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:

7796528 Canada Inc. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
J. Massey, MEMBER
R. Kodak, 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:	**068229608**
LOCATION ADDRESS:	**401 – 9 AV SW**
HEARING NUMBER:	**68833**
ASSESSMENT:	**$335,670,000 (taxable portion)**

This complaint was heard on 12th and 13th day of November, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 4.

Appeared on behalf of the Complainant:

- *Mr. S. Meiklejohn – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. – H. Neumann - Assessor – City of Calgary*
- *Mr. – A. Czechowskyj - Assessor - City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is the Gulf Canada Square high-rise office tower at 401 – 9 AV SW in the Downtown one (DT-1) area of Calgary. The building occupies 3.49 acres (ac.) and straddles the CPR main line to the south. CP Rail, Baker-Hughes, and Conoco Phillips are the main/major tenants, although there are a multitude of tenants occupying much smaller spaces in the building. It was constructed in 1978 and contains 1,034,341 square feet (SF) of office space; a 2,543 SF food court; 16,756 SF of main floor retail; 17,186 SF of second floor retail; and 50,015 SF of storage space for a total assessable area of 1,120,841 SF. The subject is "Plus 15" connected to Bankers Hall to the north, and Penn West Plaza to the east.

[4] The subject also has 57 underground parking stalls, and directly abuts and adjoins a large parkade owned by the City of Calgary, to the south. The subject is assessed using the Income Approach to Value methodology using typical vacancy rates of 2% and 4% as applied to certain components of the building, as well as a typical 6.75% Capitalization Rate (cap rate), for a total assessed value of $336,975,837. The subject contains an undefined (to the Board) quantity of exempt space valued by the Assessor at $1,300,000 which therefore results in a taxable assessed value of $335,670,000 (rounded).

Issue:

[5] What is the correct assessment for the subject when its 2012 assessed value is tested against selected valuation inputs, approaches, and/or techniques?

Complainant's Requested Value:

[6] The Complainant requests a <u>taxable</u> assessment of $307,700,000 and an <u>exempt</u> assessment of $1,170,000 based on an office rent rate of $20 per SF instead of the assessed $22 per SF.

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

Complainant's Position

[7] The Complainant argued that the subject is over-assessed given several personal observations of site and situational factors as follows:

1. Location – the subject lies at the extreme southerly limits of DT-1 and hence is uncompetitive with similar office buildings more centrally-located in downtown Calgary;

2. Parking – notwithstanding its location adjacent to a major City of Calgary parkade, the subject only has 57 underground parking stalls of its own, unlike other office buildings which contain more;

3. Quality – the subject only has a glass exterior, unlike other buildings which are clad with marble and granite. In addition the main floors, mezzanine, and common areas are worn and unkempt, not having been upgraded in over five years;

4. Floor plate - the subject has a floor plate over an acre in size (48,401 SF) which is difficult to demise and therefore uncompetitive with more modern buildings where a 20,000 SF floor plate is the norm;

5. Railway – the subject straddles the main CPR railway line through the city and therefore the noise, vibration, dust and fumes from the daily railway activity negatively affects the subject.

[8] The Complainant argued that compared to the nearby Scotia Centre, which is a newer building with a smaller floor plate, attracting superior rents, and suffering none of the above locational issues, the subject is over-assessed. The Complainant supported his arguments by referencing several annual editions of the subject's rent roll. He argued that based on actual rents in the building, - including all food court, storage, and retail leases, but excluding four recent (2011) lease deals approaching $30 per SF that he described as "outliers", the subject is only achieving an average of $18.70 per SF. Therefore, he suggested, the assessed office space rent of $22 per SF should be reduced to $20 per SF. He argued that compared to the Scotia Centre, the $22 assessed rate represents a "horizontal inequity" that must be corrected.

[9] The Complainant argued that to correct this inequity for the subject, the Income Approach to Value calculation used by the City to assess it, should be amended, but only by changing the office rent rate from a "typical" $22 per SF to an indicated "actual" $20 per SF. The Complainant clarified that he did not contest any of the other typical inputs used by the City to value the subject, and acknowledged under questioning from the Respondent, that the 6.75% cap rate used to assess the subject is appropriate.

[10] The Complainant provided a detailed analysis of assessment-to-sale (ASR) ratios of "A" Class and "B" Class office buildings in DT-1. He provided five matrices outlining "Assessment Parameters" for Class "AA"; "A"; "B"; and "C" downtown office buildings in DT-1 for each of the years 2008 to 2012. The parameters examined were rent rate; vacancy; op. cost; non-recoverables; cap rate; parking; and parking vacancy.

[11] The Complainant argued that the City's assessment parameters for office rents are flawed because they extend to $30 per SF whereas his analysis indicates that the range of office rents extends from $20 to $25. He provided a "corrected" matrix containing his findings. He argued that where office rents are within this range, there is no need to adjust the cap rate as suggested by the Respondent, should he choose to use a $20 per SF rent in his calculation instead of the assessed $22 per SF.

[12] The Complainant provided a matrix of 37 downtown office building sales from DT-1, DT-2; and DT3 market zones which transacted from 2006 to 2011 – four of which are *Post Facto*. The sales included "AA"; "A"; "B"; and "C" Class buildings. All of the sales values were compared to the respective properties' 2012 assessments. None of the sales were time-adjusted. The Complainant argued that his analysis of these sales indicate that the average ASR is 0.654 and the median ASR is 0.586 which means that all of the DT-1 properties are vastly under-assessed.

[13] The Complainant provided another matrix containing eleven market sales of "AA" and "A" class office buildings from DT-1 and DT-2 which transacted from 2006 to 2011. He noted that the subject transacted December 28, 2007 for $382,000,000 and again in a valid transaction on September 2, 2011 for $356,000,000 or $331 per SF. He noted that the latter sale is two months *Post Facto*. He calculated that the 2011 ASR for the subject – assessed at $335,670,000 (taxable) is .948 or 94.8%. He clarified that his analysis of the eleven sales, none of which were time-adjusted, but were compared to their respective 2012 assessments, reveals a weighted ASR average of 0.959, an average ASR of 0.934; and a median ASR of 0.923.

[14] The Complainant also referenced the April 21, 2011 sale and re-sale of the "A" Class Scotia Centre – firstly for $190,000,000 or $312.83 per SF, and secondly for $232,000,000 or $381.98 per SF. He noted that the Scotia Centre's 607,360 SF – about half that of the subject Gulf Canada Square, was able to attract greater rents because of its superior physical condition, and its location in downtown Calgary, unlike the subject which suffered all of the locational and functional disadvantages referenced above. He argued that this sale has "set the market" for the subject, and is an inequitable comparison for the City to use.

[15] The Complainant provided a matrix containing fifteen "B" Class office buildings from both DT-1 and DT -2 market zones. He clarified that his analysis of the fifteen sales, none of which were time-adjusted, but were compared to their respective 2012 assessments, reveals a weighted ASR average of 0.510, an average ASR of 0.523; and a median ASR of 0.512.

[16] The Complainant clarified under questioning that none of the market sales he provided were time-adjusted, because in examining the 2006 sales versus the 2011 sales, he concluded that there was not much difference in value over the 5 year period. Therefore, he considered the time adjustment to be "zero".

[17] The Complainant argued that based on his analysis therefore, "A" Class buildings are assessed at close to 95% of their market value, but "B" Class buildings are assessed at approximately 50% of their market value. He clarified that legislated Mass Appraisal parameters require assessments to be within 95% to 105% (i.e. .95 to 1.05), and his analysis indicates that a very wide "vertical inequity" exists between the assessments of Class "A" and Class "B" buildings in the core generally. He argued therefore that this demonstrates that the City's leasing study is flawed, and therefore the assessment of the subject is flawed.

[18] The Complainant provided on page 31 of C-2, a "No Time Adjustment Property Specific Comparison" of the sale details of the subject and Scotia Centre for equity purposes. He calculated that the assessment to sale (ASR) ratio of the subject is 0.9429 and the ASR for Scotia Centre is 0.9102. He argued that for equity purposes, the subject must be adjusted downward from 0.9429 to the Scotia Centre's 0.9102. In doing so, he calculated that the indicated assessment would be $324,020,000.

[19] The Complainant referenced various Calgary Composite Assessment Review Board and Court Decisions which he argued, influenced his position in this appeal. In particular he briefly referenced CARB 1591-2012-P; CARB 1358/2010-P; CARB 1792/2012-P; CARB 1791-2012-P; CARB 1796/2012-P; and CARB 1794/2012-P; and Court decisions generally described as "Jonas and Gilbert'"; "Bramalea"; "Bentall".

[20] The Complainant requested a taxable assessment of $307,700,000 and an exempt assessment of $1,170,000 based on an office rent rate of $20 per SF instead of the assessed $22 per SF – all for a total assessment of $308,870,000.

Respondent's Position

[21] The Respondent argued that the Complainant's revised Income Approach to Value methodology is flawed because he mixes "actual" rents from the subject, with "typical" vacancy, cap rate, and related variables in his calculations. He noted that the subject has been assessed using a typical 4% vacancy rate whereas the actual vacancy in the subject is 1% or less. However, the Complainant has retained the 4% typical vacancy rate in his calculations of value while also using site-specific rents. He argued that this approach is not a professionally-accepted practice while using the Income Approach to Value methodology, therefore his conclusions of alternate value for the subject are unreliable.

[22] The Respondent argued that the Complainant has also described mixing together, sales and assessment data from "AA"; "A"; "B"; and "C" Class downtown office buildings from a variety of "Downtown" market zones, to arrive at alternate conclusions of value for the subject and comparable properties, which is also erroneous methodology.

[23] The Respondent clarified that each of the described office "Classes" are assessed using different input values to arrive at assessed values using the Income Approach to Value methodology under Mass Appraisal. He clarified that as an example, the rent, vacancy, and cap rates for "A" Class buildings are different from "B" Class office buildings, which are different again from "C" Class buildings, and so on through each of the office building Classes. He further clarified that the input variables differ – not only from Class to Class, but also from market zone to market zone downtown, and therefore they cannot be interchanged without affecting the reliability of the results.

[24] He argued that for example, the typical rent, vacancy, and/or cap rates will differ in each of DT-1, DT-2, DT-3 and so on, depending on the market conditions prevalent in that zone during an assessment cycle. He argued that it is highly erroneous to assume that all input values are identical in every assessment class of building and in every DT zone. It is equally as erroneous he argued, to assume therefore that the assessed values resulting from an analysis using this methodology, are valid. He clarified that in the "A" Class alone, the City uses three different rents depending on the quality of the building. Class "A" "New" buildings (e.g. Bankers Hall) are assessed at $25 per SF; Class "A" "Average" (the subject) are assessed at $22 per SF; while Class "A-" buildings are assessed at $20 per SF.

[25] The Respondent argued that the Complainant's claim that "A" Class office buildings are assessed at 95% of market value while "B" Class buildings are assessed at 50% of market value is incorrect. He noted that in his analysis, the Complainant used unadjusted market sales from 2006 to 2011 and compared the results to each individual building's 2012 assessments. He argued that the Complainant's suggestion that in examining the sales, he observed no difference in value from 2006 to 2011 as rationale for not time-adjusting the sales, to be seriously flawed. The Respondent referenced selected professional literature to support his arguments on this point. He also referenced MGB Decision 145/07 as being in support of his position. In addition, he argued that based on the Complainant's flawed analysis, the Complainant's claim of "vertical inequity" between "A" and "B" Classes is without foundation.

[26] The Respondent argued that with respect to his rent roll analysis of the subject, the Complainant confirmed that he removed and did not consider, four of several recent 2011 office space leases in the $30 per SF range, referring to them as "outliers". He noted that Conoco Phillips rented one-third of the subject in 2011 for $27 per SF, and although the Respondent considered this to be a good indication of value for the subject, the Complainant had ignored this evidence. The Respondent noted that the Complainant clarified to the Board that he did so without investigating why the rent values were higher than the assessed $22 per SF, and his (the Complainant's) requested $20 per SF. He argued that the Complainant was in effect, ignoring current relevant (higher) rent values and focusing on rents in the subject that are lower, which is erroneous and unreliable methodology.

[27] The Respondent noted that the Complainant advised the Board that in his office rent analysis for the subject he included both "old" and "new" rents for storage space; retail space, and food court space – virtually "everything" in the building. The Respondent argued that in arriving at an average, or weighted average of rents for office space, one should only use office spaces and nothing else. He argued that the Complainant's analysis and conclusions are therefore flawed and unreliable.

[27] The Respondent clarified that the City used all of the current and valid leases in the subject and other DT -1 office buildings in its analysis, and did not favour one over another without full investigation of the particulars of any given lease. He argued that his analysis of 42 "A" Class office rents leads him to conclude that there is a trend to increasing rents, therefore it is improper to remove them because "that is the market." He argued that the rent roll confirms that the current leasing in the subject supports the assessed $22 per SF.

[29] The Respondent argued that while the Complainant argued that the subject suffers from "locational difficulties" that affect its ability to attract higher rents, he provided no market or photographic evidence to confirm his views (see [6] above), other than to verbally reference Scotia Place as being in a comparatively more preferred location and therefore attracting higher rents. He also argued that the Complainant provided no evidence that the subject's limited parking; its larger floor plate; or its location adjacent to the CPR main line, is a negative for the subject.

[30] On the contrary, the Respondent argued that the subject is physically connected to a major parkade; its major tenant is CP Rail; and the subject is "Plus 15" connected to Bankers Hall – all of which he considered to be positive locational factors for the subject. In addition, he argued that compared to Scotia Centre, the subject is attracting very competitive rents, which make it an "A" Class office building like Scotia Centre. Therefore, he argued, the Complainant's claim of a "horizontal inequity" is also without foundation.

[31] The Respondent argued that the Complainant confirmed that the subject Gulf Canada Square sold September 2, 2011 which is two months *Post Facto* the current assessment cycle. The CBRE Richard Ellis brokered open-market sale of a 50% interest in the subject for $178 Million, represents a $356 Million ($351 per SF) value for the site which was 100% occupied at the time. He clarified that CBRE estimated the cap rate for the sale at 5.9%. He also identified that on page 41 of his Brief R-1, the "Affidavit of Value" for the subject is listed as $356 Million. He noted that while the City did not use this sale in its analysis, it independently assessed the subject at $335,670,000 which represents an assessment to sale ratio of .95 or 95%. He argued this information supports the assessment, particularly when the Complainant is seeking the equivalent of $275 per SF.

[32] The Respondent posed that the April 2011 sale of a 50% interest in Scotia Centre for $95,000,000 has been referenced by the Complainant as a comparable indication of alternate, but lesser value for the subject. He clarified that this sale is invalid because it was not brokered; appeared to be between affiliated parties; and transacted for less than the $110,000,000 "Affidavit of Value" which the Respondent provided on page 123 of R-1. He noted that a second sale occurring the same day, transferred a 50% interest in Scotia Centre for $116,000,000 and the Affidavit of Value" on page 149 of R-1 confirms the same. He argued that this is a valid, brokered, market sale which supports the assessment of Scotia Centre, and by direct comparison, the subject.

[33] The Respondent provided details of a 2009 "paired sale" of an office property at 1331 MacLeod Trail SE known as "Stampede Station". He argued that while the Complainant has argued that, by personal observation, there has been no change in the market between 2006 and 2011, and therefore this represents a "zero per cent" time adjustment, this "paired sale" demonstrates a 1.1% per month time-adjustment is warranted. Therefore, he argued that this evidence also demonstrates and confirms that the Complainant's calculations of value are flawed. He also argued that while the Complainant has calculated in C-2 (page 31) that the subject should be reduced to $324,020,000 based on ASR equity, it can also be argued that the lower ASR of Scotia Centre should be increased (i.e. the assessment

increased) to match that of the subject, particularly if Scotia Centre is superior to the subject as the Complainant argues.

[34] The Respondent provided several Calgary Composite Assessment Review Board and Municipal Government Board Decisions in support of the various principles it addressed during the Hearing. In particular he referenced MGB 145/07; MGB 045/09; CARB 1331-2011-P; CARB 1281-2011-P; CARB 1868-2012-P; CARB 1870-2012-P; CARB 1282-2012-P; CARB 1454-2012-P; CARB 1866-2012-P.

Board Findings

[35] The Board finds that a detailed examination of the rent roll in the subject, supports the $22 per SF rent rate used to assess office space in the subject Gulf Canada Square.

[36] The Board finds that the Complainant's calculations of alternate value are flawed and unreliable because he mixes "typical" capitalization rates and vacancy rates with "actual' rents in the subject which is not accepted practice in Mass Appraisal.

[37] The Board finds that in his calculations of rent value for the subject, the Complainant has mixed food court; retail; and storage rents with office rents to arrive at a value for office rents, and this is an incorrect procedure.

[38] The Board finds that the Complainant's calculations of alternate comparative value for DT-1 office rents is flawed because a mixture of rents from different market zones is used, along with a mixture of rents from a broad range of building Classes, all of which has produced an unreliable result which cannot reliably be compared to the subject.

[39] The Board finds that the Complainant was unable to support, with definitive market or pictorial evidence, his arguments that the subject is inferior to Scotia Centre either in location, physical attributes, and ultimately, market value.

[40] The Board finds that the best indication of value for the subject, is the September 2, 2011 sale of the subject itself. Both parties agree that this is a valid market sale. Although this sale is only 2 months *Post Facto*, it nevertheless represents a clear market-generated valuation that supports the independently-generated City property assessment.

[41] The Board finds that the assessment of the subject is correct, fair, and equitable, contrary to the assertions of the Complainant.

Board's Decision:

[42] The assessment is confirmed at $335,670,000.

DATED AT THE CITY OF CALGARY THIS 21st **DAY OF** November **2012.**

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
3. R-1	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.

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	Multi-tenant downtown high-rise office building	Market value	Office rent; sale of subject; equity