

## **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:

***RIOCAN HOLDINGS INC.  
C/O RIOCAN MANAGEMENT INC.  
(As represented by Altus Group)  
COMPLAINANT***

and

***THE CITY OF CALGARY, RESPONDENT***

before:

***W. Krynski, PRESIDING OFFICER  
Y. Nesry, BOARD MEMBER  
P. Charuk, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>711102004</b>
<b>LOCATION ADDRESS:</b>	<b>4307 130 Avenue SE</b>
<b>FILE NUMBER:</b>	<b>72926</b>
<b>ASSESSMENT:</b>	<b>\$108,240,000</b>

This complaint was heard on 1st 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:

- *B. Neeson*
- *K. Fong*

Appeared on behalf of the Respondent:

- *R. Farkas*
- *E. D'Altorio*

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

- [1] There were no concerns from either party, respecting the panel representing the Board as constituted.
- [2] Both parties requested that all capitalization rate (cap. rate) evidence and argument presented at Hearing #72528 be cross-referenced to the following Hearings: 72358; 72548; 72550; 72655; 72657; 72926; 72927; 72929; 72931; 72933; 72936; 72937; 73682; 73683; 72429; 72427. The Board concurred with the request.
- [3] Both parties requested that all Grocery Store "A" Quality rental rate evidence and argument presented at Hearing 72657 be cross-referenced to the following Hearings: 72926; 72548. The Board concurred with the request.
- [4] As no further jurisdictional or procedural matters were raised at the outset of the Hearing, the Board proceeded to hear the merits of the complaint.

**Property Description:**

- [5] The subject property comprises a B+ quality Retail Power Centre, known as South Trail Crossing, located at 4307 130 Avenue SE. Consisting of 18 separate buildings constructed between 1999 and 2008, the property is situated in the south-east community of McKenzie Towne. Total net rentable area for the subject property is 313,275 square feet (sf). The improvements are situated on a 30.69 acre parcel of land which is zoned Commercial – Regional 3.

**Issues:**

- [6] The Complainant addressed the following issues at the Hearing:
  - The assessment is in error, as the capitalization rate applied in the Income Approach valuation is incorrect at 6.25%. The capitalization rate applied should be 6.75%.
  - The assessment is incorrect, as the "A" Quality Grocery Store rental rate is too high at \$17.00 psf. The correct rate should be \$15.00 psf.

**Complainant's Requested Value: \$98,840,000**



## 2013 Altus Power Centre Capitalization Rate Summary - Method II

<u>Power Centre Name</u>	<u>Address</u>	<u>AYOC</u>	<u>Quality</u>	<u>Sale Date</u>	<u>Area</u>	<u>N.O.I.</u>	<u>Sale Price</u>	<u>C/R</u>
HSBC Bank	95 Crowfoot Cr. NW	1997	B	13-12-2010	7,256	208,613	\$2,638,000	7.91%
Crowfoot Village	20/60 Crowfoot Cr. NW	1985	B	30-4-2012	60,612	2,107,227	\$31,250,000	6.74%
Crowfooot Corner	140 Crowfoot Cr. NW	1981-1991	B	28-5-2012	51,048	1,892,009	\$35,500,000	5.33%
Mean:								6.66%
Median:								6.74%

- [12] It was noted that both Methods I and II incorporated the same three sales as those used in the City analysis. However, a difference lies in the manner in which the Complainant calculates the Net Operating Income (NOI) for the sale at 95 Crowfoot Crescent NW, as compared to the City's calculated NOI. There is no dispute with respect to the calculated NOI's for the other two sales.
- [13] Specifically, the disputed NOI's vary due to differing opinions as to the typical market rent attributable to the sale as of the sale date. The City's NOI calculations are replicated in the Complainants submission [C-2; Pg. 24], indicating an NOI of \$167,560, which is predicated on a retail bank rate of \$32.00 psf., and basement rate of \$2.00 psf. The Complainant's Method I NOI calculations [C-2; Pg.5], reflect an NOI of \$209,420, based on a retail bank rate of \$40.00 psf. and a basement rate of \$2.00 psf. The same Method II calculations [C-2; Pg. 118] yield an NOI of \$208,613, predicated on a \$38.00 psf. retail bank rate, and an \$8.00 psf. basement rate.
- [14] In support of the suggested typical rental rates for the referenced sale property of \$40.00 psf. (Method I) and \$38.00 psf. (Method II) the Complainant references an analysis of 7 retail bank leases [C-2; Pg. 27], from various Power Centres throughout the City. The analysis indicates average and median lease rates of \$38.29 psf. and \$40.00 psf. respectively. This, the Complainant argues, supports the typical market rents as suggested, in calculating the capitalization rate for the 95 Crowfoot Crescent NW sale.
- [15] Further to this, the Complainant referenced a lease [C-2; pg. 149] respecting the sale property that was signed some 18 months after the sale date, wherein the bank space was leased for \$38.00 psf. Notwithstanding the fact that the lease was substantially post facto to the sale, it is the Complainant's position that the market had not changed significantly during this period and the lease is a good indicator of value for the space.
- [16] The Complainant summarized that method I reflected a mean capitalization rate of 6.62% and a median capitalization rate of 6.78%, while method II yielded a mean capitalization rate of 6.66% and a median capitalization rate of 6.74%. Either method, it was argued, indicates a capitalization rate of 6.75% as being appropriate in the calculation of the subject assessment.
- [17] Additionally, a document identified as exhibit C-3 Rebuttal Submission was submitted in support of the capitalization rate argument, as well as prior Composite Assessment Review Board (CARB) Decisions, for the Board's consideration.
- [18] Based on all the foregoing, the Complainant submits that a 6.75% capitalization rate results in a better market value assessment.

**Respondent's Position:**

- [19] The Respondent provided a document (R-1) in support of the current assessment.
- [20] In addition to various maps, photos, etc. of the subject property, Property Detail Reports and Assessment Explanation Supplements were provided for the subject property, as well as for the three sales utilized by the City.
- [21] The Respondent provided an analysis chart titled "2013 Power Centre Capitalization Rate Study" [R-1, Pg. 112]. The summary is replicated below:

**2013 POWER CENTRE CAPITALIZATION RATE SUMMARY**

<u>Roll Number</u>	<u>Address</u>	<u>AYOC</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Area</u>	<u>NOI</u>	<u>C/R</u>
200388189	95 Crowfoot Cr. NW	1997	13-12-2010	\$2,638,000	7,256	167,560	6.35%
016203507 & 016203606	20/60 Crowfoot Cr. NW	1985	30-4-2012	\$31,250,000	60,612	2,118,208	6.78%
175036508	140 Crowfoot Cr. NW	1991	28-5-2012	\$35,500,000	51,048	1,820,286	5.13%
<b>MEDIAN :</b>							<b>6.35%</b>
<b>AVERAGE :</b>							<b>6.09%</b>
<b>ASSESSED :</b>							<b>6.25%</b>

- [22] The Respondent advised that the three sales listed above were also included in the Complainant's analysis. It was noted that two of the sales are reasonably current, (April and May, 2012), While one (December, 2010), was 18 months from the valuation date. The sales analysis reflects median and average capitalization rates of 6.35% and 6.09% respectively, which support the assessed 6.25% capitalization rate.
- [23] Further to this, the Respondent advised that the typical NOI for the sale at 95 Crowfoot Crescent NW was predicated on a \$32.00 psf. rental rate, which reflected the typical rates applied by the City for the 2011 assessment year, and consequently, the typical rental rate as at the Dec. 2010 sale date. This, the Respondent explained, was consistent with the way in which the City determines typical NOI's for sales in Capitalization Rate Analyses. The Respondent argued that the Altus methodology was not consistent with the City's methodology of calculating typical NOI's, wherein assessment data from the valuation year of the year of sale is applied (ie: 2010 sale date = 2010 valuation year data from 2011 assessment year). The City further argued that the Altus method was inconsistent within itself, as Altus calculates the typical rental rate, by doing their own city-wide rent analysis, and then, rather than doing city-wide analyses for the other coefficients also, (i.e. vacancy, operating costs, non-recoverables, etc.), they simply adopt the City's typicals for those coefficients.
- [24] In support of the \$32.00 psf. typical rent rate, the Respondent submitted a chart [R-1; Pg. 45] containing three Leases within the Crowfoot Power Centre, one of which was from the sale property at 95 Crowfoot Crescent NW. The analysis yielded an average rental rate of \$31.50 psf. and a median rental rate of \$31.50 psf. While the leases were dated, the Respondent explained that the analysis was consistent with the methodology applied in the valuation of all Power Centres for the 2011 assessment year. The analysis, the Respondent submits, supports the \$32.00 psf. typical rent used in the sale analysis of 95 Crowfoot Crescent NW.

- [25] Additionally, the Respondent submitted a summary chart [R-1; Pg.43] containing a selected list of fifteen bank leases from various Power Centres in Calgary as an indication of typical bank lease rates in Power Centres. It was stressed that the list should not be interpreted as a lease analysis study, but was merely a sampling of what was considered to be "typical" bank leases. While two of the leases were \$42.00 psf. and \$45.00 psf., the Assessor's point was that thirteen of the fifteen leases were below \$40.00 psf., and the median was \$32.50 psf. The point here, it was argued, is that the Complainant's suggested typical rate of \$40.00 psf. was clearly not supported.
- [26] The Respondent referenced Industry Publications: the *CBRE Canadian Cap Rate Survey* as well as the *Altus Insite Investment Trends Survey* [R-1; Pgs. 96 to 99]. The CBRE Report indicated capitalization rates for Power Centres in Calgary to be 5.50% to 6.0%, while the Altus Insite report showed a Power Centre capitalization rate of 5.70%. It was noted that the Industry Reports reflected capitalization rates even more aggressive than those applied by the City.
- [27] Additionally, the Respondent argued that the Altus method II cap. rate calculations are incorrect, as they are predicated on an out-dated (1999) version of the AAVG manual. They advise that a more current (2012) version of the manual now exists, portions of which are replicated in the Respondent's evidence [R-1; Pgs. 27 to 33].
- [28] Finally, in support of their position the Respondent references a number of prior year CARB Decisions [R-1; Pgs. 122-147] supporting the City's methodology of determining Power Centre capitalization rates. In addition to this, the Respondent referenced a list of eight 2013 CARB Decisions [R-1; Pg. 121], wherein the 6.25% capitalization rate was confirmed.

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

- [29] There was insufficient market evidence from the Complainant to convince the Board that a variance to the capitalization rate is justified.
- [30] The Board has some concerns with the Complainant's reference to the outdated version of the AAVG. Notwithstanding this, the Board notes that the AAVG is merely a guide for Assessors. It is neither regulated nor legislated, and as such, it has no legal bearing.
- [31] The Board reviewed in depth the three sales put forward by both the Complainant and the Respondent, and is of the opinion that minimal weight be put on the sale at 95 Crowfoot Crescent NW. The reason being that there was considerable conflicting evidence from the two parties as to the appropriate typical rental rate to be applied in the calculation of the capitalization rate for this sale. Notwithstanding this, the Board considers the small size of this property (7,256 sf.), not to be reflective of typical commercial retail buildings within Power Centres. The cornerstone of capitalization rate analysis is the selection of truly similar sale properties. To do otherwise puts into question the accuracy of the ensuing results. Additionally, the sale is further removed (18 months) from the valuation date.
- [32] The remaining two sales, while being less than desirable from a quantity of data perspective, were nevertheless, the only market data available, and are very current, having occurred within two months of the valuation date. The sales, with capitalization rates of 6.78% and 5.13% yielded mean and median capitalization rates of 5.96%. The sales support the assessed 6.25% capitalization rate.

- [33] The Board notes that the Industry publications referenced by the Respondent support the assessed 6.25% capitalization rate.
- [34] Both parties submitted prior CARB Decisions relative to their respective positions. Having reviewed the Decisions, the Board would advise that it is not bound by previous Decisions. While the Decisions are of interest, and may be beneficial in providing some direction based on the Board's prior findings regarding specific issues, it is the Board's position that its Decisions are ultimately predicated on the evidence and argument as presented at the subject Hearing.
- [35] In order for this Board to vary the assessed capitalization rate, it is crucial that the Complainant provide market evidence that the proposed changes result in a better or more accurate assessment. In this instance, no such evidence was put forward.

## **Issue 2: Grocery Store Rental Rate for A Quality stores**

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

- [36] The Complainant is arguing that the assessed grocery store rental rate of \$18.00 psf. is too high. Altus is requesting that the A quality grocery store rate be reduced to \$15.00 psf.
- [37] In support of this position, the Complainant has provided a chart titled "A=Prime/Good location-Newer or Renovated Stores" [C-4; Pg. 7]

<b><i>Grocery Leasing Analysis</i></b>						
<b><i>'A=Prime/Good Location - Newer or Renovated Stores'</i></b>						
<b>Tenant</b>	<b>Civic Address</b>	<b>Shopping Centre</b>	<b>Area (Sf)</b>	<b>Rental Rate</b>	<b>Leasing Year</b>	<b>Term</b>
Canada Safeway	3625 Shaganappi Trail NW	Market Mall	43,026	\$8.40	2011	10
Canada Safeway	70 Shawville Blvd. SE	Shawnessy Village	51,978	\$10.47	2011	10
Calgary Co-op	1221 Canyon Meadows Drive SE	Deer Valley Marketplace	55,130	\$15.00	2011	20
Canada Safeway	100 Anderson Road SE	SouthCentre Mall	76,326	\$15.00	2011	5
Calgary Co-op	163 Quarry Park Blvd. SE	The Market at Quarry Park	45,358	\$26.45	2010	20
Sobeys Capital	356 Cranston Road SE	Cranston Market	41,334	\$19.00	2009	20
Canada Safeway	1600 85 Street SW	Aspen Landing	53,916	\$16.72	2009	25
Canada Safeway	9737 MacLeod Trail SW	Southland Crossing	44,293	\$13.50	2009	5
	Median	48,668	\$15.00			
	Mean	51,420	\$15.57			
	Weighted Mean	-	\$15.47			

- [38] Included in the chart is data respecting eight leases with start dates ranging from 2009 to 2011. Lease rates range from \$8.40 psf. to \$26.45 psf., with median, mean and weighted mean of \$15.00 psf., \$15.57 psf. and \$15.47 psf. respectively. The analysis, in the Complainant's opinion, implies a rate of \$15.00 psf. to be more appropriate to this category of property, than the \$18.00 psf. applied by the City.
- [39] Further to this, the Complainant submitted the City of Calgary summary titled "2013 Supermarket Rental Rate Analysis" [C-4; Pg. 5]. It was noted that the 4 leases provided

by the City were not representative of all the lease data available, as per the Altus analysis.

- [40] The Complainant acknowledged that the four City leases are also included in the Altus analysis. Additionally, the Complainant advised that the lease associated with the Aspen Landing comparable is reported at \$16.72 psf. in the Altus submission, while the City reports it at \$18.50 psf. The Complainant further explained that the discrepancy is due to Altus recognizing an area of free leased space, and grossing up the entire indicated leased area, results in an overall rate of \$16.72 psf.

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

- [41] The Respondent referenced City Submission R-1 and more specifically, the rental rate analysis titled "2013 Supermarket Rental Rate Analysis Revised" [R-1;Pg.139], as replicated below:

2013 Supermarket Rental Rate Analysis					
Address	Leased Area	Lease Rent Rate	Comm. Date Year	Comm. Date mo.	Lease Term
3625 Shaganappi Tr. NW	43,026	\$8.40	2011	7	10
163 Quarry Park Blvd. SE	45,358	\$26.45	2009	11	20
356 Cranston Rd. SE	41,334	\$19.00	2009	10	20
374 Aspen Glen Ld. SW	53,916	\$18.50	2009	9	25
	<b>3 Yr. Median :</b>	<b>\$18.75</b>			

- [42] The respondent acknowledged that the four leases are also included in the Altus analysis, and that the Aspen Landing lease rate of \$18.50 psf. was different from that of Altus's analysis at \$16.72 psf.
- [43] With respect to the Aspen Landing lease, the Respondent advised that the new information respecting total leased area came to the City at a very late time (June 2013), and as such, it was too late to change the data for the current assessment year. Notwithstanding this, the City argues that the ARFI received in 2012 made no reference to the free space alleged to be included in the lease, and the City rental analysis reflects the rate as reported by the owner on the ARFI.
- [44] With respect to the Altus lease at 70 Shawville Blvd. SE, the Respondent provided a copy of a rent roll [R-1; Pg. 142] indicating a 25 year lease with a start date of February 1, 1991, ending January 31, 2016. As such, it was the Respondent's opinion that the dated lease be excluded from the analysis.
- [45] With respect to the Altus Deer Valley Marketplace lease at 1221 Canyon Meadows Drive SE, [R-1; Pgs. 143 - 153], the Respondent provided information noting that in the City's opinion, the Co-op store is a B quality food store, and as such, should not be included with the A quality group.



**Board's Reasons for Decision:**

- [46] The Board is in agreement with the Complainant that the 1221 Canyon Meadows Drive SE lease is an A quality rather than a B quality grocery store and should be included in the A quality group analysis. The considerable renovations, along with classification of the shopping centre itself as an A quality supports the grocery store being an A quality.
- [47] With respect to the 70 Shawville Blvd. SE lease, the Board reviewed the Complainant's lease details [C-4; Pgs. 12 - 17], containing portions of what were purported to be the original lease documents as of 12/01/09 and 12/31/11 respectively. Indications are that the original lease was for a term of twenty years, commencing February 1, 1991 and ending January 31, 2011. The City evidence [R-1; Pg. 142] is a rent roll extract, showing the subject lease as commencing 02/01/91, with an end date of 01/31/16 and a rental rate of \$12.25 psf. Based on the foregoing, it is clear that at some point in time, the original lease at \$10.47 psf. was renegotiated to a rate of \$12.25 psf. and extended by five years to 01/31/16. The unknown is when did this take place? Based on the conflicting/lack of details, the Board has excluded the lease from the analysis.
- [48] With respect to 9737 MacLeod Trail SE, the Altus evidence [C-4; Pg. 45] includes a lease document dated June 9, 1988, showing a twenty year lease commencing May 15, 1989 and ending May 14, 2009. This was followed [C-4; Pg. 46] with a copy of a rent roll as of July 1, 2010, identifying the start date of May 15, 1989, ending May 14, 2014, and a lease rate of \$13.50 psf. Also included is a dated ARFI from 2008, re-iterating the lease start date of May 15, 1989 a twenty year term, and a rental rate of \$13.50 psf. City evidence included rent rolls dated July 1, 2012 and Sept. 1, 2011. [R-1; Pgs. 158, 159]. Both rent rolls reported lease terms of May 15, 1989 to May 14, 2014, and a rent rate of \$13.50 psf. Based on all the information, the Board concludes that a renewal/extension of the lease occurred, and the lease is included in the analysis.
- [49] With respect to the lease at 1600 85 Street SW (Aspen Landing), the Board is of the opinion that the lease should be excluded. The lease was included in both parties' analysis, but with differing values. Altus suggests a rate of \$16.72 psf., based on an area of 5,186 square feet paying \$0 rent. When blended with the area paying \$18.50 psf., the net rent to the entire rentable area is \$16.72 psf. The Respondent provided a rent roll dated January 1 to December 31, 2012 [R-1; Pg. 155], which indicates a lease rate of \$18.50. Further to this, Altus provided a letter from the property manager dated April 18, 2013, confirming the lease details, and overall rate of \$16.72 psf. [C-4; Pg.33]. While the City acknowledged the eventual receipt of the letter, it was argued that it came too late in the process to make changes. Furthermore, in reviewing the letter, the Board notes that a portion of the last paragraph appears to have been redacted, and has some concerns with respect to this. Given the conflicting/missing information respecting this lease, the Board has decided to exclude it from the analysis.
- [50] During oral testimony, the Assessor acknowledged that the Altus lease at 100 Anderson Road SE (Southcentre Safeway) was a valid lease, and should be included in the analysis.
- [51] Considering all the foregoing, the Board summarized the data for analysis as follows:

## Grocery Store Leasing Summary - A Quality

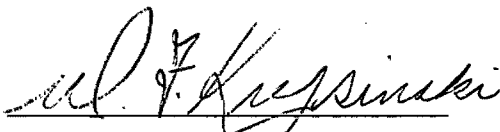
<u>Name</u>	<u>Area</u>	<u>Rate</u>	<u>Annual Rent</u>
Market Mall	43,026	\$8.40	\$361,418.40
Deer Valley	55,130	\$15.00	\$826,950.00
Southcentre	76,326	\$15.00	\$1,144,890.00
Quarry Park	45,358	\$26.45	\$1,199,719.10
Southland Crossing	44,293	\$13.50	\$597,955.50
Cranston	41,334	\$19.00	\$785,346.00
	305,467		4,916,279
	mean:	\$16.23	
	median:	\$15.00	
	Weighted Mean:	\$16.09	

- [52] The results indicate a mean rental rate of \$16.23 psf., a median rate of \$15.00 psf. and a weighted mean of \$16.09 psf. The Board places the most significance on the weighted mean result, as this process negates the influence on the data set of larger or smaller areas. It is the Board's position that the assessed A quality grocery store rate for the subject property should be reduced to \$16.00 psf.
- [53] Both parties submitted prior CARB Decisions relative to their respective positions. Having reviewed the Decisions, the Board would advise that it is not bound by previous Decisions. While the Decisions are of interest, and may be beneficial in providing some direction based on the Board's previous findings regarding specific issues, it is the Board's position that its Decisions are ultimately predicated on the evidence and argument as presented at the subject Hearing.
- [54] On review and consideration of all the evidence before it in these issues, the Board finds that, with respect to:
- **Issue 1: Capitalization Rate:** There was insufficient evidence to vary the assessment.
  - **Issue 2: Grocery Store Rental Rate:** The Board reduces the rental rate to \$16.00 psf.
- [55] The assessment is reduced to **\$107,490,000.**

DATED AT THE CITY OF CALGARY THIS

1<sup>st</sup>

DAY OF November 2013.



Walter F. Krynski

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure
2. R-1	Respondent Disclosure
3. C-2	Complainant Power Centre Retail – 2013 Capitalization Rate Analysis & Argument
4. C-3	Complainant 2013 Power Centre Cap Rate – 2013 Assessment Review Board - Rebuttal Submission
5. C-4	Complainant Grocery Leasing: A=Prime/good location-Newer or Renovated Stores
6. C-5	"A" Group Supermarkets: 2013 Assessment Review Board- Rebuttal Index

*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 USE**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Neighbourhood/Community Shopping Centre	<ul style="list-style-type: none"> <li>• Capitalization Rate</li> <li>• Grocery store Rental Rate</li> </ul>	