

**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:

**Sun Life Assurance Company of Canada
(as represented by MNP LLP), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**J. Krysa, PRESIDING OFFICER
J. Massey, MEMBER
A. Wong, MEMBER**

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

ROLL NUMBER:	067026807
LOCATION ADDRESS:	640 5 Ave SW
HEARING NUMBER:	65884
ASSESSMENT:	\$35,980,000

The complaint was heard on July 25, 2012, in Boardroom 9 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

G. Worsley; L. Mulholland (Counsel)

Appeared on behalf of the Respondent:

A. Czechowskyj; L. Gosselin (Counsel)

Board's Decision in Respect of Procedural or Jurisdictional Matters

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description

The subject property is a 23,755 sq.ft. (square foot) parcel of land located in the DT2 market area of the downtown core. The parcel is improved with a 229,740 sq.ft. "B" quality, high-rise office structure that was constructed in 1980, and contains parking facilities for 105 vehicles.

Issues

The Complainant identified the following matter in section 4 of the complaint form:

3. an assessment amount

The Complainant set out sixteen grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$25,000,000; however, only the following issues were in dispute at the hearing:

Issue 1: Does the assessment reflect the subject's physical characteristics and condition as of December 31, 2011?

Complainant's Requested Assessment

At the hearing, the Complainant requested an assessment of \$20,660,000, and provided four alternate assessment value requests ranging from \$24,130,000 to \$35,310,000 reflecting various proposed methodologies.

Board's Decision in Respect of the Issues

[1] The Complainant argued that the subject property is a unique structure, in that it was constructed specifically for a single (government) tenant; and further, that the property is in a unique circumstance as it is now predominantly vacant and undergoing a complete retrofit into a multi-tenant office building after the former and sole tenant, the Energy Resources Conservation Board vacated the property in October 2010, after 31 years of uninterrupted occupancy. The Complainant submitted that the total cost of "base building" renovations will be \$21,027,224, and will include the installation of corridors and barrier free washrooms on each floor, replacement of original mechanical (HVAC and sprinkler systems) and other major renovations which have reduced the number of available parking stalls 116 to 105; a further \$13,006,930 is committed to date for interior office finish development (tenant improvements), resulting in a total project cost of \$34,034,154. The Complainant submitted that as of December 31, 2011,

the project was approximately 55% complete with 2½ floors (43,495 sq.ft.) of the office space complete and occupied, and the remaining 186,245 sq.ft. devoid of any interior office development. In support of the subject's physical characteristics and condition, the Complainant provided photographs, a summary of building permits and correspondence from the subject's director of property management.

[2] The Complainant argued that the \$14.00 per sq.ft. lease rate applied by the Assessor was derived from typical "B" class office buildings that contained interior office development, and this rate could not be achieved for the subject's 186,245 sq.ft. of unfinished interior office area in its current physical condition as at December 31, 2011. The Complainant further argued that the assessment of 116 parking stalls does not reflect the characteristics of the subject property, as the subject had only 105 parking stalls as at December 31, 2011.

[3] The Complainant proposed the following methodologies to reflect the value of the subject's 186,245 sq.ft. unfinished interior office area:

<u>Method</u>	<u>Effective Rent Rate</u>
1. apply a "storage" rent rate of \$10.00 per sq.ft.	\$10.00
2. deduct \$5.00 per sq.ft. from the \$14.00 assessed market rent	\$ 9.00
3. deduct 50% of the \$14.00 assessed market rent	\$ 7.00 (Request)
4. deduct \$50.00 per sq.ft. (cost to cure) from the assessed value of the unfinished area	
5. deduct \$60.00 per sq.ft. (cost to cure) from the assessed value of the unfinished area	

[4] The Complainant submitted that similar approaches have been employed by the Respondent and the Board in respect of other properties, and provided examples of several of the Respondent's assessment valuation worksheets and a multitude of Board decisions in which the various proposed approaches were employed. The Complainant referred the Board to several decisions of the Assessment Review Board, MGB 103/10 and 088/10, and *697604 Alberta Ltd v. Calgary (City of)* 2005 ABQB 512; and *Alberta (Minister of Municipal Affairs) v. Alberta Oil Sands Pipeline Ltd.* 2007 ABQB 652.

[5] The Complainant's requested assessment of \$20,660,000 is predicated on a 50% deduction applied to the assessed \$14.00 market rent rate, however, the Complainant offered no explanation why this option is the Complainant's preferred approach.

[6] The Respondent argued that the assessment of the subject property at \$35,980,000 does not exceed its market value as evident by recent sales of office properties in the municipality. In support of the argument, the Respondent provided seven sales of downtown office buildings that transferred between July 2010 and August 2011, exhibiting a range of values from \$162 to \$391 per sq.ft., in contrast to the subject's assessed unit rate of \$156 per sq.ft. The Respondent argued that the sales exhibit a range of unit rates that supports the subject's assessed unit rate, even though three of the properties transferred subsequent to the valuation date on August 23, 2011; two were court ordered transactions and the remaining two sales were non-arms length transactions.

[7] The Respondent also provided an Alberta Data Search sale summary for another office property located at 903 8 Ave SW, that transferred on April 1, 2010 in a court ordered transaction for \$41,450,000 (\$298 per sq.ft.); and further, a Land Titles Office transfer document and affidavit of value document relating to the June 2012 re-sale of the same property for \$65,745,000 (\$473 per sq.ft.). In respect of the court ordered sales, the Respondent argued that the sales are valid indicators of market value, as the judicial process ensures the purchase price must reflect fair market value.

[8] The Respondent further provided an Alberta Data Search sale summary of a property located at 140 Quarry Park Blvd SE, which transferred on April 6, 2010, at a unit rate of \$355.87 per sq.ft.. The Respondent submitted that the property was 25% - 30% vacant at the sale date.

[9] In response to the Complainant's argument in respect of the subject's current condition, the Respondent added that a typical, prudent owner would have updated and renovated the improvement regularly. Moreover, the Respondent argued that although the subject is suffering from years of deferred maintenance, the current renovation is merely an expenditure of years of cumulative structural "allowances" provided to the subject property and no further adjustment is warranted.

[10] The Respondent also argued that the subject's vacancy is overstated, because many of the vacant areas were committed to new tenants and interior construction was underway. In support of the argument, the Respondent provided four CresaPartners Reports indicating the subject's 2011 vacancy rate throughout 2011 as follows:

Q1 2011	Q2 2011	Q3 2011	Q4 2011
78.25%	0%	0%	11.12%

[11] The Respondent further provided the Complainant's ARFI (Assessment Request For Information) responses dated May 13, 2011 and April 6 2012, to exhibiting the following:

May 13, 2011: 100% Vacant

April 6, 2012: 82.6% Vacant

[12] The Respondent also provided a "Stacking Plan", indicating that as of March 1, 2012, floors 3 to 8, and floors 12 to 15 were vacant, but committed to various tenants for leases commencing in August and October 2012.

[13] The Respondent further submitted that the subject's vacancy rate was at issue in the hearing of the 2011 assessment complaint, and the Board in that instance found the subject property did not suffer from atypical vacancy, and made no adjustment to the assessment.

[14] In respect of the number of parking stalls, the Respondent argued that the reduction in parking stalls from 116 to 105 is as a result of a management decision and therefore should not be reflected in the assessment.

Decision

[15] The Board finds that the assessment does not reflect the subject's physical characteristics and condition as of December 31, 2011.

The Act sets out the criteria for property valuation at section 289.

Municipal Government Act, Chapter M-26, Section 460, Revised Statutes of Alberta 2000

289 (2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

[16] In respect of parking, the Board finds that the subject property contains 105 parking stalls as of December 31, 2011. The Board is persuaded by the Complainant's evidence that confirms the number of parking stalls has been reduced to 105 in early 2011, as a result of permanent structural changes to the improvement.

[17] The Board also finds the Complainant's evidence compelling in respect of the subject's vacant and unfinished interior areas, and was persuaded by the correspondence from the director of property management, dated June 6, 2012, clearly setting out the physical characteristics and condition of the improvement as at December 31, 2011. The Board notes that the Respondent's evidence of a "Stacking Plan" as at May 2012, confirms the extent of vacant area set out in the Complainant's evidence, and there was no evidence presented to refute the Complainant's evidence that this vacant area did not include interior office development as of December 31, 2011.

[18] The Respondent's CresaPartners vacancy evidence was given little weight as it was illogical in relation to the subject's undisputed renovation timeline, and could not be reconciled with the Respondent's own ARFI evidence. Further, there was no witness testimony from CresaPartners to explain the inconsistency, as set out below:

CresaPartners	ARFI	CresaPartners	CresaPartners	CresaPartners	ARFI
Q1 2011	May 13, 2011	Q2 2011	Q3 2011	Q4 2011	April 6, 2012
78.25%	100%	0%	0%	11.12%	82.6%

[19] The Board applies little weight to the sales evidence presented by the Respondent as they included non arms length sales, court ordered sales, and three post-facto sales, of which only one was located in market area DT2, and it was of a lower "C" classification. The Sale of 140 Quarry Park Blvd was also afforded little weight as the property is not located near the downtown core, and there was no evidence to support the Respondent's assertion that the property had significant vacancy at the time of sale. Above all, none of the properties were in the same physical state as the subject property, which is in the midst of a major refurbishment.

[20] The Board understands the Respondent's argument in respect of annual structural allowances and deferred maintenance; however, section 289 of the Act is clear in respect of what each assessment must reflect, notwithstanding individual management decisions made in respect of maintaining specific properties. The Board accepts that structural allowances may appropriately reflect the maintenance and updating of a typical office building; however, in this instance, the subject property is not a typical office building as it is undergoing a major retrofit from a single tenant structure to a multi-tenant structure along with the related replacement of major components.

[21] The Board, however, does not accept the Complainant's methodology of simply making a deduction from typical "B" class market rents. The Board notes that this methodology fails to take into account the major capital investment made in the subject property as of December 31, 2011, as evident by the subject's building permits included in the Complainant's evidence.

[22] Accordingly, the decision of the Board is to accept the Complainant's requested assessment of \$20,660,000, adjusted by the value of the subject's 2010 and 2011 building permits taken out prior to the valuation date and assumed to be complete by December 31, 2011, as follows:

Complainant's Requested Assessment:		\$ 20,660,000
Permit # 2010-13293	2010-Oct-18	\$ 945,000
Permit # 2010-15803	2010-Dec-23	\$ 2,360,000
Permit # 2011-01265	2011-Feb-10	\$ 7,255,000
Permit # 2011-06587	2011-Jun-08	\$ 2,545,800
Permit # 2011-06618	2011-Jun-08	<u>\$ 350,000</u>
	Total	\$ 34,115,800
	Truncated	\$ 34,110,000

The assessment is **REVISED** from: \$ 35,980,000 to: **\$ 34,110,000.**

DATED AT THE CITY OF CALGARY THIS

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DAY OF OCTOBER, 2012.



 J. Krysa
 Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (74 pages)
2. R1	Respondent's Submission (153 pages)
3. C2	Complainant's Rebuttal Submission (212 pages) City of Calgary v. Lougheed & Company et al., 2001 ABQB Lougheed & Company v. Calgary (City of), 2003 ABCA 232 Bentall Retail Services Inc v. Vancouver Assessor, Area No.9 [2006] BCSC 424 Calgene Corporation v. Canada (Attorney General) [2011] SCC 1 Catalyst Paper Corp v. North Cowichan (District) [2012] SCC 2 CNRL v. Wood Buffalo (Regional Municipality) 2012 ABQB 177

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	s.289 MGA