

**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 MANUFACTURES LIFE INSURANCE COMPANY, COMPLAINANT
(Represented by Colliers International)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member S. ROURKE
Board Member R. DESCHAIINE***

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 2011 Assessment Roll as follows:

ROLL NUMBER: 067052704

LOCATION ADDRESS: 540 6 AVENUE SW

HEARING NUMBER: 61130

ASSESSMENT: \$25,120,000

This complaint was heard on 26 day of August, 2011 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:

- *Christopher Hartley, Colliers International, Valuation & Advisory Services – Representing The Manufacturers Life Insurance Company*

Appeared on behalf of the Respondent:

- *Harry Neumann – Representing the City of Calgary*
- *Walter Krynski – Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

The subject property, identified as Calgary House, is a 14 storey office building located in the Downtown (DT1) market area of Calgary. The structure encompasses 149,083 square feet of office space, 9793 square feet of retail space, 8,977 square feet of storage space and 69 parking stalls in an above ground parkade. The building has a +15 connection to the building to the west, over 5 Street SW.

Issues:

1. Is the Market Net Rental Rate for Office space correct?
2. Is the Market Net Rental Rate for Retail space correct?
3. Is the vacancy allowance applied to Office and Retail space correct?
4. Is the space on the main floor correctly designated?

Complainant's Requested Value: \$20,607,238.00

Board's Decision in Respect of Each Issue:

The Board will examine each issue separately in the determination of the decision.

ISSUE 1:**Market Net Rental Rate for Office Space****Complainant's Evidence:**

The Complainant requested an office rental rate of \$13.00 per square foot.

The Complainant presented the position the most comparable properties to the subject were located in the adjacent area designated DT2. The dividing line between DT1 and DT2, which runs along 5th Street SW, is arbitrarily set by the City of Calgary and the Board has the ability to assess the subject as if located in DT2 if the evidence supports the change. The Complainant believes a transition zone can be established to recognize those properties located close to a dividing line between market zones.

The Complainant reviewed the current leases in Calgary House, specifically noting the leases to Manufacturing Life Insurance Company, which are not arms-length as the tenant and the owner are the same company. Those leases would be excluded from any market analysis. An analysis of three leases was submitted as an indicator to support the rate of \$13.00. (C1, Pg. 7)

Tenant	Lease Date	Term	Net Rentable Area	Rate/ SQ. FT
NAL Resources Management Ltd	1-Dec-2010	5	89,447.0	\$13.15
New Century Petro & Sun Century	1-May-2010	5	4,835.0	\$13.00
Web Age Solutions Inc.	1Nov-2009	3	2,463.0	\$14.20

An undated Tenant Roll was submitted in support of the leases selected and comments made regarding the non-arms length leases. (C1, Pg. 11)

The Complainant provided six leases, commencing in 2009 and 2010, in support of a reduced net rental rate for office space. (C1 Pg. 8) Lease rates ranged from \$12.00 to \$13.00 per square foot. The Complainant stated the leases were selected as Colliers International representatives were involved. Two of the leases were located in DT1 in the same building, 521 3 Avenue SW, and the remainder were located in DT2.

In the Complainant's opinion Calgary House is unique as approximately 70% of the space is occupied by one tenant, NAL Resources Management Ltd.

Respondent's Evidence:

The Respondent presented the 2010 and 2011 Assessment Request for Information (ARFI) as supplied by Manufacturers Life Insurance Company. (R1, Pg. 27-69) The Respondent prepared a leasing chart (R1, Pg. 70), which identified six leases in Calgary House, commencing between November 1, 2009 and May 1, 2010, with a mean office rental rate of \$16.70, a median of \$17.10 and a weighted mean of \$19.01. The office space rental rate is currently \$14.00. The

Respondent acknowledged three of the leases were occupied by Manulife Insurance and were not considered arms length leases. They were not used in establishing the typical office rental rate.

Submitted by the Respondent was a chart of the 2011 Downtown Office Net Rental Rates (R1, Pg 72). Noted were the rates and the differences between DT1 and DT2 and also between B and B- buildings.

	2011	
CLASS	DT1,DT8	DT2,DT3,DT9
B	\$16	\$14
B-	\$14	\$13

The Respondent provided the rental analysis of the B- class buildings for DT1 and DT2 to show the difference in the overall lease rates between the two zones. (R1, Pg 73-74). The summary is shown below –

	DT1	DT2
ALL LEASES	\$16.72	\$14.58
MEAN	\$15.50	\$14.00
MEDIAN	\$16.82	\$14.05
WEIGHTED MEAN		
2010 LEASES		
MEAN	\$15.38	\$13.25
MEDIAN	\$15.00	\$14.00
WEIGHTED MEAN	\$14.92	\$12.82
2011 ASSESSED RATE	\$14.00	\$13.00

The Respondent testified weighted mean was used to establish the rental rates as it provided a better representation of the rental rates in place.

The Respondent presented third party reports – Avison Young, CB Richard Ellis and Barclay Street – as confirmation of the rental rate established by the City of Calgary. (R1, Pg 75-79)

Findings and Decision of the Board With Respect to Office Rental Rate

The Board is not in a position to re-align the downtown zones or to create transition zones in order to adjust the assessment of properties along the borders of the market zones. The Board does not have the evidence before it, nor the time to reanalyze the evidence if presented, to determine if the lines of demarcation between zones are correct. The Board must accept the City of Calgary has done due diligence in the creation of these market zones and can support it with supporting documentation, until there is compelling evidence to show an error has been made.. In this case, the Respondent has shown support from a third party, Altus Insite, which

appears to support the location of the separation of market zones DT1 and DT2. (R1, Pg 91-92) The Complainant's suggestion of a transition zone along the boundaries of market zones raises more questions for the Board than offers resolutions. Is it only for properties immediately on the dividing line or should it extend to the adjacent building? What if an office building backing onto the subject exhibits all the characteristics of a typical office in the DT1 zone, should the adjustment apply?

The Board will not make adjustments to the zones or create exception transition zones. The Board will review each case as presented and make changes when compelling evidence is provided to substantiate a reasonable change to the assessment.

With regards to the Net Office Rental Rate, the Respondent has provided 34 separate leases from 11 different 'B-' office buildings in the DT1 market zone. While there is a large range of lease rates within the DT1 zone, from \$12.00 to \$31.00, the statistical analysis supports the typical rate of \$14.00 per square foot being applied to 'B-' office buildings in the area. The Board is not in a position to comment on the range of lease rates as no direct evidence has been submitted with respect to the negotiations of the leases.

The Complainant has not provided sufficient evidence to dispute the typical lease rate in DT1 as leases were presented only from the subject building and one other property in DT1. While those leases show rates lower than the typical, this was not sufficient for the Board to alter the office net rental rate. The Board accepts the Respondent's analysis as representative of the typical rental rate for office space in the market zone DT1.

ISSUE 2:

Market Net Rental Rate for Retail Space

Complainant's Evidence:

The Complainant requested a retail rental rate of \$17.50 per square foot.

The Complainant submitted site specific rental information for the two leases in Calgary House - the Tikka Haus Inc and Starbucks Coffee. The requested rental rate for retail space of \$17.50 was believed by the Complainant to be the maximum retail rent obtainable.

Respondent's Evidence:

The Respondent submitted four retail leases, located in DT1 which illustrated a range of \$20.00 to \$28.00 for retail rates for leases commencing in 2010. (R1, Pg. 80) The lease for Nathan's Tikka Haus, located in Calgary House commenced in 2008 with a lease rate of \$17.50.

Five equity comparables from market zone DT1, all in B- class buildings, demonstrate the typical rate of \$21.00 has been applied consistently to similar spaces, either on the main floor or second floor.

Findings and Decision of the Board With Respect to Retail Rental Rate

The Board finds neither the Complainant nor the Respondent provided compelling evidence to

support a change or substantiate the current retail rent rate. The Complainant provided the only retail leases in place in Calgary House, at \$17.50 and \$32.00, but based the request on \$17.50 as the more recent lease signed in 2008 for Tikka Haus Inc. The lack of additional lease information to show the typical rate was incorrect did not compel the Board to adjust the rate. The Respondent's providing of lease comparables and equity comparables in support of the retail rental rate was more persuasive to the Board for establishing the typical retail rental rate. The Board finds the retail rental rate is fair and equitable and does not change the currently applied retail rate.

ISSUE 3:

Vacancy Allowance for Office and Retail Space

Complainant's Evidence:

The Complainant, based upon his position, that the Calgary House building is most comparable with buildings located in DT2, requested the vacancy allowance be the same as currently in place for properties in DT2 at 13.0%. Confirmation of the requested rate was supplied through two Non-Residential Properties - Income Approach Valuation spreadsheets (C1 Pg. 14-16), which indicated a vacancy allowance of 13.0%.

Respondent's Evidence:

The Respondent referred to the 2010 and 2011 ARFI surveys to support the rate of 8% for vacancy allowance. The 2010 ARFI for the subject listed only 8,423 square feet vacant of the Total Rentable Area of 158,875 square feet, or approximately 5.5%. (R1, Pg. 27) Referencing the 2011 ARFI, vacancy had decreased to 1,210 square feet, or 0.8%.

Based upon the actual vacancy of 2010 and the future vacancy as shown in the 2011 ARFI, the Respondent does not feel a rate of 13% is supported or justified as Calgary House is performing better than typical for occupancy for DT1.

Findings and Decision of the Board With Respect to Vacancy Allowance

The Board found neither party presented compelling evidence with respect to the vacancy allowance. The Complainant requested an increase to 13.0% based upon the comparable in a different downtown market zone (DT2). The Respondent countered with the actual vacancies over 2 years which indicated the subject was performing at better than the typical vacancy in DT1 and DT2.

The Board finds there is a lack of evidence to support altering the current vacancy allowance for the subject property. Further, as previously stated the Board is not relocating the dividing line between the market zones nor creating a transition zone along the divide, so looked solely at the vacancy allowance within the DT1 market zone. The fact the subject currently has a vacancy rate well below the vacancy allowance supports the current allowance of 8.0%.

The Board finds the rate of 8% appears to be a reasonable estimate of typical vacancy as of the valuation date for the zone DT1, B- office buildings.

ISSUE 4:**Correct Designation for Main Floor Space****Complainant's Evidence:**

The Complainant submitted 2,788 square feet of currently designated retail space on the main floor was in fact being used as office space by MLI (Manulife Insurance). Support was provided by the Tenant Roll. (C1, Pg 11). The space in question has no direct access to the outside, but does have exposure along 5 Street SW. The Complainant thought the space had been vacant for some time before the current occupant moved into the space.

Respondent's Evidence:

The Respondent held the position the main floor space could be easily utilized as retail space. The Respondent stated in his experience the majority of main floor space in the downtown was utilized as retail space.

Findings and Decision of the Board With Respect to Main Floor Space

The Board agrees with the Complainant with respect to the main floor designation. The space is currently being used as an office area with no direct access to the outside. Neither party provided the Board with any information as to the historical use of the space.

Having accepted the position the space should be designated as office space rather than retail, the Board looked to the impact the change of designation would have upon the overall assessment of Calgary House. Based upon the Board's calculation of the assessment, the resulting change to the assessment would amount to less than 1.0%. The resulting change is not sufficiently significant to support the Board adjusting the assessment.

The Board does direct the City of Calgary to designate the space in question to office, until such time as the actual use does change from an office use.

N.B. - The Complainant had submitted a Rebuttal document (C2) which he chose not to present at the hearing on the condition the Respondent agreed the subject property was owned by the Manufacturers Life Insurance Company. The Respondent agreed as to the ownership.

Legislative References:

Complainant: LARB 0468/2010-B
ARB 0044/2009-B
LARB 0456/2010-P

The above were submitted as part of a rebuttal document which the Complainant did not

present to the Board during the hearing.

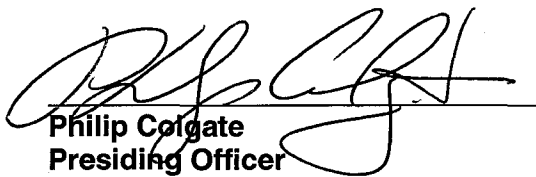
Respondent: CARB 0958/2011-P
CARB 1331/2011-P
CARB 1601/2011-P

Board's Decision:

The finding of the Board, after reviewing individually the issues raised by the Complainant, is there is insufficient evidence or the adjustment is not sufficiently significant to vary the current assessment.

The Board confirms the assessment at \$25,120,000.00

DATED AT THE CITY OF CALGARY THIS 22 DAY OF September 2011.


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
2. 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.*

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

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.

1(k) "mass appraisal" means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing;

Valuation standard for a parcel and improvements

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value ...