



## **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 Great-West Life Assurance Company, London Life Insurance Company (as represented by Altus Group Ltd), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***F. Wesseling, PRESIDING OFFICER***  
***H. Ang, BOARD MEMBER***  
***T. Livermore, 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: 068229608**

**LOCATION ADDRESS: 401 9 Ave SW**

**FILE NUMBER: 72064**

**ASSESSMENT: \$466,520,000**

This complaint was heard on the 24th day of July, 2013 and the 21st and 22<sup>nd</sup> days of August, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- S. Meiklejohn Agent, Altus Group Ltd
- D. Hamilton\* Agent, Altus Group Ltd
- R. Bruzzell\* Agent Altus Group Ltd
- K.Drozowski\* Legal Counsel, Bennett Jones LLP

Appeared on behalf of the Respondent:

- D. Zhao\* Assessor, City of Calgary
- D. Grandbois Assessor, City of Calgary
- L. Gosselin Legal Counsel, City of Calgary

\* denotes partial attendance of the hearing proceedings.

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

[1] The Board derives its authority to make this decision under Part 11 of the Act. The parties did not object to the panel representing the Board as constituted to hear the matter.

[2] The Respondent expressed a concern about new information and arguments being introduced in the rebuttal documents (C4 in 2 parts). Having regard to section 8(c) of *Matters Relating to Assessment Complaints Regulation* (MRAC), the Board reviewed the matter and ruled that pages 35-61 and pages 95-196 of the rebuttal document identified as C4, part 1 of 2, and pages 205 to the end of the rebuttal document identified as C4, part 2 of 2, be ruled as inadmissible.

[3] At the August 21, 2013 hearing, a verbal request was presented by legal counsel of the Complainant for the postponement of this hearing in light of a cost application made by the City with regard to 7 other files heard previously by this Board. In addition, legal counsel for the Complainant in writing attempted to re-address the Board's decision made on July 22, 2013 with regard to the admissibility of certain rebuttal evidence. The Board reviewed the matter and confirmed its previous decision with regard to the admissibility of certain evidence contained in the Complainant's rebuttal evidence. With regard to the postponement request, the Board ruled to deny the request on the basis that firstly the postponement request was not made in accordance with Section 15(1) and (2) of MRAC and further that the Board had no information on the City's cost application for files that may or may not have any impact on this hearing's adjudication process.

[4] At the outset of the hearing, Board member T.Livermore disclosed his past involvement with legal transactions including the subject property. Both parties confirmed that there was no perception of bias on the part of Mr. Livermore.

**Property Description:**

[5] The downtown property is known as Gulf Canada Square and consists of a multi storey (20 stories) office complex. The building was constructed in 1978. The building contains 1,034,444 square feet of assessable office space, 33,936 square feet of retail space, 2,543 square feet of food court space and 50,015 square feet of storage space. Fifty seven (57) parking stalls are provided in the building. The City of Calgary Land Use Bylaw designates the property as "Downtown Business District". For assessment purposes the building is classified "A" and is located in DT1 market area.

**Issues:**

The Complainant raised the following matter in Section 4, item 3 of the Assessment Complaint form: Assessment amount

Presentations of the Complainant and Respondent were limited to:

- [6] Office Rental Rate
- [7] Assessment methodology
- [8] Capitalization rate
- [9] Sale of the subject property in September of 2011.

**Complainant's Requested Value: \$354,120,000**

**Board's Decision:**

[10] Upon reviewing the evidence provided by the parties, the Board found that the Complainant demonstrated that the assessment was in excess of market value and an adjustment to the assessment is warranted.

[11] **The Board therefore reduces the assessment to \$412,390,000.**

**Legislative Authority, Requirements and Considerations:**

[12] Both parties submitted background information in the form of photographs, aerials, site maps as well as extensive information on the issues at hand. In the interest of brevity, the Board will restrict its comments to those items the Board determined relevant to these issues. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[13] The Board was presented with a number of previous decisions of the Assessment Review Board as well as Court decisions. While the Board respects the decisions rendered by those Boards and legal entities, it is mindful that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. This Board will therefore give limited weight to those decisions, unless the issues and evidence are shown to be timely, relevant and materially similar to the subject complaint.

**Position of the Parties**

**Complainant's Position:**

[14] The Complainant introduced the subject property by reviewing its location, general physical characteristics, the current assessment and the current assessment parameters used to arrive at the assessment amount. At issue for the complainant are four items: rental rate, methodology, capitalization rate and the 50% sale of the property in September of 2011.

[15] The Complainant took the position that the subject property is misclassified for assessment purposes. The building currently is a class "A". The location of the building in the downtown, the lack of parking, its large floor plate and its proximity to the railway with associated noise, smells and vibration were outlined as having a serious impact on the economic performance of the subject building. In the past the building has had different lower classifications. The Complainant suggests that the building should be at best an A minus (A-) and more appropriately a class "B".

[16] The current assessment is based on a rental rate of \$26 per square foot which is the rate for all buildings classified "A" in the DT1 and DT2 assessment economic zones. The Complainant is taking the position that \$20 per square foot is a more appropriate rate. In support of the request, the Complainant presented the rent roll for the building and a detailed office rent analysis. The analysis reviewed rental rates from different perspectives such as 12 months vs 6 months, full floors only and with outliers removed. The conclusion drawn by the Complainant (C1, p55 id in rental analysis) that rental rates for this kind of property over a 12 month period should be \$22.09 per square foot while over a 6 month period the rate is \$21.43 per square foot. The Complainant took exception with the City's approach of using rates based on a 6 month analysis. In addition, a differentiation between DT1 and DT2 should be implemented in terms of office rental rates as the differential between the two sub market areas is significant. When reviewing the actual rent roll for the subject building, the Complainant indicated the overall rent achieved is \$20.16 per square foot. This is considerably less than the typical market value of \$26 per square foot used for assessment purposes and again leads the Complainant to suggest that the building is misclassified.

[17] Parking rates and vacancy allowance were briefly discussed. It was indicated there were no issues with the parking assessment and a vacancy allowance of 2.75 % was recommended for the Board's consideration.

[18] The subject building assessment has a capitalization rate of 6% applied. The Complainant indicated that should a new office rental rate (\$24 per square foot) be applied that this could impact the capitalization rate. General background information was provided by means of market reports prepared by Colliers International and CB Richard Ellis. The City of Calgary's 2013 capitalization rate analysis was also reviewed in detail. The Complainant's analysis (C2) showed that capitalization rates were minimally impacted by a change of net office rental rates and as such the capitalization rate of 6% is acceptable.

[19] The subject property was sold in September, 2011, being 10 months prior to the assessment valuation date. The sale was for 50% of the property and both the Respondent and the Complainant are in agreement that the sale was a valid, arm's length transaction. The Complainant suggests that the sale should form the basis for the assessment. On questioning the Complainant agreed that the market had increased since the sale of the property which amounted to \$356,000,000.

[20] In **Rebuttal**, the Complainant reiterated that the subject property is misclassified. The focus was on the "errors" made by the Respondent in determining the assessment for this

property in terms of the trend line analysis, time adjustments and sales analysis (Scotia Centre and Altius Centre) of similar properties. The Board was presented with a number of analyses with regard to time adjustments based on the sale price of the property in 2011. The Complainant indicated that market change has been in the range of 1-1.5% per month. This is based on sound data analysis while the Respondent doesn't really appear to know how the market had changed and encouraged the Board to pick from a large range should it choose to do so. It is the Complainant's position that the Respondent did not apply the proper time adjustments to the sale of this property to determine the assessment.

### **Respondent's Position:**

[21] Legal counsel reviewed in general terms the obligations and requirements of a municipality as outlined in *Matters Relating To Assessment and Taxation Regulation* (MRAT) with regard to determining the assessment of a property. In particular, Section 2 Mass Appraisal and Section 3 Valuation Date were reviewed in light of the request made by the Complainant.

[22] The Respondent initiated their presentation with a question "How much did the market change?" The Respondent reported that the market value increase of 34% from the previous year's assessment is consistent with other similar properties in the downtown. The subject property assessment was measured against 2012 sales in the downtown. This analysis (R1 p498-499) depicts clearly that the subject's assessment is actually in the lower range of values for "A" class buildings. The Complainant's requested assessment is well below the range for these kinds of buildings.

[23] The Respondent reviewed the characteristics of Gulf Canada Square to show that class A designation of this building for assessment purposes is correct and warranted. The location of the building is in the centre of downtown and is extremely well accessible. There is no evidence before the Board by means of interior photographs or other information that the interior of the building is lacking or inferior. The building is connected to the Plus15 system and is served by a number of adjacent large parking facilities. The amenities within the building are similar to adjacent "A" class buildings. The large floor plate is unique to this building and in fact makes it very attractive to certain firms. These are all confirmed by the fact that this building has exhibited extremely low vacancy rates over the years.

[24] The Respondent agreed that the sale of the subject property in 2011 was a valid sale and that the City used the sale in the 2013 capitalization study. It was pointed out however that the sale price cannot be used as the assessment value and questioned the Complainant's requested assessment value which is lower than the sale's price.

[25] The Respondent outlined the 3 methods (R1 p159 & 360) the City uses to determine increases in the market. These methods (Sales/Assessment Ratio, Unit Value analysis and Resale) were shown to the Board for illustrative purposes. The Respondent expressed concern that the discussion raised by the Complainant about time adjustments appears to be site specific and applies only to the subject property and has not been raised in other assessment complaints. The methods outlined by the Respondent showed a range of value time adjustment from 1.76% to 5.26 % per month. On questioning the Respondent would not recommend an appropriate time adjustment.

[26] The Respondent outlined to the Board that its fundamental foundation for property assessment is with regard to typical market parameters. To contemplate using actual parameters or mixing actual with typical as suggested by the Complainant would be contrary to

the requirements of the Act. The evidence presented by the Respondent in terms of the lease analysis, the capitalization rate analysis, the vacancy rate analysis and sales analysis shows a consistency of approach and supports the classification of the subject property.

**Board's Reasons for Decision:**

[27] Both parties provided the Board with considerable evidence with regard to the income approach that determined the classification and the 2013 assessment for the subject property. In the Board's evaluation of this evidence it was determined that the classification of the subject property from class "A" to a lower classification was the primary issue. The Board determined that the subject property is currently appropriately classed. To the Board, the evidence presented (or lack of evidence) by both parties was inconclusive for an appropriate determination of value to be made using the income approach.

[28] The Board does recognize that for assessment purposes it is legislated to generate a market value using mass appraisal methods and that the best test or indication of market value is a typical market sale. The Board determined that the best indication of value for the subject is the September 2, 2011 sale of 50% of the subject property. Both the Complainant and the Respondent agree that this is a valid, arm's length market transaction. Based on this determination and the fact that both parties provided the Board with time adjustments deemed appropriate by the respective parties, the Board resolved firstly, that a time adjustment was in order and secondly, mindful of assessment to sales ratio requirements, that the most appropriate time adjustment to be applied to the sales price is based on a time adjustment of 1.76% per month as provided in evidence by the Complainant (C4, p 20).

DATED AT THE CITY OF CALGARY THIS 26<sup>th</sup> DAY OF September 2013.

  
F. Wesseling

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Disclosure
4. C4 Rebuttal in 2 parts	Complainant Disclosure
2. R1 Assessment Brief	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.*

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Decision No.		Roll No.		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Downtown Office Building	Market value	Office rental value Assessment, methodology, Building classification.	Subject sale prior to Assessment date. Time adjustments.