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 ("*MGA*").

between:

The City of Calgary & 1023822 Alberta Ltd.,
(as represented by Altus Group Ltd.), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

L. Wood, PRESIDING OFFICER
P. Pask, MEMBER
T. Usselman, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	**068079003**
LOCATION ADDRESS:	**333 7 AV SW**
HEARING NUMBER:	**68550**
ASSESSMENT:	**$421,300,000 (taxable)**

This complaint was heard on October 2nd and 3rd, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- Mr. S. Meiklejohn Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- Mr. A. Czechowskyj Assessor, City of Calgary

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

[1] There are six complaints that were scheduled before the Board on October 1 – 5th, all of which relate to downtown office high-rises. The complaint that was filed for the property located at 407 2 ST SW (file #67968) was subsequently withdrawn later that week before the Board. The parties indicated that the issues pertaining to the office rental rate, vacancy rates and the capitalization rate would be similar for all of the complaints, and had requested that their evidence and argument be cross referenced to the "Scotia Centre" file. The Board agreed with the parties' request and designated file **#67931** as the "master file", and would reference those exhibits contained in that file to the remaining complaints that are before the Board.

[2] At the commencement of the hearing, the Complainant submitted that he would not be pursuing issues in the case at hand in relation to sections 299 & 300 of the *MGA*.

[3] During the course of the hearing, the Respondent asked if he could present the following Board decisions in support of his argument: CARB 0924/2012-P; CARB 1451/2012-P; and CARB 1454/2012-P. These decisions were not disclosed in accordance with section 8(2)(b) of *Matters Relating to Assessment Complaints Regulation* AR 310/2009 ("*MRAC*"). The Complainant indicated that he did not object to the Board receiving these decisions. The Board therefore allowed the Respondent to present those decisions to the Board.

[4] During the Complainant's evidence submission, it became evident that the retail and storage areas, as utilized in the subject property's assessment, required corrections. The parties advised the Board that this property was recently renovated and the retail and storage areas, as reflected in the assessment, had changed. The parties agreed that the ATM, kiosk and office areas remained the same. The Board adjourned the hearing by mid-afternoon on October 2, 2012 to provide the parties an opportunity to review the areas together, and present those revised areas to the Board the following day.

[5] The parties presented the corrected retail and storage areas based on the Tenant Rent Roll dated May 2011 to the Board. The parties referenced the Assessment Summary Record for the subject property to make the required changes to the retail and storage spaces, which also included the combination of several of the (retail) sub components, specifically #10 & #11 and #14, #15 & #17 (Exhibit C1 pages 40 & 41). The Board has set out the parties' corrections as follows:

#	Sub Component	Original Assessed Area	Corrected Area	Market Net Rental Rate	Original Total Market Rent	Corrected Total Market Rent
1	Automated Teller Machine Space	50	50	150.00	$ 7,500	$ 7,500
2	Kiosk	360	360	130.00	$ 46,800	$ 46,800
3	Office Space	791,445	791,445	22.00	$17,411,790	$17,411,790
4	Parking Stalls	190	190	5700.00	$ 1,083,000	$ 1,083,000
5	Retail TD Square 2nd Floor and Space Area SF<= 1500 and Space Area SF > 500	2,257	818	90.00	$ 203,130	$ 73,620
6	Retail TD Square 2nd Floor and Space Area SF<= 3500 and Space Area SF > 1500	20,702	11,137	60.00	$ 1,242,120	$ 668,220
7	Retail TD Square 2nd Floor and Space Area SF<= 500	116	0	90.00	$ 10,440	$ 0
8	Retail TD Square 2nd Floor and Space Area SF<= 6000 and Space Area SF > 3500	29,728	33,738	55.00	$ 1,635,040	$ 1,855,590
9	Retail TD Square 2nd Floor and Space Area SF> 6000	23,246	48,941	40.00	$ 929,840	$ 1,957,640
10	Retail TD Square 3rd Floor and Space Area SF<= 2000 and Space Area SF > 500	10,268	10,627	65.00	$ 667,420	$ 690,755
11	Retail TD Square 3rd Floor and Space Area SF<= 500	987		65.00	$ 64,155	
12	Retail TD Square 3rd Floor and Space Area SF<= 6000 and Space Area SF > 2000	39,178	26,795	45.00	$ 1,763,010	$ 1,205,775
13	Retail TD Square 3rd Floor and Space Area SF > 6000	17,252	6,614	25.00	$ 431,300	$ 165,350
14	Retail TD Square Main Floor and Space Area SF<= 1500 and Space Area SF > 500	13,912	76,510	45.00	$ 626,040	$ 3,442,950
15	Retail TD Square Main Floor and Space Area SF<= 2500 and Space Area SF > 1500	11,922		45.00	$ 536,490	
16	Retail TD Square Main Floor and Space Area SF <= 500	726	1,501	50.00	$ 36,300	$ 75,050
17	Retail TD Square Main Floor and Space Area SF > 2500	51,295		45.00	$ 2,308,275	
18	Storage Space	141,358	131,412	10.00	$ 1,413,580	$ 1,314,120
TOTAL		**1,154,992**	**1,140,148**			
POTENTIAL NET INCOME					**$30,416,230**	**$29,998,160**

[6] The Respondent advised the Board that based on these area corrections (and assuming the assessed income parameters remained the same), the assessment would change from $421,300,000 to $415,790,000. However, the Respondent stated that he would not submit this new value as a recommendation, and instead, defended the original assessment of $421,300,000. The Board finds this type of response from an accredited assessor is unacceptable and it severely undermines any public confidence in the preparation of property

assessments which are legislated to be correct, fair and equitable. The Board finds the subject property's current assessment (taxable), should be reduced to $415,790,000, and the onus is on the Complainant to prove to the Board that a further reduction to the subject property's assessment is warranted.

[7] The parties also agreed that the exempt area, identified as the Devonian Gardens, requires an area correction from 85,068 sq. ft. to 89,530 sq. ft., also as a result of the renovations. However, as acknowledged by the Complainant, there was no separate complaint filed on the exemption which was valued at $11,600,000. Without it, the Board finds that it does not have the jurisdiction to change the exempt area despite the parties' agreement. Notwithstanding, the Board finds the assessor is able to make that correction to the roll for the current year. The assessor could issue an amended assessment notice pursuant to section 305 of the *MGA* once the Board has rendered its decision on these matters.

[8] The Respondent stated that it is highly unlikely that an amended assessment notice will be issued because the Assessment Branch's management does not want to give the Complainant an opportunity to file another assessment complaint against the subject property this year. He indicated that he would look into the matter for next year's assessment. The Board finds that internal policies or directives do not trump the legislation and given the Respondent's acknowledgement that a correction to the exempt area is warranted, an amended assessment notice should be issued in accordance with the legislative requirements.

[9] The Board has set out its calculations for the subject property based upon the corrected areas for both the taxable and exempt portions as submitted by the parties at the hearing.

[10] No additional procedural or jurisdictional matters were raised by the parties during the course of the hearing.

Property Description:

[11] The subject property is an office/retail complex, located in the Downtown Commercial Core, commonly known as TD Square. It includes two 30+ storey office towers, the Dome and Home Oil Towers. The total building area is 1,135,448 sq. ft., the floor plate is 14,300 sq. ft., and the site area is 2.64 acres. The land use designation is Downtown Business District. The property was built in 1976. The complex is comprised mainly of office space of 791,445 sq. ft.; three levels of retail space of 216,681 sq. ft. and storage area of 131,412 sq. ft. The subject property has both +15 and +30 walkway connections. There are 190 parking stalls associated with this site. There is also an exempt portion comprised of 89,530 sq. ft. commonly known as the Devonian Gardens.

Issues:

[12] The issues were identified at the hearing as follows:

(a) The assessed office lease rate should be reduced from $22.00 psf to $20.00 psf.
(b) The typical vacancy rate for the office, retail and storage components should be 5.0%.
(c) The capitalization rate should be increased from 6.5% to 6.75%.

Complainant's Requested Value:

[13] The Complainant had originally requested an assessment of $366,906,000 for the taxable portion of the subject property which was then revised at the hearing to $360,110,000. This revision was based upon a change in the requested capitalization rate from 6.625% to 6.75%. The exempt portion should be $12,010,000.

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

(a) The assessed office lease rate should be reduced from $22.00 psf to $20.00 psf.

[14] The Complainant submitted market data to determine the typical lease rate for Class A offices (Exhibit C1 pages 121 & 122). He submitted 42 market lease rates of A-old quality office buildings, including several from the subject property. He noted that any leasing activity for the subject property that was done in 2010 was borne out of the renovations, and reflects the current market for that space. The data is based on leases from DT1 and DT2 that had commenced in July 1, 2010 – July 1, 2011. The leased areas ranged from 897 – 84,106 sq. ft. for terms between 0.5 – 13 years and rates of $17.00 - $30.00 psf. The Complainant derived an assessed rate of $20.00 psf based upon his analysis which showed lease rates categorized according to a variety of factors: location in the DT1; removal of atypical leases; leases with terms greater than 3 years; and, full floor plates. The overall result of that analysis indicated a weighted average of $19.50 psf – $20.94 psf (depending on the category) which supports a rate of $20.00 psf.

[15] The Respondent provided the identical market data (the same 42 lease rates) to support the current assessed rate of $22.00 psf (Exhibit R1 page 138). The Respondent took into account all of the leases in his analysis and derived a mean of $20.70 psf; a median of $20.00 psf; and a weighted mean of $20.94 psf. The Respondent also isolated those leases that had commenced in 2011 in which he derived a mean of $21.03 psf; a median of $20.00 psf; and, a weighted mean of $21.65 psf.

[16] The Board reviewed the parties' market evidence and removed those lease rates with terms of less than three years, as the Board agrees with the parties, office leases are typically for longer periods of time. The Board took into consideration lease rates from both DT1 and DT2 even though the subject property is located in DT1. The Board considered 7 of the 8 lease rates from DT2 (which have more than 3 year terms) as there was no marked deviation in lease rates between the two zones. Based on the market evidence, the Board derived a weighted mean of $20.94 psf and a median of $21.00 psf. The Board finds that $21.00 psf is more representative of the typical market rate achieved for Class A office buildings in DT1 and therefore reduces the subject property's current assessed rate from $22.00 psf to $21.00 psf.

(b) The typical vacancy rate for the office, retail and storage components should be 5.0%.

[17] The Complainant requested that a vacancy rate of 5.0% be applied to the office area. This is supported by Cresa Partners' historical review of vacancy rates for Class A office buildings in which they determined that the average vacancy rate for the past five years was 5.0% (Exhibit C1 page 131).

[18] The Complainant submitted the actual vacancy rate for the subject property's retail component is 12.87% yet it is assessed at 2.0% (Exhibit C1 page 56). He requested that a 5.0% vacancy rate be applied to the retail and storage areas. The Complainant submitted the subject property was the original shopping centre destination and therefore it is reasonable to take into consideration suburban shopping malls in determining a typical retail vacancy rate. Moreover regional shopping centres were used last year by the Respondent to derive the capitalization rate for the subject property (Exhibit C1 page 5). The Complainant submitted that Holt Renfrew is essentially an anchor tenant at one end of TD Square and it was assessed with a 5.0% vacancy rate. The Complainant submitted the assessed vacancy rates for South Centre Mall (9.5%), North Hill Shopping Centre (12.75%) and Sunridge Mall (4.0%) which also have anchor tenants in support of his position (Exhibit C3 pages 193 – 203).

[19] The Respondent provided 15 Class A downtown office equity comparables (including the subject property) to show that the overall vacancy rate is 2.91%, yet the subject property's office component was assessed with a 4.0% vacancy rate (Exhibit R1 pages 144 & 145). He argued the market evidence does not support a further reduction.

[20] The Respondent acknowledged that the subject property has a 12.87% vacancy rate for retail but he argued that is the result of the extensive renovations and it is not abnormal. He submitted that Holt Renfrew is 100% occupied and it was assessed with a 5.0% vacancy rate, and that vacancy rate was confirmed by the Board (CARB 0924/2012-P). However, if the entire building is taken into consideration, then the 2.0% vacancy rate is fair and equitable. The Respondent indicated that his equity chart incorporated the retail vacancy rate. The Respondent requested confirmation of the current assessed vacancy rates and submitted CARB 1282/2012-P in support of his position.

[21] In rebuttal the Complainant drew comparisons to those suburban malls which received a benefit that the subject property does not have in terms of a higher vacancy rate even though they have similar sales volumes (Exhibit C3 page 190 - 192). He argued this creates an inequity between suburban vs. downtown locations in how they are assessed.

[22] The Board was not convinced that the office vacancy rate should be increased from 4.0% to 5.0% as there was insufficient evidence to justify a 1.0% increase. The Board has referenced Gulf Canada Square in how it was assessed and notes a 4.0% vacancy rate was applied to its office component. Moreover the Board notes that Cresa Partners support a 4.0% office vacancy rate for downtown office towers (Exhibit C2 page 14).

[23] However the Board finds that an increase in the vacancy rate from 2.0% to 4.0% for both the storage and retail areas is warranted. The Board finds that there was no evidence submitted by the Respondent to support the vacancy rate of 2.0% that was applied to the subject property. The Respondent's vacancy chart only addressed the office component. The Board was uncertain as to how CARB 1282/2012-P relates to the issue at hand as it dealt specifically with the market rental rate and capitalization rate that was applied to Bankers Hall, which is a Class AA building. The Board finds that a vacancy rate of 4.0% is supported based on Gulf Canada Square. The Board does not find it unreasonable to compare the retail component of TD Square to other suburban retail properties in which case the Board finds the best comparable is the Deerfoot Mall which was also assessed with a 4.0% vacancy rate. In addition, the Board notes the South Centre Mall, which was assessed with a 9.75% vacancy rate, also supports a higher vacancy rate than the 2.0% that was applied to the subject property.

(c) The capitalization rate should be increased from 6.5% to 6.75%

[24] The Complainant submitted that a 0.25% deduction to the capitalization rate was applied to the subject property because it is located on the "retail spine". The Complainant argued there is no rationalization for this deduction and therefore the capitalization rate should be 6.75% as opposed to 6.5%. Although previous Boards have accepted the adjustment, the Complainant argued that there were no sales available of Class A downtown offices located on the retail spine when those decisions were rendered (CARB 1646/2011-P). However this year, the Board has the two Scotia Centre sales to take into consideration which do not support the adjustment.

[25] The Complainant submitted the City had developed a "hybrid" capitalization rate in 2011 for TD Square: taking the average of the office capitalization rate of 6.75% and the regional shopping centre capitalization rate of 6.5% to derive a hybrid of 6.625% (Exhibit C1 page 5). The Complainant argued that same methodology should be applied to this year's assessment as well.

[26] The Complainant submitted 8 sales comparables of Downtown Class A offices that had sold in 2007 - 2011 to establish a typical capitalization rate (Exhibit C1 page 140) which the Board has set out, in part, as follows:

Building Name	Location	YOC	Building Area (SF)	Sale Date	Sale Price	Sale Price PSF	NOI	Cap Rate
Plains Midstream	607 8 AV SW	2007	247,124	10/01/2007	91,481,724	370	6,288,862	6.87
Gulf Canada Square	401 9 AV SW	1978	1,074,125	12/28/2007	382,000,000	356	26,669,997	6.72
520 5 AV SW	520 5 AV SW	1981	191,929	04/30/2008	97,500,000	508	6,289,707	6.45
Eight West	903 8 AV SW	2007	140,532	04/01/2010	41,450,000	295	2,567,454	6.19
Royal Bank Building	335 8 AV SW	1969	318,456	04/29/2010	88,000,000	276	34,740,168	6.21
Fifth AV PL	222 5 AV SW	1980	1,487,924	04/29/2010	559,600,000	376	34,740,168	6.21
Scotia Centre	225 7 AV SW	1975	607,360	04/21/2011	232,000,000	382	14,253,300	6.14
Scotia Centre	225 7 AV SW	1975	607,360	04/21/2011	190,000,000	312	14,253,300	7.50

[27] The Complainant submitted, based on the market evidence, that a 6.75% capitalization rate should be used to assess the subject property and that would apply to the retail component as well. He noted that the 6.75% capitalization rate was utilized again this year to value the regional shopping centres (Exhibit C3 pages 197-203).

[28] The Respondent submitted three sales in support of the current capitalization rate, the two Scotia Centre sales and the post facto sale of Gulf Canada Place (Exhibit R1 page 148). The Board has set out those three sales, in part, for ease of reference as follows:

Building Name	Location	Sale Date	Sale Price (Adjusted to 100% Equivalent)	Building Area (SF)	Sale Price PSF	YOC	Typical NOI at Year of Sale	Cap Rate	Assessed Cap Rate
Scotia Centre	225 7 AV SW	21/04/2011	190,000,000	609,626	312	1976	13,975,247	7.36	6.5
Scotia Centre	225 7 AV SW	21/04/2011	232,000,000	609,626	381	1976	13,975,247	6.02	6.5
Gulf Canada Square	401 9 AV SW	02/09/2011	356,000,000	1,120,841	318	1978	22,745,869	6.39	6.75

[29] The Respondent argued that the 0.25% differential is supported by MGB Order 045/09 (Exhibit R1 pages 326 – 354).

[30] It is noted that there is a slight discrepancy in the calculations used by both parties in regards to the Scotia Centre sales, likely the result of using either the actual net operating income or the typical net operating income at the time of sale. The Respondent submitted that the typical net operating income at the time of sale was pursuant to Board Order MGB 145/07 (Exhibit R1 pages 288 - 325). That methodology was not disputed by the Complainant.

[31] Based on the market evidence, the Board finds that there is insufficient evidence to support the 0.25% downward adjustment to the capitalization rates for those properties located along the retail spine. While this may have been an accepted adjustment that was utilized in the last few years, the Board is unsure of its origin and without any supporting evidence, it appears to be an arbitrary adjustment. The Board further notes that the Board Order MGB 045/09 does not address a 0.25% reduction for properties located along the retail spine.

[32] The Board finds the two sales transactions that occurred on April 21, 2011 for an undivided 50% interest for the Scotia Centre provides the best indication for the capitalization rate. The Scotia Centre is located along the retail spine. It sold with a 7.36% capitalization rate and 6.03% capitalization rate; the average of which is 6.6%. The Board has accepted the two Scotia Centre sales as valid transactions for reasons set out in CARB 2012/2012-P (the Scotia Centre decision). In addition to the Scotia Centre sales, the Board also took into consideration the sale of Fifth Avenue Place which reported a 6.21% capitalization rate and the post facto sale of Gulf Canada Square which reported a 6.39% capitalization rate (Exhibit C1 page 140; Exhibit R1 page 148). The Board finds these sales exhibit a close range in capitalization rates, and indicate that an overall capitalization rate of 6.5% is reasonable.

[33] The Board finds the 6.5% capitalization rate is further supported by Third Party Reports presented by both parties: Colliers International reports capitalization rates between 6.0% - 6.5% in Q2 2011 for Class A downtown office buildings in Calgary (Exhibit C1 page 154; Exhibit R1 page 147); and CB Richard Ellis report capitalization rates between 6.25% - 6.75% in Q2 2011 for Class A downtown office buildings in Calgary (Exhibit C1 page 148; Exhibit R1 page 147). The Board finds that the 6.5% capitalization rate also applies to the retail component and notes that CB Richard Ellis report regional malls in Calgary have reported capitalization rates between 6.0% - 6.5% in Q2 2011 in Calgary (Exhibit C1 page 148). Hence the Board finds the current assessed capitalization rate of 6.5% is reasonable.

Board's Decision:

[34] The decision of the Board is to revise the taxable portion of the 2012 assessment for the subject property to $397,890,000. The exemption for the purposes of this calculation has remained the same at $11,600,000. However the Board notes the exemption based on the corrected square footage of 89,550 sq. ft. would be $12,688,546 or $12,680,000 (rounded).

DATED AT THE CITY OF CALGARY THIS 6th **DAY OF** December **2012.**

Lana J. Wood
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

EXHIBIT NO.	ITEM
1. C1	Complainant's Evidence (Part 1 of 2)
2. C2	Complainant's Evidence (Part 2 of 2)
3. C3	Complainant's Rebuttal
4. C4	Land Title Certificate (111 096 811)
5. R1	Respondent's Evidence
6. R2	Land Titles Office (111096815)
7. R3	Land Titles Office (111096738)
8. R4	Land Titles Office (121022755)
9. R5	Land Title Certificate (121 022 750)

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	Leasable Area Net Market Rent/ Lease Rates Capitalization Rate Vacancy Rate