



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***2785528 Canada Inc., COMPLAINANT
(as represented by Altus Group)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
P. Pask, BOARD MEMBER
J. Pratt, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	175102102
LOCATION ADDRESS:	90 Crowfoot Way NW
FILE NUMBER:	74109
ASSESSMENT:	\$22,640,000

This complaint was heard on 10th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *K. Fong, Agent - Altus Group*

Appeared on behalf of the Respondent:

- *S. Turner, Assessor – City of Calgary*
- *B. Thompson, Assessor – City of Calgary*

Procedural or Jurisdictional Matters:

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

[2] Both parties requested that the capitalization rate evidence, rebuttal, all questions and answers and closing statements related to the capitalization rate be carried forward from File No. 75781 to other files being heard subsequent to that hearing. The Board agreed to carry forward all the capitalization rate related evidence and argument from File No. 75781 to the following files, including the subject file.

File No.	Roll No.	Municipal Address
74095	016202202	101 Crowfoot Way NW
74508	016203309	35 Crowfoot Way NW
75529	016203507	20 Crowfoot Cr. NW
75530	016203606	60 Crowfoot Cr. NW
74106	016208902	46 Crowfoot Cl. NW
74137	016213803	75 Crowfoot Way NW
74139	175034008	260 Crowfoot Cr. NW
74112	175036607	156 Crowfoot Gate NW
74111	175101807	70 Crowfoot Way NW
74109	175102102	90 Crowfoot Way NW
74423	175154806	138 Crowfoot Way NW
74901	200388189	95 Crowfoot Cr. NW
74130	200388197	99 Crowfoot Cr. NW

Property Description:

[3] The subject property is located at 90 Crowfoot Way NW, in the Crowfoot Power Centre. The property is a stand-alone retail building of 152,492 square feet (SF) on a 12.58 acre site. It was constructed in 1995 and is occupied by Rona Home & Garden. The property is zoned as "Direct Control District: CM1403 Retail-Shopping Centres – Power" and is in such a use. The interior finish is minimal.

[4] The 2014 property assessment is done using an Income Approach, applying the factors as shown in the table below. The net operating income (NOI) for this property is calculated as \$1,358,404. The capitalization rate applied is 6.00%. The resulting assessment is \$22,640,000 (rounded).

Sub-components	Area (SF)	Rental Rate (\$/SF)	Vacancy Rate %	Operating Cost (\$/SF)	Non-recoverable (\$/SF)
Big Box 80,001+ SF	136,681	10.00	1.00	8.00	1.00
Non-retail Mezzanine	15,811	2.00	1.00	8.00	1.00

Issues:

[5] The Complainant addressed two issues related to the 2014 Assessment Income Approach Valuation. The Complainant's position is that the 2014 Property Assessment is too high because:

- the 6.0% capitalization rate used in the Income Approach calculation is incorrect. The correct capitalization rate is 6.5%.
- the \$10.00/SF rental rate applied to the Big Box area is incorrect. The correct rental rate is \$9.00/SF.

Complainant's Requested Value:

\$18,830,000

Board's Decision:

[6] The 2014 Property Assessment of \$22,640,000 is confirmed. The Board considered the capitalization rate comparables presented by both parties and finds that they support a capitalization rate of 6.0%, as used to prepare the 2014 Assessment. The Board considered the rental rate comparables presented by both parties and finds that they support a typical rental rate for Big Box 80,001+ SF category in the Crowfoot Power Centre of \$10.00/SF.

Legislative Authority, Requirements and Considerations:

[7] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[8] The Board notes that the words "fair" and "equitable" are not defined in the MGA or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: What is the correct capitalization rate?**Complainant's Position:**

[9] The Complainant presented Exhibit C1, which summarized its position, as well as presenting a table showing the 2014 Altus Power Centre Capitalization Rate Summary. This table is also presented on page 17, Exhibit C2. Exhibit C2 presents the support information showing how the capitalization rate is calculated for each of the four sales comparables presented on the summary table. This is the evidence the Complainant relies on to support its position that the correct capitalization rate is 6.50%.

[10] The Complainant stated there are only four recent sales involving properties in power centres and all four happen to be in the Crowfoot Power Centre. The four sales used are summarized below.

Sale No.	Civic Address	Name/Occupant	Registration Date	Sale Price	Cap. Rate
1	20 & 60 Crowfoot Cr. NW	Crowfoot Village	04-2012	\$31,250,000	6.78%
2	140 Crowfoot Cr. NW	Crowfoot Corner	05-2012	\$35,500,000	5.13%
3	850 Crowfoot Cr. NW	Community Natural Foods	05-2012	\$4,750,000	6.03%
4	155 Crowfoot Way NW	Harper's Tire/Enterprise	06-2012*	\$4,100,000	8.60%

*sale date is in dispute.

[11] The Complainant calculated the capitalization rate (cap rate) by applying the typical income factors the City used in preparing the 2013 assessment to the 2012 sale price for Sales 1, 2 and 3. (This is the same method used by the Respondent in calculating its capitalization rate discussed later in this decision.)

[12] The Sale 4 property was assessed using the bare land value plus cost of improvements method in 2013 and prior years, as it was a car dealership. The bare land plus cost approach is the way the municipality (City) assesses car dealerships. This property was subsequently renovated and a portion of the building is currently leased to Harper's Tires, with the remainder leased to Enterprise Rent-a-Car. To derive the capitalization rate for Sale 4, the Complainant used the lease rates and other income factors applied to commercial property in the Crowfoot Power Centre used by the City in preparing the 2014 Assessment to derive the net operating income, which was then divided by the sale price to derive the 8.60% capitalization rate.

[13] Based on these four comparable sales, the Complainant demonstrated that the mean capitalization rate is 6.63% and the median capitalization rate is 6.41%. The Complainant argued that this analysis supports a capitalization rate of 6.5%, which is the rate used to calculate the requested assessment.

[14] The Complainant stated that there were few sales of this property type in the City, so it is necessary to use all the information that is available. The Complainant noted that the first two of its comparables are the same as used by the Respondent.

[15] The Complainant presented evidence and argued that Comparable 3 (850 Crowfoot Cr. NW) is a valid sale and can be used to indicate a capitalization rate by calculating a net operating income using the appropriate 2013 Assessment Income Approach factors used by the City. Such a calculation results in a valid indicator for the capitalization rate.

[16] The Complainant presented evidence and argued that Comparable 4 (155 Crowfoot Way NW) is a valid sale and can be used to indicate a capitalization rate. In rebuttal (Exhibit C3), the Complainant presented more evidence to support the rental rates used to calculate the capitalization rate from 2014 Income Approach Valuation documents for similar properties located in the Crowfoot Power Centre.

[17] In evidence (Exhibit C2) the Complainant provided a RealNet report regarding the sale of 155 Crowfoot Way NW property, the land title, transfer document and rent roll to support the June 2012 sale date. In rebuttal, the Complainant disputed the position of the Respondent that the agreement of sale or at least the price was determined in 2010, and argued that the transaction date does represent the sale date. Furthermore, the Complainant stated that a member of the Altus Group contacted the purchaser of the property, who apparently stated that the sale price reflected the market (no discount or premium was involved).

[18] To support the indicated capitalization rate of 6.50%, the Complainant also presented an "Investment Grade Market Indicator" located at 3320 Sunridge Way NE. The Complainant argued that this location was effectively in or similar to a power centre, as there were a number of big box type retail properties in the area. Based on an analysis of the January 2011 sale of this property, the indicated capitalization rate is 6.55%. This supports the 6.50% capitalization rate indicated by the Complainant's other evidence. This analysis was not presented as a "comparable sale" but as supporting evidence.

Respondent's Position:

[19] The Respondent's position is that the capitalization rate is 6.0%, and based this on two sales comparables, which are Sale No. 1 and 2 as presented by the Complainant. The details for these sales and other support documentation is presented in Exhibit R1.

[20] The Respondent acknowledged that Sale No. 3 is a valid sale but did not use the sale in their capitalization rate study because the property was an owner-occupied property prior to and after the sale. The City does not use owner-occupied properties in its capitalization rate studies, as a matter of policy.

[21] The Respondent presented land titles and transfer documents for the 155 Crowfoot Way NW property (Sale No. 4) and Corporate Search documents that show that the vendor and purchaser are shareholders in a common company, MAC73 Ltd. The Respondent argued that this indicates that the parties have a business relationship, and therefore the sale is considered non-arms length by the City and not used in its capitalization rate study. Based on the Non Residential Property Sale Questionnaire completed by the purchaser in September 2012, the property was not listed for sale at the time the property was purchased, further suggesting that the transaction was non-arms length.

[22] The Respondent presented a Non Residential Property Sale Questionnaire completed by the purchaser on September 5, 2012 (page 53-56, Exhibit R1). This document states that the price was agreed to on "2010/09/15" and the Offer to Purchase signed on "2010/11/04" (page 53, Exhibit R1). Based on this information, the Respondent stated that the City considers this a 2010 "sale". In this case, the title transfer in June 2012 is not reflective of the "sale" date. This is further reason that this sale is not used in its capitalization rate study.

Findings of the Board

[23] The Board notes that two sales are used by both parties in their capitalization rate analysis (Sale No. 1 and 2). The sales data and indicated capitalization rate for these two sales is identical in both analyses.

[24] The Board considered Sale No. 3 presented by the Complainant and finds that this is a valid sale. The calculation of the capitalization rate by the Complainant is consistent with the methodology used to calculate the capitalization rate for Sale No. 1 and 2 by both parties. The Board is not persuaded by the Respondent that it should not be used simply because it was an owner-occupied property at the time of sale.

[25] Regarding the sale date of Sale No. 4, the Respondent presented evidence that indicates that the price was determined and the offer to purchase occurred in 2010, and that the June 2012 date refers only to the date the title transferred. The Complainant did not provide any evidence to the contrary, nor specifically dispute this issue other than to argue that the transaction date is typically used to reflect sale date. Based on the evidence, the Board finds that at the very least, the sale date is uncertain and therefore not a reliable sale comparison.

[26] The Board is mindful of the discussion regarding consistency in methodology contained in *Westcoast Transmission Co. v. British Columbia (Vancouver – Assessor of Area No. 9)* [1987] B.C.J. No. 1273. With regard to Sale No. 4 (155 Crowfoot Way NW) and for the moment accepting that this is a June 2012 sale (notwithstanding the comments above), the Board notes that the capitalization rate presented by the Complainant is not calculated using the same methodology as used to calculate the capitalization rate for Sale No. 1, 2 and 3. The capitalization rate for Sale 4 is done using rental rates used by the City for the 2014 Assessment and applied to a transfer that occurred in June 2012. The other three capitalization rates are calculated using the City's 2013 income factors applied to the respective 2012 sales. Because the methodology used to calculate the capitalization rate for Sale No. 4 is not consistent with the methodology used to calculate the other three capitalization rates, the Board finds the capitalization rate presented for Sale No. 4 unreliable.

[27] The capitalization rates for Sale No. 1, 2 and 3 range from 5.13% to 6.78% with a mean of 5.89% and median of 6.03%. This evidence supports the 6.0% rate used by the City to calculate the 2014 Assessment using the Income Approach for properties located in the Crowfoot Power Centre.

Issue 2: What is the correct rental rate for Big Box retail space?**Position of the Complainant**

[28] The Complainant presented its 2014 Retail Anchor Analysis 80,001+ SF (Exhibit C4), summarized on page 28 of Exhibit C1. The Complainant stated that there are few lease agreements for retail space this size, as typically these are owner-occupied spaces. However, six leases are used, as presented in Exhibit C4 with their respective supporting documentation, and these six leases indicate a typical market rent for this type of space of \$9.00/SF.

[29] Four of the lease comparables are common to those used by the City and presented in the Respondent's Exhibit R1 (page 97). There is no dispute over these four common lease comparables. The Complainant also included the lease for the Walmart located at Deerfoot Mall (901 64 Ave NE) and the Walmart at the Westbrook Mall (1200 37 St. SW) in its analysis. These six lease comparables result in a range of lease rates from \$6.85 to \$14.50, a median of \$7.74/SF, a mean of \$8.97/SF and a weighted mean of \$8.70 (page 28, Exhibit C4).

[30] The Complainant presented evidence for all six of its lease comparables, but focused on the Walmart-Deerfoot and Walmart-Westbrook leases. The Complainant acknowledged that there are differences between the comparables and between the comparables and the subject in characteristics such as wall height and degree of finish, but the City includes these types of properties into the "Big Box 80,001+ SF" category for assessment purposes. Furthermore, the Complainant argued that all these retail spaces function similarly, in that they have dedicated entrances and can determine their hours of operation. Walmart-Deerfoot is a separate building sharing a common parking area with Deerfoot Mall. Walmart-Westbrook was a part of the mall some years ago, but after renovations, became a separate space from the rest of the mall (with its own entrance and an enclosed walkway into the mall proper). The respective locations of these big box lease comparable properties in various retail settings (i.e. power centres, neighbourhood centres, community centres) is different, but the retail setting does not affect how the big box retail space functions, and is therefore of no consequence to the analysis.

[31] In rebuttal, the Complainant noted that the Respondent included as one of its big box lease comparables the Rona located at 12300 Symons Valley Rd. NW in the Creekside Centre (Rona-Creekside). The Respondent presented evidence (Exhibit C5) to demonstrate that Rona had vacated the premises and that this space is currently being marketed by Cushman Wakefield via a sublease from Rona (page 93-94, Exhibit C5). Regardless of whether Rona continues to pay the rent in accordance with the lease, this is not a "typical" situation and therefore does not represent a "typical" rent. For this reason, the Complainant argued the Rona-Creekside lease should not be included in the analysis.

Respondent's Position

[32] The Respondent presented its 2014 Big Box 80,001+ SF lease rate analysis (page 97, Exhibit R1). Based on five lease comparables, including four common to the Complainant's analysis, the indicated lease rate for this category or retail space is \$10.00/SF, which is the rate used to prepare the 2014 Assessment.

[33] The Respondent stated that the Walmart-Deerfoot and Walmart-Westbrook lease comparables used by the Complainant are not used in its analysis because these properties are located in a regional mall and enclosed neighbourhood/community centre respectively. Therefore, the dynamics related to the leasing is different. Both these properties serve as "anchor tenants" in their respective shopping centres. As anchor tenants, they can negotiate lower lease rates because the landlord can increase lease rates on smaller retailers in the centre who benefit from having the anchor tenant draw shoppers to the location.

[34] The Respondent stated that three of the five lease comparables used in its analysis are properties located in power centres, with the Walmart located at 8888 Country Hills Blvd NW (Walmart-Royal Oak) and Rona-Creekside located in community shopping centres.

[35] The Respondent also presented evidence to show that Walmart at Deerfoot Mall added about 35,000 SF to the original building, but the lease rate was not adjusted and still pertains only to the original area. The Respondent argued that this is not a typical situation and another reason to disregard the Walmart-Deerfoot lease.

[36] To demonstrate its anchor tenant argument, the Respondent noted three lease comparables presented by the Complainant (page 28, Exhibit C1). The Walmart-Deerfoot lease commenced in January 2004 at a rate of \$6.85/SF, the Walmart-Westbrook lease commenced in December 2003 at a rate of \$7.47/SF and the Walmart-Royal Oak lease commenced in October 2003 at a rate of \$10.00/SF. These three Walmarts are located in a regional mall, enclosed neighbourhood/community shopping centre, and community shopping centre respectively. Walmart is a sophisticated party with considerable leverage in negotiating leases. These leases demonstrate that there is a difference in the lease rates that can be negotiated based on whether or not the space anchors a mall or shopping centre. The lease rates for Walmart-Deerfoot and Walmart-Westbrook include this anchor tenant discount. The Royal Oak Shopping Centre functions much like a power centre with each retailer essentially being a stand-alone destination, which does not result in benefits (increased customers) to other retailers in the centre, therefore there is no anchor tenant discount in the lease rate.

[37] The Respondent presented evidence demonstrating that Rona continues to pay rent on the Rona-Creekside space, and that it appears that a step-up in the rental rate occurred within the last year. The Respondent argued that this lease was negotiated by two sophisticated parties and the landlord continues to collect rent in accordance with the lease agreement. Rona made a business decision to cease operations in this property, but that does not invalidate the lease in any way. The lease commenced in November 2011 and is the most recent lease commencement of any lease comparables presented by either party.

Findings of the Board

[38] The Board notes that the subject property is located in a power centre. Three of the four lease comparables used by both parties are also located in power centres.

[39] Both parties provided much discussion regarding the "labelling" of various types of retail centres, including definitions used by various agencies in Canada and in the U.S.A., and how those different types of centres function in theory. There was also much discussion about what an "anchor tenant" is and what influence an anchor tenant may have when negotiating its lease rate. This discussion was theoretical, in that neither party applied this theory to demonstrate whether Walmart-Deerfoot or Walmart-Westbrook were indeed able to negotiate lower rents because they were "anchor tenants". It seems there may be other factors that affect the lease rate in a particular shopping centre, including proximity to residential areas, demographics of the local trading area, retail traffic, age of the centre, etc., none of which were discussed by the Respondent.

[40] The Board acknowledges that the Walmart-Deerfoot and the Walmart-Westbrook properties are located in shopping centres that are not power centres and therefore not the best comparable leases for the subject. However, they fall into the size range used by the City to define the Big Box 80,001+ SF category. The Board is not persuaded that these two leases cannot be used simply because of the "label" placed on the shopping centre by the City.

[41] With regard to the Rona-Creekside lease, the Board acknowledges that it may not be an ideal lease comparable either, but again, it is not persuaded that this lease should not be used in the analysis. The lease was signed by sophisticated parties and the landlord continues to receive the rental payments in accordance with the lease agreement. While Rona may not be operating a retail enterprise on the site, they are the occupant.

[42] The Board considered various combinations of the seven lease comparables, as presented in the table below.

Civic Address (Name)	Power Centre Leases Rate (SF)	Common Leases Rate (SF)	All Leases Rate (SF)
275 Shawville Blvd SE (Target-Shawnessey)	\$7.00	\$7.00	\$7.00
11938 Sarcee Trail NW (Cdn Tire-Beacon Hill)	\$14.50	\$14.50	\$14.50
5696 Signal Hill Ctr. SW (Target-Signal Hill)	\$8.00	\$8.00	\$8.00
888 Country Hills Blvd NW (Walmart-Royal Oak)		\$10.00	\$10.00
901 64 Ave NE (Walmart-Deerfoot)			\$6.85
1200 37 St SW (Walmart-Westbrook)			\$7.47
12300 Symons Valley Rd NW (Rona-Creekside)			\$14.50
Mean	\$9.83	\$9.87	\$9.76

[43] The Board finds that all three of these lease combinations indicate that \$10.00/SF is the correct lease rate to apply to the Big Box 80,001+ SF category. The mean is preferred in this situation due to the small sample size.

Board's Reasons for Decision:

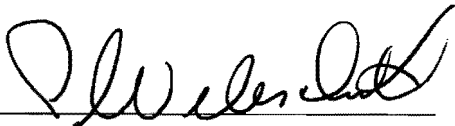
[44] The Board finds the sale of 155 Crowfoot Way NW (Sale No. 4) to be unreliable due to uncertainty regarding when the sale price was agreed to (sale date) and how the capitalization rate for this sale was calculated (inconsistent with the methodology used to calculate the other three capitalization rates presented). The Board puts no weight on this sale or the capitalization rate derived therefrom.

[45] The Board considered the capitalization rates derived for three of the four sales comparables used by the Complainant in its capitalization rate study (Sale No. 1, 2 and 3) and concludes that this evidence supports a capitalization rate of 6.0%, as is used by the City to calculate the 2014 Assessment using the Income Approach for properties located in the Crowfoot Power Centre.

[46] While the Board acknowledges that the Walmart-Deerfoot, Walmart-Westbrook and Rona-Creekside leases may not be ideal comparables, the Board is not persuaded that either of these leases cannot be used in a lease rate analysis. The Board finds that using the three leases from properties located in a power centre, the four common leases and all seven leases presented by the parties supports a lease rate of \$10.00/SF for the Big Box 80,001+ SF category.

[47] As the Board confirms capitalization rate and lease rate used in the Income Approach calculation, and none of the other factors were in dispute, the Board confirms the 2014 Assessment of \$22,640,000 for the subject property.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF June 2014.



Ivan Weleschuk

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure – Capitalization Rate Analysis
3. C3	Complainant Rebuttal – Capitalization Rate Analysis
4. C4	Complainant Disclosure – 2014 Retail Anchor Analysis
5. C5	Complainant Rebuttal – 2014 Retail Anchor Analysis
6. 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.*

For MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Commercial	Power Centre	Capitalization Rate Rental Rate	Acceptability of comparables