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:

Board Chair, J. Zezulka
Board Member, D. Morice
Board Member, P. McKenna

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 2014 Assessment Roll as follows:

ROLL NUMBER: 033044108

LOCATION ADDRESS: 1435 - 40 Avenue NE

FILE NUMBER: 74327

ASSESSMENT: $9,420,000

This complaint was heard on the 30th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *J. Langelaar, Agent, MNP LLP*
- *Y. Lau, Agent, MNP LLP*

Appeared on behalf of the Respondent:

- *F. Taciune, Assessor, City of Calgary*
- *T. Squire, City of Calgary Law Department*

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

(1) At the outset of the hearing, the Complainant objected to the Respondent's use of three comparable sales on the grounds that the sales had not been provided in response to an information request under Section 299 of the Municipal Government Act. The facts and arguments in the case, as the Board understood them, are these;

(2) During the fall of 2013, the City published a complete list of valid non-residential sales transactions within the City of Calgary. This list was supplied to the Complainant at their request. The three transactions in question were included on that list. On January 15, 2014, the Complainant made a second request for information in accordance with Section 299 of the Act. In response to the second request, the City provided a list of valid sales that contained the following introductory statement; *"The following Table displays the sales that were used in the subject valuation model."* The three sales in question were not included on that list.

(3) The Respondent countered by asserting that the City did not use the three sales in the valuation of the subject, but chose at a later date to use them in defence of the subject assessment. As such, the City should not have been required to provide the sales in the Section 299 response. The City argued that the Complainant did in fact receive the sales in response to the initial 2013 request and was aware of their existence. Moreover, the City asserted that the sales were, in fact, contained in the city's initial disclosure that was prepared and submitted in accordance with section 8(2)(b)(1) of the Matters Relating to Assessment Complaints Regulation, and therefore the Complainant should have had ample time to research the sales and respond in a rebuttal document.

(4) The Respondent also called the Board's attention to the decision of the Court of Appeal of Alberta , Canadian Natural Resources Limited (CNRL) v. Wood Buffalo (Regional Municipality) 2014 ABCA 195, paragraph (19) which states, in part; "*The central issue on appeal is whether the CARB reasonably interpreted s.9(4) by allowing evidence which defends an assessment on a different basis to that disclosed in response to a s.299 request.*"
In paragraph (20) it states "*The central purpose of taxpayer information rights is to provide taxpayers with information about the preparation of their tax assessments. In deciding whether to make a complainant and , if so, on what grounds, the taxpayer must know what it can rely upon.....*".

(5) The Board considers the situation before it to be analogous to the CNRL decision quoted. Furthermore, from a layman's point of view, it seems reasonable for a person to conclude that the three sales in question must have been faulty if they were included in the first list of valid sales, and then excluded from the final, presumably more refined, list that was actually used in the valuation. This comment reflects the comment by the Alberta Court of Appeal in the 2014 CNRL decision. Certainly, no reasonable person would have expected the sales to "crop up" in the defence as being valid sales.

(6) It seems incongruous that the City would not use the same data to defend an assessment as the data that it used to prepare it. To do otherwise seems to contravene the principle of natural justice that Section 299 was intended to protect.

(7) Finally, the Board recognizes that the Complainant probably had ample time to consider the three sales and address them in rebuttal prior to the actual hearing. However, Section 299 of the Act makes no exceptions because of "time" and this Board will also make no exceptions.

(8) The Board finds that Section 299 has not been adhered to by the Respondent City in the manner intended by the legislation, and excludes the three sales from the Respondent's evidence.

Property Description:

(9) The subject is a two building warehouse property located in the McCall community of NE Calgary. The two buildings are 36,745 and 31,208 square feet (s.f.), for a total assessable area of 67,953 s.f. The buildings were built in 1998 and 1992 respectively. Both are multi bay warehouses. The larger building has a finish ratio of 38.0 per cent. The smaller building has 55.0 per cent interior finish. The land area is 3.34 acres. The land is designated I-G. Site coverage is 34.69 per cent.

Issues:

(10) The property is currently being assessed by the sales comparison approach. The City's methodology is to value each of the buildings seperately, as though each building was a separate property, add the totals together, and then apply a "multi building" adjustment. According to the Respondent, the "multi building" adjustment is a coefficient and cannot be made public. The Complainant does not dispute the sales comparison method of valuation.

(11) The current assessment reflects a rate of $138.64 per s.f. The Complainant contends that that rate is not equitable with similar properties, and that the rate does not properly reflect market values.

Complainant's Requested Value: $8,410,000 or $7,040,000.

Board's Decision:

(12) The assessment is reduced to $7,040,000.

Legislative Authority, Requirements and Considerations:

(13) This Board derives its authority from section 460.1(2) of the Act.

(14) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;

"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"

(15) Section 467(3)of the Act states;

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality."

(16) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

(17) The Board notes that the assessment has increased from $8,460,000 in 2013, to $9,420,000 in 2014.

Position/Evidence of the Parties

(18) The Complainant submitted four sales comparables intended to be used for comparison with each of the subject's two individual buildings. The time adjusted median and average of these comparables is $143 and $145 per s.f. One of these transactions occurred in February, 2010. The Respondent states that this date is outside of the valuation period.

(19) The Complainant also analysed six paired properties in the NE quadrant that compared a single building property assessment to a similar multi-building property assessment. The median and average difference was found by the Complainant to be 13.42 per cent and 12.56 per cent. The purpose of the exercise was to mimic the city's valuation methodology for the assessment of multi-building properties.

(20) Applying the minus 13 per cent adjustment to the median and average of the comparables sales produced a value indicator of $124 per s.f., which the Complaiant used to arrive at the first assessment request of $8,410,000.

(21) The Complainant also submitted three comparables whose assessable building areas were similar to the aggregate area of the two subject buildings. The average and mean of those sales were both $104 per s.f., resulting in the second alternative request of $7,040,000.

(22) The Respondent submitted four transactions in support of the assessment. Three of those have been excluded by this Board as a result of the section 299 objection. However, the Board notes that, even if those transactions were to be included in the evidence, the mean and median time adjusted selling prices fail to support the subject assessment. Without the excluded sales, the mean and median fall considerably short of the existing assessment.

(23) The Respondent submitted three equity comparables, all of which are single building properties that reflect assessments higher than the subject's. Two of the buildings are newer than the subject. One has an 84 per cent interior finishing ratio.

(24) The Respondent maintains that none of the three equity comparables has a multi-building adjustment applied, and, if one had been applied, the comparables would be more in

line with the subject's current assessment.

Findings and Reasons for Decision:

(25) In the view of the Board, the City's method of assessing multi building properties is faulty. The City's method does not reflect the typical behaviour of buyers and sellers in the marketplace, which is one of the underlying principles of the sales comparison approach to value. Most, if not all, investors view property on the basis of the total revenue potentially generated by a property as a whole, set against the total required capital investment. In other words, in the Board's view, comparing the subject's aggregate rentable floor area to comparable properties having the same or similar aggregate floor area provides a more reasonable reflection of actual market behaviour.

(26) The Respondent's position that the "multi building'" coefficient cannot be made public is acknowledged by the Board. However, this Board has no way of determining whether the adjustment was applied correctly, or whether the adjustment reflects actual behaviour in the market place.

(27) The onus of proving that an assessment is incorrect lies with the individual alleging it. The onus rests with the Complainant to provide convincing evidence to justify a change in the assessment. In the assessment complaint process, every opportunity is provided to both parties to present evidence and arguments in support of their positions.

(28) Once the Complainant has provided sufficient evidence and argument to cast doubt on the existing assessment, the onus shifts to the Respondent to prove that the assessment is correct. The Board finds that the Complainant has provided sufficient evidence and argument to shift the burden to the Respondent, and the Respondent has failed to reply.

(29) The Board finds that the Complainant's second alternative approach, being the aggregate building method, most closely reflects the activities in the market place, and adopts that amount as being the most appropriate.

DATED AT THE CITY OF CALGARY THIS 3 **DAY OF** September, **2014.**

Presiding Officer

Jerry Zezulka

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM

1. C1 Complainant Submission
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.

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Decision No. CARB 74327P/2014			*Roll No. 033044108*	
Subject	*Type*	*Issue*	*Detail*	*Issue*
CARB	Multi building warehouse	Market Value	Sales comparison	Onus