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:

DEGI HOMBURG HARRIS GENERAL PARTNERS LTD., COMPLAINANT
(Represented by Altus Group Ltd.)

and

The City Of Calgary, RESPONDENT

before:

Board Chair P. COLGATE
Board Member J. RANKIN
Board Member E. BRUTON

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 2012 Assessment Roll as follows:

ROLL NUMBER: **201027760**

LOCATION ADDRESS: **207 9 AVENUE SW**

FILE NUMBER: **66668**

ASSESSMENT: **$255,760,000.00**

This complaint was heard on 18th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta in Boardroom 10.

Appeared on behalf of the Complainant:

- G. Kerslake, Altus Group Ltd. – Representing Degi Homburg Harris General Partners Ltd.
- M. Cameron, Altus Group Ltd. – Representing Degi Homburg Harris General Partners Ltd.

Appeared on behalf of the Respondent:

- A. Czechowskyj – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] A joint request, put forward by the Complainant and the Respondent, for the cross-referencing of the evidence presented with respect to the capitalization rate argument was presented to the Board. It was submitted that the evidence presented would be essentially the same for each of the hearings before this Board.

[3] The Board accepted the request and will review the evidence submitted by both parties when making the decisions on File Number 66932 - Roll Number 067235101, File Number 67952 - Roll Number 067238402, File Number 67913 - Roll Number 068032895, File Number 67969 - Roll Number 068051705 and File Number 66668 - Roll Number 201027760.

[4] The Complainant withdrew its issue under Sections 299 & 300 of the Municipal Government Act.

Property Description:

[5] The subject property is located at 207 9 Avenue SW, in DT1, a Downtown district of the City of Calgary. The site is improved with two A - New Class office building, known as the Penn West Plaza, constructed in 2008 and 2010. The assessment record indicates the subject has a total of 639,391 square feet of net rentable area consisting of 604,390 square feet of office space – new buildings, 6,115 square feet of office space – poor location, 8,260 square feet of recreational space 17,561 square feet of main level retail, 3,065 square feet of storage space and 368 parking stalls.

[6] The subject property was assessed by the Income Approach for a 2012 assessment of \$257,194,504.00 or \$402.25 per square foot. A portion of the building has been assessed as exempt from taxation, with an assessed value of \$1,430,000.00. This amount was deducted from the Master Account, with the resulting assessment of \$255,760,000.00, which was before this Board.

[7] The assessment record indicated the subject was assessed at the following rates:

Space	Assessment Rate
Office Space – New Building	$25.00 per sq.ft.
Parking stalls	$5,700 per annum per stall
Office Space – Poor Location	$20.00 per sq.ft.
Recreational Space	$20.00 per sq.ft.
Retail Main Level	$32.00 per sq.ft.
Storage Space	$10.00 per sq.ft.

Issues:

[8] The Assessment Review Board Complaint form contained a list of reasons and grounds for the complaint. The issues the Complainant presented at the hearing were:

1. Is the office rent rate appropriate?
2. Is the vacancy allowance appropriate?
3. Is the capitalization rate appropriate?

Complainant's requested Value: $208,070,000.00 or $325.42 per square foot (revised at hearing). Request based upon a total assessment of $209,503,464.00 less exempt component at $1,430,000.00.

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

[9] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[10] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[11] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue 1: Is the office rent rate appropriate?

Complainant's Evidence:

[12] It was the Complainant's position that the subject assessment was incorrect and argued the assessed office rate of $25.00 was inconsistent with market comparables which suggested the correct office rent for the subject was $23.00 per square foot.

[13] In support of the Complainant's position, an analysis of the lease rates for 2012 Downtown AA, A, B and C Class office rent rates was submitted. (C1, Pg. 46-57) The analysis looked at the leases in DT1 and DT2 market zones and produced statistical results for weighted average, maximum and minimum rents, mean and median values. Sub-analysis of the leases were calculated based on DT1 leases only, the removal of atypical leases, leases greater than 3 year terms and full floor leases. The results for the lease analysis are summarized below, including the results of the Class A – Old and A- submitted in the rebuttal document: (C2, Pg. 14-16, File 67969, Roll Number 068051705)

[14]

CLASS	STATISTICAL ANALYSIS	TOTAL LEASES ($)	DT1 LEASES ($)	REMOVED ATYPICAL LEASES ($)	TERMS GREATER THAN 3 YEARS ($)	FULL FLOOR LEASES ($)
AA - Old	WEIGHTED AVERAGE	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	22.88
	MEAN	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	22.75
	MEDIAN	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	NO ANALYSIS	23.50
A - Old	WEIGHTED AVERAGE	20.94	20.65	19.50	19.50	19.56
	MEAN	20.70	20.29	19.22	19.22	19.63
	MEDIAN	20.00	19.75	19.25	19.25	19.75
B & B-	WEIGHTED AVERAGE	16.94 ALL LEASES IN DT1		15.10	15.06	13.98
	MEAN	17.21		15.94	15.57	14.16
	MEDIAN	16.00		15.00	15.00	15.00
C	WEIGHTED AVERAGE	13.35	10.12	13.01	8.69	NO ANALYSIS
	MEAN	12.90	11.04	12.57	9.89	NO ANALYSIS
	MEDIAN	12.00	10.50	12.00	10.00	NO ANALYSIS

[15] The Class AA - Old analysis reviewed only four leases, located in three buildings. The Class A leases examined only those from buildings designated as A – Old; the analysis of Class B leases examined leases from building designated as Class B or B-; and the analysis of Class C leases examined leases from buildings designated as Class C. The analysis of the Class A buildings, found in the noted rebuttal document, combined both the Class A – Old and Class A- to determine the results.

[16] The Complainant argued for the reduced rental rates as the analysis shows the weighted average for Class AA-Old at $22.88 and that in the opinion of the Complainant the Class A-New was equal to the Class AA-Old. Therefore, the subject should be assessed at the requested rental rate of $23.00 per square foot.

The Complainant submitted the Tenant Rolls – December 31, 2011 into evidence, which indicated space occupied and area, lease starts and end, and rental rates. (C1, Pg. 40-44)

Respondent's Evidence:

[17] The Respondent submitted an Assessment Request For Information (ARFI) dated April 28, 2011 which also provided a January 1, 2011 Rent Roll for the Penn West Plaza. (R1, Pg. 9-16) The Respondent noted that no lease on the ARFI or the Tenant Roll, provided by the Complainant, showed any lease in the subject building to support the request for $23.00. The ARFI return showed the most recent leases with start dates in 2010 were for $34.95 per square foot. Older leases were signed for $26.50 per square foot in 2008. Referencing the Tenant Roll provided by the Complainant, The Respondent noted a post facto lease (11/01/2011) was signed for $35.00 per square foot. The Respondent's position was the leases in the subject building more than support the rate of $25.00 per square foot.

[18] Additionally, the Respondent submitted 2012 Downtown Office Rent Equity Comparables for Class A – New structures. The statistical analysis of the mean, weighted mean and median are summarized below: (R1, Pg.63)

CLASS	STATISTICAL ANALYSIS	ALL LEASES ($)	2011 LEASES ($)
A - New	MEAN	30.82	31.10
	WEIGHTED MEAN	28.07	26.84
	MEDIAN	31.00	31.50

[19] The Respondent provided additional lease information with lease data from A – New office spaces from Bankers Court and Le Germain and A Class office spaces from Encor Place, Western Canadian Place, Shell Tower, Fifth Avenue Places – East, Bow Valley Square #1, #2 and #3, Energy Plaza, Gulf Canada Square and Scotia Centre. (R1, Pg. 64-67)

[20] It was the position of the Respondent the analysis supported the rate of $25.00 per square foot for office space in the subject building as shown by the analysis of leases in DT1 and the actual leases in place on July 1, 2011.

Findings of the Board on Issue 1:

[21] The Board was not persuaded by the Complainant's argument that the rent should be based upon the hierarchy of rental rates in the market place, specifically on the basis of a different class of building as a basis for a change to the rental rate. The Board found that an analysis of actual leases for each class provided a better indicator of typical market rents.

[22] The analysis provided by the Complainant of the Class AA – Old was for properties dissimilar to the subject.

[23] The Complainant presented no analysis of properties classified as Class A – New, but rather attempted to present an argument for grouping the A – New with the AA – Old. The Complainant failed to provide sufficient evidence to support this argument, by means of an analysis of leases in the two classifications to establish the correlation.

[24] The Respondent provided an analysis of A – New Buildings which showed a weighted mean in excess of the currently applied rate of $25.00 per square foot. Further support for the typical rental rate was provided by current leases in the subject property

[25] Following the review of the submissions, the Board found there was insufficient evidence to support the change to the assessment lease rate. The rental rate for office space is confirmed at $25.00 per square foot.

Issue 2: Is the vacancy allowance appropriate?

Complainant's Evidence:

[26] The Complainant argued the vacancy allowance for office, retail, storage and recreational space in the subject building should be at 5%, not the currently assessed rates of 1% for office, 4% for retail and storage space and 2% for recreational space. The vacancy rates of 2% for parking and 10% for office space- poor location were accepted by the Complainant.

[27] The Complainant submitted a page "Historical Office Vacancy – JUNE 30 – Cresa Partners" which listed the 2011 vacancy as 5.81% and the average for five years as 5.00% for A Class buildings. (C1, Pg. 59). Supporting documentation for the table was provided. (C1A, Pg.6-30)

Respondent's Evidence:

[28] The Respondent submitted the Assessment Business Unit analysis of vacancy rates, based upon the information received in the Assessment Request for Information responses from owners and/or management companies. (R1, Pg. 95-96) Based upon the responses, the average vacancy for four Class A – New buildings was 0.95% vacancy

[29] The Respondent referred to the ARFI submitted by the managers for the Penn West Plaza, Homburg Canada REIT Management Inc., which stated on April 28, 2011 that the vacancy in the subject was zero square feet or 0.0% - in other words, fully occupied structures.

Findings of the Board on Issue 2:

[30] The Board notes the vacancy request by the Complainant was based upon a third party report – Cresa Partners and specific to an individual quarter of each year.

[31] The Board notes the Cresa Partners report does not segregate the Class A buildings into the A – New, A – Old or A- classifications, unlike the City of Calgary which reviews each classification separately.

[32] The Complainant and the Respondent provided vacancy information with respect to the total space, but none was submitted to show what the vacancy rates were for office space, retail spaces or any other space separately.

[33] The Board finds the Complainant's averages for vacancy are based upon the combination of Headlease and Sublease space, which results in a higher vacancy percentage. The Respondent bases its analysis on only the headlease vacancy, as reported on the ARFI's submitted in response to the annual surveys.

[34] The Board made reference to Black's Law Dictionary 7th Edition in its deliberations, specifically the definitions of Headlease and Sublease:

Headlease – a primary lease under which a sublease has been granted

Sublease – a lease by a lessee to a third party, conveying some or all of the leased property for a shorter term than that of the lessee, who retains a reversion in the lease

[35] The Board finds the best indicator of vacancy in a building is that provided by the headlease data and the ARFI returns submitted to the City of Calgary. When a comparison is made for the subject property the percentage vacancy submitted shows a very close correlation with the 0.95% in the City of Calgary analysis.

[36] The Board finds insufficient evidence to support a change to the vacancy allowance as applied in the assessment calculation.

Issue 3: Is the capitalization rate appropriate?

Complainant's Evidence:

[37] The Complainant argued that the capitalization rate, based on a sale of the Scotia Centre, should be 7.25%, not the currently assessed capitalization rate of 6.75%.

[38] In support of the Complainant's position that the capitalization rate is incorrect, the Complainant presented the two sales for the Scotia Centre, a class A property in the DT1 zone of Downtown Calgary. The two sales represented a purchase of a 50% interest in the building:

Scotia Centre sale dated 04/21/2011 for 190,000,000.00 (100% interest equivalent)

Scotia Centre sale dated 04/21/2011 for 232,000,000.00 (100% interest equivalent)

[39] Based upon the Complainant's Net Operating Income (NOI), capitalization rates for the two sales of Scotia Centre was calculated:

Sale Number	Name	Address	Sale Date	Sale Price ($)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	14,253,300	7.5
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	14,253,000	6.14

(C1, Pg. 68)

[40] It was argued by the Complainant that Sale 2 was not a sale to be relied on due to a number of factors affecting the transaction, such as Scotia Capital Real Estate being a broker in the transaction and Scotia Mortgage Corporation providing the mortgage for the purchase. The Bank of Nova Scotia Properties Inc. was the vendor of the property.

[41] The Complainant argued that Sale 1, with a capitalization rate of 7.5%, was the only sale on which to base the capitalization rate of the subject property.

The Complainant supported the request for a 7.25% capitalization rate by referring the Board to the capitalization rate for the Scotia Centre located on the Stephen Avenue mall. The capitalization rate produced by the Scotia Centre at 7.5% is equated to the Class A – Old buildings. The Complainant argued the differential between the Class A – Old and the Class A – New should be 0.25%, resulting in the requested 7.25% capitalization rate. The Complainant submitted a 'corrected' assessment parameters table. (C1, Pg. 37)

Respondent's Evidence:

[42] The Respondent introduced the same two Scotia Centre sales as the Complainant, plus introducing a third sale for Gulf Canada Square. The Respondent stated the third sale was not used in the determination of the capitalization rate as it was post facto to the July 1, 2011 valuation date. It was stated by the Respondent the Gulf Canada Square sale was only an indicator that the capitalization rate used by the City of Calgary Assessment Business Unit (ABU) was correct.

Sale Number	Name	Address	Sale Date	Sale Price ($)	NOI	Capitalization Rate (%)
1	Scotia Centre	225 7 Avenue SW	04/21/2011	190,000,000	13,975,247	7.36
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02
					Mean for 2 Sales	6.69
					2012 Capitalization Rate	6.75
Sale Number	**Name**	**Address**	**Sale Date**	**Sale Price**	**NOI**	**Capitalization Rate (%)**
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39
					Mean for 3 Sales	6.59

(R1, Pg. 73)

[43] The Respondent provided the 2012 Downtown Office Cap Rate Sales chart, using typical NOI for the year of sale, that indicated the first Scotia Centre Sale in April 2011 resulted in a 7.36% capitalization rate, the second Scotia Centre sale in April 2011 resulted in a 6.02% capitalization rate, and the Gulf Canada Square sale in September 2011 resulted in a 6.39% capitalization rate.

[44] The Respondent argued that Sale 2 should be included as the sale was on the open market, as shown in the RealNet document (R1, Pg. 77) which showed the sale type as 'Market". Further, the RealNet documents indicated the transaction was brokered by two different brokers – CB Richard Ellis Canada representing the purchaser, Homburg Canada REIT GP Inc. and Scotia Capital Real Estate representing the vendor, The Bank of Nova Scotia Properties Inc.

[45] In rebuttal to the Complainant's assertion that the sale was not valid as the Bank of Nova Scotia provided the mortgage for the purchase, the Respondent showed the Board how the financing was not preferential. The financing for the Scotia Centre 50% purchase was for $69,900,000.00 at an interest rate of 4.6% for a period of 7 years. (R1, Pg. 78) A sale for a 50% interest in Gulf Canada Square was for $150,000,000.00 at an interest rate of 4.606% for a period of 5 years. (R1, Pg. 88)

[46] The Respondent introduced evidence that the original purchase for 50% of the property by The Bank of Nova Scotia was for $94,900,000.00 on September 29, 2006 of the Scotia Centre. (R1, Pg. 97-109)

Findings of the Board on Issue 3:

The Board notes the following transactions for an interest in the Scotia Centre:

Vendor	Purchaser	Sale Date	Interest	Consideration ($)
Oxford Properties Group Ltd.	The Bank of Nova Scotia	September, 2006	50%	94,900,000
Aspen Properties	The Bank of Nova Scotia	April, 2011	50%	95,000,000
The Bank of Nova Scotia	Homburg Canada REIT GP Inc.	April, 2011	50%	116,000,000

[47] In verbal testimony, the Respondent indicated that the Aspen Properties – Bank of Nova Scotia sale was completed in October 2010, but not registered until April of 2011.

[48] To coin the expression, the Board finds that both of the sales for an interest in the Scotia Centre "have some hair on them". It was suggested that Sale 1 was possibly tainted by a possible granting of a right of first refusal to the Bank of Nova Scotia, but no evidence was presented to support this contention.

[49] The Board did note, from the evidence submitted, that the consideration paid for a 50% interest increased from $94,900,000.00 in September of 2006 to $95,000,000.00 in April of 2011 - an increase of only $100,000.00 over a period of four and a half years.

[50] The Board considered the Respondent's argument that one sale of the Scotia Centre for $190,000,000.00 (100% interest) may not be market value, as one 50% owner was selling to the other 50% owner. The Board is of the opinion that a sale of this nature may occur with predetermined factors such as a right of first refusal or other mechanisms. Additionally, the small increase in value over four years does not appear to be to the Board a true market value, given that in a period of only months a 50% share in the property sold for $116,000,000.00, an increase of $21,000,000.00. For these reasons the Board placed no weight on Sale 1 for $95,000,000.00.

[51] The Board found the Complainant's argument against Sale 2 was without support and therefore accepts the sale as an indicator of market value and a capitalization rate. The Board did not find it unreasonable for the owner of the building, The Bank of Nova Scotia, to use an in-house broker to handle the negotiations for the sale of an interest in the property. Further, the Board did not find it unreasonable for The Bank of Nova Scotia to be a party to the financing of the property, given that they were intimately involved with the transaction and in the position to offer financing during the negotiations. The Board noted that the arrangement did not provide the Purchaser with a preferred interest rate.

[52] The Board reviewed the details of the Gulf Canada Square sale as presented. The sale was post facto, occurring in September of 2011, but both the Complainant and the Respondent during their testimony stated that sales of this type occur in advance of the actual registration date. This was clearly shown in the two sales for Scotia Centre when both sales were registered on April 21, 2011. The Board therefore accepts the Gulf Canada sale as an indicator of market value and the resulting capitalization rate is used by the Board in its decision.

[53] The Board analyzed the two sales to determine a capitalization rate based upon Sale 2 for the Scotia Centre and the Gulf Canada Square sale, using typical NOI as submitted by the Respondent:

Sale Number	Name	Address	Sale Date	Sale Price ($)	NOI	Capitalization Rate (%)	Capitalization Rate (%) Adjusted .25%
2	Scotia Centre	225 7 Avenue SW	04/21/2011	232,000,000	13,975,247	6.02	6.27
3	Gulf Canada Square	401 9 Avenue SW	09/02/2011	356,000,000	22,745,869	6.39	6.39
					Mean	6.21	6.33
					2012 ABU Capitalization Rate	**6.75**	**6.75**

(1) .25% adjustment to reflect a negative adjustment in capitalization rates for properties on the Stephen Avenue 'Spine' and those located elsewhere in DT1.

[54] The Board accepts the Respondent's capitalization rate of 6.75% to be applied to the subject property, although the Board's analysis indicates a lower capitalization rate. The Board finds insufficient support for the 7.25% request by the Complainant.

Board's Decision:

[55] Based upon the reasons given, the Board confirms the assessment at $255,760,000.00.

DATED AT THE CITY OF CALGARY THIS 1 **DAY OF** November **2012.**

PHILIP COLGATE
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure – Part 1
2. C1A	Complainant Disclosure – Part 2
3. R1	Respondent Disclosure
4.	Numerous MGB and CARB Decisions

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	Office	High Rise	Income Approach	-Capitalization Rate -Net Market Rent -Vacancy Allowance