

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints 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 Co. Of Canada(as represented by Altus Group
Limited),COMPLAINANT "A"**

and

**Hudson's Bay Company(as represented by Wilson Laycraft Barristers and Solicitors),
COMPLAINANT "B"**

and

The City Of Calgary, RESPONDENT

before:

**T. B. Hudson, BOARD CHAIRMAN
D. Steele, MEMBER
J. O'Hearn, MEMBER**

These are complaints 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 2011 Assessment Roll as follows:

ROLL NUMBER: 075107805

LOCATION ADDRESS: 5115 17 AV SE

HEARING NUMBERS: 64152 and 64699

ASSESSMENT: \$30,090,000

Complainant A was heard commencing on the 21st day of June 2011, and concluding on the 23rd day of June 2011. Complainant B was heard commencing on the 21st day of June and concluding on the 22nd day of June, 2011. Both complaints were heard at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant A

- A. Izard Altus Group Limited

Appeared on behalf of the Respondent:

- R. Ford City of Calgary.

Appeared on behalf of Complainant B

- B. Dell, Wilson Laycraft
- P. Leclaire Hudson's Bay Company
- L. Shimek Ryan Property Tax Services U

Appeared on behalf of the Respondent

- R. Ford, Assessor, City of Calgary

Background

As noted above, the Board heard two separate complaints on the same roll number.. Complainant A, represented the landlord owner of the property, while Complainant B represented the largest tenant on the subject property. The individual complainants converge in a common request for a reduction in the overall assessment. Therefore, the Board has treated the review of the individual complaints as essentially one hearing conducted in two parts. This decision brings together the findings of the Board with respect to the issues identified in the individual complaints, and the conclusion of the Board with respect to the subject property assessment.

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

The Respondent suggested that the submission of Complainant A, with respect to the capitalization rate change requested should be ignored, or at least given little or no weight by the Board. The Respondent argued that the Complainant's cap rate conclusions are based on a Leased Fee Estate (LFE) Valuation, and the assessment must, by law, be prepared on a Fee Simple Estate (FSE) Valuation. Complainant A countered, that the cap rate change requested is based on market evidence and should be considered by the Board. **The Board decided that Complainant A's submission would be considered and given the weight deemed appropriate in the context of all of the evidence and argument presented by the parties.**

Property Description:

The subject property is located at 5115 17 AV SE in the Forest Lawn community in Calgary. It is classified as a Community Shopping Centre, and known as the Town and Country Centre. The site area is 10.25 acres and includes improvements totalling some 154,603 square feet of retail space. The improvements include a free standing big box Zellers store with 96,874 square feet of main floor retail space, and 8,621 square feet of non-retail mezzanine space. Also included is a 41,747 square foot free standing Sobeys grocery store. The remaining improvements include an auto parts store and a gas bar. The current assessment for the subject property based on the capitalized income approach to value is \$30,090,000.

Issues:**Complainant A**

The issues argued by Complainant A, include that the correct rental rate for the Sobeys store should be \$13 per square foot versus the assessed rate of \$17. Complainant A also suggested that the resulting reduction in net operating income (NOI), should then be capitalized at a rate of 7.75% versus the assessed rate of 7.25%. Complainant A further claimed that the subject property is in an "inferior" location when compared to other Community Shopping Centres of similar age and condition, and therefore a reduction in the assessment is warranted based on equity. Rental rates for the other tenancies in the subject property, with the exception of the Zellers main floor retail space (which was argued by Complainant B), and all of the other valuation parameters used by the Respondent in the income approach to value assessment calculation were accepted by Complainant A.

Complainant B

Complainant B identified the assessed rental rate (\$14) per square foot on the Zellers main floor retail space, and (\$1) per square foot on the non-retail mezzanine space as the issues. The requested rates are \$5 for the main floor, and \$0 for the mezzanine. They also agree with the reduction in Sobeys rent rate, and the cap rate change proposed by Complainant A. All of the remaining valuation parameters used by the Respondent in the income approach to value assessment calculation were accepted by Complainant B.

Complainant's Requested Value: \$15,010,000

Board's Findings in Respect of Each Matter or Issue:**Complainant A**

ISSUE #1 Sobeys Rent Rate: The Complainant suggested that the "inferior" location of the subject property should result in a reduced assessed rental rate for the Sobeys tenancy. Several similar grocery stores within Community Shopping Centres assessed at \$13 psf were identified by the Complainant. However, the Board finds that the CO-OP Store located at 3330 17 AV SE in the same Forest Lawn Community to be the best comparable to the subject. Although very similar in size and location, the Respondent noted that the CO-OP store was constructed in 1977, while the Sobeys store on the subject property was constructed in 2007. **The Board finds that the \$17 assessed rental rate is reasonable for the Sobeys store given its relatively new construction. This conclusion is supported by the extensive list of both lease and equity comparables submitted by the Respondent on Pages 33 to 35 of Exhibit R1.**

ISSUE #2 Capitalization Rate : The Complainant submitted their "2011 Capitalization Rate Analysis and Argument", for Community Shopping Centres which is included on Pages 53 through 82 in Exhibit C1., all in support of their request for a 7.75 % cap rate. The Respondent also submitted a Capitalization Rate Summary for Community Shopping Centres in support of the 7.25% cap rate used to prepare the assessment of the subject property. The Board noted that four (4) sales comparables were common to both submissions, with no objections to their used raised by either party. However, there was considerable contrast in the conclusions of the parties, which appears to be the result of employing different methodology to calculate gross operating income (PGI), for the same sales. In most other respects, the submissions were quite similar. The Complainant indicated that their calculations of PGI for the four sales were based on actual rent rates being achieved at the time of sale with any vacant space included at "market" rates. The Respondent indicated that their calculations of PGI for the four sales were based on "typical" rent rates being achieved by this category of retail properties (plus any vacant space) at the time of sale. Both parties characterized each other's methodology as "flawed".

The primary responsibility of the Board is to evaluate the competing evidence of the parties, based on the the estimates of assessment values resulting from the process, rather than the process itself. The estimates of assessed value when compared to the sale prices of the comparable properties is often used in this evaluation. The Respondent presented the only evidence on this issue in the form of an assessment to sales ratio (ASR) for each of the four sales common to the submissions of the parties. The 7.25% cap rate applied by the Respondent results in superior ASR results for three (3) of the four common sales, as shown on page 465 of Exhibit R1. **The Board, therefore, finds that the 7.25% cap rate, is the appropriate rate to apply in the income approach to assessment value calculation for the subject property.**

ISSUE #3: Does the location of the subject property warrant a reduction in the assessment based on equity ?

The Board finds that any potential negative impact on the assessed value of the property due to location is offset by both the new construction of the Sobeys store in 2007, and the expansion and renovation of the Zellers store in 2006.

Complainant B**ISSUE #1 What Rent Rate should be used to assess the Main Floor Retail Space in the Zellers Store?**

The Board finds that \$14 per square foot is typical market rent for big box retail stores similar to the Zellers store, and should be used in the subject property assessment.

The assessed rent rate under complaint is \$14 psf., the requested rate is \$5 psf. The Complainant pointed to the assessment history, which shows the assessed rent rate of \$5 per square foot has been in place both before (in 2004), and after the redevelopment (in 2006), up to and including the 2010 assessment year. Given this reality, and the fact that nothing about the subject property has changed, the Complainant contended that the assessed rate should remain at \$5 psf. for 2011. The Respondent countered that the Assessor must, by law, assess the subject property on the basis of the full fee simple estate interest, which includes the interests of both the landlord and the tenant. In fact, the Matters Relating to Assessment and Taxation Regulation (MRAC), Part 1: Standards of Assessment, Section 2, supports this interpretation. The Respondent noted that \$5 psf. reflects the contract rent, which represents only the leased fee or landlord's interest in the subject property. The leasehold or tenant interest has value when the contract rent paid by the tenant is less than typical market rent.

The Complainant contends that the contract rent is the same as market rent for the subject property. In support of this position, the Complainant submitted lease summaries including rent rates for comparable Zellers and Hudson Bay stores in Western Canadian locations; including the Calgary Forest Lawn location. The leases all show terms of fifteen (15) to twenty (20) years, and contract rent rates similar to the subject (Page 22 of Exhibit C3).

The Respondent contends that because the subject property is comparable to numerous free standing "big box" retail stores located in shopping centres in all areas of Calgary, it must be assessed using typical market rates. These properties have been stratified by size, and assessment rent rates assigned based on the analysis of information provided by the property owners through the Assessment Request For Information (ARFI) process. A chart on Page 36 of Exhibit R1 shows six (6) lease comparables in the same size range (ie 50,001 to 100,000 square feet) as the subject. Rent rates range from a low of \$12 psf. to a high of \$16.65 psf., with a median of \$14.50 psf., with lease terms similar to the subject. The Respondent also submitted a chart on Page 35 of Exhibit R1 showing sixteen (16) properties classified as "big box" in the same size range as the subject and assessed at \$14 psf., to demonstrate the equity of the assessment.

On a balance of probabilities, the Complainant has to prove that the contract rent in place for the subject property is the same as market rent, and therefore should be used in the market value assessment.

However, the Board is of the view that in order to determine typical rent rates for "big box" stores in the Calgary market, comparables other than Bay and Zellers stores should be included in the analysis. The Board concludes that the contract rent in place for the Zellers store on the subject property reflects only the leased fee interest, and therefore

should not be used to prepare a fee simple estate market value assessment.

ISSUE #2: What Rent Rate Should be Applied to the Non-Retail Mezzanine Space in the Zellers Store?

The Board finds that a rent rate of \$1 per square foot should be applied to the Zellers Mezzanine Space.

The Complainant requested elimination of the assessed rate of \$1 psf. for the mezzanine because use of the space is included in the \$5 psf. contract rent for the retail space. The Respondent countered that the mezzanine space has value in use, notwithstanding the fact that the Zellers lease allows use of the mezzanine space rent free. The nominal rate of \$1 psf. recognizes the current use of the space as storage, etc. and the Board accepts the Respondent's position on this issue.

Board's Decision: The assessment is confirmed at \$30,090,000

DATED AT THE CITY OF CALGARY THIS 27 DAY OF July 2011.

A handwritten signature in blue ink, appearing to read "T. B. Hudson", written over a horizontal line.

T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant A Disclosure
2. R1	Respondent Disclosure
3. C1	Complainant B Leclaire Willsay
4. C2	Complainant B Disclosure
5. C3	Complainant B Ryan Report
6. C4	Complainant B Ryan Appendices
7. C5	Complainant B Ryan Rebuttal
8 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.*