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

1023820 Alberta Ltd.
(as represented by
Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before

L. Yakimchuk, PRESIDING OFFICER
K. Farn, MEMBER
G. Milne, 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: 068241793

LOCATION ADDRESS: 751 – 3 St SW

FILE NUMBER: 67938

ASSESSMENT: $377,440,000

This complaint was heard on September 24, 2012 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *S. Meiklejohn, Altus Group Limited*
- *D. Hamilton, Altus Group Limited*

Appeared on behalf of the Respondent:

- *A. Czechowskyj, City of Calgary Assessment*
- *H. Neumann, City of Calgary Assessment*

Property Description:

[1] The subject property, known as the Eaton Centre, is an "AA" class, 763,618 square foot (sf) 1989 office/retail building located on 51,444 sf in Calgary's Downtown Commercial Core (DT1). The retail portion is part of the complex known as "The Core" which is anchored by Holt Renfrew and The Bay (separate tax rolls) and is considered part of the downtown Retail Spine.

Issues:

[2] Is the current assessment too high? Does market value support the current assessment? Is the assessment equitable with other similar properties?

Complainant's Requested Value: $295,130,000

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

Evidence and Arguments

[3] **Does market value support the current assessment?** The Complainant, D. Hamilton on behalf of Altus, argued that the parameters of assessment using income value were wrong. He requested that the assessment be changed to reflect 5% Retail Vacancy (currently 2%), 4% Retail Non-recoverable costs (currently 2%) and a 7.00% overall capitalization (Cap) rate (currently 6%) based on the sale of the Scotia Centre. Later in the presentation, the Complainant reduced the cap rate request to as low as 6.375% and then to 6.25%.

[4] The Complainant argued that the retail portion of the property acts like a regional shopping centre, so the Vacancy rate and non-recoverable expense rate should be the same as they are for regional shopping centres. Further, he suggested that the downtown retail is at a disadvantage because there is very little parking available. The parking that is available is paid parking. The property is assessed with 298 parking stalls.

[5] The Complainant argued that market value is based on Net Operating Income (NOI) and that the typical rents used by the city were inaccurate for this building. He presented a Tenant Roll for the subject building indicating a mean rent rate (using new full plate leases) of $22.40/sf. The offices in the subject building are assessed at $25.00/sf. The Complainant requested an office rent rate of $23.00/sf.

[6] The complainant offered a list of comparable DT1 "AA" (Old) class office rents which had a weighted average of $25.65/sf, and $22.76/sf for full floor rentals. (C1 p139)

[7] **Is the assessment equitable with other properties?** Mr. Meikeljohn stated that the "AA" class DT1 office building Cap rate is 6.25%, with a .25% reduction to account for location on the Retail Spine. The Complainant argued that "AA" buildings tend to have an assessment to sales ratio (ASR) that is much higher than "B" and "C" class buildings, thus creating *vertical inequity*. This would be inequity from top to bottom rather than within an assessment group.

[8] In terms of equity, the Complainant also argued that Scotia Fashion Centre, which is used for the Market Value Sales comparison, is assessed at 6.5% Cap rate (6.75% - 0.25% for location). The difference between "A" and "AA" buildings is not sufficient to justify a 0.5% difference in Cap rates between Scotia Fashion Centre and the subject. The two buildings are in similar locations, both have been extensively renovated, and their largest components are offices.

[9] The Respondent, A. Czechowskyj, City of Calgary Assessor, informed the Board that the City is defending the Market Value of the property, ie: the value achieved when a willing buyer is purchasing the property from a willing seller. He emphasized that it is important to look at Sales and that Typical NOI inputs should be used to be consistent.

[10] Mr. Czechowskyj argued that the City rental analysis (R1 p137) supports an office rent rate of $25/sf (weighted mean of leases $27.19). Further he argued that time adjustments are a valid tool for updating assessments, citing the sale and resale of Stampede Centre, which indicates an increase in value of 1.1%/month. He said that the acid test for accuracy is Sales and referred the board to R1, p145 – 151 which shows two sales of 50% interest inScotia Centre, an "A"-class office/retail tower on the DT1 Retail Spine.

[11] The Respondent explained that "A" class buildings will have a higher Cap rate than "AA" class buildings, and buildings on the Retail Spine will have a lower Cap rate than those in other parts of DT1. The Respondent argued that the second Scotia Centre sale supports the assessed Cap rate of 6.5% for "A" class buildings on the DT1 Retail Spine.

[12] Both Scotia Bank sales are for half of the property. The first sale is a cash sale for $190,000,000 ($312/sf) and the second sale is a brokered, mortgaged sale for $232,000,000 ($381/sf). The Respondent argued that the second sale, with a Cap rate of 6.02%, is a more accurate reflection of the value because it was brokered, indicating that it was available as an arm's length sale. He claimed the sale information was supported by a post facto sale of Gulf Canada Square, which sold for $356,000,000 ($318/sf). Images of the documents registered at Alberta Government Services Land Titles were presented in evidence.

[13] Mr. Czechowskyj also presented several judicial, MGB and CARB decisions which supported his arguments.

[14] In rebuttal, the Complainant argued that the City is using the wrong sale on which to base the market value of DT1 properties. There are two sales within the assessment period, both for Scotia Centre (an "A"-class building). Mr. Meikeljohn argued that the first sale, for half the property, was an unencumbered cash sale and should be considered a true Market Value sale. He argued that the second sale is encumbered with conditions that make it suspect in terms of Market Value. The Cap rate on the first sale is 7.36%.

[15] The Complainant argued that the retail portion of the subject property acts as part of a Regional Shopping Centre, with Holt Renfrew as the anchor at one end and a range of tenants typical of Regional Shopping Centres throughout. Comparing the amount of business done in each of the Regional Shopping Centres, the Complainant claimed *The Core* was similar to

Southcentre Mall, and should be assessed with similar parameters. This would be a better assessment of the risk attached to owning a retail centre. Upon questioning, he indicated that the Cap rate for regional malls such as Chinook or Southcentre is 6.5%.

[16] In summary, the Complainant said that the subject property assessment should be influenced by parameters for regional shopping centres. He argued that a value/sf is inaccurate when it lumps all sorts of space within the building at the same value. Further, he contended that the first sale of a half share in the Scotia Centre was more likely to be a true indicator of market value than the second because the first is a cash sale.

[17] The Respondent summarized by highlighting the two sales of Scotia Centre, indicating that reducing the assessment as the Complainant requested would bring the assessed value to the same level as "A" class buildings. He maintained that the second Scotia Centre sale was most indicative of Market Value. Further, he argued that comparing Eaton's Centre to a Regional Shopping Centre was inaccurate because the subject is mainly an office building, with a location in a highly desirable area.

[18] The Complainant ended by reiterating the argument that NOI should be actual, not typical and that the current assessed value is significantly higher than currently available sales data would suggest.

Board Findings

[19] **The Board considered Market Value** in terms of sales comparisons and NOI parameters. The City of Calgary had applied separate parameters for the retail and office portions of the subject building, and had supported these with documentation. In the interests of Mass Assessment, the Board found that the typical rental, vacancy, and operating costs used by the City were a fair representation of these parameters.

[20] The Cap rate is a direct result of the comparison to the available Market Sales. As there were only two market sales available in the assessment year, and these were sales of half shares of the same "A" class building, Scotia Centre, choosing one sale over the other could change the rate significantly. The Board reviewed the documentation attached to the Land Title Registrations for these two purchases and found that reasons to discredit either sale were possible, but speculative. As a result, the Board used both sales in a calculation of Cap rate. The actual Cap rate for Scotia Centre was, therefore, 6.69%, rounded to 6.5%. Scotia Centre is located on the Retail Spine, similar to the subject building. As it is an "A" class building, smaller and moderately older than Eaton Square, it would be appropriate to reduce the Cap rate for the subject accordingly.

[21] There is a disparity between the two uses of area in the subject building, so the Board considered a variety of possibilities, including separate Cap rates for separate uses to reflect the higher risk that Shopping Centres bear, evidenced by higher Cap rates for regional shopping centres. Eaton Centre is 20.13% retail, as compared to Banker's Hall at 10.76% and other office towers at about 2% (R1, p134). However, risk is difficult to measure and such an option was not presented by the Complainant. For this reason, the Board placed the Cap rate at 6.25% as an equitable differentiation between the subject and Scotia Centre.

[22] The Board found that the typical inputs and the subsequent assessed value derived using the 6.25% Cap rate were within the range of values for other similar buildings, therefore **equitable**. Further, the Board decided that if Vertical Inequities exist they are not within the powers of the Board to correct at this hearing.

[23] For these reasons, the Board varies the current assessment using typical rates and a 6.25% Cap rate.

Board's Decision:

[24] The Board varies the assessment to $362,350,000.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF November 2012.

Lana Yakimchuk

Lana Yakimchuk
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Addenda
3. R1	Respondent Disclosure
4. C3	Complainant Rebuttal

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 MGB Administrative Use Only:

Decision No. 1950-2012-P Roll No. **080007305**

Subject	**Type**	**Issue**	**Detail**	**Issue**
CARB	DT1 Office/Retail	Income Approach	Cap Rate	Equity