

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:

593308 Alberta Ltd.
(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:	068075506
LOCATION ADDRESS:	101 6 AV SW
LEGAL DESCRIPTION:	Plan A; Block 43; Lots 16-20
FILE NUMBER:	70861
ASSESSMENT:	\$ 101,830,000

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:

[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 the regulation section 8(2) where Rebuttal Document must be filed no less than seven days prior to the hearing.

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

Property Description:

[6] The subject property is a high-rise building located in downtown Calgary's Non-Residential Zone [*NRZ*] of DT1 – Downtown Commercial Core. The predominant use of the 238,882 square foot quality 'B' building is Office Space with 228,427 square feet. There is 2,627 square feet of Recreation Space, 5,782 square feet of Retail Main Level and 2,046 square feet of Retail 2nd Level. There are 53 underground parking stalls.

[7] 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>
PARKING	\$4,800.00	2.00%	\$0.00	2.00%
OFFICE	\$22.00	1.50%	\$17.00	2.00%
RECREATION	\$16.00	2.00%	\$18.00	2.00%
RETAIL MAIN	\$16.00	7.75%	\$20.00	2.00%
RETAIL 2ND	\$18.00	7.75%	\$20.00	2.00%

[8] An exempt tenant occupies 4,266 square feet of Office Space and is assessed under a different roll; therefore, only 224,161 square feet of Office Space is under complaint.

Issues:

[9] Numerous issues have been raised by the Complainant during the complaint process. At the time of hearing three main issues remained; 1) the quality grading assigned to the property with use of typical associated with the quality change, 2) the office rental rate for the subject based on actual in place leases, and 3) the capitalisation rate; with sub-issues of which sales to use and which Net Operating Income [*NOI*] to use to calculate the capitalisation rate.

Complainant's Requested Value: \$61,090,000

Board's Decision:

[10] The Board found the assessment is correct and confirmed the original \$101,830,000 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 is incorrectly stratified as a 'B' quality grade and should be a 'B-'. The Complainant reviewed the 'Assessment Range of Key Factors, Components & Variables' (C1 p. 22) to identify; 1) Location, 2) Class (quality grade), 3) Space Type with(in) the Building, and 4) Space Area, as the considerations to calculate an assessment. The Class (quality grade) is further explained in a document entitled 'Physical & Economic Characteristics / Quality Classification' (C1 p. 33). In this document the following are used to compare properties and assign a quality grade; location (including location within the block), physical condition, functionality, age, number of floors, total net rentable area, floor plate size, type and quality of construction, quality of retail space, connection to +15 (public pedestrian walkway system that links buildings throughout the downtown), on-site parking capacity, and building tenant amenities.

[12] The Complainant explains that the factors the Respondent uses to identify a quality grade are subjective in nature requiring the assessor to make a judgement call, and in this case the assessor has erred in their stratification. The analysis of the Complainant finds no clear definable criteria why the subject is a 'B' building versus a 'B-' (C1 pp. 23-24).

[13] In addition to requesting the 'B-' typical parameters for the subject, the Complainant requests an adjustment on the assessed rental rate using leasing activity within the subject to justify a requested \$16 per square foot (C1 p. 30). The Complainant points out, that within a disclosure document received from the Respondent on April 2, 2013, the Respondent indicates that a 'Quality Control' check is performed that looks at the actual rental rates achieved to assure the accuracy of initial building classification (grading) (C1 pp. 33-34).

[14] The Complainant would also like the Board to alter the typical capitalisation rate assessed to both 'B' and 'B-' buildings from 5.00% to 6.00%. 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 5.00% for the subject ('B' grade) while 'A' and 'AA' are assessed with a 6.00% capitalisation rate (C1 p. 40).

[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 (C1 pp. 41-42).

[16] The Complainant examined all the parameters assessed for downtown office buildings

and concluded that the subject, if graded as an 'A' of 'A-', would receive a lower assessment, something that is not reasonable (C1 p. 44). In addition, 'B' grade buildings have experienced a 2.50% drop in their capitalisation rate in one year while 'A' rates are stable.

[17] The Complainant provided a 'B' grade capitalisation study using two buildings not utilised by the Respondent within their study. The first building is 208 9 AV SW and calculates a capitalisation rate of 5.87% and the second building at 401 4 AV SW, if the retail space is adjusted correctly, achieves a capitalisation rate of 6.00%. Using the Respondent's typical on the second building calculates a capitalisation rate of 5.30% (C1 p. 63).

[18] The Complainant concludes that their analysis indicates an assessed value net of exempt area of \$61,090,000 (C1 pp. 26-87).

Respondent's Position:

[19] The Respondent indicated that this issue has been resolved by past boards; in 2010 and 2012 (not under complaint in 2011), previous boards heard an argument to change the quality grading to 'B-' from 'B'. In each case the Board confirmed the assessment (R1 pp.451-462).

[20] The Respondent explained the Complainant has no evidence to support a change in vacancy, which would occur if the building is graded as a 'B-'. Also the only rental rate evidence disclosed by the Complainant is select leases from within the subject building. Meanwhile other leases within the subject suggest the 'B' grade is warranted with 17 leases ranging from \$15 to \$37 per square foot while the assessment is \$22 per square foot (R1 pp. 15-44).

[21] The Respondent discounted the Complainant's capitalisation rate study because it included only two sales; one a retail stratified building (not an office building), and the other is not a typical downtown office building. If the Board were to test the parameters requested by the Complainant against actual sales and do an ASR test (Assessment to Sales Ratio test), you find the ASR will be 0.80 and 0.77 versus the Respondent's conclusion which calculates a 0.96 and 1.08 ASR (R1 pp. 69-71).

[22] The Respondent reviewed the subject details and the '2013 Downtown Office Capitalisation Rate Summary' to explain the conclusion of 5.00% capitalisation rate for the subject property (R1 pp. 81-414).

[23] In conclusion, the Respondent provided equity comparables illustrating the subject's assessment is calculated in the same manner (R1 p. 416).


Board's Reasons for Decision:

[24] The Board found the Complainant created a *prima facie* case by casting doubt as to the correct assessment of the subject. The Respondent answered the case of the Complainant showing the atypical nature of the sales presented in their capitalisation rate study.

[25] The Board looked at the physical characteristics of the two sales presented by the Complainant in their capitalisation rate study and found little in common with the subject while the Respondent's sales in their capitalisation rate study looked to somewhat resemble the subject.

[26] The Board is not persuaded by the Complainant's argument and evidence; therefore, must not alter the assessment as required in *the Act* section 467(3).

DATED AT THE CITY OF CALGARY THIS 24th DAY OF September 2013.

A handwritten signature in black ink, appearing to read "Jeffrey Dawson", is written over a horizontal line.

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