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:

Fifth Avenue Place (Calgary) Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
K. Coolidge, MEMBER
P. Pask, 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:	**068 049 907**
LOCATION ADDRESS:	**222 – 5 Avenue SW, Calgary**
HEARING NUMBER:	**64160**
ASSESSMENT:	**$463,200,000**

This complaint was heard on the 11th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- D. Chabot, G. Kerslake

Appeared on behalf of the Respondent:

- H. Neumann, W. Krysinski, A. Czechowskyj

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

There were no preliminary or procedural matters.

Property Description:

Fifth Avenue Place, a two building office/retail complex occupying a full downtown city block (128,956 square feet) bounded by 4th and 5th Avenues and 1st and 2nd Streets SW. For assessment purposes, the property is classified as Class A offices. Each of the buildings is 35 stories high. The ground and second (+15) floors are developed for retail uses. Gross office floor area is 1,433,263 square feet; total building area is 1,487,924 square feet. There are 791 parking stalls in an underground parkade. The complex was built in 1980.

Issues:

1. Is the market rental rate for office space $23.00 per square foot or $21.00 per square foot?
2. What is the correct monthly rental rate to be applied to parking stalls for assessment purposes?
3. What is the correct area occupied for storage use?

The Complaint Form, filed on March 7, 2011, contained a list of several grounds for appeal, however, only the three issues shown above were pursued at the hearing.

Complainant's Requested Value: $424,990,000 with office space assessed on the basis of a $21.00 per square foot market rental rate, parking stalls assessed on the basis of $450 per month for unreserved stalls and $520 per month for reserved stalls and with a reduction in storage space area from 11,263 square feet to 5,951 square feet.

Party Positions on the Issues:

Complainant's Position:

Office Rental Rate - The Complainant argued that all office space in the buildings should be assessed on the basis of a $21.00 per square foot market rental rate rather than the $23.00 rate used by the assessor. In support of the argument, the Complainant provided data on 27 lease transactions that had occurred in seven Class A office developments, including one lease in the subject complex. Lease rates ranged from $17.00 to $32.00 per square foot with weighted mean averages of $20.97 overall and $20.20 for lease areas of more than 10,000 square feet.

When selecting lease data, the Complainant argued that the superior lease data came from transactions where both the "deal done date" and the "commencement date" were within the one year time period from July 2009 to July 2010. It was argued that the Respondent did not pay heed to "deal done dates" and, as a result relied upon some leases where the deal had actually been made one or more years prior to the July 1, 2010 valuation date for assessments. As a result, those rent rates were not reflective of market rates as at July 2010. Market rates would be found by relying on just lease data where both deal done and commencement dates were within the relevant time period. In some data sets, the deal done date was also referred to as the "lease close date". The Complainant defines the term as the date when lease negotiations were finalized.

In support of the requested $21.00 office rental rate, the Complainant provided summaries and copies of market survey reports prepared and published by third parties such as Barclay Street Real Estate Ltd. and CB Richard Ellis Limited. Survey data for the second quarter of 2010 was reported. It was emphasized that these third party surveys reported "asking" rental rates which are not necessarily the same as final rental rates at which lease deals are done.

The Complainant provided evidence and argument that some of the Respondent's lease data was incorrect or inaccurate for use in a 2010 valuation date. In particular, one lease that the Respondent showed as a 2010 lease was actually negotiated in 2007 and therefore did not reflect 2010 market rent. Furthermore, the Respondent's lease transaction list showed the transaction as two leases (11,933 and 23,386 square feet) whereas indications were that it was a single lease. By including it as two leases, each with a $31.00 rent, the Respondent's means and medians tended to be higher than if it had been shown as a single lease at $31.00 rent.

Parking rent rates – The Complainant provided a copy of an email message from a property manager that stated that 62 reserved stalls in the subject property were rented at $520 per month while the remaining 729 unreserved stalls were rented at $450 per month. The 2011 assessment is based on all 791 stalls being rented at $475 per month. The difference in gross rent of $185,220 per year should be recognized by a reduction in the assessment.

Storage area – a copy of portions of the December 31, 2010 rent roll was provided that showed a total of 5,951 square feet of storage space in four building areas. The assessment is based on 11,263 square feet of storage space which results in an over-assessment.

Respondent's Position:

Office rental rate – firstly, the Respondent took issue with some of the Complainant's lease information, in particular, a lease to BP Canada in BP Centre across 4th Avenue from the subject. There was argument that the Complainant's data regarding this lease was flawed and that the commencement date of the lease should have been 2003 and not 2009 as suggested by the Complainant. In support of the $23.00 per square foot rental rate, the Respondent provided data on 22 lease transactions in seven properties, including two within the subject complex. All 22 leases had commencement dates during the first six months of 2010.

The Respondent did not report nor consider negotiation/deal done dates for several reasons. Firstly, such information is not readily available and the date cannot always be accurately determined. For example, the date that lease documents are signed could be significantly different than the date that final agreement between the parties took place. Further, the City of Calgary Assessment Unit does not have the resources to thoroughly analyze thousands of leases each year to determine such things as deal done dates. The Respondent consistently relies upon lease commencement dates as the pertinent date for analysis of market rents. It was argued that commencement dates are clearly set out in every lease and are reported by the property owner/manager to the assessor in the annual ARFI (Assessment Request For Information), therefore it is information that is readily available to the assessor.

The 22 leases that the Respondent relied upon produced a mean average of $23.99 per square foot, a median of $23.75, weighted mean of $25.23 and weighted mean of $26.20 for leases involving floor area of more than 10,000 square feet. The Respondent maintained that all of these averages supported the $23.00 rate which was used in preparing the assessment.

Evidence from the Respondent included third party reports from Barclay Street, CB Richard Ellis and Avison Young for the 1st, 2nd and 3rd quarters of 2010 that supported the $23.00 office rental rate.

Parking rent rate – The Respondent assesses all parking stalls in all downtown Class A office buildings at a single typical rate of $475 per stall per month. A summary of a rental survey was included in evidence that showed mean and median rental rates of $487.50 for "Regular" (unreserved) stalls and of $517.73 to $522.50 for reserved stalls. An overall weighted mean was $488.99. This evidence, the Respondent maintained, supported the overall $475 rate used in making the subject assessment.

Assessments are to be based on typical rents and rates and not on specific data from the subject property.

Storage area – The Respondent assesses 11,263 square feet of storage space, an amount reported by the property owner on an ARFI. The owner has not updated the ARFI data to show a smaller total area for storage space. The partial rent roll provided by the Complainant was questioned as to whether there might be vacant storage space not shown on the roll. Further, it was suggested that the 5,312 square feet of unaccounted for space could not have disappeared and could have been reallocated to some other use. The Complainant was unable to confirm where the 5,312 square feet of space might be allocated.

The Respondent concluded its case by arguing that the onus is on the Complainant to convince the Board that the assessment is incorrect. The assessment therefore must be checked against market evidence. There were no arms-length sales of office properties that occurred in downtown Calgary during the year prior to the July 1, 2010 valuation date. In an attempt to demonstrate that the subject assessment rate of $311 per square foot of building area was reasonable, the Respondent provided data on three non-arms-length transfers involving REITs (Real Estate Investment Trusts), including a transfer of a 50% interest in the subject property in April 2010 and the transfer of 50% interests in two Class AA office properties (Bankers' Hall and Suncor Energy Centre). Data on a July 2009 sale of a Beltline office property (Stampede Station) was also provided as was data on a post-facto (April 2011) sale of a 50% interest in Scotia Centre, a downtown Class A office. These transfers and sales produced rates from $313 to $446 per square foot which supported the subject's assessment of $311 per square foot, in the opinion of the Respondent. The Respondent made comments about changes in the marketplace from time to time but there was no evidence provided to support those statements.

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

1. The Board finds that there are no grounds for changing the assessment by changing the office rental rate from $23.00 to $21.00 per square foot without consideration of other valuation formula inputs, particularly the capitalization rate.
2. The parking stalls are properly assessed using a typical Class A building rate of $475 per stall per month as the market rental rate.
3. There is no compelling evidence before the Board to warrant any change in the amount of the assessed storage space in the complex.

Board's Reasons for the Decision:

Both parties provided office space rental data. Some of the leases were used by both parties but for others, there was disagreement as to the validity or reliability of the data.

The Complainant chose leases where the deal done date and lease commencement date were both within the one year period from July 2009 to July 2010. The Respondent relied solely on lease commencement dates. The Complainant provided evidence that showed that at least one of the Respondent's lease comparables was a lease that had been negotiated and finalized in 2007 but was being presented as evidence of a 2010 lease because the commencement date was in 2010. The Board recognizes that pinpointing a deal done date is difficult and requires effort on the part of the analyst, however, there is merit in having regard to the date that a lease deal was finalized. Exclusively using lease commencement dates is not always reliable.

Notwithstanding the above, the Board does not have to decide on the precise rental rate for the reasons set out below.

Assessments of office buildings such as Fifth Avenue Place are prepared using an income approach. In the application of the income approach, the assessor takes a number of steps:

- Estimate the potential gross annual income the property can generate;
- Make allowance(s) for rent losses due to vacancy;
- Make deductions for operating expenses on vacant space;
- Apply a "non-recoverable expense" deduction;
- Calculate the net operating income resulting from the previous steps; and
- Convert the net operating income into a property value by applying a capitalization rate that has been extracted from an analysis of market sales of similar properties.

There were no capitalization rate studies in evidence before the Board, however, it is understood that such studies would examine market sales of properties in the same class as the subject. Sale prices would be adjusted for market changes between the sale date and the effective valuation date. The adjusted sale price would be used, relative to the net operating income that could be obtained with all building space rented at market rental rates, to determine a capitalization rate for that sale. Similar analyses of several sales would provide an indication of the appropriate capitalization rate for use in valuing the property. For the subject Class A office property, the Respondent applies a 7.5% capitalization rate which the Board believes would have been determined by analysing sales wherein the market office rental rate was $23.00 per square foot.

The Complainant does not argue against any of the inputs into the steps in the application of the income approach other than the office space rental rate ($21.00 versus $23.00 per square foot). There are no disagreements with vacancy, operating cost, shortfall or non-recoverable cost rates. There is no disagreement with the use of a 7.5% capitalization rate, therefore the Board assumes that the Complainant would have arrived at this rate by analysing property sales based on a $21.00 per square foot office rental rate. No such analysis was provided to the Board which the Board considers to be a critical omission.

There is no contention that the subject property is inferior to other downtown Class A office properties. The rent study that resulted in a market rental rate conclusion of $21.00 per square foot for offices would therefore be applicable to all similar Class A offices in the same market area. Those other properties are currently assessed using a $23.00 per square foot office rental rate and a 7.5% capitalization rate. It must be assumed that the 7.5% capitalization rate was derived by a process similar to that described above and that the capitalization rates derived from sales were based on office space being rented at a market rate of $23.00 per square foot.

If the Complainant accepts the 7.5% capitalization rate, then that rate would have to have been derived by analysing sales of office properties where the market rental rate was $21.00 per square foot.

The Respondent argues that the Complainant cannot simply argue that one input factor in the income approach should be changed. It is the assessment that must be proven to be wrong. The only way to prove this is to compare the actual and requested assessments to actual sales data. In this instance, there is no comparable property sales data. The Respondent has provided data on a number of property transfers (REITs), one 2009 Beltline sale and one 2011 downtown office property sale and concluded that the price per square foot of building area from these transfers supports the current $311 per square foot assessment on the subject. The Board does not accept this argument. If there are no comparable property sales, then there is no data that can be used in a comparison of sales to assessments. The fact that per square foot rates from sales or transfers of non-comparable properties are similar to the unit assessment rate is irrelevant. There is no reliable market evidence that might indicate whether the final assessment is reasonable or unreasonable. For this reason, the only way to check an assessment is to analyze each of the input components in the income approach formula. The Complainant is therefore justified in arguing that the office space rental rate of $23.00 per square foot is too high and requesting an assessment based on a change in the office rental rate to $21.00 per square foot.

The weakness in the Complainant's argument is in the replacement of the $23.00 rental rate with the $21.00 rental rate without consideration of the impacts of the other inputs. If the Board was convinced that the subject property was unique and therefore not similar to other Class A offices, then it might accept that the office rental rate is the only input rate that should be changed. That, however, is not the case. The Complainant's evidence relates to all Class A buildings in the market zone. The capitalization rate for that property class, if derived using a $21.00 per square foot office rental rate, might have been different than 7.5%. The Board has no way of knowing whether or not there should be a capitalization rate adjustment because it has no evidence of capitalization rates.

In summary, the Board is unable to accept the Complainant's office rental rate of $21.00 per square foot without having evidence of the impact on capitalization rates of that rate in a capitalization rate study. The unanswered question is: Would use of a $21.00 market rental rate on office space in a capitalization rate study result in a 7.5% capitalization rate? The Complainant cannot simply adopt some input factors used by the Respondent without demonstrating that those inputs would be the ones the market would apply to properties where the office rental rate was different than that used in the Respondent's analysis.

The issues of parking stall rents and the amount of storage space are sufficiently explained in the Board decisions. The Respondent must assess using mass appraisal techniques and one of the requirements is to use typical rents and rates. There is consistency in the Respondent's application of a constant $475 per month rental rate for underground parking stalls in Class A office properties.

The 2011 assessment is confirmed at $463,200,000.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF JULY 2011.

W. K.

W. Kipp
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal 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.*