ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 691/10

Altus Group Ltd
17327 - 106A Ave
Edmonton, AB T5S 1M7

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton, AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held between January 10 and 18, 2011 respecting a complaint for:

Roll Number	**Municipal Address**	**Legal Description**
3009859	10250 101 STREET NW	Plan: 7720369 Block: 1 Lot: G, F
Assessed Value	**Assessment Type**	**Assessment Notice for**
$110,882,500	Annual - New	2010

Before:

Robert Mowbrey, Presiding Officer
Jim Wall, Board Member
Jasbeer Singh, Board Member

Board Officer: Annet N. Adetunji
Counsel to Presiding Officer: Peggy Kemp

Persons Appearing: Complainant

From Altus Group Ltd:

Stephen Cook, Director
Anthony Patenaude, Sr. Tax Consultant
Keith Wensel, Witness

Richard Knibbs
Senior Director, Asset Management
GWL Realty Advisors

Dean Wulf
Director, Office Leasing
Oxford Properties

Persons Appearing: Respondent

From the City of Edmonton:

Cameron Ashmore, Barrister and Solicitor
Renee Gosselink, Assessor
Kevin Smyl, Assessor
Tracy Ryan, Assessor
Brennen Tipton, Assessor
Darren Davies, Assessor
Vasily Kim, Assessor

Andy Chopko, Appraiser/Consultant
Impact Property Advisors Ltd.

A. PRELIMINARY AND PROCEDURAL MATTERS

1. Upon opening the hearing, the Presiding Officer made a number of announcements to clarify some issues. The issues were such that they were carried forward from the suburban properties and as such, they would be applicable to the downtown office buildings.

2. Roll number to start with: The Board advised the parties that since the Complainant initiates the Complaint, the Board does not see any problem with the method the Complainant has outlined and will proceed in the manner the Complainant has arranged the order of the files on the docket.

3. Decisions and Exhibits: Both parties agreed that each file would be opened individually and a written merit hearing decision would be completed for each file. Both parties agreed that a good deal of the evidence and argument from this hearing would be carried forward to all the downtown office property hearings, as well as evidence and argument from roll number 1560150 of the suburban office properties.

4. Summaries: The Presiding Officer advised the parties that the Board would follow the procedure of the composite assessment review board that Edmonton uses. After all evidence and cross-examination has been completed, the Complainant would give summary, the Respondent would then give summary and the Complainant would give the last word. The Board could see no reason to change the procedure of the Edmonton composite assessment review board.

5. Paneling of Witnesses: The Presiding Officer advised the parties that the witness giving the evidence should be the witness that answers the cross-examination regarding the testimony. The Presiding Officer advised the parties that caucusing for answers would be discouraged.

6. Expert Witnesses: The Presiding Officer advised the parties that the Board decision is not to formally "qualify" the expert witnesses. The Board does not have to follow the same rules of evidence as a court. The Board will take note of the expert witnesses' qualifications and experience and place the appropriate weight on the testimony.

7. Swearing and Affirmation: The Presiding Officer advised the parties that they were still under oath and would continue to be until all the hearings are complete. Any new witnesses would be either sworn in or affirmed, according to the witness' preference.

8. Issues Common to all Files: Since the issue of capitalization rates is common to all files before the Board and the issue of rental rates in common to a large number of suburban and downtown office properties, both parties agreed to carry forward relevant evidence, argument and cross-examination during the hearings on Roll # 1560150 (the first file of the suburban office properties). In addition, downtown office files have been grouped by sub-class. The first file in each group will serve as the 'lead file' and all evidence, arguments and cross-examination in respect of this file, will, with the agreement of both parties, apply to all other files in the group.

9. Rebuttal Evidence: There was an objection raised by the Respondent regarding the contents in the Complainant's rebuttal evidence. The Respondent stated that disclosure rules had not been met. The Complainant stated the "will say" statement disclosed to the Respondent

should adequately cover the issue. The Board recessed, deliberated and rendered a decision. The decision was to allow the witness to give testimony on a few issues only, as the "will say" statement was a little 'thin' regarding the content of what might be said.

In addition;

10. Upon questioning by the Presiding Officer, the parties had indicated, at the commencement of the office hearings that they had no objection to the composition of the Board.

11. The Respondent had raised a number of preliminary issues stating that procedural fairness throughout the hearings was the goal. The Complainant had stated that an adjournment was necessary, so that the Complainant could meaningfully respond to the procedural issues raised by the Respondent and possibly even come to an agreement with the Respondent on some of the issues.

12. The Board had recessed, deliberated and rendered a decision to the parties. The decision was to grant an adjournment request and recommence the hearings, a day and a half later.

13. At the recommencement of the hearings, Jim Wall, a Board member had advised the parties that he previously had a professional relationship with the Respondent's capitalization rate study witness, Andy Chopko. In addition, the Board member had stated that he had known the Respondent's witness for 40 years and at one time had a mentoring relationship with the witness; and several years ago had shared office space with the witness. The Board member also stated that he also knew the Complainant's expert witness and was known to most of the veteran appraisers throughout the City. The Respondent had confirmed that he had spoken with the witness and from their point of view, there was no bias. The Complainant had shown concern with the perception of bias and had requested the Board member to recuse himself.

14. The Board had recessed, deliberated and rendered a decision. The decision given by the affected Board member stated that he had considered the Complainant's objection, and believed that an informed and reasonable person viewing the question objectively would not reasonably believe that the circumstances described would give rise to any apprehension of bias. Therefore the affected Board member would not be recusing himself and the other Board members had concurred.

15. Parking Lots / Excess Land: A few files on the list for hearing by the Board have issues pertaining to 'Parking Lots' that are located on land that is not an integral part of the business property municipal roll number, and thus, separately assessed. Both parties were in agreement that all evidence, arguments and cross-examination in respect of the first file with Excess Land component, will apply to all other files in the group.

B. BACKGROUND

16. The subject property is a multi-storey sub-class 'AH' office building known as the HSBC Bank of Canada. The subject property was constructed in 1979 and is located at 10250 – 101 Street in the Financial district. The subject property has a total leasable area of 301,662 square feet and the 2010 assessment is $110,882,500.

C. ISSUES

1) Should the Respondent's capitalization rate study be excluded for non-compliance with sections 299 and 300 of the *Municipal Government Act* (MGA), R.S.A. 2000, c. M-26?
2) What is the appropriate capitalization rate for the 2010 assessment year to establish the assessment value for the subject 'AH' office property in the downtown area of Edmonton?
3) What is the appropriate market rental rate for the 2010 assessment year for a class 'AH' office property in the downtown area of Edmonton?
4) What is the appropriate vacancy shortfall allowance for the 2010 assessment year for the subject property?

ISSUE 1: SHOULD THE RESPONDENT'S CAPITALIZATION RATE STUDY BE EXCLUDED FOR NON-COMPLIANCE WITH SECTIONS 299 AND 300 OF THE MGA?

17. The Complainant brought forth a preliminary issue prior to the Respondent's expert witness, Mr. Chopko, giving testimony. The Complainant's issue was that the Respondent had not complied with sections 299/300 of the *MGA*. The Complainant advised the Board that the Complainant had requested the capitalization rate study from the Respondent under sections 299 and 300. The Complainant asked that Mr. Chopko's report be removed from the evidence under section 9(4) of the *Matters Relating to Assessment Complaints Regulation (MRAC),* AR 310/2009 because they had not received an appropriate response from the Respondent and sections 299/300 had been breached. The sections are outlined as follows:

S.299 (1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

S.300 (1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

The MRAC:

Failure to disclose

S.9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

18. The Respondent stated that this was the first they had heard of this preliminary application and stated that there was no section 299 request in the materials filed. The Respondent advised the Board that section 299(1) does not say a municipality must provide "all" that had been requested. The Respondent also noted that the two sections are different and that different information can be requested under each of them. The Respondent stated the information requested under section 299 is given solely to the owner of the property or the representative of the owner.

19. The Respondent advised the Board that section 27.3(1) of the *Matters Relating to Assessment and Taxation Regulation (MRAT)*, AR 220/2004 regarding key variables of valuation model does not say that capitalization rates and rental rates must be provided.

The MRAT:

Key factors and variables of valuation model

S.27.3(1) For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include

(a) descriptors and codes for variables used in the valuation model,

(b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and

(c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property.

(2) Despite subsection (1), information that is required to be provided under section 299 or 300 of the Act does not include coefficients.

20. The Respondent stated that the Complainant could have asked for a compliance review under section 27.6(1).

Compliance review

S. 27.6(1) In this section, "compliance review" means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.

(2) An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person's request under section 299 or 300 of the Act.

(3) A request for a compliance review must be made within 45 days of the assessed person's request under section 299 or 300 of the Act.

21. The Complainant produced an e-mail from the Government of Alberta, Municipal Affairs (Advisor, Stakeholder Relations /Assessment Services) advising the Complainant that the Minister cannot compel a party to disclose via a compliance review. The Complainant stated that they were not interested in the municipality being fined, but only interested in receiving the information.

22. The Complainant stated that section 27.3 only sets out the bare minimum of what has to be provided. Also, the Complainant stated that section 27.3 only talks about direct sales modeling and this property was assessed on the income approach. The Complainant stated that the legislators did not intend for no information to be provided about property assessed on the income approach.

23. After hearing the arguments from both parties, the Board recessed. After deliberating, the Board rendered its decision to both parties. The decision was that the capitalization rate study would not be excluded.

The reasons for the decision are:

24. The Board notes that the Complainant did not produce a copy of the letter requesting information from the Respondent under section 299 or 300. Therefore the Board cannot evaluate the request to determine if it was made properly.

25. The Complainant did not explain to the Board why *"sufficient information to show how the assessor prepared the assessment"* as stated in section 299 would necessarily include a capitalization rate study. A capitalization rate study used in preparing the assessment(s) of property might be part of "sufficient information to show how the assessor prepared the assessment" but the Board finds that a capitalization rate study prepared for the purpose of defending the assessment cannot be requested under section 299 or 300.

26. The Board also observed that the capitalization rate study was provided to the Complainant in compliance with the disclosure requirements set out in section 8(2) of *MRAC*. The Board sees no other reason to exclude the study and notes that a high quality decision is more likely to result if all the relevant evidence is presented to the Board.

The MRAC:

Disclosure of evidence

S.8(1) In this section, "complainant" includes an assessed person or taxpayer who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence.

ISSUE 2: WHAT IS THE APPROPRIATE CAPITALIZATION RATE FOR THE 2010 ASSESSMENT YEAR TO ESTABLISH THE ASSESSMENT VALUE FOR THE SUBJECT 'AH' OFFICE PROPERTY IN THE DOWNTOWN AREA OF EDMONTON?

Complainant's Position

27. The Complainant (Altus) presented to the Board a binder of information comprising of the Complainant's evidence (marked as Exhibit C-8D) in addition to a site specific document with 31 pages (marked as Exhibit C-1-60).

28. The Complainant argued that the Respondent had not been compliant with section 293 of the *MGA* in assessing the subject properties for 2010 assessment year. The use of incorrect income approach calculations and assumptions had resulted in inaccurate assessed rents, low capitalization rates and site specific issues.

29. The Complainant, quoting from MGB Notices of Decision (DL-057/10 and 058/10), argued that it is not equitable to apply capitalization rates from an actual rent analysis at the time of its sale to current market rent based net incomes (Exhibit C-8D, page 17, para 75, 77).

30. The Complainant stressed that time-adjusting the sale to valuation date using the same methodology and parameters, as used by the City in previous years, is the best and most reliable method of deriving a capitalization rate for assessment purposes (Exhibit C-8D, page18, para 82).

31. The Complainant argued that the Net Income is based on projecting rental rates as indicated by actual leasing activity, with consideration to market trends, within the building and similar buildings around the time of the valuation date, and these rental rates need to be projected onto the entire building (Exhibit C-8D, page18, para 83).

32. The Complainant emphasized that changes in the market place warranted a much higher capitalization rates than the ones used by the Respondent. The Complainant highlighted the facts pertaining to the sale of ATCO Centre. This property was originally tied up at a capitalization rate of less than 7% in September 2008, and finally sold, to the same purchaser, in January 2009, just a few months later, with a capitalization rate of 8.07% (Exhibit C-8D, page 480).

33. The Complainant argued that if ATCO Centre – an excellent investment opportunity, commanded a capitalization rate of 8.07%, practically all other office buildings must provide a much higher capitalization rate, to account for relatively greater risk involved.

34. Using the following nine sales in support of its arguments, the Complainant argued for capitalization rates of 8.25% and 8.75% for different classes of downtown office buildings in the City of Edmonton.

	Address	Class	Sale Date	Sale Price	Network Cap Rate	Complainant's Adj. Cap Rate
1.	44 Capital Boulevard	'AM'	Sep '07	$111.4m	6.23%	8.90%
2.	Capital Place	'AL'	Oct '07	$ 36.0m	6.44%	8.58%
3.	Bank of Montreal	'AM'	Oct '07	$ 46.890m	4.83%	7.03%
4.	Canada Place	'AA'	Nov '07	$338.329m	5.18%	7.55%
5.	Scotia Place Tower I & II	'AH'	Jan '08	$160.0m	4.22%	10.08%
6.	Highfield Place	'BH'	Feb '08	$18.0m	n/a*	12.03%
7.	TD Bank Building	'CH'	May '08	$ 6.1m	n/a*	8.64%
8.	Petroleum Plaza	'AM'	Aug '08	$130.0m	6.77%	9.47%
9.	ATCO Centre	'AH'	Jan '09	$110m	7.41%	8.07%

Note: '*' Corresponding Network published information not available for these properties.

35. The Complainant indicated to the Board that its preferred approach of using the Time Adjusted Sale Price (TASP) to bring the sale price to the valuation date and then applying the rental rates (income) derived from the Complainant's analysis, provided an *adjusted capitalization rate* that best reflected the actual market situation on the valuation date.

36. The Complainant presented its Direct Comparison Approach and argued that the Respondent's 2010 assessment values per square foot, when viewed in comparison against time-adjusted sale prices (TASP) yield unacceptably high Assessment to Sales Ratios (ASRs)

and thus support the Complainant's contention that the Respondent's assessment figures are too high (see table below).

Building Name	Building Class	TASP Rate ($ / sq. ft)	Assessed Rate ($ / sq. ft)	ASR
44 Capital Blvd	AM	$285	$339	1.19
Capital Place	AL	$203	$232	1.14
Bank of Montreal	AM	$309	$290	0.94
Canada Place	AA	$382	$407	1.07
Scotia Pl I & II	AH	$271	$401	1.48
Highfield Place	BH	$163	$245	1.50
TD Bank Building	CH	$112	$121	1.08
Petroleum Plaza	AM	$261	$329	1.26
ATCO Centre	AH	$349	$413	1.18
	Median:	$271	$329	1.26
	Average:	$259	$308	1.18

37. The Complainant argued that using the established practice of time adjusting the sale price and using the current market rental rate capitalized at the cap rate applicable at the date of valuation (Jul 01, 2009), would yield the more acceptable ASR values (between 0.88 – 1.34), with a median of 1.07, as presented below (Exhibit C-8D, page 22, para 100).

Building Name	Building Class	TASP Rate* ($ / sq. ft)	Recommended Assessment Rate (/sq.ft.)	ASR
44 Capital Blvd	AM	$285	$308	1.08
Capital Place	AL	$203	$211	1.04
Bank of Montreal	AM	$309	$263	0.85
Canada Place	AA	$382	$350	0.92
Scotia Pl I & II	AH	$271	$332	1.22
Highfield Place	BH	$163	$224	1.38
TD Bank Building	CH	$112	$110	0.99
Petroleum Plaza	AM	$261	$299	1.15
ATCO Centre	AH	$349	$341	0.98
	Median:	$271	$299	1.04
	Average:	$259	$271	1.07

Note: '*' The complainant used the 'Retail' time adjustment factor, posted on the Respondent's website. This, the Complainant alleged is in keeping with the established practice, also used by the Respondent until the 2009 assessment year.

38. The Complainant emphasized that although still higher than the most desirable range of 0.95 to 1.05, the above approach would yield consistent and more acceptable outcomes (Exhibit C-8D, page 25, para 111).

39. The Complainant argued against the use of a 'Trend-Line' analysis for determining capitalization rates as this is not usually relied upon by an investor and argued in favour of

applying Time Adjustment that is also supported by the MGB Notices of Decision DL 057/10 and DL 058/10 (Exhibit C-8D, page 18, para 81).

40. The Complainant's witness (an employee of the Complainant and an accredited appraiser) presented national and global economic scenarios, correlation between bond rates and capitalization rates. The witness argued that the fundamentals of the real estate market changed drastically, for the worse, in July 2007 and this huge collapse could not be captured on a trend-line. The Complainant's witness further argued that the credit contraction caused by market uncertainty resulted in serious erosion of equity that needed to be reflected in much higher capitalization rates.

41. The Complainant emphasized that choosing a cap rate at the low end of the range would be ignoring market trends, cap rate trends, vacancy trends and increased risk from new competition and prevalent credit restrictions. The Complainant argued that a cap rate of 8.25% for class 'AA, AH, AM, AL & BB' buildings is clearly warranted. Maintaining a hierarchal spread between classes of buildings, that also reflects the risk differential; a capitalization rate of 8.75% for other classes of buildings would be fair and equitable.

42. The Complainant challenged the Respondent's equity argument by saying that if the Complainant demonstrated an inequitable situation in respect of any property in any group or class, the same argument should be held valid for all properties in the subject group or class. The Respondent conceded this to the Complainant.

43. A summary of capitalization rates, both assessed and requested, is as below. This is also available at Exhibit C-8D, page 4.

		Capitalization Rates*	
District	Class	Respondent's Assessment	Complainant's Request
Financial	AA	7.50%	8.25%
	AH	7.50%	8.25%
	AM	7.50%	8.25%
	AL	7.50%	8.25%
	BB	7.50%	8.25%
	BH	8.00%	8.75%
	BL	8.00%	8.75%
	CH	8.00%	8.75%
	CL	8.00%	8.75%
Government	AH	7.50%	8.25%
	AM	7.50%	8.25%
	AL	7.50%	8.25%
	BH	8.00%	8.75%
	BL	8.00%	8.75%
	CH	8.00%	8.75%
	CL	8.00%	8.75%

Note: '*' The Complainant is requesting all capitalization rates to be 3/4% higher than assessed.

Respondent's Position

44. The Respondent presented a 31 page assessment brief (Exhibit R-1-60) and two evidence binders (Exhibits R-6D) as support for the 2010 assessment on downtown office properties located in two market areas of the City. The Respondent argued that the subject property's rental rate and capitalization rate are correct, as these were derived from the Mass Appraisal process through multiple regression analysis, and this methodology is consistent with Provincial Quality Standards, and has been tested by the audit, as set out in *MRAT*.

45. The Respondent stated that assessments in the province of Alberta must be carried out on the basis of mass appraisal. The Respondent quoted from the International Association of Assessing Officers, Property Appraisal and Assessment Administration, Chicago, Illinois, 1990, pages 88-89 and states;

"single property appraisal is the valuation of a particular property as of a given date: Mass Appraisal is the valuation of many properties as of a given date, using standard procedures and statistical testing".
"Also, mass appraisal requires standardized procedures across many properties. Thus, valuation models developed for Mass Appraisal must represent supply and demand patterns for groups of properties rather than a single property." (Exhibit R-6D, Section 1-1).

46. The Respondent presented the Board with charts (Exhibit R-6D, Section 2, Pages 2-1 & 2-2) that summarized the Respondent's position on the elements used in arriving at the 2010 assessment for downtown office buildings.

47. The Respondent stated that the Income Approach is the approach of choice, as it best reflects typical actions of buyers and sellers when purchasing income-producing properties. Ample information provided by owners with regard to both income and expenses reinforced this suggestion.

48. Assessments were tested and the model's predictions of the value met Provincial Quality Standards as set out in *MRAT*. The audit is used to determine the accuracy of the City's predictions relative to the marketplace, and is a direct reflection on the accuracy of the model. The measure in this process is the calculation of ASRs (Assessment to Sales Ratios).

49. The Respondent did not specifically argue about the ASR's applicability to specific properties. However, the Respondent noted that the Complainant applied ASRs to its nine sales comparables and demonstrated that the ASRs ranged from 0.94 to 1.50 with a median of 1.18 and an average of 1.20; using the retail time adjustment through to July 1, 2009 on the sale prices on these nine sales comparables resulted in a range of ASR's of .88 to 1.34 with a median of 1.04 and an average of 1.07. The Respondent's time adjustment (retail rate up to July 1, 2008 and no time adjustment between July 1, 2008 and July 1, 2009) was rejected by the Complainant in this exercise. The Respondent's position is to reject any time adjustment for office buildings in the preparation of the 2010 assessment.

50. The Respondent indicated that class 'A' and class 'BB' downtown office buildings, in both the Financial and Government Districts of Edmonton, had a 7.5% capitalization rate applied to their projected Net Operating Income (NOI); other class 'B' & 'C' buildings in the same districts were assessed with an 8% capitalization rate. These capitalization rates represent a 1% increase from the 2009 rates. The decision to apply this increase was as a result of there

being a limited number of current sales in the downtown office market in Edmonton which made it difficult to determine an appropriate capitalization rate through direct comparison. The Respondent suggested to the Board that the 1% increase in capitalization rates for the 2010 assessment year is adequately supported by various third party information and in particular, by the independent study which was carried out by an expert consultant (Exhibit R-6D, section 17).

51. Capitalization rates for the 2009 assessments were determined by using retail sales time adjustments. It was determined during the current valuation process, that because of recent differences in the retail and office markets, it was not valid to employ a similar methodology for the current assessment year. Testing using the retail time adjustments for the current assessment year did not line up with the market data for capitalization rates in the office market. Since there was a minimal number of downtown office buildings sold during the valuation period, the Respondent analyzed a set of 29 sales used for the 2009 capitalization rate study and found that by applying the same (retail) time adjustment factors, that the Complainant was suggesting, the resulting capitalization rates bore no relationship to the previous year's capitalization rates and were totally inconsistent with market realities. Using the retail time adjustment and applying it to downtown offices would have resulted in a median increase of 3.31% and an average increase of 3.16% (Exhibit R-6D, section 9, pages 80 and 81).

52. The Respondent challenged the stabilization method used to indicate a capitalization rate from the nine sales (Exhibit C-8D, Downtown Sales, page 7) used by the Complainant. The Respondent provided data sheets (Exhibit R-6D, section 9, pages 2 to 71) from various data sources which indicated a range in capitalization rates for the Complainant's sales of 4.22% to 7.45%. This is in comparison to the Complainant's stabilized method which produced capitalization rates of 7.03% to 12.03%. The Respondent questioned the method used to stabilize the nine sale properties and highlighted that the Respondent's independent consultant, in his Capitalization Rate study and Critical Review of the Altus document, (Exhibit R-6D, section 17) did not find any support for this approach advocated by the Complainant.

Complainant Sale No.	**Building/ Complex**	**Network Cap Rate**	**Bourgeois Cap Rate**	**Anderson Cap Rate**	**Respondent Cap Rate**	**Complainant Cap Rate**
1	44 Capital Boulevard	6.23	6.25	6.23	7.50	8.90
2	Capital Place	6.44	-	6.44	7.50	8.58
3	Bank of Montreal Bldg	4.83	-	4.83	7.50	7.03
4	Canada Place	5.18	-	-	7.50	7.55
5	Scotia Place	4.22	9.02	-	7.50	10.08
6	Highfield Place	-	-	-	8.00	12.03
7	TD Bank Building (Old)	-	-	-	8.00	8.64
8	Petroleum Plaza	6.77	6.77	6.77	7.50	9.47
9	Atco Centre	7.41	7.50	7.45	7.50	8.07

53. The Respondent, in a cross-examination of the Complainant, also pointed out several problems related to the Complainant's nine sales used to develop a capitalization rate, and in particular, questioned the use of sale number four (Canada Place) and sale number five (Scotia Place Towers). The Respondent indicated that Canada Place property formed a part of a seven property portfolio acquisition across Canada where all buildings were fully

occupied by the Federal Government. And Scotia Place Towers represented the purchase of a partial interest, which was not exposed to the open market. It was therefore not considered to be a typical sale by the Respondent.

54. The Respondent agreed with evidence from third party reports (R-6D, section 11) that, at the time of valuation (July 1 2009), capitalization rates were higher than the previous year's figures. Acknowledging the prevalent trend, the Respondent adopted capitalization rate figures at the upper end of the range reported by these third party sources. The Respondent noted that the capitalization rate study commissioned by the Respondent fully supported this decision (Exhibit R-6D, section 17).

55. The Respondent presented the Board with an independent capitalization rate study (R-6D, section 17) which used 14 sales of downtown office buildings to develop an adjusted capitalization rate trend line (Exhibit R-6D, section 17, page 10). The stabilization of the capitalization rates indicated that capitalization rates were in a downward trend during the first half of 2007 and then showed a gradual upward trend until the date of the last sale which was April 2010. The most recent four sales from January 2008 to April 2010 showed an increase of 0.67% during that time period. The same independent capitalization rate study of 10 sales between January 2007 and January 2009 indicated capitalization rates which ranged from 4.12% to 7.45%. These same sales indicated a stabilized capitalization rate range from 3.59% to 6.9%. It should be noted that adjustments were made to allow for a 5% vacancy rate and a 2% rate for structural expenses. Applying a series of indicated adjustments to the 10 sales based on this information, the independent appraiser projected a capitalization rate for Edmonton's downtown office inventory (Exhibit R-6D, section 17-75,76) as at July 1, 2009 of 7.25% to 7.5% for both 'A' and 'B' buildings and 8.25% to 8.5% for 'C' buildings. It should be noted that except for the class 'C' downtown office buildings, the appraiser's final conclusions indicate lower capitalization rates than those actually used by the Respondent in its 2010 assessment. The author of the capitalization rate study concluded:

    (a) the trend line developed through the study indicated capitalization rates for downtown office buildings in the city of Edmonton were rising between the 2008 and July 1, 2009;
    (b) the overall capitalization rate for class 'A' commercial office buildings situated in the financial and government sectors of downtown Edmonton would be 7.5% when applying market rents in the overall valuation process along with market vacancy and at least a 2% allowance for structural maintenance depending on age of building. Commercial office buildings developed prior to 1980 would likely carry greater investment risk and suggested a capitalization rate in the mid-to upper portion of the 7.50% to 7.75% range;
    (c) class 'B' commercial office buildings in the downtown area of Edmonton would have a capitalization rate in the 7.25% to 7.50% range;
    (d) class 'C' commercial office buildings in the downtown area of the city of Edmonton would have an indicated capitalization rate of 8.25%.

56. The foregoing capitalization rates assume good management as of the date of valuation - July 1, 2009.

57. The Respondent provided equity comparables in each sub-class involved in this hearing which were located in the downtown office market. These equity comparables were put

forward in chart form (Exhibit R-6D, section 12, pages 1 to 9); the equity comparables exhibited the same per-unit rents, vacancy rates, structural allowance and capitalization rates as to the subject properties within their respective sub-classes. The complainant provided no equity argument.

58. The Respondent put forward references from the Alberta Assessors Association as to the valuation guide for office buildings, 2009 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual by Alberta Municipal Affairs and Information on Mass Appraisal of Real Property from the International Association of Assessing Officers. The Respondent contends that the processes followed in performing the 2010 assessment were in line with these regulations and information (Exhibit R-6D, section 14).

59. A substantial number of Board Orders were put forward by the Respondent. The Respondent contends these orders provide support for the methodology used by the Respondent pertaining to rental rates and capitalization rates and placed particular emphasis on MGB orders DL 057/10 and DL 058/10. It should be noted that the Complainant also used these two orders and quoted different sections than were quoted by the Respondent (Exhibit R-6D, section 15).

ISSUE 3: WHAT IS THE APPROPRIATE MARKET RENTAL RATE FOR THE 2010 ASSESSMENT YEAR FOR A CLASS 'AH' OFFICE PROPERTY IN THE DOWNTOWN AREA OF EDMONTON?

Complainant's Position

60. Quoting from MGB decisions (MGB DL 057/10 and DL 058/10), the Complainant argued that as the increased rents will typically result in increased value, the opposite is also true, and in the softer market conditions, prevalent at the time of valuation (Jul 01, 2009), the decreased rents ought to typically result in decreased value. This constituted the foundation for the Complainant's 2010 appeals (Exhibit C-8D, page 10, para 31, 32).

61. The Complainant argued that the Respondent's use of rental data spanning a period from January 2008 to July 2009, provided inputs that did not truly reflect the market realities on the valuation date of July 01, 2009 (Exhibit C-8D, page 12, para 46).

62. The Complainant stressed that the inputs used by the City of Edmonton Assessment Department for typical rental rates, capitalization rates, and vacancy rates were not representative of the market place as of the valuation date of July 01, 2009 (Exhibit C-8D, page 11, para 34).

63. The Complainant, basing its rental rate argument on the analysis of its own database, concluded that the rental rates for 'AA' and 'AH' buildings were over-assessed. This is also supported by independent market reports. (Exhibit C-8D, page 12, paras 50, 51). The Complainant also cited third party reports (Exhibit C-2S, pages 228-235).

64. The Complainant highlighted Colliers 2Q 2009 market report that showed a downward rental rate trend during the 1st and the 2nd quarter of 2009. The Complainant argued that the

Respondent's hike in the assessed rents on the valuation date (Jul 01, 2009) is totally out of sync with what the independent industry sources reported (Exhibit C-2S, pages 228, 233).

65. The Complainant presented a list of 52 leases in respect of downtown 'AA' office buildings. These leases were concluded between Jan '08 and Dec '09 (Exhibit C-8D, Rents, pages 2-3). The Complainant's analysis of these leases supports its contention that the Respondent's rental rates for 'AA' buildings are too high. These were analyzed by the Respondent to show an average rent of $30.04 per square foot and a median rental rate of $32 per square foot (Exhibit R-6, Section 4, page 1).

66. The Complainant presented a list of 42 leases in respect of downtown 'AH' office buildings. These leases were concluded between Jan '08 and Nov '09 (Exhibit C-8D, Rents, pages 8-9). The Complainant's analysis of these leases supports its contention that the Respondent's rental rates for 'AH' buildings are too high. These were analyzed by the Respondent to show an average rent of $27.04 per square foot and a median rental rate of $28 per square foot (Exhibit R-6, Section 4, page 2).

67. A summary of the rental rates, both assessed and requested, is as below. This is also available at Exhibit C-8D, Page 4.

		Rental Rates / PSF / Yr	
District	Class	Respondent's Assessment	Complainant's Request
Financial	AA*	$34.00	$32.00
	AH*	$31.00	$28.00
	AM	$26.00	$26.00
	AL	$19.00	$19.00
	BB	$19.00	$19.00
	BH	$19.00	$19.00
	BL	$15.00	$15.00
	CH	$13.00	$13.00
	CL	$10.00	$10.00
Government	AH*	$31.00	$28.00
	AM	$26.00	$26.00
	AL	$19.00	$19.00
	BH	$19.00	$19.00
	BL	$15.00	$15.00
	CH	$13.00	$13.00
	CL	$10.00	$10.00

Note: '*' The Complainant is contesting the rental rates applied by the Respondent for arriving at the assessment values in respect of 'AA' and 'AH' class downtown office buildings.

68. The Complainant produced its own rental analysis charts based on selected leases pertaining to the period from January 2008 to July 2009, for downtown office buildings, in support of its request for lower rents (Exhibit C-8D, Rents, Pages 2-19).

69. The Complainant argued that the actual leasing activity, closest to the valuation date of July 01, 2009, is the best indicator of the true market rents. The Complainant's two industry specialist witnesses stressed that 'Renewal' lease rates are as good indicators of prevalent market rents as the 'New' lease rates, and these must all be included in any rental rate analysis, with equal weightage.

70. The Complainant also questioned the Respondent's use of small space and short-term leases in its analysis to derive a representative market rent for its assessments. The Complainant argued that the use of 'weighted averages' would eliminate the possible distortions in the derived rates.

71. The Complainant, highlighting the downward pressure from increasing vacancy rates and an influx of sublease space, argued that no justification existed for the assessed rental rates' increase from $30 to $34 per square foot for 'AA' buildings and from $25 to $31 per square foot for the 'AH' buildings (Exhibit C-8D, Page 9, paras 21, 23).

72. The Complainant's two expert witnesses confirmed the fact that to a landlord, renewals were as important as the new leases. The witnesses stated that most downtown office building tenants utilized the services of a broker to handle negotiations with the landlord and the net difference between rental rates in new or renewal leases was minimal.

73. The Complainant's analysis utilized 28 leases and included both, renewals and new leases to arrive at a mean rental rate of $29 per square foot. Eight new leases, during the six months immediately preceding the valuation date, yielded a mean rental rate of $30 per square foot.

Respondent's Position

74. The Respondent relied upon third-party information from Colliers International, CB Richard Ellis and Altus. These studies are from the third quarter in 2008 and the second quarter of 2010, and although they are on a national basis, they have sections which relate to Edmonton. The Respondent contends that this third-party information confirms that rents for office space in the City of Edmonton were either rising or at least stabilized during the 2009 assessment year. In addition to these, studies point to a rise in capitalization rates of Edmonton office buildings in the 0.5% - 1% range (Exhibit R-6D, section 11).

75. Third-party information from Colliers International was put forward which indicated some stabilization in rental rates across all property classes during the third and fourth quarters of 2009 (Exhibit R-6D, section 13).

76. The Respondent provided the Board with comments on the Complainant's rental rate indicators (R-6D, section 5, pages 1-13). The Respondent indicated which of the Complainants rental rate properties were used by the Respondent in their study and provided various comments on whether or not certain ones were used in the Respondent's study, and if not used, the Respondent's reasons for not using them.

77. The Respondent plotted all of the downtown rents from 2009 and 2008, included in the Complainant's evidence. The Respondent's analysis of these charts indicated a general increase in rents from one year to the next (Exhibit R-6D, section 6).

78. The Respondent contends that rental rates used in the 2010 assessment must take into consideration the upward trend shown as opposed to the Complainant's contention that Rental Rates for downtown office buildings in Edmonton were at their peak in 2008 and declined steadily through 2009.

79. The Respondent provided third party information from Colliers International, CB Richard Ellis, Cushman and Wakefield and Avison Young as support of their rental projections. These publications are specifically for the greater Edmonton area with the exception of one article on a national basis. The Respondent questioned the reliability of the third party information put forward by the Complainant (Exhibit R-6D, section 7).

80. As a reference for asking rental rates the Respondent provided a publication known as 'Altus Insite' which references Available and Vacant space summaries of various downtown office buildings including the subject, in the City of Edmonton (Exhibit R-6D, section 8, pages 1-154).

81. The Respondent utilized 29 new leases only and arrived at a mean rental rate of $30.56 and a median rate of $30 per square foot, for the mass appraisal analysis. The Respondent advised the Board that the subject property included four leases in the mass appraisal analysis for "AH" downtown buildings. The four leases were for $28, $33, $28 and $32 per square foot.

ISSUE 3: WHAT IS THE APPROPRIATE VACANCY ALLOWANCE FOR THE 2010 ASSESSMENT YEAR FOR THE SUBJECT PROPERTY?

Complainant's Position

82. The Complainant stated that the vacancy shortfall should be priced at $20 per square foot.

Respondent's Position

83. The Respondent advised the Board that there was no food court or large commercial retail space.

84. The Respondent advised the Board that according to the owner supplied information (R-1-60, page 18) the total occupancy costs in the subject building were $15.48 per square foot. This does not support the Complainant's request for $20 per square foot.

D. DECISION

85. The decision of the Board is to reduce the 2010 assessment from $110,882,500 to $107,387,000 based on a $30 per square foot rental rate and a capitalization rate of 7.50%.

E. REASONS FOR THE DECISION

86. The Board was not persuaded with the Complainant's submission that the vacancy shortfall should be valued at $20 per square foot; especially in view of the Respondent's highlighting the fact that the owner supplied information adequately supported the assessment at $15 per square foot.

87. The Board supports the $30 per square foot rental rate for class 'AH' office buildings in the downtown area. The Board recognizes the fact that a one dollar decrease in the rental rate is within 5% tolerance the city uses for mass appraisal. The Board is of the opinion that even a small (3.3%) decrease can have a substantial impact in case of downtown office building values to the building owners.

88. The Board was persuaded by the Respondent's capitalization rate methodology and analysis and rebuttal to the Complainant's capitalization rate argument that relied on:
    a. Independent third party data to initially establish capitalization rates for downtown office buildings;
    b. Confirmation of these capitalization rates with available sales information;
    c. Further validation of these capitalization rates by engaging the services of an experienced industry professional to provide independent analysis.

89. The Board was persuaded by the Respondent's consultant's analysis and presentation that the capitalization rate for class 'A' and class 'B' buildings should be at a rate of 7.50% and class 'C' downtown office buildings should be at a rate of 8.25% (Exhibit R-6D, section 17, pages 75-76).

90. The Board accepts the Respondent's decision to apply an increase of 100 basis points to the capitalization rates used in completing the previous year (2009) assessment of downtown office buildings in the City of Edmonton. The Board finds this to be well supported by the independent industry reports and the Respondent's consultant's research and analysis.

91. The Board was not persuaded by the Complainant's capitalization rate trends arguments based on '2009 National Investor Survey' (Exhibit C-6, pages 18–44), as this survey pertained to the United States and not Canada.

92. The Board finds the Complainant's methodology might be acceptable if a sufficient number of current investment sales comparables were available. There were only four sales in 2008 and just one in 2009. Several of the nine sales comparables presented by the Complainant, had extraneous factors rendering these unsuitable for direct comparison. One sale was a part of seven property portfolio, while more than one had rental subsidies and the most recent sale included extensive tenant improvements with uncertain costs. Another sale involved only partial interest, and one sale was in respect of a property with heritage status that rendered it atypical sale. The Board questions the reliability in projecting a capitalization rate from such

a small sampling of sales with serious financing, heritage, partial interest, subsidies and shared or detached parking facilities with separate titles.

93. Respecting the Complainant's witness, the Board found the presentations interesting, but found the macro economics did not lend itself well to the Edmonton market. There was not sufficient evidence to show that the Edmonton moved in tandem with the national market. As such the Board placed little weight on witness' testimony.

94. The Board placed little weight on third party reports provided by the Complainant (C-6, pages 54-61) as these pertained to 'retail' and not 'downtown offices'.

95. Assessment to Sales Ratio is used to test the methodology used in valuing property each year for assessment purposes; ASR is the ratio of the assessment to the sales price. The closer the ratio is to 1, the better the assessment reflects market conditions. When the ASR analysis completed by the Complainant (Exhibit C-8 D, pages 24-25) was examined, the Board noted that while the average ASR is close to the guidelines (0.95 - 1.05), however, the overall individual ranges indicate substantial deviation. Therefore, the Board was not persuaded by the Complainant's analysis of the ASRs indicated by the sales comparables.

96. The Board notes the Respondent produced an equity argument (Exhibit R-6, section 12) to show that the subject property was assessed in a fair and equitable manner. These equity comparables reflected the similarities between the equity comparables and the subject property.

97. The Board was persuaded by the graphs showing the trend of rental rates based on the information provided by the Complainant (Exhibit R-6D, section 3, pages 3-7 and section 6, pages 1-4). Upon review of these graphs of the combined data from the two parties, the Board finds that the Respondent's position that rents did rise between 2008 and the valuation day of July 1, 2009, is reasonable.

98. The Board was persuaded by the Complainant's and Respondent's market rental rates analysis. The Complainant utilized both, renewal and new leases, while the Respondent relied solely on the new leases. The Board appreciates that in the current economic climate, it must be a challenge to maintain high occupancy levels. The Board, therefore, considered renewal leases to be just as valid as the new leases, during the 2010 assessment year. This would also be consistent with the assessment methodology employed with the suburban office buildings, even allowing for the fact that the new leases were rather scarce in the suburban markets.

F. DISSENTING DECISION AND REASONS

99. There were no dissenting opinions.

Dated this 25th day of February, 2011, at the City of Edmonton, in the Province of Alberta.

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Robert Mowbrey
Presiding Officer

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD

Exhibit No.	Item
C-1-60	Complainant's Disclosure and Witness Report
C-2-S	Complainant's Addendum
C-4	Complainant's Excerpts from the *MGA, MRAT* and *MRAC*
C-5	Complainant's ARB Order
C-6	Complainant's Main Rebuttal
C-6A	Complainant's Witness Report
C-7	Complainant's Rebuttal – Combined Income Statements and Rent Rolls
C-8D	Complainant's Downtown Assessment Brief
R-1-60	Respondent's Assessment Brief
R-2	Respondent's Master Suburban Assessment Brief 1 of 2
R-3	Respondent's Master Suburban Assessment Brief 2 of 2
R-4	Respondent's Ontario Court of Appeal Decision, 2010 ONCA 672
R-5	Respondent's Tax Court of Canada Decision, 2005 TCC 34
R-6D	Respondent's Master Downtown Assessment Brief (2 Binders)

This Decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.

cc: Municipal Government Board
PSPIB-RE Direct
Aspen Properties (101st Street) Ltd.