

**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:

***Omers Realty Corporation c/o Oxford Properties Group
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
T. Usselman, MEMBER
P. Pask, 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:	067235200
LOCATION ADDRESS:	555 2 AV SW
HEARING NUMBER:	66933
ASSESSMENT:	\$662,670,000

This complaint was heard on the 4th day of October, 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 The complaint that was filed for the property located at 407 2 ST SW (file #67968) was subsequently withdrawn later that week before the Board.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] In addition, the parties indicated that they would be referring to their submissions filed in Eighth Avenue Place (file #66619) which was heard immediately prior to this complaint. It had an issue pertaining to tenant improvement allowances, common to both complaints.

[3] 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 and 362 & 364 of the MGA.

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

Property Description:

[5] The subject property is comprised of two high-rise office towers, located in the Eau Claire community, commonly known as Centennial Place. Both towers were constructed in 2010. The West Tower has an assessable building area of 467,822 sq. ft., and the East Tower has an assessable building area of 872,216 sq. ft. for a total area of 1,340,037 sq. ft. There is 1,276,964 sq. ft. of office space; 23,322 sq. ft. of retail space; 27,712 sq. ft. of storage space; 4,089 sq. ft. for food court space; and 7,950 sq. ft. for recreation space. There are 793 parking stalls associated with this property. The land parcel is 2.30 acres, and the land use designation is the Direct Control District. The property has +15 walkway connections. It was assessed with a quality rating of AA-New.

[6] The subject property was assessed based on the Income Approach to value at \$662,670,000 or \$494.52 psf.

Issues:

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

- (a) The subject property's assessment does not reflect the amount and condition of the unfinished (shell) space as at the condition date.
- (b) The assessed vacancy rate for the retail area should be increased from 2.0% to 4.0% to bring it in line with the vacancy rate for the office space.
- (c) The capitalization rate should be increased from 6.25% to 6.75%.

Complainant's Requested Value:

[8] The Complainant had originally requested an assessment of \$539,520,000 or \$402.62 psf for the subject property which was then revised at the beginning of the hearing to \$590,560,000 or \$440.70 psf. The basis for the revision was for consistency with the rental rates that were requested for Eighth Avenue Place (#66619). At the end of the hearing, the Complainant submitted an additional request of \$637,800,000 or \$475.96 psf based on the current assessed capitalization rate of 6.25% also similar to Eighth Avenue Place.

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

[9] The Complainant submitted that there is unfinished space in the subject property which the Respondent has assessed as if it is finished and occupied, similarly to the issue that was argued before the Board in Eighth Avenue Place. The Complainant requested a tenant improvement allowance of \$7.50 psf to be applied to the office area (192,533 sq. ft.) and retail areas (17,778 sq. ft.) that were under construction as of December 31, 2011 (Exhibit C3).

[10] The Complainant argued that only the completed tenant improvements are assessable, not those yet to be completed. The Complainant submitted *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512 ("the Acton decision") in support of his position. Any tenant improvements subsequently completed and leased after December 31, 2011 are irrelevant for the 2012 assessment and should be captured in the 2013 assessments etc.

[11] In this instance, the Complainant is not challenging the assessed rental rates which the Respondent has applied to the office (\$30.00 psf) or retail areas (\$35.00 psf). He indicated that the assessed office space at \$30.00 psf fits within the leasing patterns of \$28.00 - \$35.00 psf as indicated on their rent roll (Exhibit C1 pages 44 - 58). He requested those rates be applied to the completed areas of 1,084,431 sq. ft. of office area and 4,212 sq. ft. of retail area. Based on the Tenant Roster With Charges, there is no specific information regarding deductions for Tenant Improvements for Centennial Place (Exhibit C1 pages 59 - 72). He argued that Centennial Place competes with Eighth Avenue Place with a similar tenancy mix and would have similar demising requirements (\$13.50 psf for shorter term leases; \$7.50 psf for longer 10 - 15 year leases). The Complainant submitted that the assessed rates should be reduced by \$7.50 psf to the unfinished office and retail areas to account for the tenant improvements. The Complainant submitted CARB 0931-2012-P in support of his position (Exhibit C1 pages 46 - 52).

[12] The Respondent submitted that Centennial Place mirrors Eighth Avenue Place. He argued that the rental rates are not in contention but a one-time capital expenditure. The Respondent submitted the subject property's Rent Roll and argued that it is generating rents higher than the current assessed rates of \$30.00 psf and \$35.00 psf, and therefore its market value is not being affected by the unfinished office and retail space (Exhibit R1 pages 34 - 47). He also submitted CARB 1207/2012-P in support of his position.

[13] The Respondent argued that the Complainant's (initial) request of \$539,520,000 or \$402.62 psf is unreasonable. The Respondent argued that the Complainant is essentially asking the Board to return to 2010 values. The Respondent referred to the two sales of Bankers Hall and Suncor Energy Centre that occurred in April 2010 for \$459.62 psf and \$453.27 psf respectively (Exhibit C2 page 57). He argued that since 2010, commercial property values have increased. The Respondent set out a time adjustment sales analysis in support of an increase in value (Exhibit R1 pages 208 & 209). He requested confirmation of the assessment as there was no compelling market evidence to alter the assessment.

[14] In rebuttal, the Complainant argued that there was no need to have a time adjustment analysis as values have not changed since 2010 as evidenced by the (first) sale of Scotia Centre and Gulf Canada Square.

[15] The Board finds that the Respondent relied heavily on a time adjustment analysis to defend the subject property's assessment, yet the analysis is questionable since it was based upon one foreclosure and two post facto sales. Moreover the Board was confused by the Respondent's two charts used in his analysis of the same three sales in which he derived different (and unexplained) results. As such, the Board finds the Respondent's time adjustment analysis is inconclusive.

[16] The issue before the Board pertained to whether the tenant improvements not yet completed should be assessable. As stated in its decision for Eighth Avenue Place, the Board notes that the courts have provided some direction in regards to assessing tenant improvements not yet completed particularly in the Acton decision. The Honourable Madam Justice Acton clearly states in that decision "tenant improvements that do not exist at the time of the assessment cannot be considered assessable" (para. 29). In this instance, the Respondent assessed the subject property as if the tenant improvements had been in place by December 31, 2011 which is clearly an error. As paraphrased from the Acton decision, circumstances could arise in which the improvements might never be completed, therefore one cannot assess on an anticipatory basis (para. 27).

[17] The Board finds the Complainant's request of a \$7.50 psf tenant improvement allowance for unfinished space in Centennial Place is reasonable. The Board has reached the same conclusion in Eighth Avenue Place and since the two properties are comparable, they should be assessed in a similar manner. As indicated, the Complainant is not contesting the current assessed rates of \$30.00 psf (office) and \$35.00 psf (retail) for the finished space. It is only that space which was under construction as of December 31, 2011 that is in contention. The Board has reduced the rates for those areas to \$22.50 psf (office) and \$27.50 psf (retail) to account for the tenant improvements, as follows:

	Office Area	Office Area (main)	Retail Area (main)	Retail Area (2 nd flr)	Retail Area (main)	Retail Area (2 nd flr)	Retail Area (below)
	Completed	Under Construction	Completed	Completed	Under Construction	Under Construction	Unknown
Assessed Rate	\$30.00 psf	\$22.50 psf	\$35.00 psf	\$35.00 psf	\$27.50 psf	\$27.50 psf	\$18.00 psf
Assessed Area	1,084,431 sq. ft.	192,533 sq. ft.	927 sq. ft.	3,285 sq. ft.	10,085 sq. ft.	7,693 sq. ft.	1,332 sq. ft.

- (b) The assessed vacancy rate for the retail area should be increased from 2.0% to 4.0% to bring it in line with the vacancy rate for the office space.

[18] The Complainant submitted that he is not challenging the vacancy rate of 4.0% which was applied to the office space but requested that it be applied to the retail area as well for consistency. The Complainant submitted that Centennial Place is located in the northwest portion of the downtown core and it is +15 connected (Exhibit C1 page 19). Yet there are not a lot of people in this area, outside of the lunch hour, to support the retailers and the primary destination is the food court. Therefore the main and second floor retail areas are experiencing problems leasing space (Exhibit C1 pages 44 & 45). The Complainant submitted that the total retail space is 27,412 sq. ft. (Exhibit C3). As of May 2011, there was 17,778 sq. ft. of vacant retail space, a 65% vacancy rate.

[19] The Respondent submitted a chart in support of the current vacancy rates (Exhibit R1 page 85). The Respondent applied a 2% vacancy rate to the retail area based on four Class AA office towers, including the subject property.

[20] The Board notes, during the hearing, a discrepancy arose in regards to the Respondent's vacancy chart. It appears that the vacant area of only one of the Centennial Place Towers was taken into consideration, not both. The Assessment Request for Information ("ARFI") dated May 17, 2011 reported 192,533 sq. ft. of vacant space yet the Respondent only reported 27,321 sq. ft. (Exhibit R1 pages 16 – 33). This has a significant impact on the vacancy rate on the subject property (from 2.12% to 7.12%) and the overall vacancy for Class AA office buildings from 2.67% to 5.26%. Moreover this error has potentially affected all of the 2012 assessments for downtown Class AA office buildings. The Board finds the Complainant's request of a 4% vacancy rate to be applied to the retail area is reasonable and supported by the evidence.

- (c) The capitalization rate should be increased from 6.25% to 6.75%.

[21] The Complainant submitted the only market data to base a capitalization rate is the sale of the Class A property, the Scotia Centre. The Complainant submitted the tenancies are similar between the two properties because they are better quality buildings; however, the subject

property is superior to the Scotia Centre. The Complainant submitted the only indication of a capitalization rate of AA buildings is to benchmark what a typical capitalization rate would be in 2012; therefore, it is opinion based as to whether it should be higher or lower than the current 6.25%.

[22] The Respondent submitted a chart for the 2012 Downtown Office Capitalization Rate in which he based the subject property's capitalization rate of 6.25% (Exhibit R1 page 87). In the second quarter of 2011, Altus Insite reported a capitalization rate range of 5.8% - 7.0% for Class AA office buildings, and CB Richard Ellis reported 5.75% - 6.25%. The Respondent applied the same 6.25% capitalization rate to Eighth Avenue Place, Centennial Place, Livingston Place and Jamieson Place (Exhibit R1 page 87).

[23] As indicated above, Eighth Avenue Place is a comparable property to the subject, and both were assessed with a 6.25% capitalization rate. During the course of this hearing, it appears that the Complainant conceded to the 6.25% capitalization rate given his new request of \$637,800,000 or \$475.96 psf (based on a 6.25% capitalization rate). As such, the Board finds that the capitalization rate is no longer an issue in this instance.

Board's Decision:

[24] The decision of the Board is to revise the 2012 assessment for the subject property from \$662,670,000 to \$638,520,000.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF December 2012.



Lana J. Wood
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Evidence (Part 1 of 2)
2. C2	Complainant's Evidence (Part 2 of 2)
3. C3	Complainant's Income Approach Calculation
4. R1	Respondent's Evidence

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