



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:

**Sunward Investments Ltd., (*as represented by Linnell Taylor Assessment Strategies*),
COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

***R. Fegan, PRESIDING OFFICER
H. Ang, BOARD MEMBER
P. Charuk, BOARD MEMBER***

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 2013 Assessment Roll as follows:

ROLL NUMBER:	079017703
LOCATION ADDRESS:	2100 4 ST SW
FILE NUMBER:	70208
ASSESSMENT:	\$6,730,000

This complaint was heard on the 16th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- D. Sheridan

Appeared on behalf of the Respondent:

- C. Fox

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

[1] The Complainant raised the issue of late disclosure. The Complainant did not receive the Respondent's evidence disclosure in accordance with the regulations. The Respondent acknowledged that the disclosure had been sent on July 2, 2013 to an incorrect e-mail address and was not sent to the correct address until the following day, July 03, 2013.

[2] After reviewing AR310/2009, 9 (1) "*A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8*", the Board did not hear any evidence from the Respondent's late disclosure.

Property Description:

[3] The subject property is a retail strip centre consisting of 15,428 square feet of building, built in 1970. The site is 29,171 square feet. The land use designation of the subject property is C-COR1, (Commercial Corridor).

Issues:

[4] The main issue in this complaint was the market value of the subject property. The sub issue was, which approach should be used to determine market value.

Requested Value: \$5,760,000.

Board's Decision: The complaint is denied and the assessment is confirmed at \$6,730,000.

Legislative Authority, Requirements and Considerations:

[5] With respect to the preliminary issue the Board had reference to AR310/2009, 9(1).

[6] With respect to the issues raised on the merits of the complaint, the Board had reference to MGA 289(2)(a) "*Each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed*".

[7] The Board also made reference to AR 220/2004, Standards of Assessment, 2(c) "*An assessment of property based on market value must reflect typical market conditions for properties similar to that property.*"

Position of the Parties**Complainant's Position:**

[8] The Complainant argued that the subject was an improved property that was fully occupied and operating as a retail strip shopping centre. The complainant objected to the assessor's method of valuation. The assessor had assessed the property "as if" it were vacant land.

[9] The Complainant argued that as of the effective date of valuation the subject was a fully functioning retail centre and the assessment should not be based on an anticipated future use.

[10] The Complainant provided an Assessment Request for Information document that indicated that as of September 20, 2012, the subject was fully leased with terms extending out as far as 2017. The Complainant argued that the re-development of this site was far from imminent.

[11] In preparing the requested assessment, the Complainant used valuation parameters taken from similar properties. Rental rates ranged from \$28.00 to \$33.00 per square foot and a vacancy allowance of 9.5% was used, a non-recoverable allowance of 1% and a "short fall" adjustment based on operating expenses of \$12.00 per square foot. The Complainant used a capitalization rate of 7.00%.

[12] The Complainant provided a number of previous decisions supporting the concept that property assessment should not be predicated on future events. The Complainant also provided an excerpt from the *Bramalea Decision* saying "*Where the taxpayer subjected to the higher assessment is in competition with others in the same class, and is for this reason unable to pass on the extra tax burden to customers, the unfairness of such a result becomes blatant*".

[13] The Complainant provided a capitalization rate analysis using three sales.

Respondent's Position:

[14] The Respondent argued that the standard for property assessment in Alberta is market value and that the market value of the subject property is derived entirely from the value of the land and not from the income stream provided from the current leasing activity.

[15] The Respondent pointed out through questions to the Complainant that the complainant had taken the net operating income, used to calculate the capitalization rate, from the 2013 assessment explanation sheets regardless of the year of the sale.

Board's Reasons for Decision:

[16] The Board agrees with the Complainant that the assessment should reflect the characteristics and physical condition of the property on December 31 2012. The Board also finds that the assessment must reflect similar market conditions for properties similar to that property. The Board finds that the application of a land value to the subject would not reflect market conditions for properties similar to the subject property. The subject property is fully occupied and some of the leases in place do not expire until 2017. Re-development is not imminent.

[17] The Board found that a variety of capitalization rates had been applied to retail properties across the City ranging from 5.25% to 7.00%. The Complainant had used a capitalization rate of 7.00% in the requested assessment calculation. The Board found that the

properties used to calculate the 7.00% capitalization rate were not sufficiently similar to the subject property.

[18] The Board found that the "Tivoli" plaza located at 2015 4 ST SW., across 4th street from the subject property, was the most similar to the subject property. The retail components of this property had been assessed using very similar inputs to the ones used by the Complainant in the requested assessment calculation, retail rates ranging from \$30.00 to \$33.00 per square foot and a retail vacancy rate of 9.5%, 1% non-recoverable allowance and \$12.00 operating expenses. The Board found that the Complainant's request to apply a 7.00% capitalization rate to the subject property while similar properties in the immediate vicinity were assessed using a 5.25% capitalization rate would create an inequity. The use of a 5.25% capitalization rate would produce an assessment higher than the one in place, for this reason the Board confirmed the assessment.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF August 2013.



R. Fegan

Presiding Officer

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

NO.	ITEM
1. C1	Complainant 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.*

CARB Identifier Codes

Decision No. CARB 70208P-2013		Roll No. 079017703		
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office Building	Market Value	Cap Rate, Renovations