

**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:

***661377 Alberta Ltd., (as represented by Wilson Laycraft, Barristers & Solicitors),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
J. O'Hearn, MEMBER
A. Zindler, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	068106293
LOCATION ADDRESS:	150- 9th Avenue SW
HEARING NUMBER:	64613
ASSESSMENT:	\$97,960,000

This complaint was heard on 14 day of June, 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:

- Mr. B. Dell Wilson Laycraft, Barristers & Solicitors
- Mr. G. Kerslake Altus Group Ltd.

Appeared on behalf of the Respondent:

- Ms. L. Gosselin City of Calgary's Law Branch
- Mr. H. Neumann City of Calgary's Assessment Branch
- Mr. W. Krysinki City of Calgary's Assessment Branch (observer)
- Ms. C. Dao City of Calgary's Law Branch (observer)
- Ms. E. Currie City of Calgary's Assessment Branch (observer)

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

At the commencement of the hearing, the Complainant raised an issue of institutional bias based on the current legislative scheme but he later rescinded that issue.

Property Description:

The subject property, known as Encana Place, is a 30- storey downtown office building. It has a floor plate of 14,453 square feet, a total building area of 376,283 square feet and is situated on 0.76 acres of land. It was built in 1982. The subject property, located on a corner lot, has a land designation of CM-2. There are 50 parking stalls associated with this property. The building has access to the +15 walkway system.

With the exception of a small retail component on the main level (442 square feet), the entire building is occupied by one tenant, Encana Corporation.

The building has a quality rating of "A-" for the 2011 assessment which is a change from the previous year's assessment which had reflected a "B-" quality rating. The "A-" rating (as opposed to an "A" rating) reflects the limited number of parking stalls associated with the site.

The subject property was assessed based on the income approach to value.

Issues:

1. The market rent rate for office space should be reduced from \$22.00 to \$19.00 psf.
2. The capitalization rate should be increased from 7.5% to 8.0% as reflected in the 2010 assessment.

Complainant's Requested Value: \$79,000,000

Board's Decision in Respect of Each Matter or Issue:

The Board notes that the Complainant identified three matters on the complaint form, namely: (3) an assessment, (6) the type of property and (7) the type of improvement. Upon questioning, the Complainant indicated due to the vagueness of the form, he thought it was appropriate to identify those three matters as the subject of his complaint. However, the Board finds the Complainant's evidence was based primarily on issues pertaining to the subject property's assessment (i.e. rental rate and capitalization rate); therefore, the Board does not deem it necessary to make findings on the other two matters.

1. Market Rent Rate for Office Space

The Complainant requested the market rent rate for office space used in the income approach to valuation for the subject property be reduced from \$22.00 psf to \$19.00 psf. He indicated that Encana Corporation, which occupies the building, will be relocating to the Bow Office Tower in 2012 and this has an impact on the current market rent rate. He anticipates more than one tenant will likely occupy Encana Place in the future (Exhibit C2 page 13).

The Complainant submitted a lease analysis of four leases from three downtown office buildings for the Board's consideration (Exhibit C2 page 24). The leased areas ranged between 3,063-75,454 square feet with rates of \$15.00- \$21.00 psf. The leases' start dates are within 7 months of the valuation date and have terms between 3.42- 11.42 years. Based on this, the Complainant calculated a median lease rate of \$17.74 psf or a weighted average of \$19.13 psf. The weighted average of \$19.00 psf is the market rent rate proposed by the Complainant.

The Complainant submitted the 26 leases relied upon by the assessor in establishing the assessed office rate of \$22.00 psf is based on superior buildings that are located within the central core, have +15 walkway access, parking and relationship to other significant office buildings as compared to the subject property (Exhibit C2 page 29). Moreover, he suggested the boundaries used by the Respondent to divide the downtown into market areas are arbitrary.

The Complainant indicated the rate of \$19.00 psf is further supported by the 2011 business assessment for the subject property of \$19.50 psf (Exhibit C1 Tab 8). The Complainant cited various Municipal Government Board ("MGB") Orders and Court decisions in support of the use of net rent for valuation purposes: MGB Orders 094/07 (Exhibit C1 Tab 4); 068/08 (Exhibit C1 Tab 5); 045/09 (Exhibit C1 Tab 9) and DL 107/09 (Exhibit C1 Tab 10); *Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417 (Exhibit C1 Tab 6) *City of Port Alberni v. MacMillan Bloedel Ltd. et al* (1973), 36 D.L.R. (3d) 299 (Exhibit C1 Tab 7).

The Complainant also submitted two Court decisions in support of the use of equity for valuation purposes: *Bramalea Ltd. v. British Columbia (Assessor of Area #9- Vancouver)* (1990) 76 D.L.R. (4th) 53 (B.C.C.A.) (Exhibit C1 Tab 1) and *Mountain View (County) v. (Municipal Government Board)*, [2000] A.J. No. 1042, 2000 ABQB 594 (Exhibit C1 Tab 2). The Complainant provided an equity analysis of five comparables for the Board's consideration (Exhibit C2 page 34). The comparables are downtown office buildings that have a market rent of \$19.00 psf and a capitalization rate of 7.5%. The buildings, constructed between 1980- 2007, have floor plates between 12,000-20,372 square feet, assessed building areas of 238,247-604,164 square feet, and 84-338 parking stalls. The Complainant indicated the subject property is most similar to the Nexen property located at 801 7 Avenue SW which is assessed at \$19.00 psf. He submitted, based on the subject property's tenancy, age, size and limited parking (parking ratio of 1:7520),

the market rent rate should be \$19.00 psf (Exhibit C2 page 10).

The Respondent submitted the downtown is divided into market areas (e.g. DT1, DT2 etc) and the rents are different in each market area. He stated if rent rates from different market areas are mixed, then this could result in an underassessment.

The Respondent's submitted a rental analysis of 26 leases from five downtown office buildings of class "A-" in the zone DT1 (Exhibit R1 page 33). The leases were within 18 months of the valuation date with terms between 2.25-10 years in duration. The leased areas ranged between 1,077-302,645 square feet and market rent rates between \$7.41-\$44.70 psf which reflect a weighted mean for all leases of \$27.75 psf and a weighted mean for 2010 leases \$26.65 psf. The Respondent applied a market rent rate of \$22.00 psf. The Respondent also submitted a rental analysis of 14 leases from 6 buildings downtown office buildings with an "A-" class in DT2 (Exhibit R1 page 34). These leases, with start dates within 12 months of the valuation date, reflect leased areas of 1,805-79,607 square feet with rates between \$16.00-\$36.00 psf for a weighted mean for all leases of \$22.56 psf and a weighted mean for 2010 leases of \$19.78 psf. The assessor applied a market rent rate of \$19.00 psf to those properties located in DT2.

The Respondent submitted 9 equity comparables including the subject property in the DT1 zone (Exhibit R1 page 47). The Respondent stated all of the properties were treated in an equitable fashion. Each had an office rate of \$22.00 psf, 7% vacancy, \$18.00 psf operating costs, 7.5% capitalization rate, and \$475.00/ parking stall applied to its assessment (Exhibit R1 page 47). The Respondent also included 9 equity comparables of properties located in DT2 to show that they were treated in a similar and consistent manner. Each had an office rate of \$19.00 psf, vacancy rate of 7%, operating costs of \$18.00 psf, a capitalization rate of 7.5% and \$475.00 per parking stall (Exhibit R1 page 47).

The Respondent submitted, with the exception of the property known as Chevron Texaco Plaza located at 500 5 Avenue SW ("Chevron"), the Complainant's lease and equity analysis is based on properties located several blocks from the subject property in DT2 whereas the subject property is located in DT1 which is considered the central core.

The Respondent submitted the base rate used for property and business assessments are the same at \$22.00 psf. However, business assessments reflect an assessed value of the tenant's interest whereas property assessments require an incorporation of all interests in the fee simple estate (including the tenant's interests) which results in different assessed rates. He noted the Complainant withdrew the complaint in regards to the 2011 business assessment for the subject property (Exhibit R1 page 50).

The Respondent submitted the definition of mass appraisal requires an assessor to provide an estimate of value of the fee simple estate as set out in section 2 of *Matters Relating to Assessment and Taxation Regulation AR 220/04 (MRAT)*:

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.*

The Respondent indicated the market value of the fee simple estate includes both the landlord's and tenant's interests and submitted a MGB order and a Court case in support of this: *Mann & Moll Developments Limited v. Edmonton (City)* 2010 CarswellAlta 910 (Exhibit R1 Tab 7) and *Calgary (City) v. Loughheed and Co. (A.B.Q.B.)* 2001 CarswellAlta 630 and 2003 CarswellAlta 1076, 2003 CarswellAlta 1076 (Tab 8).

The Respondent also submitted various citations from MGB orders and Court cases in regards to onus and suggested that the Complainant did not meet his onus in this instance (Exhibit R1 pages 7, 8 and Tab 9).

The Board finds the Complainant failed to provide sufficient evidence to convince the Board that a reduced rental rate of \$19.00 psf is warranted. The Complainant's market analysis was somewhat limited. It was based on four leases from three properties, two of which are located in DT2, which is a different market area than the subject property, which is located in DT1. The Board was persuaded by the Respondent's 40 leases that a clear distinction exists between the rents that are achieved by class "A-" office buildings located in DT1 versus DT2. Moreover, the Complainant's equity analysis failed to convince the Board that the subject property was not treated fairly and equitably with similar properties. The Complainant selected comparables which were not located in the same market area as the subject property which were assessed consistently at \$22.00 psf but instead chose comparables in DT2 which were assessed consistently at \$19.00 psf.

2. Capitalization Rate

The Complainant submitted the capitalization rate of 8.0% that was utilized in the 2010 assessment should be applied to the 2011 assessment for the subject property (Exhibit C2 page 17). The Complainant stated there were no sales to support the current capitalization rate of 7.5%. He also submitted the current tenant vacating the premises coupled with the amount of office space that will be on the market in 2012 has an impact on the current value of the subject property.

The Respondent submitted the correction in classification affected the capitalization rate for the subject property (Exhibit R1 pages 16, 17, 48, 64, 65). He indicated all downtown office buildings with an "A" classification have a 7.5% capitalization rate which is supported by market reports (Exhibit R1 pages 35-96). The Respondent submitted the impact of Encana Corporation vacating the premises will be minimal due to a significant potential backfill of that space (Exhibit R1 pages 51 & 52).

The Board notes that assessments are not carried forward from prior years but are prepared by each municipality on an annual basis as reflected in section 285 of the *Municipal Government Act*.

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

The Board finds the absence of market sales presents a challenge in establishing a capitalization rate for the subject property. The only evidence before the Board is the market reports provided by the Respondent which support the use of the 7.5% capitalization rate for class "A" downtown office buildings. The Board notes while the Complainant questioned the

Respondent about why the change in classification occurred between the 2010 and 2011 assessments, he did not appear to challenge its validity. Moreover, the Board finds the evidence presented by both parties suggests that this property is properly designated as a class "A-" building.

In regards to the impact of future market conditions, the Board notes an assessment must reflect an estimate of value as of July 1 of the assessment year in accordance with section 3 of *MRAT* which states:

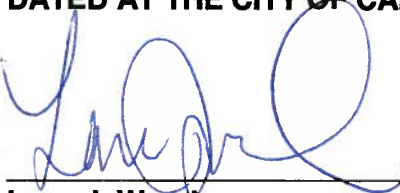
3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Notwithstanding, the Board finds there was little evidence which attempted to quantify how future market conditions affect the current valuation of the subject property. As such, anticipated changes that may occur in the market place in 2012 (and beyond) are best left for future assessments.

Board's Decision:

The decision of the Board is to confirm the 2011 assessment of the subject property at \$97,960,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF JULY 2011.



Lana J. Wood
Presiding Officer

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

EXHIBIT NO.	ITEM
1. C1	Brief of the Complainant
2. C2	2011 Property Tax Assessment Consulting Report
3. C3	Rebuttal of the Complainant
4. C4	Colored Map of +15 Walkway System
5. R1	City of Calgary Assessment Brief
6. R2	Colored Excerpts from Exhibit R1- Photographs of Subject Property (pp. 20- 27) and Graphs (pp. 35- 39)

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.*