

## **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., COMPLAINANT**  
*(as represented by Altus Group Limited)*

and

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

before:

**BOARD CHAIR: P.COLGATE**  
**BOARD MEMBER: B. JERCHER**  
**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: 200533982**

**LOCATION ADDRESS: 3633 WESTWINDS DRIVE NE**

**FILE NUMBER: 72428**

**ASSESSMENT: \$26,020,000.00**

This complaint was heard on 4rd 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.

[2]

### **Preliminary Matter:**

[3] The preliminary matter raised in File Number 72218, Roll Number 201599321, 540 16 Avenue NE was a request for the presentations on the capitalization rate, the resulting questions and the decision be carried forward to seven 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

[4] The Board accepted the request of the Respondent and the Complainant and will carry forward the evidence and the questions on the capitalization rate received for the hearing File Number 72218 to the following seven hearings:

File	Roll Number	Address
72254	010095206	7020 4 Street NW
72275	049010614	3575 20 Avenue NE
72356	037159902	4122 Brentwood Road NW
72428	200533982	3633 Westwinds Drive NE
72689	049007495	2853 32 Street NE
72826	201358751	9630 MacLeod Trail SE
73675	129181103	10505 Southport Road SW

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

[6] In the interest of continuity, the Complainant's submissions identified as C2 and C3 received for this hearing are also carried to the seven referenced hearings.

[7] The second 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

[8] 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

[9] 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.

[10] 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.

[11] There being no additional preliminary matters, the Board proceeded to the merit hearing.

#### **Property Description:**

[12] The subject property is a retail freestanding big box (Westwinds Superstore) and gas bar in the community of Westwinds, located at 3633 Westwinds Drive NE. The primary structure has an assessable area of 186,822 square feet, demised as 155,753 square feet of big box assessed at a rate of \$10.00 per square foot, 13,043 square feet of non-retail mezzanine space assessed at a rate of \$2.00 per square foot, 2,135 square feet of office space assessed at a rate of \$12.00 per square foot, 9,442 square feet of recreational space assessed at a rate of \$14.00 per square foot and 6,448 square feet of retail space assessed at a rate of \$18.00 per square foot. The gas bar is assessed at a rate of \$45,000.00. The capitalization rate applied to the property is 7.00%

#### **Issues:**

[13] The Complainant placed two issues before the Board for consideration:

Issue 1: The Capitalization rate is incorrect and should be increased to 7.5% from the current 7.0%, and

Issue 2: The big box rental rate should be reduced to \$8.00 per square foot from the current rate of \$10.00 per square foot.

**Complainant's Requested Value: \$20,220,000.00**

**Board's Decision:**

[14] 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.

[15] The Decision of the Board was to confirm the assessment to **\$26,020,000.00**

**Legislative Authority, Requirements and Considerations:**

[16] 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.

[17] 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.

[18] 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, it 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: Capitalization Rate****Position of the Parties****Complainant's Position:**

[19] The Complainant introduced into evidence a 2013 "Freestanding Retail Capitalization Study" of nine (9) sales occurring between January 11, 2011 and April 17, 2013. The analysis produced an average capitalization rate of 7.40% and a median capitalization rate of 7.39%. The table submitted showed: (C1, Pg. 31)

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate
Valuation	Date --	July 1, 2012 --	Assessment	Year 2013					
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	840,500	\$790,000	\$58,845	7.45%
20076255	1323 Centre St. NW	11-Jan-2012	15,469	1972	A-	\$5,040,000	\$4,775,000	\$352,891	7.39%
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	\$1,500,000	\$1,700,000	\$105,532	6.21%
076051309	3515 17 Ave SE	28-Nov-2011	11,700	1960	C-	\$1,160,000	\$1,040,000	\$81,664	7.85%
115010407	7404 Ogden Rd SE	6-Sep-2011	1,530	1955	C	\$1,040,000	\$1,085,000	\$87,802	8.09%

039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	\$1,410,000	\$1,440,000	\$98,826	6.86%
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	\$1,360,000	\$1,425,000	\$95,557	6.71%
<b>Valuation</b>	<b>Date -</b>	<b>July 1,</b>	<b>2011 -</b>	<b>Assessment</b>	<b>Year 2012</b>				
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	\$1,180,000	\$850,000	\$74,854	8.81%
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	\$1,430,000	\$1,400,000	\$101,383	7.24%
								Average	7.40%
								Median	7.39%

[20] The Complainant submitted documentation for the calculation to determine the capitalization rates for each of the sales. (C1, Pg. 33-41) The Complainant noted that for the property at 7404 Ogden Road SE it had to create an Income Approach valuation to determine the capitalization rate as the property was currently assessed on a Cost Approach.

[21] The Complainant submitted an Assessment to Sales Ratio (ASR) analysis based upon a 7.5% capitalization rate which indicted an average ASR of 1.007 and a median ASR of 0.984. The table submitted showed: (C1, Pg. 44)

Roll Number	Address	Sale Date	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate	Current ASR	Recalculated wit 7.5%	Revised ASR
<b>Valuation</b>	<b>Date --</b>	<b>July 1,</b>	<b>2012 --</b>	<b>Assessment</b>	<b>Year</b>	<b>2013</b>			
08126459	2639 17 Ave SW	17-Apr-2012	840,500	\$790,000	\$58,845	7.45%	1.03	\$784,500	0.99
20076255	1323 Centre St. NW	11-Jan-2012	\$5,040,000	\$4,775,000	\$352,891	7.39%	1.06	\$4,700,000	0.98
069048908	1435 9 Ave SE	20-Dec-2011	\$1,500,000	\$1,700,000	\$105,532	6.21%	0.88	\$1,400,000	0.82
076051309	3515 17 Ave SE	28-Nov-2011	\$1,160,000	\$1,040,000	\$81,664	7.85%	1.12	\$1,080,000	1.04
115010407	7404 Ogden Rd SE	6-Sep-2011	\$1,040,000	\$1,085,000	\$87,802	8.09%	0.96	\$1,390,000	1.28
039035902	6331 Bowness Rd NW	31-Aug-2011	\$1,410,000	\$1,440,000	\$98,826	6.86%	0.98	\$1,310,000	0.91
059077503	321 19 Street NW	26-Jul-2011	\$1,360,000	\$1,425,000	\$95,557	6.71%	0.95	\$1,270,000	0.89
<b>Valuation</b>	<b>Date -</b>	<b>July 1,</b>	<b>2011 --</b>	<b>Assessment</b>	<b>Year</b>	<b>2013</b>			
046043402	126 16 Ave NE	1-Apr-2011	\$1,180,000	\$850,000	\$74,854	8.81%	1.39	\$998,000	1.17
046158101	2803 Centre St. NW	11-Jan-2011	\$1,430,000	\$1,400,000	\$101,383	7.24%	1.02	\$1,350,000	0.96
					Average	7.40%	1.047		1.007
					Median	7.39%	1.021		0.984

[22] The Complainant argued the resulting ASR's, using a capitalization rate of 7.5% produced a better result than the City of Calgary which produced an average ASR of 1.047 and a median ASR of 1.021

[23] The Complainant submitted extensive documentation for each of the sales submitted in the form of photographs, Commercial Edge documents, RealNet Canada documents, City of Calgary Assessment Summary Reports, City of Calgary Non-Residential Properties – Income Approach Valuation reports, Land title documents, transfer documents and Corporate Searches. (C2, Pg. 15-276)

[24] The Complainant submitted argument that the City of Calgary was inconsistent in its rejection of sales presented in the Complainant's submission and that the City of Calgary in fact used sales which fell under their reasons for exclusion.

[25] The first example, 520 17 Avenue SW, was shown to be a non-brokered sale that was purchased by the owner of an adjacent property for the purpose of expansion. The Complainant submitted the "2013 Beltline Retail Capitalization rate Summary" which used the sale in its analysis

[26] The second example was the sale of 90 Cranleigh Drive SE, which the City of Calgary used in its "2013 Strip Centre Capitalization Rate Summary". The Complainant provided a copy of the City of Calgary 'Non-residential Property Sale Questionnaire which indicated the sale was not conducted through a broker. (C2, Pg. 307-315)

[27] The Complainant presented three industrial properties, included in the City of Calgary's "Non-Residential Industrial Sales", which showed the inconsistent application of the 'exclusion rules'.

[28] Contrary to the City of Calgary argument for the exclusion of sales which had additional income due to signage, the sale at 5420 53 Avenue SE was determined by the City of Calgary to be a valid sale and used in analysis. This was despite a comment on the RealNet document which states, "Discussions with representatives of the vendor indicated that the property collects approximately \$29,400 in revenue from Telus Towers, and Patterson Sign on contracts that were recently renewed". (C2, Pg. 330-332)

[29] A second sale at 4020 9 Street SE, used by the City of Calgary in its industrial analysis, was shown by RealNet as a non-brokered sale as "this transaction involved the purchase of the property by one of the existing tenants". (C2, Pg. 333-335)

[30] A third sale at 9232 Horton Road SW was stated by RealNet as "At the time of inspection the building was vacant". The Complainant argued this was contrary to the City of Calgary statement that vacant properties should not be utilized in any analysis. (C2, Pg. 336-338)

[31] The Complainant put forward a final argument against the City of Calgary exclusion of a sale which included income from signage. The Complainant entered the City of Calgary "2013 Neighbourhood, Community Centre capitalization Rate Summary", highlighting the sales at 3320 Sunridge Way NE and 999 36 Street NE. Rent rolls for the two properties indicated income from sign rent from the tenants. (C2, Pg. 339-350)

### **Respondent's Position:**

[32] The Respondent submitted a rebuttal to the Complainant's capitalization rate analysis, presenting arguments as to why a number of sales should be excluded or the Complainant used

incorrect values in the analysis.

[33] The Respondent argued the sale at 7404 Ogden Road SE should be excluded for a number of reasons. (R1, Pg. 27-35) The Respondent noted the sale was for a gas bar with a Subproperty Use of CM0711 – Vehicle/Accessories – Convenience Store Gas Bar. This designation was different from that of the subject property classified as a CM0201 – Retail Freestanding. The properties were from two different property groups and assessed using a different method, a Cost Approach versus an Income Approach. The Respondent also argued that the Complainant, when creating an Income Approach, had incorrectly applied the typical rate from 2013, at \$95,000.00 for the gas bar, in place of the 2012 gas bar rate of \$70,000.00 which would apply to the property for a sale on September 6, 2011.

[34] The Respondent challenged the use of the sale at 2639 17 Avenue SW for two reasons. The Respondent noted the sale was not conducted through a broker as supported by the RealNet document and response to the "Non-Residential Property Sale Questionnaire". The Respondent further stated the sale should be rejected as there was additional income generated for this property which was not recognized in the Net Operating Income (NOI), specifically income from a lease for the placement of billboards on the roof of the structure. The photograph on the RealNet document showed the billboards and a copy of "Property Lease Agreement" showed an additional income of \$12,000.00 per year that was not captured in the NOI based on typical rental rates. The Respondent argued this represented an amount equal to 20% of the NOI for the property. The Respondent argued a purchaser would take this additional income into consideration when making an offer to purchase. (R1, Pg.39-68)

[35] For the sale of 1435 9 Avenue SE on December 20, 2011, the Respondent argued the Complainant had used the NOI for roll year 2013 while the City of Calgary used the NOI of roll year 2012. The Respondent stated the procedure used by the City of Calgary was to apply the typical rates and variables determined in which the sale occurred. For the sale of December 2011 the NOI used should be based upon the 2011 typical rates and therefore the NOI for roll year 2012. The Respondent also noted the property had undergone renovations both pre- and post sale of the property, as stated in the RealNet document. (R1, Pg.92-109 and 245-252)

[36] The Complainant's analysis for the sale at 3515 17 Avenue SE was challenged by the Respondent as the analysis was based upon the NOI for roll year 2013, when the sale was November 2011. As previously stated the City of Calgary would use the NOI determined for the roll year 2012. The Respondent also noted the sale did not use a broker and the response to the "Non-Residential Property sale Questionnaire" indicated the sale was not an arms-length transaction. The Respondent notes both these factors raised a flag to the use of the sale. (R1, Pg. 110-132)

[37] The Respondent, while also using the sales at 6331 Bowness Road NW and 321 19 Street NW, disputed the Complainant's use of the NOI for roll year 2013 for the sales occurring in July and August 2011, instead of the NOI for roll year 2012. (R1, Pg.133-165)

[38] The Respondent disputed the use of the sale at 126 16 Avenue NE as the sale did not employ a broker and that RealNet noted, "At the time of sale the building was completely vacant" and "It was our understanding that the Purchaser intended to use this property for their own bridal wear business". The Respondent argued with no tenant and the purchaser intending to occupy the premise the determining factor in the purchase was not as an income property and thus the sale price was not reflective of an income generating property. Further, as an owner occupied premise there was no income on which to base a market value.(R1, Pg.166-185)

[39] The sale at 2803 Centre Street NW was argued by the Respondent as unsuitable for a

capitalization analysis. The Respondent argued that as the property was purchased vacant, with the intention of the purchaser was to convert the property to an office from its previous retail use; there was no NOI to add in the establishment of the market value. (R1, Pg. 213-234)

[40] The Respondent submitted a revised capitalization rate study and ASR study based upon the sales submitted by the Complainant. It was the argument of the Respondent that when the correct NOI's and typical rates were used the resulting capitalization rates showed an average rate of 6.87% and a median of 7.24%, which were more supportive of the current rate of 7.00% than the requested rate of 7.5%. (R1, Pg. 244)

[41] The Respondent showed that the resulting ASR's for the Complainant's sales would have an average of 1.047 and a median of 1.021 with a capitalization rate of 7.0%. If the capitalization rate was set at 7.5% the average is 0.997 and the median is 0.984.

[42] The Respondent submitted the three City of Calgary "2013 Freestanding Capitalization Rate Summary" reports. Version one capitalization study consisted of three sales and used the NOI for roll year 2013 for the analysis. Version two capitalization study consisted of the same three sales but changed the NOI to roll year 2012 for two of the sales. The third version and the basis for the Respondent's defence of the capitalization rate consists of four sales using the NOI for roll years 2012 and 2013, depending upon date of the sale registration. (R1, Pg. 302, 321, 311)

[43] The final version of the Respondent's "2013 Freestanding Cap Rate Study with Sale Year NOI – Including Additional Sale" is presented: (R1, Pg. 322)

Roll Number	Address	Actual Year of Construction (YOC)	Sale Registration Date	Sale Price	Sale Year Assessable Area (square feet)	Sale Year Assessed Net Operating Income (NOI)	Capitalization Rate
059077503	3321 19 Street NW	1945	2011-07-26	\$1,425,000	4,064	\$91,267	6.40%
039035902	6331 Bowness Road NW	1977	2011-08-31	\$1,440,000	15,425	\$100,028	6.95%
200076255	1323 Centre Street NW	1972	2012-01-11	\$4,775,000	15,469	\$352,891	7.39%
069048908	1435 9 Ave SE	1950	2011-12-20	\$1,700,000	7,870	\$73,833	4.34%
						Median	6.68%
						Average	6.27%
						Assessed	7.00%

[44] The Respondent argued the resulting analysis supported the current capitalization rate of 7.00%.

[45] The Respondent submitted an ASR study of the four sales in the City of Calgary capitalization study that determined the ASR was better with a 7.00% capitalization rate than for the 7.50% rate requested by the Complainant. (R1, Pg. 331)



Roll Number	Address	2013 Assessment	Sale Registration Date	Sale Price	Sale Year Assessed Net Operating Income (NOI)	Capitalization Rate	ASR with 7.00% Cap Rate	ASR with 7.50% Cap Rate
059077503	3321 19 Street NW	\$1,360,000	2011-07-26	\$1,425,000	\$91,267	6.40%	0.954	0.985
039035902	6331 Bowness Road NW	\$1,410,000	2011-08-31	\$1,440,000	\$100,028	6.95%	0.979	0.828
200076255	1323 Centre Street NW	\$5,040,000	2012-01-11	\$4,775,000	\$352,891	7.39%	1.055	0.915
069048908	1435 9 Ave SE	\$1,500,000	2011-12-20	\$1,700,000	\$73,833	4.34%	0.882	0.894
					Median	6.68%	0.97	0.90
					Average	6.27%	0.97	0.91

[46] The Respondent submitted into evidence a copy of the Altus Group's "Community-Neighbourhood Shopping Centre Capitalization Rate Analysis" which it was argued used the year of sale typical rates and resulting NOI to determine the requested capitalization rate, unlike the request in their presentation to use future years rates. Specifically the sales in 2012 where the Complainant used the NOI for roll year 2013. The Respondent argued the Complainant's agency was inconsistent in its approach, changing their methodology to obtain a lower value. The Respondent argued the City of Calgary was consistent in its methodology and the application of the NOI in its analysis. (R1, Pg. 333-356)

[47] The Respondent submitted three alternative analysis of the capitalization rate, using different combination of sales. The Respondent noted all three approaches supported the current rate of 7.00%. (R1, Pg. 384-386)

#### **Complainant Rebuttal:**

[48] The Complainant submitted additional evidence for the inclusion of non-brokered sales. The Complainant entered into evidence cases of the acceptance by a Board of a non-brokered sale.

[49] For the sale at 520 17 Avenue SW, shown to be a non-brokered sale that was purchased by the owner of an adjacent property for the purpose of expansion, the Complainant submitted a Composite Assessment Review Board (CARB) decision which accepted the sales as valid and usable in analysis – CARB 72729P-2013. (C3, Pg. 48-54)

#### **Board's Reasons for Decision:**

[50] The Board in reaching its decision looked to the evidence submitted by both parties with respect to the sales submitted. The Board noted there were four sales in common for both parties – 1323 Centre Street NW, 1435 9 Avenue SE, 6331 Bowness Road NW and 321 19 Street NW. However, the parties diverge at this point with differences for the NOI and the resulting capitalization rate for three of the sales.

[51] The Board reviewed each of the sales presented in order to determine the suitability of

the sale for a capitalization study. As previously stated four sales were common for the two parties and were accepted by the Board. The additional five sales submitted by the Complainant were reviewed – 2639 17 Avenue SW, 3515 17 Avenue SE, 7404 Ogden Road SE, 126 16 Avenue NE and 2803 Centre Street NW.

[52] The Board found the sale at 7404 Ogden Road SE was dissimilar from the other sales as it was a gas bar, currently assessed on a cost approach. The Board looked to the Valuation Approach, Property Use and Subproperty Use designations for each of the sales and found:

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	Valuation Approach	Property Use	Subproperty Use
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	Income	Commercial	CM0201 Retail - Freestanding
20076255	1323 Centre St. NW	11-Jan-2012	15,469	1972	A-	Income	Commercial	CM0201 Retail - Freestanding
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	Income	Commercial	CM0201 Retail - Freestanding
076051309	3515 17 Ave SE	28-Nov-2011	11,700	1960	C-	Income	Commercial	CM0201 Retail - Freestanding
115010407	7404 Ogden Rd SE	6-Sep-2011	1,530	1955	C	Cost	Commercial	CM0711 Vehicle/Accessories - Convenience Store Gas Bar
039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	Income	Commercial	CM0201 Retail - Freestanding
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	Income	Commercial	CM0201 Retail - Freestanding
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	Income	Commercial	CM0201 Retail - Freestanding
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	Income	Commercial	CM0201 Retail - Freestanding

[53] The Board found the sales at 7404 Ogden Road was not a comparable property and not suitable in the capitalization rate analysis presented by the Complainant. The Board noted the property was assessed based upon the Cost Approach and the Complainant was required to determine an assessment for the property using an Income Approach. The Board found the removal of this sale resulted in revised capitalization rates of 7.315% average and 7.125% median, no longer a clear support for the requested 7.5% capitalization rate.

[54] As the onus is on the Complainant to support its position the Board reviewed each of the sales, as presented in the Complainant's table of C1, Pg 31.

- 2639 17 Avenue SW: Sold April 2012. The Board accepted this sale as valid for the capitalization analysis. The Board did not accept the Respondent's argument that a sale should be excluded when a broker was not involved in the transaction. The argument with respect to the income from the signage was not accepted, as evidence was presented this was not a unique situation as other properties also generate revenue from signage but ignored in City of Calgary in its analysis of revenues.
- 1323 Centre Street NW: Sold January 2012. The Board accepted this sale as it was the only sale on which both parties agreed.

- 1435 9 Avenue SE: Sold December 2011. The Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013. The Board found the Complainant's agency was inconsistent in its selection of the roll year for the NOI used in its analysis for determining the capitalization rate. The selection of the roll year NOI would be based on obtaining the lowest value, not on a supportable and consistent approach.
- 3515 17 Avenue SE: Sold November 2011. The Board did not accept this sale as the respondent to the ARFI indicated it was not an arm-length transaction. No evidence was presented to show an error had been made in the selection of a "NO" response.
- 6331 Bowness Road NW: Sold August 2011. As previously stated, the Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013.
- 321 19 Street NW: Sold July 2011. As previously stated, the Board accepted this sale but did not accept the NOI used by the Complainant, based upon roll year 2013.
- 126 16 Avenue NE: Sold April 2011. The Board accepts the sale as valid but placed less weight on the resulting capitalization rate as the sale occurred more than a year prior to the valuation date of July 1, 2012.
- 2803 Centre Street NW: Sold January 2011. The Board accepts the sale as valid but placed less weight on the resulting capitalization rate as the sale occurred almost a year prior to the valuation date of July 1, 2012.

[55] Based on the findings for each sale, the Board determined a capitalization rate based upon the seven accepted sales.

Roll Number	Address	Sale Date	Area (sf)	YOC	Quality	2013 Assessment	Sale Price	Net Operating Income (NOI)	Capitalization Rate
08126459	2639 17 Ave SW	17-Apr-2012	3,760	1947	C+	840,500	\$790,000	\$58,845	7.45%
20076255	1323 Centre St. NW	11-Jan-2012	15,469	1972	A-	\$5,040,000	\$4,775,000	\$352,891	7.39%
069048908	1435 9 Ave SE	20-Dec-2011	7,870	1950	A-	\$1,500,000	\$1,700,000	\$73,833	4.34%
039035902	6331 Bowness Rd NW	31-Aug-2011	15,426	1977	C+	\$1,410,000	\$1,440,000	\$100,028	6.95%
059077503	321 19 Street NW	26-Jul-2011	4,200	1945	A-	\$1,360,000	\$1,425,000	\$91,267	6.40%
								Average	6.51%
								Median	6.95%
046043402	126 16 Ave NE	1-Apr-2011	10,132	1957	C	\$1,180,000	\$850,000	\$74,854	8.81%
046158101	2803 Centre St. NW	11-Jan-2011	4,020	1979	A-	\$1,430,000	\$1,400,000	\$101,383	7.24%
								Average – all sales	6.94%
								Median – all sales	7.24%

[56] The Board found the resulting capitalization rates determined through the two analyses were more supportive of the current rate of 7.00% than the requested 7.50%.

## **ISSUE 2: Big Box Rental Rate**

### **Position of the Parties**

#### **Complainant's Position:**

[57] 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	Walmart	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 Sarcee 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	Walmart	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	Walmart	Rosscarrok	1972	Westbrook Mall	Community	DC	B	158,022	1-Dec-03	\$7.47	\$2.15	20
8888 Country Hills Bv NW	Walmart	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		

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

[59] 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).

[60] 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)

[61] The Complainant submitted a document from First Capital Holdings (ALB) Corporation which indicated a lease for the Wal-Mart premise 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.

[62] 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.

[63] 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)

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

[65] 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)

#### Respondent Position:

[66] 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

[67] 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.

[68] 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)

[69] 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)

[70] 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)

[71] 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 Decision confirming the business rate at \$9.00, on the subject property. (R1, Pg. 278-284)

[72] 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.

[73] 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 ..."

[74] 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.

[75] 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".

[76] 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)

[77] The third property the Respondent wanted excluded was for the Wal-Mart located at 1200 37 Street SW, the 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.

[78] 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.

[79] 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)

[80] 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.

[81] The Respondent argued the lease at 12330 Symons Valley Road NW was valid even though the tenant, RONA, had vacated the premise. In an email from Paul Sullivan of BC Appraisers He responded to an inquiry from Brenda Thompson of the City of Calgary 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)

[82] 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**

[83] With respect to the Wal-Mart located at 1221 Canyon Meadows Drive SE, the complainant restates its opinion the lease was a new, 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)

[84] 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)

[85] 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 2:**

[86] 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.

[87] 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.

[88] The Complainant questioned the inclusion of the leases for the RONA premise 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.

[89] 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.

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.

[90] 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 to in design 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.

[91] 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 not supportive of the Complainant's request for \$8.00 per square foot.

[92] 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*).

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

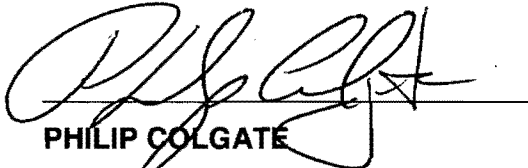


**BOARD DECISION**

[94] For the reasons cited for each issue, the Board found insufficient evidence to support a change to the assessment.

[95] The Board confirmed the assessment at **\$26,020,000.00**

**DATED AT THE CITY OF CALGARY THIS** 6<sup>th</sup> **DAY OF** November **2013.**



**PHILIP COLGATE**  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Rebuttal
4. C4	Complainant Disclosure
5. C5	Complainant Rebuttal
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.*

**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 Store	Income Approach	Capitalization Rate Net Market Rent/Lease Rates