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:

1023822 Alberta Ltd. And 1023822 Alberta Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER
R. Cochrane, MEMBER
J. Rankin, 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:	**068 079 003**
LOCATION ADDRESS:	**333 – 7 Avenue SW, Calgary AB**
HEARING NUMBER:	**62728**
ASSESSMENT:	**$367,550,000**

This complaint was heard on the 27th 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. Genereux*

Appeared on behalf of the Respondent:

- *W. Krysinski and H. Neumann*

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

On the morning of July 27, 2011, the same CARB panel heard the Complaint against the assessment on an adjoining property (File 64013) to the one being considered in this file. Both parties stated that the issue and arguments were essentially the same for both files and they requested that the Board carry forward the arguments from File 64013 to the current file in order to avoid unnecessary repetition. The Board agreed and the parties proceeded to present argument and evidence that related specifically to this file.

Property Description:

Toronto Dominion Square (The Core) – a retail and office complex that occupies most of a downtown block bounded by 7th and 8th Avenues and 2nd and 3rd Streets SW. The complex has several civic addresses but the assessment records show just 333 – 7 Avenue SW, Calgary, Alberta. Two office buildings (Home Tower and Dome Tower) rise above a four level podium, all completed in 1976. In 2010/2011, a major renovation/upgrading of the retail component was completed. The retail floors are directly linked to the Calgary Eaton Centre complex (west side of 3 Street SW) and to Scotia Centre office and retail building (east side of 2 Street SW). The Calgary Eaton Centre retail was also completely renovated/upgraded at the same time as that in the subject and the combined three and four levels of retail space have been named "The Core." Bridges over 3 Street and 4 Street that link the three properties at the +15 and +30 levels are wide and they are developed with retail stores as well. Another +15 and +30 link passes above the Stephen Avenue (8 Avenue) Mall to Bankers' Hall, another complex of office buildings with several levels of retail space at the base. In TD Square, the fourth level of the podium is developed as Devonian Gardens, an indoor park. This park, exempt from taxation, is assessed separately from TD Square.

The office towers (34 and 35 storeys) contain a total of 791,445 square feet of office space. The average floorplate size is 14,300 square feet. In the retail podium, floor areas are:

Kiosk:	360 square feet
Automated Teller:	50 square feet
1st Floor Retail:	77,855 square feet
2nd Floor Retail:	76,049 square feet
3rd Floor Retail:	67,113 square feet

There are 140,884 square feet of storage space in the complex and there is an underground parkade with 184 parking stalls. These floor areas are taken from the assessment summary.

For 2011, the property is assessed using an income approach. In the assessment calculations, rents for offices (Class A) are $23.00 per square foot. Retail spaces are attributed rental rates ranging from $25.00 to $90.00 per square foot while kiosk and ATM spaces are at $120.00 and $150.00 per square foot. Storage space is assigned a rent of $10.00 per square foot. Parking stall rent is set at $475 per stall per month.

The total assessment of $367,550,000 represents a unit rate of $318.52 per square foot of gross building area (excluding the parkade).

Issues:

There were numerous grounds for appeal set out in the Assessment Review Board Complaint form that was filed on March 4, 2011. At the hearing, however, the Complainant pursued just one issue:

> The capitalization rate used in the income approach is too low and should be increased from 7.25% to 7.5%

Complainant's Requested Value: $355,300,000

Party Positions on the Issue:

Complainant's Position:

Most Class A office properties in downtown are assessed by the income approach utilizing a capitalization rate of 7.5%. All income approach input factors are the same for the subject except for some retail rent rates and the capitalization rate which is 7.25%.

The Complainant argued that the assessor's reduced capitalization rate was influenced, in part at least, by the capitalization rate for regional shopping centres which is 6.5%. Yet, the subject with just 220,000 square feet of retail space is significantly smaller than a regional shopping centre which can contain 1,000,000 or more square feet. The amount of space in the subject is more closely aligned with Power Centres or Community Centres which are assessed by use of a 7.25% capitalization rate. The 7.25% capitalization rate is applied to all income from the subject property, including office, parking, storage and retail space income. The resulting tax on the entire property is higher than all of the competitor Class A buildings in downtown.

There is no basis for the lower capitalization rate because there have been no sales of similar properties from which the capitalization rate might have been extracted. In fact, there have been no downtown office property sales since 2006. With no market support, there is no basis for the arbitrary 0.25% capitalization rate reduction from that used for other Class A properties.

The 2010 assessment year was the first year that the capitalization rate adjustment was made for the subject and a few similarly located properties on the Stephen Avenue (8th Avenue) Mall with a higher than normal ratio of retail space. In 2010, the assessor had rationalized the capitalization rate adjustment by a comparison to regional shopping centres, however, there are significant differences in the amounts of retail area.

The Complainant maintained that the subject assessment is inequitable when compared to other Class A properties. Information was provided on 14 Class A properties that had all been assessed using a 7.5% capitalization rate.

Respondent's Position:

There is a group of Class AA, A and B properties that front onto the Stephen Avenue (8th Avenue) Mall that have higher than typical ratios of retail space (as much as 20% in some buildings compared to a typical 2% to 4%). For these properties, assessments are made using the income approach wherein the capitalization rate is reduced by 0.25%. This practice started in 2010 after a number of complaints had been filed wherein the issue was that typical office buildings were being treated unfairly because they were less valuable than those with high ratios of retail space but were valued with the same capitalization rates. Although there had been no sales of major downtown properties for several years, the Respondent opined that when there were sales, the market did differentiate between those containing significant retail space and those with a typical ratio. In the opinion of the Respondent, properties such as the subject are superior investments due to greater security of income and thus, lower ownership risk due to the significant retail component. The 0.25% capitalization rate reduction takes this lower risk into account.

A chart in Exhibit R1 showed a number of properties that were assessed in the manner described above, including Bankers' Hall (AA), Scotia Centre (A), Calgary Eaton Centre/Canada Trust Tower (AA) and the subject (A). For comparison, three regional shopping centre assessments were summarized wherein the capitalization rate was 6.5%.

The Respondent provided data on three historical (2006) sales. Scotia Centre (Class A) sold on the basis of a 5.15% capitalization rate. A Class B building at 940 – 6 Avenue SW sold at a capitalization rate of 6.8% and a suburban office property sale at 8500 Macleod Trail SW showed a 7.5% capitalization rate. These sales showed that the market attributed a lower capitalization rate for properties on the Stephen Avenue Mall with high retail space components (Scotia Centre). An April 2011 sale of a 50% interest in Scotia Centre indicated a capitalization rate of 7.4%. If the sale was analyzed using 2010 rental rates, the Respondent stated that the capitalization rate would have been 6.5%.

CARB decision 0958/2011-P was copied in Exhibit R1 and the Respondent drew the attention of the Board to this and other CARB and Municipal Government Board (MGB) decisions.

Part of the Respondent's argument was that, "at some point, you need to compare the assessment to the market." This statement pertained to support for the 2011 assessment as well as to the assessment being requested by the Complainant.

The subject assessment reflects a rate of $318 per square foot of building area and the Complainant's request is to have the rate reduced to $308 per square foot. Respondent support for the assessment of $318 per square foot came from an analysis of recent events involving office properties. Three events involved transfers of partial interests in Class AA and A buildings (Bankers' Hall, Suncor Energy Centre and Fifth Avenue Place) from owners to REITs (Real Estate Investment Trusts) that were controlled by the owners. A July 2009 market sale of a Class AA office property in the Beltline (Stampede Station) was detailed as was an April 2011 sale of a partial interest in a Class A downtown office (Scotia Centre). The Respondent argued that these transfers and transactions, although not truly comparable market sales data, tended to support the assessment rate. Prices from the transfers/transactions ranged from $313 to $446 per square foot of building area. It was argued that in the absence of open market sales transactions, these indicators were better than nothing.

The subject property, with 19% of its floor area developed for retail uses that achieve very high retail rents also has minimal vacancy. Investors would recognize the lower investment risk due to these factors and would base a purchase price on a lower than typical capitalization rate. This property and those others on the Mall with substantial retail area are unique properties. The Complainant has provided no evidence to the contrary.

Board's Decision in Respect of Each Issue:

The Board confirms the 2011 assessment of $367,550,000.

Reasons for the Decision:

There was no market evidence before the Board to support either capitalization rate (7.25% or 7.5%). Both parties provided argument and some evidentiary documentation.

The Respondent puts the subject property into a sub-class of properties that front onto the Stephen Avenue (8 Avenue) Mall that contain higher than typical retail space components. The Respondent offers that there are five or six properties in this sub-class. All of those properties are assessed using a capitalization rate that is 0.25% lower than the rates applied to other properties in the AA, A or B classes.

The Respondent's evidence brief (Exhibit R1) contains the following explanation of capitalization rate derivation:

> *". . . in the determination of capitalization rates for assessment valuation, it is imperative that the sales analysis process includes not only timely (base year) sales of truly similar properties, but also an analysis predicated on the same Net Operating Income parameters as applied in the NOI that is to be capitalized; That is to say, based on typical market factors, rather than "actual" or historical contract rents, vacancies, operating costs, etc. In this way, Fee Simple market value assessments are achieved."*

It logically follows from the above that the capitalization rate of 7.5%, used in assessing Class A properties should have been determined from sales of Class A properties. There were no such sales within the base year. Further, the determination of the 7.25% capitalization rate applied in the subject assessment should have been determined from sales of truly similar properties. There were no such sales within the base year.

The Board does not accept the Respondent's comparison of three totally different properties (downtown Class A, west downtown Class B and suburban Macleod Trail) that sold in 2006 as support for the 0.25% rate adjustment. These properties are vastly different and there is no explanation of how the Scotia Centre property, with a high ratio of retail space, sold at a lower capitalization rate than other Class A properties with typical retail space components.

Both parties provided market reports (Altus Insite, CBRE, Colliers) and argued that the capitalization rate data supported their positions. In a general way, these reports might be useful, however, some analysts do not distinguish between A and AA properties and none of them speak of a sub-class of properties with high ratios of retail floor areas. The Board can draw no conclusions from these reports with respect to the appropriate capitalization rate for application in the assessment of the subject property.

The Complainant's argument regarding the amount of retail space concludes that the subject, with 220,000 square feet of retail cannot be compared to regional shopping centres where there could be 1,000,000 or more square feet. From the floor area perspective, the subject is more closely aligned with smaller power centres or community centres where capitalization rates are 7.25%. The Board fails to see how the amount of retail space between the subject, regional shopping centres and power/community shopping centres impacts substantially on capitalization rates. Capitalization rates relate to the quality of income and market risks associated with a property's ability to produce income over a period of time. Size alone is not considered to impact significantly on a capitalization rate.

The Respondent, as a part of its argument that the total assessment must be confirmed by market evidence, 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 (AA @ $446, AA @ $444, A @ $376 and AA @ $436) supports the current $318 per square foot assessment on the subject. The Board does not accept this argument. None of these are sales of truly comparable properties to the subject. 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 bracket the subject's 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 test of reasonableness can only be found in analysis of the input factors into the income approach formula.

In conclusion, the Board finds that some of the Complainant's argument relating to the subject's fit within the A class may have merit however without some type of market evidence to support the argument, there is no compulsion to alter the capitalization rate that has been applied in the subject property assessment calculation.

The 2011 assessment of 333 – 7 Avenue SW, Calgary is confirmed at $367,550,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF AUGUST 2011.

W. Kipp

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

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.*