

**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:

***Penny Lane Shopping Centre Ltd.,
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
P. Pask, MEMBER
T. Usselman, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	201572476
LOCATION ADDRESS:	555 8 AV SW
HEARING NUMBER:	66619
ASSESSMENT:	\$591,750,000

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 The complaint that was filed for the property located at 407 2 ST SW (file #67968) was subsequently withdrawn later that week before the Board.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] 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.

[3] During the course of the hearing, the Complainant asked if he could present a rebuttal document regarding parking restrictions for the subject property. This document was not disclosed in accordance with section 8(2)(c) of *Matters Relating to Assessment Complaints Regulation* AR 310/2009 ("MRAC") and was considered late. However the Respondent did not object to the Board receiving this document. It is noted that both parties submitted materials that were late during the course of this week and both agreed to allow the materials in order to put all of the facts before the Board. The Board therefore allowed the Complainant to submit that document at the hearing, which was marked as Exhibit C4.

[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 downtown commercial core, commonly known as Eighth Avenue Place. Construction began for the first tower in 2010, and the second tower is currently under construction. There is a total building area of 1,094,344 sq. ft. which is comprised of 1,041,925 sq. ft. of office space, and 52,419 sq. ft. of retail space. There are 1,143 parking stalls associated with this property. The land parcel is 2.68 acres, and the land use designation is the Downtown Business District. The property has

+15 walkway connections. It was assessed with a quality rating of AA-New.

Issues:

[6] 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%.
- (d) The subject property's assessment does not reflect the current parking restrictions.

Complainant's Requested Value:

[7] The Complainant had requested an assessment of \$525,060,000 or \$479.79 psf for the subject property.

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

- (a) The subject property's assessment does not reflect the amount and condition of the unfinished (shell) space as at the condition date.

[8] The Complainant submitted the subject property was still under construction as of December 31, 2011. Although the shell of the building has been completed, there is a large amount of space that is still shell space in which the tenant improvements have not been completed although leasing is underway. The Complainant submitted the City has assessed that space as if it is completed and applied current rental rates for the office and retail space to the entire area including the uncompleted space of 211,249 sq. ft.

[9] 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. He included the tenant rent roll for the subject property which also reflects the breakdown of finished and occupied area of 883,297 sq. ft. (or 80.7%) and the area under construction of 211,149 sq. ft. (or 19.3%)(Exhibit C1 pages 54 & 55). The Complainant also submitted a series of photographs of various floors within the subject property that are still under construction (Exhibit C2).

[10] In this instance, the Complainant is not challenging the assessed rental rates which the Respondent has applied to the office area (\$30.00 psf) or the retail areas (\$35.00 psf). He agreed that these are the typical rates for this type of property if the space was completed. However he submitted that the rental rates should be reduced by \$7.50 psf for the unfinished

space to account for the tenant improvements (Exhibit C1 page 45). The Complainant submitted CARB 0931-2012-P in support of his position (Exhibit C1 pages 46 – 52). The Complainant indicated that it will cost \$112.50 psf to construct the walls, washrooms, electrical etc. in Eighth Avenue Place to the tenants' specifications.

[11] The Complainant submitted there are also restrictions imposed upon the owner in regards to the retail and parking components as there is potential danger while the second tower is under construction. According to the Development Permits, occupancy is not allowed in the retail podium until the second tower is fully completed. There are parking restrictions in place that will not be lifted until the second tower is completed, which the Complainant estimated will likely be in 2014 or 2015.

[12] The Respondent submitted that the tenant improvements have already been captured and negotiated by the parties earlier this year. He submitted the 2011 Supplementary Assessment for the subject property which was originally valued at \$156,123,330, and then it was revised to \$125,000,000 (Exhibit R2). The Respondent stated the \$125,000,000 was the result of a negotiated settlement between the parties to account for the unfinished area, which is only taken off once as it is a capital expenditure. The Respondent argued that no further reduction for tenant allowances should be given by the Board as this would constitute "double dipping".

[13] The Board finds there was no evidence to support the Respondent's contention that the 2011 Supplementary Assessment of \$125,000,000 as agreed to by the parties had captured future tenant improvements in Eighth Avenue Place. Thus, the Board was not persuaded by the Respondent's argument and placed little weight on the 2011 Supplementary Assessment.

[14] 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. There was a significant amount of area still under construction as evidenced by the photographs in which the tenant improvements were not in place. 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).

[15] The Board finds the \$7.50 psf reduction from the current assessed office and retail rates proposed by the Complainant is reasonable, and that rate was not contested by the Respondent. Given the Complainant's acceptance of the current assessed rates for the office at \$30.00 psf and the retail at \$35.00 psf, the Board will reduce those rates accordingly by the tenant improvement allowance of \$7.50 psf to \$22.50 psf and \$27.50 psf respectively.

[16] The Board notes, upon its review of the materials presented by both parties, there were discrepancies in the square footage reported for the area under construction. At the hearing, the Board inquired specifically to the Complainant regarding the area under construction, and the Complainant stated that it was 211,149 sq. ft. as of November 8, 2011 (Exhibit C1 pages 54 & 55). He indicated that this number was reported by the owners and is the most current document that he had in his possession. However upon reviewing the parties' submissions, the Board noted another chart that was not discussed at the hearing, which is dated December

2011. It shows 273,297 sq. ft. under construction (Exhibit C4 pages 10 & 11). The discrepancy between the two documents appears to be that space occupied by GE. The Board also noted that the Respondent included the 2012 Assessment Request for Information for the subject property reporting the area under construction of 90,022 sq. ft. as of August 22, 2012 (Exhibit R1 page 15). Based on these documents, there is uncertainty as to what is the correct area under construction as of December 31, 2011. However, at the hearing, both parties seemed to accept that area is 211,149 sq. ft. and the allocation of that area as set out in the Complainant's submission (Exhibit C1 page 45). Therefore the Board has accepted the area under construction of 211,149 sq. ft. is accurate and the division of the office and retail areas as follows:

	Office Area	Office Area	Retail Area (main)	Retail Area (2 nd flr)
	Completed	Under Construction	Under Construction	Under Construction
Assessed Rate	\$30.00 psf	\$22.50 psf	\$27.50 psf	\$27.50 psf
Assessed Area	883,195 sq. ft.	158,730 sq. ft.	27,989 sq. ft.	24,430 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.

[17] 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 space as well for consistency.

[18] The Respondent submitted that there is an error in the vacancy rates reported for the retail area, which should be increased from 2.0% to 4.0%. This was based in data errors that the Respondent reported in his vacancy chart for Centennial Place. This changes the overall vacancy rate from 2.67% to 5.26% (cross reference to file #66933, Exhibit R1 page 85). The Respondent submitted that the change in vacancy to 4.0% would result in a decrease in the assessment (assuming the remaining income parameters remain the same) from \$591,750,000 to \$590,840,000.

[19] The Board finds, given the corrected data in the Respondent's vacancy study, it is arguable that a 5.0% vacancy rate should have been applied to the subject property. Notwithstanding, the Complainant requested that the 4.0% vacancy rate that was applied to the office component be carried over to the retail area. Based on the evidence before it, the Board finds the Complainant's request of a 4.0% vacancy rate for the retail component is reasonable and supported by the evidence.

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

[20] 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%.

[21] 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 41). 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 99).

[22] The Board finds there is insufficient evidence presented to change the assessed capitalization rate. The Complainant acknowledged that Eighth Avenue Place and Centennial Place are comparable properties, and he had recalculated his requested assessment for Centennial Place during that hearing and included the current 6.25% capitalization rate (file #66933). Based on equity, the Board finds the current capitalization rate of 6.25% applied to Eighth Avenue Place is reasonable.

(d) The subject property's assessment does not reflect the current parking restrictions.

[23] In rebuttal, the Complainant raised an additional issue in regards to the parking for Eighth Avenue Place, which he became aware of after the rebuttal was due (Exhibit C4). He submitted that the owner is not receiving any benefit via parking revenues. The City had placed parking restrictions on this property before construction could commence, as reflected in an excerpt from the Development Agreement (Exhibit C4 pages 4 – 8). There are a total of 1,143 parking stalls: 685 stalls are designated as long term stalls and 458 are designated for short term public stalls (less than 4 hours). Based on statistics for an eight month period in which the parking stays were recorded, it appears that the short term stalls are not being used on a regular basis. There were only 5,093 stays out of 219,840 stays which equates to a 97.7% vacancy rate. This is in stark contrast to the 2012 assessment which is based upon 100% occupancy for the 1,143 parking stalls as long term stalls (\$6,000/stall). The Complainant submitted the excess vacancy will not be corrected until the second tower is completed.

[24] While the Respondent questioned the statistics for the parking, there was no definitive response from the Respondent on this issue.

[25] The Board notes the Complainant's concerns in regards to the parking but makes no finding on this issue. As the Complainant had indicated, this is an ancillary issue, one that came to his attention after the rebuttal was due, and there was no correlation between the parking issue and the Complainant's requested assessment before the Board. The Board notes that the vacancy could be attributed to a number of factors, including the rate set by the owner of \$32.00 per 4 hours, which may adversely affect the number of stays. Nevertheless, it was not clear to the Board how to quantify the parking issue in relation to the subject property's assessment as the Complainant did not suggest an alternative value to the Board. It is also noted that the Complainant asked the Board to deal with the three primary issues as identified above as the basis of his complaint.

Board's Decision:

[26] The decision of the Board is to revise the 2012 assessment for the subject property from \$591,750,000 to \$567,000,000.

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 3)
2. C2	Complainant's Evidence (Part 2 of 3)
3. C3	Complainant's Evidence (Part 3 of 3)
4. C4	Complainant's Rebuttal
5. R1	Respondent's Evidence
6. R2	Respondent's Evidence (2011 Supplementary Assessment)

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