



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:

Encana Corporation
(as represented by MNP LLP), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
D. Morice, BOARD MEMBER
P. McKenna, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board [CARB] 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:	201307543
LOCATION ADDRESS:	515 1 ST SE
LEGAL DESCRIPTION:	Plan C; Block 31; Lots 17-20
FILE NUMBER:	70863
ASSESSMENT:	\$ 4,750,000

This complaint was heard on the 13th day of August, 2013 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- G. Worsley Agent, MNP LLP
- W. Van Bruggen Agent, MNP LLP

Appeared on behalf of the Respondent:

- K. Gardiner Assessor, City of Calgary

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

Issue 1 – Rebuttal Disclosure:

[1] The Board found the Rebuttal Document of Complainant to have been filed late and therefore non-admissible.

Legislative Authority, Requirements and Considerations:

Matters Relating to Assessment Complaints [MRAC]

Alberta Regulation 310/2009

Disclosure of evidence

- 8(2)** *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*
- (c) *the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

Failure to disclose

- 9(2)** *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

Respondent's Position:

[2] The Respondent requested that the Rebuttal Document not be considered by the Board as it was filed late. The hearing notice indicated that Rebuttal Disclosure is to be disclosed on August 6, 2013 and the document arrived August 7, 2013 – one day late.

Complainant's Position:

[3] The Complainant acknowledged that the Rebuttal Document was filed late because of

an internal error related to the long weekend in August.

Board's Reasons for Decision:

[4] The Board, respecting *MRAC*, found in section 9(2) of the regulation, that the Board must not hear any evidence that was not properly disclosed in accordance with section 8(2) of the regulation states the Rebuttal Document must be filed no less than seven days prior to the hearing.

Issue 2 – Cross Reference:

[5] The Board, at the request of the Respondent, agreed that all Respondent evidence, discussion, questions and answers heard during decision CARB 70863P-2013 be incorporated into this hearing.

[6] There are no additional preliminary, procedural, or jurisdictional issues.

Property Description:

[7] The subject property is a low-rise building located in downtown Calgary's Non-Residential Zone [*NRZ*] of DT1 – Downtown Commercial Core. The predominate use of the 26,040 square foot quality 'C' building is Office Space with 21,378 square feet. There is 4,662 square feet Storage Space as well.

[8] The Income Approach to Value is utilised by the Respondent with the following parameters:

<u>SPACE</u>	<u>RENTAL RATE</u>	<u>VACANCY ALLOWANCE</u>	<u>OPERATING COSTS ALLOWANCE</u>	<u>NON- RECOVERABLES ALLOWANCE</u>
OFFICE	\$13.00	6.75%	\$16.00	2.00%
STORAGE	\$8.00	10.00%	\$5.00	2.00%

Issues:

[9] Numerous issues have been raised by the Complainant during the complaint process. At the time of hearing four issues remained; 1) the office rental rate, 2) the office vacancy allowance, 3) the storage vacancy allowance, and 4) the capitalisation rate.

Complainant's Requested Value: \$2,710,000

Board's Decision:

[10] The Board found the assessment is correct and confirmed the original \$4,750,000 value.

Legislative Authority, Requirements and Considerations:**The Municipal Government Act [the Act]**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation

- 467(3)** *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*
- (a) the valuation and other standards set out in the regulations,*
 - (b) the procedures set out in the regulations, and*
 - (c) the assessments of similar property or businesses in the same municipality.*

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

[11] The Complainant argues that the subject's Storage Space vacancy allowance should be 12% versus the 10% assessed allowance, this request is based on a vacancy allowance in a nearby DT3 building (C1 pp. 19-23).

[12] The Complainant further states the vacancy allowance for the Office Space is incorrect at 6.75% and should be 12.25% for a DT3 building (C1 pp. 24-36).

[13] The Complainant did an office rental rate analysis for DT3 in favour of their request for \$11 per square foot for Office Space (C1 p. 37).

[14] The Complainant also requested the Board alter the typical capitalisation rate assessed to 'C' buildings from 5.50% to 7.00%. The Complainant explained that traditionally a hierarchy exists where 'AA' buildings achieve the lowest capitalisation rates followed by 'A', 'B' and so on. The Respondent in 2013 is assessing a capitalisation rate of 5.50% for the subject ('C' grade) while 'A' and 'AA' are assessed with a 6.00% capitalisation rate (C1 p. 38).

[15] The Complainant pointed to third party reporting agencies to show the hierarchy nationwide and to show that industry professionals, as of the valuation date, are finding capitalisation rates of between 6.75 and 7.25% in one study and between 6.25 and 7.00% in another study for downtown Calgary 'B' grade buildings and that 'C' grade buildings must be in the 7-7.25% range (C1 pp. 38-40).

[16] The Complainant concludes that their analysis indicates an assessed value of \$2,710,000.

Respondent's Position:

[17] The Respondent explained that the subject is located in DT1 whereas the evidence from the Complainant for vacancy and rental rate is for DT3 and the capitalisation rate argument is based solely of third party reports (R1 pp. 4-5).

[18] The Respondent provided the Assessment Request for Information [ARFI] for the subject showing actual in place rent of \$18 per square foot on the valuation date with *post facto* info that in place lease is \$20 per square foot and no vacancy (R1 pp. 17-32).

[19] The Respondent used the Complainant's requested assessment parameters to test two sales finding Assessment to Sales Ratios [ASR] significantly different than the results using the assessed parameters (R1 pp. 34-36).

[20] The Respondent provided copies of their 'C' grade office rent, vacancy, and capitalisation rate studies to support their assessment (R1 pp. 38-73).

[21] In conclusion, the Respondent provided equity comparables illustrating the subject's assessment is calculated in the same manner (R1 p. 75).

Board's Reasons for Decision:

[22] The Board found the Complainant's evidence is not for the *NRZ* of DT1 where the subject is located. The Complainant failed to convince the Board why the subject is incorrectly stratified in the DT1 market area.

[23] The Board finds the evidence provided by the Complainant is not relevant to the subject and is not persuaded by the Complainant's argument. Therefore, the Board must not alter the assessment as required in *the Act* section 467(3).

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


Jeffrey Dawson

Presiding Officer

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

NO.	ITEM
1.	C1 Complainant Disclosure
2.	R1 Respondent Disclosure
3.	Rebuttal Disclosure – Not accepted – LATE

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.*

Municipal Government Board use only: Decision Identifier Codes				
Complaint Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	Capitalisation Rate
				Market Rental Rate
				Vacancy