assessment must be based on market value, using mass appraisal and "must reflect typical market conditions for properties similar to that property". Step increases or extensions included in a rent roll may well have been negotiated at the beginning of the lease and may not reflect current market values. In the absence of rent rolls that explicitly demonstrated that there was a negotiated renewal as of a specific date or an independent undertaking by the owner/manager to that effect, the Board would be relying on assumptions to draw the conclusion advanced by the Complainant. For that reason, in the absence of clear evidence that would add clarity to the issue, the Board discarded the Shawnessy Village and Southland Crossing rents from the analysis.

[20] The Board was left with five rents: the four that were not contested, as noted in para [9] above and the \$18.50 rent from Aspen Landing. The calculation resulted in a median rent of \$19 or a mean rent of \$17.49. This analysis supported the assessed rent of \$18. Even if Southland Crossing, the better supported of the stale-dated rents was included, the median became \$16.75 and the mean was \$16.80 – still closer to the assessed rent than the requested rent.

[21] Accordingly, the assessed rental rate of \$18 is confirmed.

Issue Number 2: Capitalization Rate

Complainant's Position:

[22] The Complainant presented a Freestanding Retail Capitalization Study that included 9 properties which sold between January 2011 and April 2012 with cap rates ranging from 6.21% to 8.81%. The study showed a median cap rate of 7.39% and an average of 7.40%. The study, as presented, supported the Complainant's requested cap rate of 7.5%.

[23] The properties were all freestanding retail but not necessarily grocery stores. According to the Complainant, and later agreed to by the Respondent, the properties used by the Respondent in developing its own rates are not stratified by age, quality, size, location or use.

[24] The Complainant advised that his methodology in determining the appropriate cap rate for each property was to use the sales price as listed but, if the sale took place after July 1 in the year in which it sold, he applied the typical input parameters for the following year in order to capture any change in value after the valuation date. According to the Complainant, the Respondent used the typical parameters for the year of sale, as of July 1 of that year.

[25] Where sales occurred after July 1, 2011, the Complainant's methodology produced different NOI's for the same properties than those calculated by the Respondent. According to the Complainant, his methodology produced a more accurate statement of value and a more correct cap rate since the sales date had advanced beyond the 30 month rental rate analysis used by the Respondent in establishing its cap rate.

Respondent's Position:

[26] Four of the properties used by the Complainant formed the basis for the Respondent's cap rate analysis. These were sales that took place between July 2011 and January 2012. The cap rates ranged from 4.34% to 7.39% with an average of 6.27% and a median of 6.68%. The Respondent used the listed sales price and the input parameters from July 1 of the year of sale.

Issue Number 2: Capitalization Rate - Board's Findings and Reasons for Decision

[27] The Parties had significant differences with respect to the validity and suitability of some sales. Certainly, under other circumstances, the Board would have had difficulty, for example, finding the relevance of the sale of a gas bar to the sale of a much larger retail property such as a grocery store. The specifics of the comparables did not enter into our deliberations because, in the end, the Board's determination was based on an evaluation of the methodology used in calculating the cap rate.

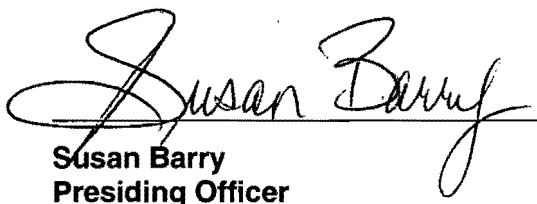
[28] For example, using one property at 1435 9th Ave SE which sold on December 20, 2011, the Respondent's NOI was \$73,833 using input parameters at the valuation date of July 1, 2011 producing a cap rate of 4.34%. However, if the input parameters at the valuation date of July 1, 2012 were applied, as in the Complainant's methodology, the NOI became \$105,532 and the cap rate became 6.21%. Using the Complainant's methodology, a sale completed in August of 2011 would have the same input values as one completed in April of the following year.

[29] Both approaches could be considered arbitrary although the Respondent's approach had the benefit of consistency of parameter values: sale in 2011, parameter values from 2011. In the Complainant's case his methodology time adjusted the input parameters without time adjusting the sale price or without demonstrating why a time adjustment is not required. In this respect he offends *Westcoast (Westcoast Transmission Co. V. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273)* which established the principle that there needs to be consistency in the inputs in the calculations. A valid cap rate based on a 2011 sale cannot be derived from using rental rates, vacancy rates, and etcetera, from a different period.

[30] The Complainant's methodology did not meet the test of consistency and, accordingly, the Board confirms the cap rate of 7.0% applied by the Respondent.

[31] The Complainant failed to convince the Board to adjust either the rental rate or the capitalization. The 2013 Assessment is confirmed at \$8,970,000.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF November 2013.


Susan Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure – Kensington Market Safeway
2. C2	Complainant's Disclosure – Grocery Leasing "A"
3. C3	Complainant's Disclosure – Grocery Leasing "B"
4. C4	Complainant's Disclosure – "A" Group Supermarkets Rebuttal
5. C5	Complainant's Disclosure – "B" Group Supermarkets Rebuttal
6. C6	Complainant's Disclosure – Freestanding Retail – Capitalization Rate Analysis
7. R1	Respondent's 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.*

For Administrative Purposes Only

Municipality	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary	058213307	Retail	Stand Alone	Rental Rate & Cap Rate	