CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of a complaint against the Property assessment as provided by the *Municipal Government Act* being Chapter M-26, Section 460(4).

between:

Altus Group Ltd. - Complainant

and

The City of Calgary - Respondent

before:

J. Schmidt, PRESIDING OFFICER
K. Kelly, MEMBER
J. Massey, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board in respect of a Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	**200945343**
LEGAL DESCRIPTION:	**Plan 8810807 Block C Lot 1**
FILE NUMBER:	**59555**
ASSESSMENT:	**$423,380,000**

This complaint was heard on June 17, 2010 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:
Doug Hamilton, Altus Group Ltd.

Appeared on behalf of the Respondent:
Roy Fegan, Assessor, City of Calgary

Property Description and Background

The property is known as Livingston Place and is located at 222 – 3rd Avenue SW, Calgary. This property was developed in 2007 as a two tower office complex. Included in the complex are approximately 845,000 square feet of office space, 500 parking stalls and retail space on the lower level.

For purposes of property assessment the building was classified as an "AA" office. The income approach to value using the direct capitalization method was applied to determine the estimate of market value.

Issues:

In considering the complaint as filed, together with the representations and the documents presented by the parties, the specific issues which were addressed in this case are as follows:

1. Office rental rate
2. Office vacancy rate
3. Overall capitalization rate.

Board's Findings respecting each issue:

1. The typical market office rental rate for the subject "AA" class office space is $34.00 per square foot.

2. The typical stabilized vacancy rate for the subject "AA" class office space is 2.0%.

3. The overall capitalization rate for the subject "AA" class property is 7.0%.

Reasons:

1. Office Rental Rates

The Complainant submitted in evidence eleven 2009 lease transactions taken from lease deal documents showing various occupancy dates ranging from 2009 to 2012. These lease deals indicate a weighted average rental rate at $28.18 for "AA" office space. It was argued these lease deals were a clear indication of 2009 rental rates based on future expectations of a declining market due to, in particular, supply and demand of office space in Calgary. The office rent roll for Livingston Place indicates an average lease rate at $28.00 with a weighted average at $27.74 for the total building office space. These leases were generally transacted at the peak of the downtown Calgary office rental market with subsequent lease rates in decline. While the evidence supports an approximate $28.00 rate, it was requested that a reasonable typical market rent rate should be $30.00 to determine the assessment.

The Respondent countered that for purposes of completing the annual assessment the various property managers are requested to provide leasing information based on new leases during the year leading up to the July 1, 2009 assessment valuation date. That information indicates a weighted average at $38.49 for "AA" office space. Third party companies who track office net annual rent show second quarter 2009 lease rates ranging from $32.00 to $42.00. Even the Complainant's Insite report shows $35.19 as being typical for "A" office space. It was argued that lease deals, as presented by the Complainant, for post 2009 occupancy dates do not represent 2009 market. They may represent market rent for the future date of occupancy, however that is only speculation. Rather than base an assessment on future rental contracts, actual new leases with occupancy start dates leading up to the July 1, 2009 assessment valuation date should be considered as the best indication of typical market rental rates. New leases which were reported show lease rates have dropped from the 2008 assessment year by approximately 15%. There is therefore agreement with the Complainant that the market was declining with respect to lease rates. The evidence supports a lease rate at $34.00 which was used in determining the subject property assessed value for the 2009 assessment in place of $38.00 which was used for the 2008 assessment.

The lease deals which were presented by the Complainant, in the Board's view, may have been simply transacted as a hedge against what may or may not happen in the future market place. As such, those contracts will not be considered as typical transactions for the 2009 "AA" office rental rates. There can be no doubt that large project leasing managers are confronted with and consider all the market forces which affect market rental rates. In this case, those managers reported lease rates, for the effective assessment year, having a weighted average of $38.49. As well, third party companies directly involved in the subject type leasing contracts, etc. report a second quarter 2009 rental rate for "AA" class office space ranging from $32.00 to $42.00. Placing the most weight on the property manager's reported 2009 lease start contracts the Board is convinced that the $34.00 lease rate used to establish typical market value in this case is reasonable.

2. Office Vacancy Rate

The Complainant submitted that historical data as supplied by CB Richard Ellis shows the downtown office vacancy rate for September 2009 at 12.6% compared to 4.10% for September 2008. In particular, the Class "AA" office vacancy inventory went from .00% to 8.4% in the same period. As a result of an estimate some three million square feet of new office space is scheduled for completion in downtown Calgary by 2012 the normal vacancy rate will substantially increase. Industry reports are projecting a vacancy rate in excess of 15% by 2012. This projected vacancy rate, combined with available historical data, a office vacancy rate at 7% is requested.

The Respondent took the position that for market value assessment purposes it is the actual market data that occurred during a particular assessment cycle which must be used. Each assessment year, property managers are requested to supply information respecting, in part, actual vacancy. The subject property manager's information reply, for the 2009 assessment year, shows no vacancy for the south tower and .055% vacancy for the west tower. There was a total of some 7.5 million "AA" class office space available for lease, as reported for the 2009 assessment on the information request form. Of the available space, 42,537 was reported as being vacant. This would indicate an actual vacancy rate of 0.564% for the 2009 assessment year. In addition, second quarter 2009 industry reports were reviewed. Those reports for "AA" class office space show:

Cresa	-	0.07%	second quarter, 2009
Avison Young	-	0.01%	second quarter, 2009
Colliers	-	2.29%	June 30, 2009
Barclay	-	1.60%	second quarter, 2009

Any future forecast which claims vacancy rate for "AA" office space could reach 10% to 15% is simply a forecast and has no bearing on the 2009 market condition. In consideration of the actual vacancies, as reported, as well as third party reports a reasonable stabilized vacancy rate at 2% was applied to all "AA" class office property in the direct capitalization method to market value.

There can be no doubt that a large inventory of new "AA" class office space is being developed and will be available. As a result it is true that the economic principle of supply and demand will be tested. To claim with certainty that there will be an oversupply of vacant space is highly dependant on market conditions as they unfold. While it is true that the players in the market consider the future, as the Complainant contends, that consideration is expressed in actual transaction which occurred at any particular time. In this case, the question is simply, did the market transaction which occurred during the 2009 assessment year show a vacancy rate for "AA" class office space to be greater than a stabilized 2%? To answer this question the Board looked to the evidence as presented by both parties. The Complainant's evidence shows a vacancy rate at 8.4% at the end of the third quarter 2009. As well, a projected vacancy rate by 2012 of over 15% was argued. The Respondent's actual vacancy reported by property managers was less than 1.0% with industry reported vacancy ranging up to 2.29%.

The Board will rely on the actual market condition in 2009 which shows vacancy rates for "AA" class office space at less than 1.0%. Stabilizing the rate at 2% is reasonable and is accepted in this case. When the market shows higher vacancy rates, that is the time to use the higher rate (stabilized) in the direct capitalization method of valuation.

3. Overall Capitalization Rate

The Complainant submitted that a 7.5% capitalization rate should be applied to determine the estimate of market value using the income approach to value. Since no "AA" class property sales were available to analyze for purposes of developing a cap rate, class "A" sales indicators were considered. Class "A" sales data show a cap rate of approximately 8.0%. Reducing this rate by .50%, due to the higher class "AA" property a cap rate at 7.5% 's reasonable. The 7.5% cap rate is further supported by the industry reports showing downtown Calgary cap rates ranging from 7.0% to 7.5% and trending up in third quarter 2009.

The Respondent concurred with the Complainant that no "AA" class office property sales were available to analyze respecting cap rates. There were two "A" class sales, one of which took place in 2008 showing a cap rate of 6.67%. The other sale took place in 2007 showing a cap rate at 7.44%. Since these sales indicators were not for "AA" class properties regard was given to downtown capitalization rates as reported by the industry analysts. These reports show a cap rate range of 6.7% to 7.50% for the second quarter 2009 for class "A" property in downtown Calgary.

Based on the available information as of July 1, 2009 a cap rate at 7.00% was determined to be applied in the income approach to value for all downtown "AA" class property with the exception of "Bankers Hall" and Canada Trust/Eaton Centre properties which were set at 6.75%.

While the evidence is not compelling from either party respecting the cap rate, the Board is satisfied that a typical "AA" class office property in downtown Calgary can generate the 7.0% cap rate this is suggested by the industry publication. Therefore the cap rate at 7% which is applied to all downtown Calgary "AA" class office property is reasonable and is accepted.

Decision:

Having given careful consideration to the evidence, argument and facts which came forward in this case the complaint is not allowed.

Accordingly, the assessment is confirmed at $423,380,000.

Dated at the City of Calgary, in the Province of Alberta, this 15 day of July, 2010.

J. Schmidt, Presiding Officer

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 related 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 person 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.