



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:

1731325 Alberta Ltd., (as represented by Wilson Laycraft), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***R. Fegan, PRESIDING OFFICER
Y. Nesry, BOARD MEMBER
J. Rankin, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	068106293
LOCATION ADDRESS:	150 9th AV SW
FILE NUMBER:	74931
ASSESSMENT:	\$191,230,000

This complaint was heard on the 16th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- G. Ludwig (Solicitor for the Complainant)
- G. Kerslake (Agent, Altus Group)

Appeared on behalf of the Respondent:

- D. Lidgren, (Assessor, City of Calgary)
- J. Young, (Assessor, City of Calgary)

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

[1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject of this complaint is a 30 storey office tower built in 1979, with a total of 376,283 square feet and 51 underground parking stalls. The building is classified as an "A-" building for assessment purposes. The property is located in a geographic area described as downtown one and eight (DT-1,8) for assessment purposes.

Issues:

[3] The issues in this complaint are; location of the subject property, physical characteristics of the subject property, office rental rate, office vacancy rate, and capitalization rate.

Complainant's Requested Value: \$145,280,000

Board's Decision: The complaint is allowed in part and the assessment is revised to \$169,080,000.

Legislative Authority, Requirements and Considerations:

[4] Section 293 of the Act requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 - (a) apply the valuation and other standards set out in the regulations, and
 - (b) follow the procedures set out in the regulations.

- [5] Matters Relating to Assessment and Taxation Regulation (MRAT) states:
- Mass Appraisal
- (1) 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.
 - 4(1) The valuation standard for a parcel of land is
 - (a) Market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties

Complainant's Position:

- [6] The Complainant argued that the location of the subject property was inferior to other buildings located in the zone known as DT-1,8. The Complainant explained that the subject was at the south eastern end of the downtown core and was not connected to the main shopping and business district by the Plus 15 system.
- [7] The Complainant argued that the subject property had been owner occupied by Encana Corporation for over thirty years and now that Encana had moved to their new location the building would need significant renovations to make it competitive in the rental market. The Complainant provided a copy of a letter from Mr. B. Krizan, Director, Corporate Services, Encana Corporation to Mr. Nelson Karpa, Director/City Assessor. The letter stated that "a substantial cash outlay will be required to convert the property to multi-tenant use". No specific numbers were provided.
- [8] The Complainant provided a copy of the Assessment Request for Information that was sent to the City of Calgary on May 06, 2013. This ARFI indicated that the building had a vacant area of 249,988 square feet. The form also provided the new mailing address for Encana Corporation.
- [9] The Complainant provided evidence that Encana was no longer being assessed for business assessment at this location to support their position that the Encana space was vacant.
- [10] The Complainant provided a rental analysis for "A-" buildings (exhibit C-2 page 49). The analysis included only leases that exceeded 14,000 square feet and included buildings from DT-1,8 and DT-2,3,9. The area described as DT-2,3,9 is located in the downtown area but is west of 5th Street. Based on this analysis the Complainant requested that a rental rate of \$27.00 per square foot be applied to the office space in the subject property.
- [11] The Complainant provided a vacancy study for "A-" buildings. This study included only buildings from DT-1,8 including the subject property. The overall vacancy rate provided by this analysis was 8.98% (exhibit C-2, page 51). The Complainant requested that a vacancy rate of 9.0% be applied to the office space in the subject property.

[12] The Complainant provided a capitalization rate study that had been completed using the City of Calgary's methodology (exhibit C-2, page 53). The Complainant pointed out to the Board that the analysis consisted of both "A" and "A-" buildings. The Complainant argued that the one "A-" building was the most similar to the subject and that the 6.02% capitalization rate produced by that sale should be rounded to 6.0% and applied to the subject property.

[13] The Complainant was aware of the head lease in the subject property. It was a 35 year lease which commenced in 1982 and does not terminate until 2017. It was the Complainant's position that the subject had been an owner occupied building until Encana moved into the newly constructed "The Bow" building and that the head lease in place was not an arm's length transaction.

Respondent's Position:

[14] The Respondent argued that the location of the subject was not inferior to other office buildings in DT-1,8. The Respondent pointed out that there had been a number of new developments in the immediate area of the subject property. The Germain complex, a multi-use building (hotel, office, and residential) was built immediately east of the subject property. Bankers Court and Penn West are two newly constructed office towers just one block west of the subject property. It was the Respondent's position that if the subject property's location was truly inferior these developments would not have occurred in that location.

[15] The Respondent provided the ARFI forms that they had received from Encana for both 2012 and 2013 as well as some e-mail exchanges between the Respondent and Encana. The information provided by Encana made it clear that Encana no longer occupied space in the building. Mr. B. Anderson advised the Respondent as follows; "The head lease that you refer to is correct. There is only one subtenant in the building. That is Brion Energy (used to be Dover) and they have sublet floors 3 – 11. All of the other floors are vacant." The subsequent ARFI provided by Encana indicated that the space occupied by Brion Energy was leased at a rental rate of \$33.50 per square foot commencing on March 01, 2013.

[16] The Respondent provided a rental analysis for "A-" buildings located in DT-1,8 (exhibit R-1, page 61). There were 23 leases which commenced between July 01, 2012 and March 01, 2013. The leased spaces varied in size from 879 to 52,114 square feet. The weighted mean lease rate was \$30.29 per square foot. The rate applied by the Respondent was \$30.00 per square foot.

[17] The Respondent provided a rental analysis for "A-" buildings located in DT-2,3,9 (exhibit R-1, page 62). There were 17 leases in the sample and the weighted mean was \$22.05 per square foot.

[18] The Respondent provided a vacancy study for "A-" buildings located in DT-1,8. The Respondent used the same buildings that were used by the Complainant (exhibit C-2, page 51). The only difference between the two studies was the vacant space recorded for the subject building. The Respondent argued that there was a head lease in place in the subject property and for that reason the vacancy rate in the subject building was zero.

[19] The Respondent provided a capitalization rate analysis (exhibit R-1, page 96), this was the same analysis relied upon by the Complainant (exhibit C-2, page 53). The Respondent argued that it would be wrong to rely solely on the sale of the Trimac building because it was located in DT-2,3,9 and that when more sales were available for analysis they should be used. The Respondent stated that the median of the five sales indicated a capitalization rate of 5.63% and a rate of 5.75% had been applied.

Board's Reasons for Decision:

[20] Location/Rental Rate; the Board did not agree with the Complainant that the location of the subject property prevented the building from achieving the \$30.00 rental used by the Assessor. While the Board is aware that sub-leasing is not used by the Respondent in their analysis, the Board found that the sub-lease to Brion Energy for \$33.50 per square foot was an indication that the \$30.00 used by the Respondent was not out of line and that the requested rate of \$27.00 was not reflective of what space in the subject building was capable of achieving.

[21] Building Condition; there was very little evidence presented to support the Complainant's assertion that the subject needed significant renovations prior to re-leasing. The Board noted that approximately 126,000 square feet of space had been leased since Encana moved out, apparently without any major renovations. The evidence was that no renovations had taken place.


[22] Rental Rate Analysis; the Board noted that the office space rental analysis provided by the Complainant (exhibit C-2, page 49) was taken from both DT-1,8 and DT-2,3,9. The Board further noted that there was a significant difference between the rents taken from each of the two areas. DT-1,8 had a weighted mean of \$28.74 compared to DT-2,3,9 had a weighted mean of \$21.67. The Board noted that the results of the Respondent's rental analysis (exhibit R-1, pages 61 and 62) indicated a difference between DT-1,8 and DT-2,3,9 that was similar to the difference resulting from the Complainant's analysis. The Board agreed with the Respondent that the rental rate for the subject property should be taken from leases in the DT-1,8 location.

[23] Capitalization Rate; the Board found that the sale of Trimac House was not the best indicator of a capitalization rate applicable to the subject property, mainly because of Trimac's location in DT-2,3,9. The Board found that all five sales should be utilized in estimating a capitalization rate for the subject property.

[24] Vacancy Rate; the Board agreed with the Complainant that the subject property had 249,988 square feet of vacant space. While the Board does not disagree with the Respondent's position that in normal circumstances if space is leased, then it should not be considered vacant because rent continues to accrue to the owner. In this case however, no comprehensive explanation was provided as to why the head lease continued to be in place. The Board was satisfied that the head lease was not an arm's length transaction between two un-related corporations and for that reason the Board found that a vacancy rate of 9% was appropriate.

[25] In summary the Board agreed with the Complainant on only one issue, the vacancy rate to be applied to the subject should be 9.0% and accordingly the assessed value is reduced to \$169,080,000.

DATED AT THE CITY OF CALGARY THIS 28th DAY OF July 2014.



R. Fegan

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Rebuttal
4. C4	Complainant Rebuttal
5. 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.*

CARB Identifier Codes

Decision No.		Roll No.		
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Office	Market Value	Capitalization Rate

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