

**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:

Canada Mortgage and Housing Corporation, *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:	024024507
LOCATION ADDRESS:	5055 11 St. NE
HEARING NUMBER:	61206
ASSESSMENT:	\$9,960,000

This complaint was heard on the 16th 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 - *Complainant*

Appeared on behalf of the Respondent:

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

Property Description:

The subject is located at 5055 11 St NE, Calgary. It is an A quality suburban office building constructed in 2000 with 46,523 sf of above grade space assessed at an annual lease rate \$18 per sf and 17,645 sf of below grade space at an \$8 rate. The assessed value is \$9,960,000.

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 assessed net income did not reflect actual operations, the tax exempt status of one or more tenants had not been recognized as per ss 362 and 364 of the *Municipal Government Act (MGA)*, the physical condition of unfinished space caused by tenant departure had not been recognized, the office rental rate should be no more than \$15 per sf., access and location factors had not been considered, and vacancy and credit allowances should be no less than 15%.

The Composite Assessment Review Board (CARB) received evidence and heard argument on only the following 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, nor was the \$8 rent rate for the below grade office space. By making the change to the rate for above grade office rent from \$18 to \$15, the Complainant urged the CARB to reduce the assessment to \$8,360,000.

The Complainant argued the subject was a unique building with unique circumstances. An ARFI for the subject was presented, showing that the previous tenant, Westjet, had occupied the entire building under a lease which commenced October, 2000 and which expired in August, 2010. The annual lease rate shown was \$15. Westjet had vacated the building early, a brochure advertising the property showed it was available for tenant fixturing May 1, 2009. The ARFI also

showed that a new 10 year lease had been signed with a commencement date of January 1, 2011 and a rent of \$8. Oral evidence was presented to the effect that the new tenant had been granted possession as of July 1, 2010 in order to carry out tenant improvements, for which project the owner had advanced a cash allowance of \$45 per sq. ft. applied to the entire 64,168 sf. In addition, the tenant was to receive a \$300,000 moving allowance and 18 months free rent for the lower floor area of 17,645 sf. After the first 5 years of the lease, the annual rate was to step-up, and an annual surcharge of \$1 per sf was to be applied to the operating costs in years 6-10 as consideration for the moving allowance. The Complainant argued that the new lease at an \$8 rental rate encumbered the property, demonstrated it wasn't capable of achieving the assessed \$18 rate in the open market, and in these circumstances the requested \$15 rate was more than reasonable.

The Complainant introduced the same 11 (including the subject) lease comparables as had been sent at other complaint hearings of NE suburban "A" quality offices, and pointed to the only other single-tenant lease transaction at 3250 Sunridge Way NE, where the City of Calgary had leased an entire 27,180 sf building at \$11 per sf for a term of one year commencing August 1, 2010. Also highlighted was the decision of the CARB for the previous year, CARB 1481-2010-P, which had reduced the above-grade rental rate from \$20 to \$15 in consideration of the accumulated wear and tear and poor physical condition of the property after Westjet vacated the premises in April of 2009.

The Assessor established the out-of-pocket costs to the landlord for tenant improvements and move-in allowance amounted to \$3.1 million or \$52.50 per sf. and the improvements were to be accomplished by year end 2010. Had the property been in the same condition as the previous year, the Assessor would have been obliged to carry forward the \$15 rate set by the 2010 CARB but the improvements carried out in the second half of 2010 restored the building to typical condition. The May, 2010 ARFI showed the new lease was to commence January of 2011, but the old Westjet lease continued until August, 2010. A RealNet report showed the subject was purchased by the current owner in September, 2001 for \$9.1 million.

The Respondent showed the same 5 equity comparables, all assessed at an \$18 lease rate, and the same 7 lease comparable as had been seen at other hearings before the panel of "A" quality suburban offices.

Board's Findings in respect of Each Matter or Issue:

The leasing evidence at this hearing was identical to that presented at other hearings before the panel the same week involving NE suburban "A" Class office properties. For a more detailed overview of these leases and the conclusions reached, refer to CARB 0877/2011-P or CARB 0933/2011-P. As was pointed out in those decisions, after the parties decimated one another's lease details, the CARB was left with 5 leases, or 6 if one included for trending purposes the August 1, 2011 lease at \$11 per sf. for 3250 Sunridge Way. The CARB found that \$16.50 seemed to be indicated as a typical lease rate in the July 1, 2009-2010 timeframe but declined to substitute that lower lease rate in a capitalized income approach.

The 2010 CARB reduced the assessment by finding a \$15 lease rate to account for the state of disrepair of the subject premises on the flight of Westjet. This CARB finds that the physical condition of the property as of December 31, 2010 ought to be at least typical, given the substantial investment of some \$2.8 million in improvements.

Standards of assessment are set out in Part 1 of *Matters Relating to Assessment and Taxation Regulation 220/2004* where one finds at s 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.

In other CARB decisions referred to above, the Board expressed scepticism at the terms of the new lease which came into effect January 1, 2011. Although the lease commences well after the valuation date of July 1, 2010 the Complainant noted the terms were agreed much earlier and signatures affixed June 30, 2010. Quite simply, the CARB reiterates that this lease is atypical: the owner receives a net effective rent of 0 for well over five years. The CARB concludes that the full fee simple interest in the property has for whatever motivation been subdivided into an owner's interest and a lessee's interest

The CARB finds interesting the subject sale in 2001 for \$9.1 million. That price is close to equidistant from the requested \$8,360,000 and the actual assessment of \$9,960,000. The CARB is far from convinced that ten years on, after an upgrade of \$2.8 million, the subject has declined in value or even remained the same which would be the approximate result if the Board were to substitute a \$16.50 rent rate in a reworked income capitalization.

Board Decisions on the Issues:

The Board confirms the assessment of \$9,960,000.

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.*