

**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-26.1, Section 460(4).

between:

Sun Life Assurance Company of Canada, *COMPLAINANT*

and

The City Of Calgary, RESPONDENT

before:

J. Noonan, *PRESIDING OFFICER*

R. Roy, *MEMBER*

D. Julien, *MEMBER*

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	009004482
LOCATION ADDRESS:	6815 8 St. NE
HEARING NUMBER:	61143
ASSESSMENT:	\$34,140,000

This complaint was heard on the 15th day of June, 2011 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- G. Worsley, Sr. Tax Consultant, Altus Group

Appeared on behalf of the Respondent:

- R. Fegan, M. Lau, T. Neal, Assessors, *The City of Calgary*

Property Description:

The subject is located at 6815 8 St NE, Calgary. It is a three-storey lowrise office building built in 1981 with an adjacent sister building, collectively known as the Deerfoot Atria located in the Deerfoot Business Centre. The subject Deerfoot Atrium North comprises 164,659 sq.ft. of Class A office space assessed at an \$18 rent rate, as well as 243 underground parking stalls assessed at an annual rent rate of \$1080 or \$90 per month. As the name suggests, the property has an atrium decorated with plants and a water feature, and an advertising brochure refers to a fitness facility and conference centre, although those facilities are likely located in the adjacent sister building. The assessed value is \$34,140,000. ✓

Jurisdictional or Procedural Issues Heard:

1. Should the Board hear evidence about the assessed rate for underground parking stalls?
2. Should the Respondent be able to refer and comment on the entirety of the Complainant's evidence disclosure when some evidence was advanced in support of an issue now withdrawn?

Jurisdictional Issue 1:

The Respondent originally requested the Board not hear evidence on the parking rate issue as it had not been properly identified on the complaint form. When it was pointed out that the parking rate was indeed listed on the complaint form as an issue, the request was withdrawn. However, the point was resurrected a short time later as the Respondent noted that the evidence disclosure from the Complainant did not identify what was wrong with the parking rate: specifically, the requested value page used the same parking rate as did the Assessor.

The Complainant conceded that through an oversight, the evidence package had used the same \$1080 annual parking rate as the assessment, and not the \$900 figure as intended. If the Composite Assessment Review Board (CARB) decided to hear this issue, the corrected requested assessment would be \$28,467,836 using 243 stalls at \$1080 annual rent, or \$27,907,731 using \$900 annual rent, rather than the \$28,300,000 identified in the evidence package.

Board Findings and Reasons:

On examination of the Complainant's evidence (Exhibit C1), a 96-page document, the CARB

concludes that it would have been difficult for the Respondent to anticipate that the parking rate was still a live issue. The executive summary makes no mention of parking, the "Difference Summary" outlining the requested assessment parameters differs from the City's parameters only in respect of the annual rent rate applied to the office, and the calculation of the requested assessment uses the same annual parking rate (\$1080) as assessed. There are a few pages of building manager's lease notes that mention parking rates of \$75 per month or less, buried amongst a great many other lease details, but the CARB concludes there is insufficient mention of this issue and consequently, declined consideration of argument on altering the parking rate.

Jurisdictional Issue 2:

The Respondent requested that the City be allowed to address the entire evidence disclosure (Exhibit C1) of the Complainant and objected to the addition to or removal from anything in that Exhibit. The Respondent noted that the Complainant's evidence was due 42 days prior to the hearing, and the Respondent had to respond. It was unfair to the City if at the hearing evidence was allowed to be withdrawn from the Complainant's package if that evidence demonstrated assessment equity, as was argued to be the case here, and in anticipation that the equity issue would be withdrawn as had been the case in some other hearings dealing with similar properties.

The Complainant argued that procedural fairness would be violated if a Complainant was not permitted to withdraw an issue and the evidence accompanying.

Board Findings and Reasons:

The CARB will allow the Respondent to make use of the Complainant's evidence on the issue of assessment equity, even if the Complainant no longer wishes to pursue that issue.

The *Municipal Government Act (MGA)* at s. 293(1) directs an assessor to prepare an assessment in a fair and equitable manner. If at a hearing the assessor wishes to show that an assessment is equitable, even though the complaint is based on whether the assessment has fairly applied the market value standard, is permissible even though it might be considered off-topic in regard to the specific issue or issues that comprise the complaint. The CARB is aware that in some instances the evidence provided by both parties regarding market value can be poor, contradictory, or inconclusive. Where evidence of market value is murky, it is indeed helpful to an assessment tribunal, required to produce a written decision, to be able to point to assessment equity, or lack thereof, even though that was not the specific issue at hand.

In this case, the Respondent could have simply photocopied the page or pages from the Complainant's package and include it in their own in order to preclude any controversy. In the interest of conserving paper and printing toner, the CARB has no problem with the Respondent making use of the Complainant's evidence, and vice versa.

Issues:

The complaint form identified a number of issues or grounds for appeal, namely that the assessment was in excess of market value, unfair and inequitable in comparison to comparable

properties, that the property details were incorrect and inconsistent with the characteristics and physical condition of the subject, that information requested pursuant to sections 299 or 300 of the *Municipal Government Act (MGA)* was not provided, the subject office classification was unfair, inequitable and incorrect, the office rental rate should be no more than \$15 per sf., and the value attributed to parking was unfair, inequitable, and incorrect.

As well as hearing from the Respondent about assessment equity, the Composite Assessment Review Board (CARB) received evidence and heard argument on the following Complainant issue:

1. Should the annual office rent rate used in the capitalized income approach be reduced from \$18 to \$15?

The Complainant advised the parameters for vacancy, operating cost shortfall, non-recoverables and cap rate employed by the City in the income approach valuation were not at issue. By making the change to the rate for office rent, the Complainant urged the CARB to reduce the assessment to \$28,460,000.

Issue 1: Office Rent

The office rent evidence at this hearing was very similar to that advanced for the sister Deerfoot Atrium South which is reproduced below. At this hearing, the Respondent produced a brochure advertising sublet space available at the subject available Jan 1, 2011 and a "Direct Asking Rate" of \$18-\$20. In addition, the subject's March 2010 ARFI showed many of the in-place leases were for rates above the assessed \$18. The Assessor established the parking capitalized value at \$3,360,000 and consequently the office assessment at \$30,780,000 or just under \$187 per sf for the 164,659 sf of office space, the same as the median rate of 10 NE properties in the Complainant's evidence Exhibit C1.

The Complainant introduced 11 leases from the NE quadrant dated from Aug 1, 2009 to Aug 1, 2010 for spaces ranging from 823 sf to 64,168 sf within buildings classed A- or A+. These leases showed an average rent of \$14.09, a median of \$16 and a weighted average of \$10.46. A graph of this leasing activity was argued to show a declining trend through the relevant year and suggesting a \$13 rate as at July 1, 2010. Particular attention was drawn to 3 leases at 3030 and 3250 Sunridge Way, presented as very good comparables to the subject in terms of age and location. Both properties are single storied, built in 2000, and both approximately 27,000 sf. One lease for an entire building (27180 sf) commenced Aug 1, 2010 at a rate of \$11 per sf. for a term of 1 year, the leasee being the City of Calgary. Though post facto in the City's view, this lease was very close to the valuation date and should be given considerable weight. Two leases for areas of 8326 and 2693 sf commenced Dec 1, 2009 at rates of \$16 and \$17.50. In light of all the lease evidence supplied, the requested rate of \$15 was very reasonable.

The Respondent presented 5 equity comparables of A2 or A- quality in the NE quadrant, all assessed at the \$18 office rate. Seven NE leases were also introduced, including 5 that had also been utilized by the Complainant, showing a mean rental rate of \$17.71 and a weighted mean of \$20.42 in comparison to the assessed rate of \$18. The Respondent argued that 3 of

the Complainant's leases were post facto to the July 1, 2010 valuation date and ought not be given consideration. Three Complainant leases were derived from the Airport Corporate Centre, a new building the City classes as A+, assesses at a \$24 rate, and excludes it from the NE inventory due to its airport location and the fact the owner only owns the upper floors of the structure, not the ground floor nor the land. Problems were also noted with some of the other Complainant leases, and again it was argued that these ought to be excluded from consideration. Attention was drawn to the post facto lease at 5055 11 St NE, the former Westjet building overlooking Deerfoot Trail. It was noted (by one or both parties) that this lease commenced Jan 1, 2011 though the tenant was granted early and free occupancy July 1, 2010 to make tenant improvements amounting to \$45 per sf paid for by the owner, and the new tenant was also granted a \$300,000 moving cost allowance. In return, the tenant signed a 10 year lease for the entire building at \$8 per sf. for the first 5 years and two step-ups to \$14 and \$16 in later years. Meanwhile, the City's ARFI data showed that the Westjet lease that commenced October, 2000 was to expire in August 2010 and specified a \$15 rate until that date. The Respondent questioned the typicality of this lease. Another lease from Suite 218 of Deerfoot Atrium South advanced by the Complainant conflicted with ARFI data that showed Suite 218 with a different area, lease start date and rent rate.

In rebuttal, the Complainant raised points of concern in regard to some of the leases used by the Respondent. Of note, the largest lease of 112,123 sf. at a rate of \$21 had a significant impact on the City's weighted mean of \$20.42. However, this lease took effect in February 2008, at a rate of \$19 until August, 2009. From Aug 2009 to Aug 2010, the rate agreed was \$21, as per the City information, but this was a step-up provision negotiated before February 2008, and consequently not reflective of leasing activity in the July 1, 2009 – 2010 timeframe. The second highest lease used by the City was from 233 Mayland Place NE, showing a rate of \$20.50 for 21,858 sf. It was shown that this lease commenced Dec 1, 2009 which was one year after the now tenant sold the property to the Calgary Real Estate Board. It was suggested that this should be looked at as a vendor leaseback transaction, and thus atypical.

Board Findings and Reasons:

The parties were successful in calling into question whether some of each other's leases were truly typical of leasing activity in the July 1, 2009 – 2010 timeframe. In particular, the City's largest lease at 3030 2 Ave SE (Telus House and considered part of the NE inventory) was shown to be a step-up to an earlier February 2008 contract, but a line of argument that this lease should also be considered a vendor leaseback transaction was shown not to be correct. The same vendor leaseback argument was raised regarding the lease at 233 Mayland Place, but the CARB is inclined to accept this transaction due to the passage of time between sale and lease dates, and the sophistication of the parties: the Calgary Real Estate Board and the Alberta New Home Warranty Program.

Of the Complainant's comparables, the CARB accepted the City's assertion that the 3 leases at Airport Corporate Centre were from a higher quality building (A+) not in the NE inventory. These leases seemed to the CARB inexplicably low for new high-quality space and one in particular for 1526 sf on the top floor of this development at a rate of \$9 for 5 years defied comprehension, being well below the rate the City has found typical for B class buildings in the NE at \$12 per sf. Another comparable advanced by the Complainant, the former Westjet building at 5055 11 St., was similarly puzzling. The \$45 per sf inducement for tenant improvements, plus the \$300,000

move-in allowance effectively means that the owner would wait in excess of 5 years before breaking even on this transaction at an \$8 rent, disregarding the time value of money. The CARB thought this arrangement atypical. During the course of the hearing, the lease for Suite 218 at the subject for which the parties had conflicting information was clarified as properly being for Suite 240. This lease was for \$15 per sf., but the CARB noted it was for a brief 6 months, an atypically short term. Another lease at the subject property, Deerfoot Atria North, had a face rent of \$16 but the first 3 months of each year were free. This meant the effective face rent was \$12. At another hearing, it was clarified that this lease was an extension or renewal on the same terms of an earlier lease, now applied to a space some $\frac{1}{3}$ the size of the original, the balance having been taken up by another party at a far higher rate.

The CARB makes special note of the lease at 3250 Sunridge Way, where the City of Calgary rented the entire building (27,180 sf) commencing Aug 1, 2010. The Assessor views any leasing activity after July 1, 2010 as post facto and argues such leases should not be considered. The Complainant observes that the MGA does not exclude such leases from consideration; rather it is a policy decision of the City. The CARB is aware that court decisions direct tribunals to give weight to sales that occurred mere weeks after valuation date, and that post facto sales can be given consideration for trending purposes. It occurs to the CARB that leasing activity is a strong component of market value and should be afforded the same consideration the courts have decided regarding sales. At minimum, the 3250 Sunridge lease should be seen as evidence of a weakening market, and at maximum consideration, one would include this lease in calculations of average and mean rental rates.

At the end of the day, the CARB is left with 5 or 6 leases, 4 cited by both parties which appear as the first four entries in the table below. Mayland Place is a comparable advanced by the City and 3250 Sunridge is the post facto (or not) lease previously discussed.

Address	Area SF	Lease Commencement	Rent	Term (Yrs)
3030 Sunridge Way	2693	December 1, 2009	\$17.50	3
3030 Sunridge Way	8326	December 1, 2009	\$16.	3
6815 8 St. NE	1513	July 1, 2010	\$17.	5
6715 8 St. NE	823	July 1, 2010	\$16.	5
233 Mayland Pl.	21,858	December 1, 2009	\$20.50	Unknown
3250 Sunridge Way	27,180	August 1, 2010	\$11.	1

Average Rent of first five above: \$17.40
Median \$17.

Average Rent of all 6 leases: \$16.33
Median \$16.50

Average of first 4: \$16.625
Median \$16.50

As can be seen, all roads lead to a value of about \$16.50 which is precisely half-way between the parties' positions. In such a case, the CARB has several alternate routes in deciding a

complaint: adopting a hard-nosed manner and finding the Complainant's \$15 lease rate is unsupported; finding that \$16.50 is the correct typical lease rate and substituting that value in the income approach calculations; or travel on a different path.

The City is fond of pointing out that a lease rate is but one component of an income approach value determination, and if one changes any part of the chain of calculation, other adjustments must or should be considered, especially the cap rate. The City argues that it is unfair for a Complainant to accept a typical cap rate, vacancy allowance, and other inputs but argue for a different lease rate in isolation from those other factors. The dilemma facing the parties and the CARB is that there is no sales evidence from NE Calgary in the year prior to valuation to guide a value decision. It was noted out that the current assessment of \$34,140,000 is a decline of 16% from the previous year's value of \$40,680,000. The Complainant's request represents a decline of some 30%, almost double.

The CARB is admonished at MGA s 467 (3) that it must not alter any assessment that is fair and equitable, taking into consideration ...c) the assessments of similar property... in the same municipality. The CARB sees that the assessment is equitable as all other NE offices of this class are assessed at an \$18 rate. If anything, the amenities of this building in comparison to the features of other properties whose assessment complaints were heard the same week suggest this property might well be superior to many others in its class. The CARB does not have before it the evidence to conclude the assessment is fair or unfair: the City's \$18 lease rate appears high, given the limited valid lease evidence before this panel, but the CARB cannot conclude that \$34,140,000 is not a reasonable estimate of the property's value as of July 1, 2010. The CRAB is quite sure that the Complainant's requested assessment is not fair due to a lack of evidence of a general nature: had the average suburban office property dropped in value by 30% or more, newspapers and other media would have printed or broadcast little else.

Board Decisions on the Issues:

The Board confirms the assessment of \$34,140,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July 2011.

for 
J. Noonan
Presiding Officer

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.*