



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 (MGA).

between

***Loblaw Properties West Inc.
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before

***L. Yakimchuk, PRESIDING OFFICER
P. Cross, BOARD MEMBER
G. Milne, 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: 200383438

LOCATION ADDRESS: 20 Heritage Meadows Wy SE

FILE NUMBER: 74421

ASSESSMENT: \$29,290,000

This complaint was heard on June 17, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

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

Appeared on behalf of the Respondent:

- *J. Lepine, City of Calgary Assessor*
- *N. Sunderji, City of Calgary Assessor*

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

[1] The Respondent, City of Calgary, objected to portions of the Rebuttal because some documents provided by the Complainant in the disclosure package had not been presented as evidence at the Board proceedings. These documents were some of the results of a Section 299 (MGA) request.

[2] The Respondent asked that the Rebuttal be limited to a direct response to the information in R1. Any use of the disclosure package which was not tabled at the hearing should be removed from the Rebuttal.

[3] The Board agreed that Rebuttal should be limited to direct response to the Respondent's Assessment Brief (R1). The Rebuttal would be heard and the Board would give the information the weight it merited, but would not hear any new information.

[4] As well, the parties asked that the arguments concerning Capitalization (Cap) rate be carried over from File 75544, and that both the Cap rate arguments and the Rent rate arguments presented in this file be carried over to Files 74421, 74129 and 74167. For this reason, the decisions written for all of these documents will look similar.

Property Description:

The subject property is a Real Canadian Superstore assessed as a Big Box retail store. It is located at 20 Heritage Meadows Wy SE. Only the Big Box (151,037 square feet [sf]) portion and mezzanine (6,143 sf) portion of this assessment were contested.

Issues:

- [5] Should the Cap rate be increased to 6.50% from 6.00% for this property?
- [6] Should the rent rate be reduced to \$9.00/sf from \$10.00/sf for this property?
- [7] Should the assessment for mezzanine areas be reduced from \$14.00/sf and \$23.00/sf to the typical rate applied to the remainder of the area?

Complainant's Requested Value: \$23,810,000

Board's Decision:

- [8] The Board revised the assessed value to \$28,410,000.

Legislative Authority, Requirements and Considerations:

The Composite Assessment Review Board (CARB) derives its authority from the Municipal Government Act (MGA) RSA 2000 Section 460.1:

- (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

For the purposes of this hearing, the CARB will consider MGA Section 293(1)

In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and
- (b) follow the procedures set out in the regulations.

Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA Section 293(1)(b). The CARB decision will be guided by MRAT Section 2, which states that

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.

and MRAT Section 4(1), which states that

The valuation standard for a parcel of land is

- (a) market value, or

if the parcel is used for farming operations, agricultural use value

Position of the Parties

Complainant's Position:

[9] Issue One (Cap Rate): The Complainant presented photographs of the subject property, Real Canadian Superstore, which is located in a Power Retail Centre.

[10] The Cap rate for Power Centres has been calculated by the City of Calgary based on two 2012 sales of properties in the Crowfoot Crossing Power Centre. The Complainant argued that not only are these two sales from the same location, but they were arranged at the same time. Altus does not believe that they are an accurate representation of typical Calgary Power Centre properties.

[11] In their 2014 Altus Power Centre Capitalization Rate Summary (C1 p27) the Complainant introduced two additional sales of Power Centre properties. One is Community Natural Foods at 850 Crowfoot Cr NW and the other is Harper's Tire/Enterprise at 155 Crowfoot Wy NW. The sales, with Cap rates of 6.03% and 8.60%, were registered on May 30, 2012 and June 26, 2012 respectively. Including these two sales in the calculation of a typical Cap rate resulted in a Mean Cap rate of 6.63% and a Median Cap rate of 6.41%.

[12] As well, Altus included the sale of the Sunridge Sears building at 3320 Sunridge Way NE registered on January 19, 2011 with a Cap rate of 6.55% to support the requested Cap rate of 6.5%.

[13] Issue Two (Rent Rate): Altus presented a 2014 Retail Anchor Analysis (C1, p32) which listed six Big Box stores in different locations throughout Calgary. Four of the stores (two Target stores, one Walmart and one Canadian Tire) were located in Power Centres. Two other Walmart stores were located in a Regional Mall and an enclosed Neighbourhood Community Shopping Centre. The stores ranged in size from 95,423 sf to 158,022 sf.

[14] The Complainant argued that although two Walmart stores on the list were not considered Power Centre stores, they behaved like Power Centre stores. The Deerfoot Mall store is on a separate pad away from the main Deerfoot Mall and independent of it. The business hours are different and the parking is separate from the main mall. The Westbrook Mall Walmart is separate from the Westbrook Mall except for one small corridor which leads to either the Mall entrance or the Walmart entrance. This store also operates independently from the main Mall, with different shopping hours. This is why Altus included these two stores in their Retail Anchor Analysis.

[15] The median Market rent for the six stores on the list was \$7.74/sf and the mean was \$8.97/sf. Altus argued that this result meant that an accurate Rent rate for Big Box stores over 80,000 sf would be \$9.00/sf.

[16] Issue Three (Mezzanine Rent): The Complainant stated that Lines 13 and 14 on the 2014 Municipal Shopping Centre Assessment Summary (C1, p13) show \$14.00/sf and \$23.00/sf assessments for the mezzanine area in this building. The Complainant asked that the rent rate be reduced to the typical \$10.00/sf, or \$9.00/sf with the overall requested Rent rate reduction. Correcting for this error alone would reduce the assessment to \$28,410,000.

Respondent's Position:

[17] Issue One (Cap Rate): The Respondent explained that the City used the two sales from Crowfoot Crossing because they were the only timely sales of income producing properties available. He stated that Crowfoot Crossing is an accepted example of a Power Centre and the two properties were sold fairly recently, in 2012.

[18] The Respondent argued that Harper's Tire (previously Crowfoot Honda) was sold as a vacant property, and it was not producing an income at the time of the sale. Further, it was changed after it was purchased to accommodate the two current tenants, therefore the income which it is currently producing is not the income it would have been able to produce prior to being sold. Previously, the car dealership had been assessed using the Cost approach. It would be difficult to accurately calculate a Cap rate for the property for the assessment year.

[19] In addition, the Respondent argued that Direct Control (DC) land use limitations on the property restrict its options for development severely and may have been a reason that the property sold at a low value, therefore increasing the Cap rate.

[20] Finally, the Respondent introduced corporate searches, sales and other documents indicating that there may be a relationship between the vendor and purchaser rendering the sale non-arm's length.

[21] The Respondent also argued that 850 Crowfoot Cr NW was purchased for occupancy by the owner and not to produce a rental income. For this reason, it was excluded from the Cap rate study.

[22] Issue Two (Rent Rate): The Respondent presented a rent rate study, 2014 Big Box 80,001+ sf (R1, p94) which included five property leases. The leases for these properties ranged from \$7.00/sf to \$14.50/sf with a median value of \$10.00/sf.

[23] The Big Box leases ranged in size from 95,423 sf to 132,288 sf. Four of them (two Target stores, one Canadian Tire and one vacant Rona) were located in Power Centres, and one was a Walmart located in a Neighbourhood Community Shopping Centre in Country Hills.

[24] The Respondent argued that the Walmart in Deerfoot Shopping Centre used in the Complainant's Rent Rate Study was atypical because the owners had an agreement that allowed them to expand the size of the building at their own expense, but continue to pay rent only on the original portion (R1, p97). Deerfoot Shopping Centre is also a Regional Mall, not a Power Centre. Regional malls and enclosed neighbourhood shopping centres are excluded from Big Box Analyses. For this reason City of Calgary has excluded this store from their own analysis.

[25] The Respondent explained that the City does not include stores connected to enclosed shopping centres in their Big Box studies because these tend to be anchors for the shopping centres and attract lower rents. That is why they excluded the Westbrook Mall Walmart.

[26] In response to questioning by the Complainant and the Board, the Respondent defended the use of a vacant property in the study because Rona continued to pay the rent despite vacating it, therefore the property is still producing an income.

[27] The Respondent asked that the Board confirm the median Rent rate of \$10.00/sf as calculated in their study.

[28] Issue Three (Mezzanine Rent): The Respondent stated that there was no support given for the higher rent rate for the mezzanine areas and agreed to reducing the rent rate to \$10.00/sf for this area.

Board's Reasons for Decision:

[29] Issue One (Cap Rate): The Board considered the Capitalization Rate Summary presented by the Complainant (C2, p17). Two of the sales in the summary were also on the Respondent's 2014 Power Centre Capitalization Rate Study (R1, p99). The remaining two came from the same Power Centre (Crowfoot Crossing) as the first two.

[30] Both parties accepted 20/60 Crowfoot Cr NW and 140 Crowfoot Cr NW as suitable sales for the study. The Board agreed and chose to use them as well.

[31] The Sunridge Sears building is not in a Power Centre and its sale was introduced by the Complainant to support a 6.5% Cap rate, but not to be included in the Power Centre Cap rate study. The Board did not include it in the Cap rate study.

[32] The Respondent argued that 850 Crowfoot Cr NW was owner occupied and was purchased for its value to the owner. The Board found that the sale was arm's length and had a value that could be measured to calculate a Cap rate. The building was similar before and after it was sold. The Board decided to include it in the Cap rate study. The Cap rate (6.03%) used by the Complainant for this property did not change the Cap rate presented by the City.

[33] The Board considered 155 Crowfoot Wy NW. The property sold as a vacant car dealership which was assessed using the Cost approach, and is now operating as a tire shop and a car rental office assessed using the Income approach. The Board decided that the Sale value of the property was based on its use as a car dealership, whereas the Income approach valuation is based on a different use with some alterations to the building. It would be difficult to calculate an accurate Cap rate for the building using these two values.

[34] For these reasons, the Board chose to exclude 155 Crowfoot Wy NW from the Cap rate study and to use the three remaining properties proposed by the parties. There were no other timely sales of similar Power Centre properties available, therefore these three sales from one centre only were used to calculate a typical Cap rate of 6.00%.

[35] Issue Two (Rent Rate): The Board reviewed the Altus Rent Rate Study (C1, p32). Two of the Walmart rates were lower than most of the other rates except for the Target in Shawnessy Towne Centre. All of the Walmart leases were signed within a four month period of each other at rates of \$6.85/sf in Deerfoot Mall, \$7.47/sf in Westbrook Mall and \$10.00/sf in Royal Oak Centre. The Board accepted the Target leases (\$7.00/sf and \$8.00/sf) which were used by both parties.

[36] However, the Deerfoot Walmart rate was complicated by the exceptional lease agreement presented by the City in R1, p97. The Westbrook Mall Walmart is attached to an enclosed shopping centre and enclosed shopping centres are not typically included in Big Box studies because they anchor the shopping centres and often pay lower rents to attract customers to the mall. The Board accepted this explanation, which was supported by the evidence of the low lease. The Board did not use these two Walmart store leases in their final analysis.

[37] The Board examined the Rona lease which is being paid on a vacant building. Discussion about the acceptability of a lease on a building which is now vacant, as part of a study of typical properties resulted in the decision that although there was no business on the premises, the building was still earning an income. Although the full intent of the owner or the renter concerning the building's future are not known, the current fact is that rent is being paid so the lease was included in the list.

[38] Finally, the remaining leases on the City of Calgary study were also in the Altus study,

so the Board accepted them in making their decision. The resulting median Rent rate was \$10.00/sf, confirming the City of Calgary rate.

[39] Issue Three (Mezzanine Rent): Both parties accepted \$10.00/sf as the rent rate for the mezzanine areas. The Board supported this rate.

[40] The Board reduced the assessed value to \$28,410,000 with a Cap rate of 6.00% and a Rent rate of \$10.00/sf.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF July 2014.



L. Yakimchuk

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Cap Rate Study
3. C3	Complainant Disclosure
4. C4	2014 Retail Anchor Analysis
5. C5	Rebuttal
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 office use only:

A	B	C	D	E
CARB	Retail	Big Box	Income approach	Cap Rate
				Rent Rate