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:

Hudson's Bay Company
(as represented by Wilson Laycraft, Barristers & Solicitors), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L. Wood, PRESIDING OFFICER
J. O'Hearn, MEMBER
A. Zindler, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	**068080803**
LOCATION ADDRESS:	**200 – 8 AV SW**
HEARING NUMBER:	**64700**
ASSESSMENT:	**$35,670,000**

This complaint was heard on June 13, 2011 and August 30, 2011 in Boardrooms 8 and 7 at the Assessment Review Board, located on Floor Numbers 3 & 4, 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *Mr. B. Dell* — *Lawyer, Wilson Laycraft, Barristers & Solicitors*
- *Mr. P. LeClair* — *Director, Real Estate Assessments, Hudson's Bay Company*
- *Mr. D. Genereux* — *Agent, Altus Group Ltd.*
- *Mr. G. Kerslake* — *Senior Director, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Ms. C. Dao* — *Lawyer, City of Calgary Law Department*
- *Ms. E. Borisenko* — *Assessor, City of Calgary*

<u>Board's Decision in Respect of Procedural or Jurisdictional Matters:</u>

At the commencement of the hearing on June 13, 2011, the Complainant indicated that although he did not object to the composition of the panel, he did object to the overall legislative scheme. There was no response from the City or the Board in regards to this issue and the merits of the hearing proceeded.

At the commencement of the hearing on August 30, 2011, the Respondent asked that the Complainant's objection be revisited. The Complainant argued that his concern was in regards to the institutional independence of the Board and that it was adversely affected by the current legislation as well as the City of Calgary's bylaw (Exhibit C4). He reiterated that he did not have any concern with the individual members of the panel. The Respondent argued that this allegation was not supported with any evidence and it had to be decided by the panel; otherwise, the matter could not proceed. The Board acknowledged the parties' positions in regards to the issue concerning institutional bias and noted that both parties' positions were articulated on the record. Institutional bias is a serious allegation. However, it is not one for the Board to address. It was the Board's position to proceed with the merits of the case and asked that the Respondent present their evidence.

During the course of the cross examination of the assessor, the Respondent objected to the Complainant asking questions in relation to a Board's findings set out in a board order. She argued that the Complainant should not be allowed to question the assessor on a board order as it is considered argument. The Board agreed that board orders and case - law are considered argument. However, the assessor chose to speak to that board order during her evidence as opposed to presenting the board order in argument; therefore, the Complainant was allowed to ask her questions based on that board order.

<u>Property Description:</u>

The subject property is known as the downtown Hudson's Bay building ("the Bay"). It is a freestanding building located in the central core of downtown Calgary. It was constructed in 1911 with additions in 1929 and 1957. The 6 - storey building consists of 381,230 sq. ft. of net rentable area, situated on 1.64 acres of land. There is 310,512 sq. ft. of net rentable area located between floors 1 – 6 and there is 51,752 sq. ft. in the basement. The only area not occupied by the Bay building is 18,966 sq. ft. located on the roof top level which is leased to a private health club. The subject property is connected to (+15) and (+30) levels of Scotia Centre. The land use designation is CM-2. The subject property is classified as a Category "A" Potential Heritage Site.

The subject property was assessed based on the Income Approach to value. It is the assessed rental rates and capitalization rate that are in dispute.

Issues:

1. The assessed rental rates applied to the retail portion of the subject property at $8.00 psf and the basement area at $6.00 psf should be reduced to $5.00 psf.

2. The assessed rate for the health club area should be reduced from $9.50 psf to $8.75 psf.

3. The capitalization rate should be increased from 7.0% to 8.5%

Complainant's Requested Value: $18,450,000

Board's Decision in Respect of Each Matter or Issue:

1. The assessed rental rates applied to the retail portion of the subject property at $8.00 psf and the basement area at $6.00 psf should be reduced to $5.00 psf.

The Complainant submitted based on equity and correctness the assessed rental rate should be $5.00 psf for the Bay building. This would apply to the 6 floors currently assessed at $8.00 psf (310,512 sq. ft.) as well as the basement level (51,752 sq. ft.) which is currently assessed at $6.00 psf. The $5.00 psf rate would reflect the age, state and condition of the subject property. The Complainant illustrated through photographs and verbal testimony that the upper three levels of the Bay building are in dire need of repairs. The Complainant described the upper three levels as having a clearance centre appearance (worn out tiles, exposed electrical wiring etc.). It does not have the same finish as the main floor. The configuration and layout of the 100 year old building also warrants a $5.00 psf rate.

The Complainant submitted, based on equity, the subject property should be assessed similarly to other Bay stores in Calgary at $5.00 psf (Exhibit C1 page 21). Moreover, the most comparable properties are those in which the Bay is the tenant, and the lease rates are $5.00 psf. The Complainant provided an overview of national retailers, like the Bay, negotiating new locations with a landlord who is usually recognized on a national level (Exhibit C1 page 6). The retail sales that are achievable in a particular location are the driving force behind the negotiations. The Complainant explained the Bay (and Zellers) based their negotiations on what they expect their sales to be and agree on a lease rate that is based on a percentage of sales. In this case, the Complainant illustrated, that the subject property has the lowest retail sales on a per square foot basis as opposed to other Bay locations within the City of Calgary; yet, it is assessed at the highest rate which is not equitable (Exhibit C2). Based on a percentage rate analysis, (for example, 3.0% - 3.5% of retail sales per square foot for the subject property), it supports a $5.00 psf assessed rate.

The Complainant indicated that apart from other Bay stores, the Zellers stores would be a similar comparable to the Bay. The Complainant drew a distinction between the Bay and Zellers versus the big box retailers like Costco, Rona and Wal-Mart, which he argued, would not be conducive to occupy similar type space. Besides layout and design differences, there are other components to those large big box retailers that the full line department stores, like the Bay, do not share. The modern, big box retail buildings include automotive and grocery components and are constructed with loading docks, high floor to ceiling ratios etc. He also spoke to retailing in Canada in general with the trend moving towards big box stores and American companies and moving away from full line department stores as evidenced by the demise of Eaton's in 2000. That space that Eaton's left behind was taken over by Sears and the Bay but now it has been converted to a Holt Renfrew (Exhibit C3 pages 7 & 8).

The Complainant submitted a "*Western Canada Department Store Lease Analysis*" of 30 Bay and Zellers locations (Exhibit C1 page 19). It reflects leases which commenced in January 2000 to November 2007 for various Bay and Zellers locations throughout the western provinces. The leased areas ranged between 94,618 sq. ft. to 264,364 sq. ft. with rates between $1.74 psf to $7.50 psf. The median value is $4.95 psf and the average is $4.81 psf. The Complainant submitted that the leasing activity has been on a downward trend, part of which is a reflection of the economy. There has not been much signing in the last few years. He made reference to the Winnipeg lease which commenced in 2003 for $1.74 psf with a 20 year term, with options to renew. He also referred to the Forest Lawn Centre's lease at $4.00 psf, which was low rent with money up front to expand the store.

The Complainant provided an overview of the assessment history for the Zellers and Bay stores in Calgary. He submitted that for several years the assessed rates have been between $5.00 psf to $5.50 psf (Exhibit C3 page 3). The assessed rates applied to the property and business assessments were the same. The Complainant submitted that had changed in 2011 and the property assessments are at a higher rate on a per square foot basis than the business assessments. The Complainant argued that there was no rationale for that recent change.

The Complainant also spoke to several Bay stores located in landmark buildings throughout Western Canada, similar to the subject property (Exhibit C3 pages 8 - 14). He noted that the Calgary location is assessed at the highest rates in comparison to its Western counterparts (Exhibit C1 page 14). For example, the Bay store in Winnipeg was assessed at $3.25 psf for 446,086 sq. ft.; the Bay in Edmonton is assessed at $5.25 psf for 167,946 sq. ft.

The Respondent submitted the subject property is unique and that there are no exact comparables to base its value. The Respondent submitted 9 lease comparables which served as benchmarks in deriving an assessed rate for the subject property (Exhibit R1 page 121). The Respondent's comparables were located throughout the City of Calgary. The areas were 24,493 sq. ft. - 268,094 sq. ft. and were leased at $8.62 psf to $36.00 psf. The leases commenced in November 2007 - August 2010. Three of the comparables were properties located near the subject property: Winners located at 126A 8 AV SW which has a lease for 30,833 sq. ft. at a rate of $17.84 psf; Sportchek located at 120 8 AV SW which has a lease for 24,493 sq. ft. at a rate of $36.00 psf (recently renovated); and Holt Renfrew located at 510 8 AV SW which has a lease for 146,887 sq. ft. at $21.55 psf. The Respondent also included in her analysis a Food Market warehouse located at 4639 72 AV SE which has a lease for 268,094 sq. ft. at $8.62 psf.

Based on these leases, the Respondent derived an $8.00 psf assessed rate for the Bay. The $6.00 psf assessed rate which was applied to the basement area remains unchanged from the 2010 assessment. She noted that both the $8.00 psf rate and $6.00 psf rate were considered fair and equitable by the Board in 2010 as reflected in CARB 1804 – 2010 – P (Exhibit R1 pages 52 – 55).

The Respondent submitted further support for the overall assessed rate of $94.00 psf for the subject property. She submitted an analysis based on the assessed value of the land value only. The land located in the downtown core/ Stephen Avenue is assessed at $375.00 psf as supported by 20 downtown land equity comparables (Exhibit R1 page 169). The Respondent included a site adjustment influence for the corner lot (+5%) and derived a land assessment value of $28,276,368 (Exhibit R1 page 161). Furthermore, she submitted four vacant land sales in the downtown core that occurred in 2007 and 2008. The lots were 3,253 sq. ft. – 27,950 sq. ft. and had sold for $518.78 psf - $707.04 psf (for a mean of $589.82 psf and median of $566.73 psf) (Exhibit R1 page 164). The Respondent submitted a rough cost approach valuations for the improvement which does not include the underlying land value which ranged between $31,545,994 and $35,113,348 depending upon grade (Exhibit R1 pages 170 & 171).

In rebuttal, the Complainant provided an assessed land value for the subject property. He applied the site adjustments of restricted access (-15%), land use restriction as a result of the heritage zoning (-20%) and LRT tracks (-15%) of which he derived an underlying land value of $10,804,000. The Complainant also set out the demolition costs for the building of $10.21 psf as well as the depreciated cost of the building of $29.59 psf (Exhibit C1 pages 97 - 106).

The Board was not convinced by the Complainant's argument that a $5.00 psf assessed rate is supported by full line department store market activity and equity. As such, the Board placed little weight on the Complainant's correlation between the retail sales on per square foot basis and the average assessed rate. The Board noted the Complainant suggested that this type of full line department store is a "dinosaur" which may be true. Eaton's had left due to bankruptcy proceedings over a decade ago and Sears vacated its downtown location within the last few years (Exhibit C3 Tab 17). The current retail trend is arguably suburban malls, big box stores and power centres (Exhibit C3 pages 7 & 8). However, the retail market is not the determining factor in establishing the assessment of a property. It is the parcel of land and improvements to it that must be valued in a property assessment, not the tenant or the tenant's business.

The subject property is a landmark building with a superior real estate location. It has the largest area of the 5 Bay stores (362,264 sq. ft.) that encompasses 6 storeys and the basement. It is simply not comparable to the Bay store anchor tenants in typical shopping centres. This is a unique building that enjoys a prime location in downtown Calgary. The Complainant submitted several other Bay stores located throughout Western Canada that occupied similar landmark buildings as the subject property. The Board notes the Bay building in Calgary has the highest assessed rate psf in comparison (Exhibit C3 page 14). Yet without supporting market evidence, it is difficult to establish a correlation between the Calgary market and that of Victoria, Saskatoon, Regina, Edmonton, etc. in order for the Board to place any significant weight on these comparables.

The Board noted the Complainant emphasized the deteriorated state and condition of the upper three levels of this building, further proof that a lower assessed rate is warranted. The Board did not place much weight on that evidence as it is the property owner's decision as to the state and condition of the building's interior. Moreover, the space is functional as it is still being used for the sale of its retail products as indicated in the photographs despite its "clearance centre" appearance. However, there was no evidence to suggest the Bay is limited in renovating its interior areas particularly for those upper 3 levels even with a Category "A" Potential Heritage Site classification for the subject property.

Be that as it may, the Board did not find the lease comparables used by the Respondent that formed the basis of the $8.00 psf similar to the subject property. The Board noted the Sportchek had $1.7 million dollars in renovations which is reflected in the $36.00 psf rate. The Holt Renfrew's location (former Eaton's Centre) had $139 million dollars in renovations. The Board also noted the lease for 6880 11 ST SE was non-arm's length and therefore may not be reflective of a market lease. The property located at 4639 72 AV SE is a warehouse with a food component, and is not similar to the subject based on physical characteristics and location. The Board noted the inclusion of big box retailers located at 1832 52 ST SE and 11940 Sarcee TR NW which again are not similar to the subject property and are located outside of the downtown core. Even if the Respondent used these comparables as benchmarks, the Board struggled to draw a correlation between the comparables utilized in the analysis and the subject property. The Board appreciates that comparables for the subject property simply may not exist within the City of Calgary as illustrated in the parties' evidence.

Notwithstanding, the Board finds the blended $8.00 psf assessed rental rate as applied by the assessor throughout the 6 floors and the $6.00 psf rate for the basement is not unreasonable when considering the overall value of the subject property is $35,670,000 or $94.00 psf. The Respondent indicated, if vacant, the land parcel would be assessed at $375.00 psf for Stephen Avenue. The Board noted that both parties had identified different site adjustments to be applied to the subject property if it were valued as a vacant land parcel. The Respondent applied a corner lot influence (+5%) and derived a value of $28,276,368. The Complainant applied restricted access (-15%), land use restriction as a result of the heritage zoning (-20%) and LRT tracks (-15%) of which he derived an underlying land value of $10,804,000. However, the Board found the restricted access and land use restriction was unsupported. As an example, the Board applied the site influences of corner lot adjustment (+5%) and light rail transit (-15%) to the subject property and derived an assessed land value of $24,236,887. The Complainant's request of $18,450,000 or $48.00 psf for both land and building appears inordinately low for the subject property in comparison.

The Board noted that both parties submitted rough calculations based on Marshall and Swift for the cost of the improvement. Both parties indicated that their cost calculations were not based on a comprehensive analysis but merely served as rough estimates. Given the intricacies involved in developing a cost analysis, particularly for the subject property, the Board finds it would be unfair to both parties to place any weight on the improvement and/or demolition costs that they provided to the Board.

2. The assessed rate for the health club area should be reduced from $9.50 psf to $8.75 psf.

The Complainant submitted the recreation area (18,966 sq. ft.) should be reduced from $9.50 psf to $8.75 psf to reflect current market value for the space. The Complainant stated the lease for the recreation space was renewed on June 28, 2010 for $8.75, close to the valuation date of July 1, 2010, and therefore is the best indicator of value for this space (Exhibit C1 page 58).

The Respondent argued that little weight should be applied to the subject lease for the World Health Bay Club because it was a renewal. The original lease had commenced in July 2000 for

$6.25 psf for a 10 year term. Moreover she indicated that all downtown recreation areas have been assessed at a $10.00 psf rate. The Respondent applied a $9.50 psf rate to the subject to recognize its inferior (rooftop) location on the subject property. The Respondent submitted 7 lease comparables in support of the assessed rate of $9.50 psf that had commenced in January 2002 – February 2010 (Exhibit R1 page 122). The areas were 1,486 sq. ft. to 28,044 sq. ft. and leased for $11.06 psf to $20.50 psf.

The Board finds the Complainant presented little evidence in support of the $8.75 psf rate for the recreational space. Other than the subject renewal at $8.75 psf, the Complainant did not submit any market evidence to suggest that the typical market rate is less than $9.50 psf. The Board also noted the subject lease was not in evidence. The Board finds the evidence presented by the Respondent supports the assessed rate. The Board finds the best comparable is 111 2 ST SW at $20.50 psf based on its size and location which is considerably higher than the assessed rate applied to the subject property's recreational space. The Board also accepts the Respondent's rationale for applying a small downward adjustment from the typical $10.00 psf rate for the subject gym given its location on the rooftop and restricted access within the subject property.

3. The capitalization rate should be increased from 7.0% to 8.5%.

The Complainant submitted that the current 7.0% capitalization rate does not capture the risk associated with this aged heritage building. Moreover, the Category "A" Potential Heritage Site classification for the subject property could affect its sale because it could impede what the purchaser could do with the property. The limited parking is also an issue that has to be taken into consideration in the capitalization rate. The Complainant suggested that a 7.5% capitalization rate plus a 1.0%- 2% premium to account for the risk associated with building is warranted.

The Complainant submitted 8 sales comparables that included 5 community centres and 3 power centres which occurred in January 2009 – February 2010 (Exhibit C1 page 73). The buildings ranged between 29,772 sq. ft. – 86,025 sq. ft. and were situated on land parcels of 81,022 sq. ft. – 880,348 sq. ft. The year of construction was 1970 – 2009. The sale price was $6,944,450 - $32,000,000. The Complainant's capitalization rate analysis included the (1) Market Net Operating Income (2) Actual with Typical Vacancy, Shortfall and Non Recoverables; (3) City Cap Rate Study and (4) Real Net/ADS Estimates. The Complainant submitted the market indicates an unadjusted capitalization rate of 7.73% for these sales and if adjusted to reflect typical income parameters then that would indicate a capitalization rate of 7.41%; therefore, a 7.5% capitalization rate would be a reasonable reflection of investor requirements. The Complainant suggested a further 1.0% premium for the risk associated with the subject property for a total capitalization rate of 8.5% (Exhibit C1 page 28).

The Respondent submitted the City separates the various sales in the retail market and derives typical capitalization rates for each retail category (Exhibit R1 pages 126 & 127). The Respondent submitted the sales used to derive the typical capitalization rates specifically for Regional Shopping Centres, Neighbourhood/Community Shopping Centres and Power Centres (Exhibit R1 pages 128, 134,140). There were general comments provided in regards to the sales used to derive the typical capitalization rates for Strip Centres and Freestanding Retail (Exhibit R1 page 126). The Respondent also submitted several market reports but indicated they are not 100% reliable because it is not known what numbers were used in the calculations (Exhibit R1 pages 150 – 158).

The Respondent submitted the 7.0% capitalization rate was based on the sale of the Sunridge Regional Shopping Centre which occurred in December 2009. It is 815,714 sq. ft. and sold for $242,500,000 or $310 psf. The actual capitalization rate was reported by RealNet at 6.8%, the City applied a typical capitalization rate of 5.84% (Exhibit R1 page 126). The Respondent derived typical capitalization rates of 6.5% - 7.25% for Regional Shopping Centres based on this one sale (Group A - C) (Exhibit R1 page 128). She submitted the Regional Shopping Mall is more comparable to the subject than Power Centres and Neighbourhood Shopping Centres which were both assessed using a typical 7.25% capitalization rate. The Respondent also indicated that she applied the same capitalization rate of 7.0% to the subject property's assessment as in 2010. The Respondent also submitted 33 equity comparables located on 8 AV SW, including the subject property, to illustrate that the subject property was equitably assessed with a 7.0% capitalization rate (Exhibit R1 page 149).

The Respondent also stated there were several retail sales that occurred in 2008 - 2010 which the Complainant did not include in their Capitalization Rate Study (Exhibit R1 page 159). She submitted if those sales were included in the Complainant's analysis, the mean is 7.05% and median is 6.92%, which further supports the City's application of a 7.0% capitalization rate for the subject property.

The Board was not convinced that the subject property, a landmark building, is similar to the modern Power Centres and Neighbourhood/Community Centres that formed the basis of the Complainant's Capitalization Rate Analysis of 7.5%. Moreover, the building sizes of the comparables (29,772 sq. ft. – 86,025 sq. ft.) are not similar to the subject property (362,164 sq. ft.) and the locations throughout the City are not similar to the subject property, which is in a prime, downtown location. The Board also finds the additional 1% premium for the risk associated with the subject property was not supported with any market evidence. There was no evidence of any impact of the Category "A" Potential Heritage Site classification for the subject property. As such, the Board finds there was insufficient evidence to support the Complainant's request of an 8.5% capitalization rate for the subject property.

Board's Decision:

The decision of the Board is to confirm the 2011 assessment for the subject property at $35,670,000.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF NOVEMBER 2011.

Lana J. Wood
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

EXHIBIT NO.	ITEM
1. C1	Complainant's Submission
2. C2	Complainant's Submission
3. C3	Complainant's Submission
4. C4	Complainant's Submission
5. C5	Complainant's Rebuttal (Part 1)
6. C6	Complainant's Rebuttal (Part 2)
7. R1	Respondent's Submission
8. RA	Respondent's Document

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	Stand Alone	Income Approach	Net Market Rent / Lease Rates; Capitalization Rate