



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:

THE STANDARD LIFE ASSURANCE COMPANY OF CANADA, COMPLAINANT
(represented AEC Property Tax Solutions)

and

The City Of Calgary, RESPONDENT

before:

BOARD CHAIR: P. COLGATE
BOARD MEMBER: A. MACIAG
BOARD MEMBER: T. USSELMAN

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 2013 Assessment Roll as follows:

ROLL NUMBER: 201050135
LOCATION ADDRESS: 903 8 AVENUE SW
FILE NUMBER: 72216
ASSESSMENT: \$61,710,000

This complaint was heard on 25th day of November, 2013 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 1.

Appeared on behalf of the Complainant:

- *Michael Oh, AEC Property Tax Solutions*
- *Brock Ryan, AEC Property Tax Solutions*
- *Maciej Kudrycki, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *Kelly Gardiner, City of Calgary*
- *Jarrett Young, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] No objection was raised with respect to the Board's composition.

Preliminary Matter:

[3] No preliminary matter were raised for the Board's consideration. The merit hearing proceeded.

[4] The Board noted the Complainant had identified Matters 1,2,3,4,5,6 and 7 on the complaint form. Upon questioning the Complainant indicated the issues raised related to only Matter 3 – the assessment amount.

Property Description:

[5] The subject property, known as 8 West, is a Downtown Office A quality building located in the DT2 market area at 903 8th Avenue SW. The 2009 structure encompasses 139,552 square feet of area, demised into 130,174 square feet of office space, assessed at a market rental rate of \$26.00 per square foot, 8,878 square feet of retail main level space, assessed at a market rental rate of \$25.00 per square foot, and 500 square feet of storage space, assessed at a market rental rate of \$10.00 per square foot.

[6] The subject property is assessed on the Income Approach to Value, with a capitalization rate of 6.00% applied to the Net Operating Income (NOI).

Issues:

[7] The Complainant placed four issues before the Board for its consideration:

- Issue 1. Incorrect Area for Leasable Office Space and Vacant Office Space,
- Issue 2. Chronic vacancy,
- Issue 3. Office market rental rate,
- Issue 4. Tenant Improvements.

Complainant's Requested Value: \$50,090,000.

Board's Decision:

[8] Based on the Board's decision as stated, the Board found insufficient information to support in part the changes requested by the Complainant. Further, taking guidance from Justice Acton the Board found the market value of the subject property exceed the current assessed value.

[9] The Board confirmed the assessment at **\$61,710,000.**

Legislative Authority, Requirements and Considerations:

[10] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[11] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

Position of the Parties

Issue 1 - Incorrect Leasable Area for Office Space and Vacant Office Space,

Complainant's Position:

[12] The Complainant introduced the argument that the City of Calgary had erred in the area attributed to vacant space in the subject property. Through tables and supported by the rent roll for the subject property, the Complainant showed the correct vacant space for the subject was 13,305 square feet instead of the 8,979 applied by the City of Calgary. The resulting change for the subject property would increase the percentage vacancy from 6.90% to 10.22%. The effect on the typical rental rate would increase the percentage from 0.78% to 0.82% (C1, Pg. 64-65 and Pg. 23-37)

Respondent's Position:

[13] The Respondent, accepting the Complainant's argument on the typical vacancy, introduced a 'What If' document to show the correcting of the typical vacancy rate to 0.82% would result in a change to the assessment from \$61,710,000 to \$61,650,000, or a decrease of \$60,000 or 0.10%

Issue 2 - Chronic Vacancy

Complainant's Position:

[14] The Complainant submitted a review of the vacancy for the subject property indicated a consistent pattern of high vacancy which should be recognized in the determination of the assessment. Through the use of the rent rolls for the year 2010, 2011 and 2012, (C1, Pg. 23-

37) the vacancy was shown to be:

Rent Roll Year	Percentage Vacancy
2010	31.6%
2011	31.4%
2012	10.2%

[15] The Complainant requested the vacancy rate for the subject property be adjusted to 10.0% for the determination of the property assessment.

Respondent's Position:

[16] In response to the Complainant's argument, the Respondent introduced from the Glossary for Property Appraisal and Assessment the definition of Vacancy and Collection Loss:

"The amount of money deducted from the potential annual gross income to reflect the effect of probable vacancy and turnover, or non-payment of rent by tenants. Vacancy and collection is commonly expressed as a percentage of potential annual gross income, and **it should be based on market research, not actual rental history of a property**". (R1, Pg. 61-62)

[17] The Respondent submitted CARB1747/2011-P, a decision on the subject property, which also addressed the issue of chronic vacancy. The Board in the 2011 decision found that new buildings would experience a period of higher than typical vacancy during the initial lease-up period.

[18] The Respondent submitted a document from Altus InSite, dated October 24, 2013, which indicated that mid-October of 2013 there were no head leases available in the subject property and only 23,678 square feet of sublet available area. It was the Respondent position the entire building was under lease, supporting the Respondent's position that chronic vacancy was not present.

Issue 3 - Office Market Rental Rate

Complainant's Position:

[19] It was the argument of the Complainant that the market values for DT2 were lower than the rates of DT1, and therefore the leases should be analyzed separately.

[20] The Complainant submitted its own analysis of the rental rate in DT2 in support of the requested rate of \$24.00 per square foot. (C1, Pg. 63) Based upon a total of nine (9) leases commencing between July 1, 2011 and May 1, 2012, the Complainant determined results for a typical rental rate lower than that determined by the City of Calgary in its analysis of DT1 and DT2 lease rates. The analysis indicated:

Class	Statistical Analysis	Rate per Square Foot
A – All Leases	Mean All Leases	\$23.88
	Median All Leases	\$24.00
	Weighted Mean	\$23.68
2012 Leases	Mean 2012	\$23.40
	Median 2012	\$23.50
	Weighted 2012	\$23.55
>10,000 square foot leases	Mean 2012	\$24.00
>10,000 square foot leases	Median 2012	\$23.75
>10,000 square foot leases	Weighted Mean	\$23.96

Respondent's Position:

[21] It was the position of the Respondent the analysis, which combined both the DT1 and DT2 market areas was supported as the rates found in DT2 were similar to the lease rates found in DT1. The Respondent submitted its analysis of the leases which indicated an upward movement in the lease rates between 2011 and 2012. (R1, Pg. 93-94)

Class	Statistical Analysis	Rate per Square Foot
A – All Leases	Mean All Leases	\$24.77
	Median All Leases	\$24.50
	Weighted Mean	\$23.82
2011 Leases	Mean 2011	\$22.43
	Median 2011	\$22.25
	Weighted 2011	\$21.22
2012 Leases	Mean 2012	\$26.30
	Median 2012	\$27.00
	Weighted Mean	\$26.09

[22] The Respondent submitted there were sufficient leases in 2012 to indicate a typical rental rate for the market area office space of \$26.00 per square foot.

Issue 4 - Tenant Improvements

Complainant's Position:

[23] The Complainant submitted as number of photographs of the subject property, taken in 2013, which indicated a lack of tenant improvements in areas of the office building. (C1, Pg. 42-52)

[24] The Complainant argued the tenant improvement would equate to approximately \$6.00 per square foot. This was supported by a copy of a leased commencing November 1st, 2009 in which it was agreed in Section 5.16(b):

The Tenant shall coordinate the design, supervision and construction of the improvements (all of which is herein call the "Improvements") to the Leased Premises. The Landlord shall contribute a maximum of Sixty Dollars (\$60.00) per rentable square foot of the Leased Premises towards the Improvements"

[25] The Complainant submitted a number of CARB decisions which granted reductions on the basis of missing tenant improvements, i.e. CARB 72829-P-2013, CARB 72564P-2013, CARB 72395/P-2013 and CARB 2427/2012-P.

[26] It was the Complainant's argument that Justice Acton in 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512 clearly stated "... in my view, tenant improvements that do not exist at the time of the assessment cannot be considered assessable; including them demonstrated an unreasonable analysis of the evidence".

[27] In rebuttal to the 2012 sale of the subject property the Complainant argued the sale should not be used as the sale, although an arm's-length transaction, failed to satisfy the requirement to be exposed on the open market. The Complainant submitted a copy of a letter received from Standard Life which stated the sale was not exposed on the open market. (C1, Pg. 16)

Respondent's Position:

[28] The Respondent presented little evidence in response to the Complainant's argument on the lack of tenant improvements in the subject property. The Respondent spoke to '**Tenant Inducements**' adding value to a property, not detracting from its value. (R1, Pg. 4)

[29] The Respondent submitted the RealNet document for the 2012 sale of the subject property, which registered a value of \$65,745,000 on June 21, 2012, only ten days before the valuation date of July 1, 2012. (R1, Pg. 53-55) It was the Respondent's argument the sale price clearly supported the assessment value for the subject property and no adjustment need be made to the assessment. It was argued a prudent purchaser would take into consideration the factors of vacancy, needed tenant improvements and rental rates when preparing an offer to purchase and during any negotiations.

Board's Reasons for Decision:

[30] The Board looked closely at the sale of the subject property registered June 21, 2012 for a reported value of \$65,745,000. The Respondent had used the sale in its determination of the capitalization rate for roll year 2013, and this was not challenged by the Complainant. The Complainant stated to the Board the sale was an arm's-length transaction, but should not be used as it was not exposed to the open market as the Municipal Government Act stipulates in Section 1(1)(n), where it addressed the term 'market value'.

1(1)(n) "**market value**" means the amount that a property, as defined in Section 284(1)(r), might be expected to realize if it is sold on the **open market** by a willing seller to a willing buyer;

[31] The Board sought clarification for terms in the legislation and referenced Black's Law Dictionary, 7th Edition.

'market value' or 'fair market value' – the price that a seller is willing to accept and a buyer is willing to pay in the open market and in an arm's-length transaction.

'open market' – a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition.

'arm's-length' – of or relating to dealings, between two parties who are not related or not in close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship.

[32] The Board took guidance from Justice L.D. Acton in the decision on 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512, where the Justice quoted from another decision Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.:

It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980, C.31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (S. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of the subject property is generally accepted as the best means of establishing the market value of that property.

...

...I think that generally speaking the recent sale price, if available as it was in this case, is in law and, in common sense, the most realistic and reliable method of establishing market value.

[33] The Board looked at the question of exposure in an 'open market' in response to the Complainant's argument that the property was not properly exposed to buyers. The evidence before the Board was a letter from Standard Life in which they expressed the opinion that "the purchase and sale of this property was not exposed on the open market". The letter went on to state the purchaser, Standard Life, had been approached by a broker, James Miller of Avison Young Commercial Real Estate, asking if Standard Life was interested in potentially buying the subject property. The letter further stated that confidential negotiations were conducted and the "property was not publically exposed to the market place in relation to this sale. The subject was not openly listed for sale".

[34] The Board found the letter was limited in information as it was only the opinion of the representative of the purchaser and not able to address the motivations or directions of the vendor.

[35] The Board found the vendor had contracted a broker, Avison Young, to market its property for sale and that broker did approach the final purchaser of the subject property. No evidence was submitted to show that Standard Life was the only potential purchaser approached to show interest in the purchase of the property. The Board was of the opinion a prudent broker would approach all parties who could potentially express interest in the purchase of the subject property in order to maximize the market value for its client, the vendor. Once Standard Life expressed their interest the negotiations became confidential and there was no need to list the property.

[36] The Board found the vendor's use of a broker and the practice of brokers approaching potential buyers to find those with an interest in purchasing a property satisfies the need for an 'open market' transaction.

[37] The Board found the Affidavit Re: Value of Land, which is evidence given under oath by a representative of the Complainant, was a further substantiation of the value of the property with a signed declaration "the current value of the land in my opinion is \$65,745,000.00" and which goes on to define "value" as the dollar amount that the land might be expected to realize if it was sold on the open market by a willing seller to a willing buyer.

[38] The Board found the MGA is very specific with respect to the sale being between a willing buyer and seller, but the term 'open market' does not specifically state a need for a 'listing' for the property to occur in order for the sale to be a valid representation of the market value.

[39] The Board, accepting the sale was an arm's-length transaction and the declared consideration was a representation of the market value for the subject property, found the assessment was supported at **\$61,710,000.**

[40] With that decision, the Board found the issues raised by the Complainant with respect to the vacancy, rental rates and tenant improvements became moot as the requested assessments fell below the market value of the subject property. However the Board will respond to the issues raised.

[41] The Board finds a knowledgeable purchaser would take into consideration the vacancy rate for the property when determining the purchaser offer. This is supported in the Standard Life letter which acknowledged the issue of vacancy and the "probability of correcting this chronic vacancy problem".

[42] The Board accepted the Respondent's argument that vacancy percentage for the subject property was a factor of the lease up time involved with a new building. This was supported by evidence that only sublease space was now available in the subject property in 2013.

[43] The Board found the correction to the typical vacancy rate was not significant to warrant an adjustment to the assessment, for it would not reduce the sale price below the level of the current assessment value.

[44] The Board rejected the argument of chronic vacancy in the subject building and found the corrected typical vacancy rate would not influence the current assessment.

[45] The Board found the argument put forward by the Complainant with respect to the rental rate was limited by the number of leases available in the DT2 market area. The Board found the Complainant's argument for the separate treatment for DT2 was not supported by the evidence of the lease rates as the DT2 lease rates fell within the range of rates for the DT1 and DT2 market areas. The Board found the Complainant failed to establish the lease rates were not typical for the larger market area of DT1 and DT2.

[46] The Board found there was a valid argument for the adjustment of the assessment value due to the lack of tenant improvement in a situation where a sale price was not a factor. The Board followed the decision of Justice Acton which stated that a recognition for the lack of tenant improvements should be made in the determination of the assessment value. However, in the case before the Board, if one accepts the decision of Justice Acton to recognize the sale price as the indicator of market value then the Board would be adjusting from the \$65,745,000 sale price. Based on the sale price, less the tenant improvements set at \$1,050,000 by the Complainant, the result still exceeded the current assessed value of \$61,710,000.

[47] The Board found the best indicator of market value is the sale price of the subject property. As this value exceeds the current assessment of the subject property, the Board confirmed the assessment at **\$61,710,000**.

DATED AT THE CITY OF CALGARY THIS 6 DAY OF December 2013.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

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,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

2 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	-Vacancy -Tenant Improvements -Net Market /Lease Rates -Sale Price