



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:

Teck Coal Limited
(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:	068229905
LOCATION ADDRESS:	205 9 AV SE
LEGAL DESCRIPTION:	Plan 1423LK; Block 3
FILE NUMBER:	70862
ASSESSMENT:	\$ 25,510,000

This complaint was heard on the 15th 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

Appeared on behalf of the Respondent:

- D. Zhao Assessor, City of Calgary
- E. Currie 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.

[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 DT3 – Downtown Commercial Core. The predominate use of the 108,239 square foot quality 'C' building is Office Space with 103,132 square feet. There is 4,099 square feet of Retail Main Level, 834 square feet of Retail Below Grade, 173 square feet of Storage Space, and 53 on-site 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>
OFFICE	\$13.00	6.75%	\$16.00	2.00%
PARKING STALLS	\$4,500.00	2.00%	\$0.00	2.00%
RETAIL BELOW GRADE	\$10.00	7.75%	\$20.00	2.00%
RETAIL	\$16.00	7.75%	\$20.00	2.00%
STORAGE	\$8.00	12.00%	\$4.00	2.00%

Issues:

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

Complainant's Requested Value: \$15,180,000

Board's Decision:

[9] The Board found the assessment is incorrect and changed the value to \$20,820,000 by adjusting the office rental rate to \$11 per square foot and the office vacancy allowance to 9.25%.

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

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

Decisions of assessment review board

- 467(1)** *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

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

[10] The Complainant provided a 'C' grade office vacancy study showing a conclusion of 9.57% with nearby buildings showing a 12.27% vacancy. On this basis, the Complainant requests 12.25% (C1 pp. 19-31).

[11] The Complainant provided a conclusion of 'C' grade rental rates of \$11 per square foot analysing the subject and its closest comparable – First Street Plaza (C1 pp. 32).

[12] 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. 33).

[13] 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. 33-37).

[14] The Complainant concludes that their analysis indicates an assessed value of \$15,180,000.

Respondent's Position:

[15] The Respondent explained that the subject is located in DT3 whereas the evidence from the Complainant for vacancy and rental rate are in DT1, DT8, and DT9 (R1 pp. 32-37).

[16] The Respondent provided their rental rate analysis that concludes a \$13 per square foot rate (R1 pp. 47-48).

[17] The Respondent disclosed their vacancy analysis that concludes a 6.75% value (R1 pp. 50-51).

[18] The Respondent explained their 'C' grade capitalisation rate study that concludes a 5.50% capitalisation rate and argued the Complainant's request is solely based on third party market reports (R1 pp. 53-70).

[19] The Respondent used the Complainant's requested assessment parameters to test a sale finding an Assessment to Sales Ratio [ASR] significantly different than the result using the assessed parameters (R1 pp. 44-45).

[20] In conclusion, the Respondent provided equity comparables illustrating the subject's assessment is calculated in the same manner (R1 p. 72).

Board's Reasons for Decision:

[21] The Board found the Complainant's evidence in regards to the capitalisation rate weak and non-persuasive. However, the Complainant did convince the Board that the vacancy within the subject is 9.25% which supports their downtown 'C' grade vacancy conclusion of 9.57%.

[22] The Board found the rental rate evidence of the Complainant was not in the NRZ of DT3 where the subject is located; however, the comparable is the closest and most compelling argument for the subject's office rental rate. In addition, the subject's rental rate was demonstrated to be in the \$11 per square foot range requested by the Complainant.

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