

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:	067246504
LOCATION ADDRESS:	813 11 AV SW
FILE NUMBER:	72381
ASSESSMENT:	\$12,200,000

This complaint was heard on the 23rd day 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

Appeared on behalf of the Respondent:

- M. Byrne, City of Calgary
- C. Fox, 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 were previously submitted for CARB 72370 and would also be submitted for 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 and C2, C3, C4 and C5 were carried forward for this hearing.

Property Description:

[2] The subject is a freestanding, retail grocery store located in the Beltline, area 4, at 813 11 AV. SW and known as the Beltline Canada Safeway. It is considered to be an A class building, constructed in 1996 encompassing 38,808 square feet (sq.ft.) on a 101,830 sq.ft. parcel of land. The 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 5.5 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 6% in accordance with the Complainant's analysis or, in the alternative, to 7% having regard to equity?

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 \$9,300,000.

[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 \$10,140,000.

[7] In a third calculation, the Complainant requested that, if the rental rate is reduced to \$15 and the cap rate is adjusted to 7%, then the corrected assessment would be \$7,990,000.

Board's Decision:

[8] The 2013 Assessment is confirmed at \$12,200,000.

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

[9] For the sake of clarity, the Board produced a chart of 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:

[10] 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.

[11] 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.

[12] 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.

[13] 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:

[14] The Respondent noted that there was insufficient, appropriate lease information specific to the Beltline available for analysis and, accordingly, it applied its 2013 Supermarket Rental Rate Analysis to Beltline grocery stores.

[15] The revised 2013 Supermarket Rental Rate Analysis 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.

[16] 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.

[17] 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:

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

[19] 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.

[20] 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.

[21] 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.

[22] 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.

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

Issue Number 2: Capitalization Rate

Complainant's Position:

[24] For the sake of clarity, the Board produced a chart of the relevant portions of the cap rate comparables introduced by the Complainant and the Respondent. Minor variances in NOI and cap rate have been adjusted for this table to conform to the City's valuation reports for the properties on the appropriate valuation dates.

Building	Class	Area/YoC	Sale Date	Sale Price	NOI	Cap Rate %
Sasso/Ventro	AA	23,709/2008	July 8, 2011	\$12,800,000	\$744,069	5.81
El Sombrero	B	5,672/1912	Oct 24, 2011	\$3,150,000	\$150,423	4.77
Cosmetic Laser	B	11,259/1962	May 23, 2012	\$2,600,000	\$154,410	5.94
Elbow River Casino	A	77,680/2005	July 3, 2012	\$20,800,000	\$1,583,440	7.61

[25] The Complainant presented a 2013 Beltline Capitalization Rate Analysis that included

three sales of retail premises, two of which (Sasso/Ventro and Cosmetic Laser) were accepted by the Respondent. The third sale is Elbow River Casino. The median of these rates is 5.94% and the mean is 6.45%. As calculated, these supported the requested cap rate of 6%.

[26] The Complainant used the same methodology as the Respondent in developing the cap rate; that is, the input values from the year of sale were applied to calculate the NOI which was then divided by an unadjusted sales price to get to the cap rate. The Complainant did not stratify his analysis by building classification although his statement was that the City does apply different cap rates to different retail classifications; namely: 5.5% to A class; 5.25% to B class; and 5.75% to C class.

[27] It was the Complainant's contention that the Casino was a valid sale and, with an assessable area of 77,680 sq.ft., was more comparable to the subject at 38,808 sq.ft. than the other comparables used by himself or the Respondent. According to the evidence presented by the Complainant, the transfer documents were dated June 26 and June 28, 2012 although the sale was not registered at Land Titles until July 3, 2012.

[28] It was the Complainant's position that the El Sombrero sale in the Respondent's cap rate analysis should be excluded for three reasons. First, it is not a brokered sale and the evidence of the Respondent in the hearing related to CARB 72370 was that the City did not accept non-brokered sales as arms-length transactions. Secondly, he provided an email memo from the purchaser to the effect that the lot was purchased for redevelopment purposes and therefore paid higher than market value. Thirdly, he pointed to the Respondent's submission of the Sales Assessment Request for Information (ARFI) form which shows that the sales price was not based on its NOI.

[29] Finally, for the sake of equity, the Complainant asked the Board to consider the Safeway property heard by this Board as CARB 72370 where the City assessed the property using a cap rate of 7.0%.

Respondent's Position:

[30] The Respondent presented its 2013 Beltline Retail Capitalization Rate Summary which included two of the properties used by the Complainant. It also added the El Sombrero sale but excluded the Elbow River Casino. The resulting cap rates, not stratified for building class, were a median of 5.81% and a mean of 5.49%. Stratified for A class buildings only, the rate was 5.81% and for B class the median rate was 5.33%. Because of the paucity of sales in the Beltline, the Respondent struck a balance for A class between the calculated rates for A and C.

[31] The Respondent argued that it has a very strict policy regarding the date of sale for the purpose of cap rate analysis: that date must precede July 1 in the year of valuation. The rule is designed to provide a benchmark that can be applied consistently to all sales. For that reason, among others, the Respondent's position was that the Casino sale must be excluded.

[32] As for El Sombrero, the Respondent stated that the City does not have a fixed rule on the validity of brokered versus non-brokered sales. All other things being equal, a non-brokered sale could be a valid sale. The Respondent did say that if there were a lot of otherwise valid sales, most of which were brokered, they would probably put more emphasis on the brokered sales.

[33] The Respondent also pointed to the Sales ARFI which clearly indicated that El Sombrero was declared to be an arms-length transaction, that it was leased and generating income, and that redevelopment was not imminent in that 30% of the property had tenant leases in place for

2 to 5 years and 70% of the property had tenant leases in place for over 5 years. The Respondent also pointed to the Complainant's memo from the purchaser that stated it was intending to use the property to redevelop it in conjunction with his adjacent property in 15 to 20 years.

[34] With respect to the Complainant's equity argument, the Respondent noted that the property, while located within the inner City, is not in the Beltline where much different input parameters apply.

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

[35] Unlike the previous hearing, CARB 72370, the Parties were consistent in their methodology for calculating the cap rate.

[36] However, there was clearly a difference between the evidence of the City in CARB 72370 and the subject CARB 72381 with respect to the validity of non-brokered sales. The former said non-brokered sales were invalid; the assessor for the subject said they were not necessarily excluded. Because that discussion was not relevant to the Board's decision in CARB 72370, we were prepared to accept the evidence of the assessor in CARB 72381 in that regard. However, the Complainant was justified in being confused. While we cannot direct the Assessment Department, it would certainly be less confusing and more equitable if all the assessors, both in practice and at hearings, spoke from the same policy page.

[37] Having determined that El Sombrero was a valid sale, the Board also decided that it was a relevant sale. Certainly it was bought as a going concern in an arms-length transaction and while the eventual purpose is for redevelopment, that is a prospect that lies in the distant future. It generates income and a cap rate can be calculated using the appropriate parameters.

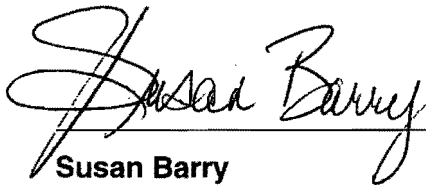
[38] The Board did not accept the Casino sale. The Respondent has a clear cut off date for sales and the Board accepted the rationale for that position. While a somewhat *post facto* sale of the subject could be used in assessing the subject – a position accepted by the Courts – using a *post facto* sale in the analysis of cap rates could create equity concerns.

[39] Finally, the Board did not accept that the property in CARB 72370 was an equitable comparison with respect to the cap rate. That property is well outside the Beltline and a number of quite different factors affect cap rates applied in that area.

[40] The Complainant did not satisfy the Board that the cap rate should be adjusted to either 6% or 7%.

[41] The Complainant failed to convince the Board to adjust either the rental rate or the capitalization rate. The 2013 Assessment is confirmed at \$12,200,000.

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 – Canada 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 - Altus 2013 Beltline Retail Capitalization Rate Analysis
7. C7	Complainant's Disclosure – Beltline Retail –Rebuttal Submission
8. 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	067246505	Retail	Stand Alone	Rental Rate & Cap Rate	