



## **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:**

***Petro Fina Capital Corp. (as represented by Altus Group Limited), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***W. Kipp, PRESIDING OFFICER***

***K. Bickford, BOARD MEMBER***

***P. Grace, 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:

<b>ROLL NUMBER:</b>	<b>067072900</b>
<b>LOCATION ADDRESS:</b>	<b>736 - 8 Avenue SW, Calgary AB</b>
<b>FILE NUMBER:</b>	<b>74676</b>
<b>ASSESSMENT:</b>	<b>\$39,310,000</b>

This complaint was heard on the 25<sup>th</sup> day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- S. Meiklejohn (Agent, Altus Group Limited)

Appeared on behalf of the Respondent:

- E. Borisenko (Assessor, The City of Calgary)

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

[1] Due to similarities in issues, evidence and argument, the parties requested and the CARB consented to carrying forward Complainant disclosure C1B (Capitalization Rate analysis), C2 (Complainant Rebuttal) and R1 (Respondent's disclosure) from file 74635 to files 74679, 75751, 74659, 75696 and 74676. Further, the Complainant requested, the Respondent agreed and the CARB consented to carrying forward exhibits C1B and C2 to file 75345.

[2] There were no jurisdictional matters to be decided by the CARB.

**Property Description:**

[3] The property that is the subject of this assessment complaint is the Fina Building, an office building located in the westerly area of downtown Calgary. The property is on the northeast corner of the intersection of 8 Avenue SW with 7 Street SW. The property is situated within the DT2 downtown economic zone. It is connected to the downtown +15 walkway system.

[4] Built in 1959, the 11 storey building contains 146,016 square feet of office space, 11,154 square feet of ground floor retail space, 7,381 square feet of +15 level retail space, a 2,704 square foot recreational space and 420 square feet of storage space. There are 26 underground parking stalls. The building occupies a 19,510 square foot commercial corner lot.

[5] For assessment purposes, the property is in the Class "C" office category. The assessment of \$39,310,000 was calculated by use of an income approach. Valuation parameters for this class are:

- 1) Typical rents: \$16.00 per square foot for office and retail space, \$14.00 per square foot for the recreational space and \$6.00 per square foot for storage space.
- 2) Annual rent for each of the 48 parking stalls is \$3,600.
- 3) Typical Class "C" vacancy allowances: 9.0 percent for office, 8.0 percent for retail, and 2.0 percent for recreational and storage space.
- 4) No vacancy allowance was applied to parking income.
- 5) Vacant space operating costs: \$14.50 per square foot for office, \$20.00 per

square foot for retail, \$14.00 per square foot for recreational space and \$5.00 per square foot for the storage space.

- 6) Non-recoverable expense allowance: 2.0 percent of total income.
- 7) The net operating income (NOI) of \$2,260,351 was converted into an assessment amount of \$39,310,000 by the application of a 5.75 percent capitalization rate.

**Issues:**

[6] In the Assessment Review Board Complaint form filed February 25, 2014, Section 4 – Complaint Information had a check mark in box #3 “Assessment amount”.

[7] In Section 5 – Reason(s) for Complaint, the Complainant stated numerous grounds for the complaint.

[8] At the hearing, the Complainant pursued the following issues which can be summarized as follows:

- 1) Valuation procedures – the Respondent’s application of the income approach is based on the following incorrect valuation parameters – office vacancy, parking vacancy and the capitalization rate. One property should be removed from the Respondent’s Class “C” office vacancy study and two others should be added. Only one “C” sale has been relied upon in determining the capitalization rate and one other sale should be added. Further, the NOI used in calculating the capitalization rate should be the typical NOI at the date of the property’s sale rather than at an assessment valuation date. Historically, the Respondent has made a 2.0 percent deduction for parking vacancy in the downtown office property valuation calculations but this practice has been discontinued for 2014. It should be reinstated.

**Complainant’s Requested Value: \$34,570,000.**

**Board’s Decision:**

[9] The 2014 assessment is confirmed at \$39,310,000.

**Legislative Authority, Requirements and Considerations:**

[10] The CARB is established pursuant to Part 11 (Assessment Review Boards), Division 1 (Establishment and Function of Assessment Review Boards) of the Act. CARB decisions are rendered pursuant to Division 2 (Decisions of Assessment Review Boards) of the Act.

[11] Actions of the CARB involve reference to the Interpretation Act and the Act as well as the regulations established under that act. When legislative interpretation is made by the CARB, references and explanations will be provided in the relevant areas of the board order.

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

[12] The Respondent's application of the income approach contains a number of errors which lead to an incorrect market value conclusion.

[13] Firstly, the DT2,3,9 Class "C" vacancy study conducted by the Respondent is incorrect. That study contains properties that are government owned and occupied, owner-user properties or single tenant properties. These types of properties do not compete with multi-tenant properties which form the basis of the income approach used in preparing office building assessments. These types of properties have no place in the vacancy study. In the Respondent's Class "C" downtown office study, a property named Police Headquarters (616 Macleod Trail SE) was included in the 2014 survey. Firstly, the Complainant questioned the reasoning for including it in 2014 whereas it had not been in the study the previous year. Moreover, it is fully occupied by municipal tenants (other than a small coffee shop on the ground floor) and it does not compete with other downtown multi-tenant office properties. Its vacancy rate of zero percent skews the outcome of the study.

[14] The DT2,3,9 vacancy study should include a property known as the Burns Building. It is a Class "C" office property that should be designated as being within economic zone DT3. The City of Calgary assessment business unit has it in DT8. DT8 is an irregular, arbitrarily configured zone that encompasses some, but not all properties that front onto the Stephen Avenue Mall (8 Avenue). In the subject block, only the Burns Building is shown to be in DT8. The adjoining Performing Arts Centre and the Calgary Public Building (part performing arts and part office) are in DT3 even though they have similar frontage to the Burns Building on Stephen Avenue. Olympic Plaza which is directly across Stephen Avenue from the Burns Building is in DT3 as is Rocky Mountain Plaza, an office building across 7 Avenue SE from Olympic Plaza. In the blocks to the west, the Telus Convention Centre (both sides of Stephen Avenue) along with the Hyatt and Marriott hotels are excluded from DT8. Given the nature of the Burns Building, its location and its comparability to surrounding and nearby properties, there is no reason for it to be classified as a DT8 property. It should be designated as a DT3 property and then included within the properties surveyed for the DT2,3,9 vacancy survey.

[15] Another building that should be included within a DT2,3,9 vacancy study is United Place, an 83,361 square foot office building at 395 – 7 Street SW in the northwest area of downtown. This property is incorrectly classed as a "B-" property whereas it should be Class "C". The physical and locational characteristics of United Place are such that it belongs in the "C" class. City of Calgary quality classification criteria were gathered and then sorted to isolate certain characteristics such as age of building, number of stories, floorplate size, office and retail area, number of parking stalls and parking ratio (office area per parking stall). United Place fits into the "C" class ranges for nearly all of these characteristics.

[16] With the above three changes to the DT2,3,9 vacancy study, the typical office vacancy for the current assessment year changes from 9.0 percent (the rate used by the Respondent in making Class "C" office assessments) to 11.25 percent.

[17] Historically, the Respondent, when using the income approach to value downtown office properties, deducted an allowance for vacancy in the parking category. Recently, that allowance was 2.0 percent of potential gross income from parking. For the current assessment year, that constant has been removed from the formula. Consistency in valuation procedures is one of the stalwarts of a fair and equitable assessment system. For this reason alone, the past practice of

a 2.0 percent parking income vacancy allowance should not be abandoned.

[18] The final incorrect component of the valuation parameters is the capitalization rate and there are two parts to the Complainant's argument. The first is the property used to select the capitalization rate that is then applied to all Class "C" downtown office properties. The second error is the manner in which the capitalization rate is extracted from a sale.

[19] The Respondent has relied upon a single sale in determining the capitalization rate for application in valuing Class "C" offices in downtown Calgary. That sale involved the Centennial Building, a seven storey, 27,203 square foot office building at 816 – 7 Avenue SW. The building was constructed in 1965. There are 10 surface or partially covered parking stalls. The property sold in January 2012 at a price of \$6,020,000 (\$221 per square foot of building area).

[20] The Complainant is familiar with the purchaser of this property. That corporation owns other property in the same block which brings into question the motivation behind this purchase. Although there was no documentary evidence in support, the Complainant argued that this office property purchase was motivated by the purchaser's desire to assemble a sizeable redevelopment site. Appraisal Institute of Canada textbook excerpts explained how "plottage" impacts values and how motivational factors should be considered when analyzing property sales.

[21] The Respondent calculated the capitalization rate from the Centennial Building sale at 5.61 percent. The reported "sale year" typical NOI was \$337,883. It is the Respondent's practice to utilize the NOI from the assessment valuation date of the same year as the sale. For assessment purposes, properties are valued as at July 1 of each year. Therefore, for the sale analysis, the assessed typical NOI as at July 1, 2012 was used. That NOI would have been based upon an analysis of office rents from leases that occurred between July 1, 2011 and June 30, 2012. That NOI was based on a typical rental rate of \$13.00 per square foot for office space, a \$16.00 per square foot rate for a small main floor retail area and \$4,500 per year for each of the 10 parking stalls.

[22] The Complainant argued that the incorrect capitalization rate stems from the use of an incorrect NOI amount. Since the property sold in January 2012, it is the typical NOI as at that month that should be used. Using the Respondent's full listing of Class "C" office rent comparables, the Complainant selected those that fit within certain periods of time. For analysis of this property, six subsets of rents were set out: nine months prior to and after the sale date, six months prior to and after the sale date, three months prior to and after the sale date, three months straddling the sale date, six months straddling the sale date and nine months straddling the sale date. All three of the before and after analyses showed that rents were rising. Through the analysis method, it was possible to determine when increases occurred. The Complainant's conclusion was that the typical office rent rate was understated by the Respondent's use of a NOI amount from an incorrect period of time. The correct rent rate is \$14.00 per square foot for offices with all other rates remaining the same as those used by the Respondent. With appropriate changes made, the correct capitalization rate to be extracted from the Centennial Building sale is 6.02 percent.

[23] The Complainant offered a second property sale for consideration. That sale involved the Burns Building, a seven storey office building at 237 – 8 Avenue SE (Stephen Avenue Mall), directly across Macleod Trail from the main entrance to the Calgary Municipal Building (City Hall). There are 60,387 square feet of office space, 13,314 square feet of ground floor retail space and 1,265 square feet of basement storage space. There is no parking on the site. The Burns Building is designated by the Province of Alberta as an historical resource. It was a leasehold interest in the property that sold for \$13,100,000 in August 2012. Fee simple title is

held by The City of Calgary and there is a long term lease to the leasehold estate owner. By adding an amount (\$2,270,000) for land value, the Complainant determined that an equivalent fee simple price would have been \$15,370,000 (\$205 per square foot of building area). The land add-on was calculated by application of the City of Calgary land assessment rate of \$175 per square foot to the area of the land under the Burns Building. As in its analysis of the Centennial Building sale, the Complainant estimated the NOI based on typical rents as at the date of sale (August 2012). In this instance, a seventh rent subset (12 months prior to and after the sale date) was added. The conclusion was that the typical rent rates as at August 2012 would have been: Office - \$16.00, Retail - \$16.00, Storage - \$6.00 (all are per square foot rates). The indicated NOI of \$1,001,774 yielded a capitalization rate (on the calculated fee simple price) of 6.52 percent.

[24] The Complainant's final conclusion was that the appropriate capitalization rate for application in Class "C" downtown office property assessment valuation should be 6.25 percent. This rate should therefore be used in the Fina Building assessment calculation.

### **Respondent's Position:**

[25] In the DT2,3,9 Class "C" vacancy study, the Police Headquarters building at 616 Macleod Trail SE has been included because, as a City of Calgary owned property, any vacant space would be offered for lease on the market. There is one non-municipal tenant in the building (a Second Cup coffee shop). Other municipally owned properties are included in vacancy studies for other economic zones so the inclusion of the Police Headquarters building in the Class "C" study is not out of place.

[26] The Burns Building is included in the DT8 economic zone due to its heritage designation and its location fronting onto the Stephan Avenue Mall. There are portions of the DT3 zone around the building but that does not mean that the Burns Building should be reallocated to that zone. The leasehold estate in the property sold in August 2012 and subsequently, a large block of vacant space was created by the new owner so that renovations that were expected to take over one year could be undertaken. Subsequent to renovations being completed, the building was attracting significantly higher rents. If the property was to be included in the DT2,3,9 Class "C" vacancy, it would also have to be included in the office rent study and that would increase the Class "C" rent rate.

[27] The Respondent provided excerpts from hearing disclosure documents filed by the Altus Group for 2013 assessment complaints, pointing out that Altus used the same NOI as the Respondent had used for that year. The Respondent also provided a list of 2013 CARB decisions wherein the capitalization rate used by the Respondent had been confirmed. Other excerpts from CARB and Municipal Government Board orders confirmed the Respondent's position that fee simple estate sales are preferred in the process of extracting capitalization rates. The Burns Building sale did not involve a sale of the fee simple estate. The Respondent also questioned whether the Complainant's analysis method whereby a land value was added to the leasehold estate sale price is a recognized appraisal/assessment practice. Other CARB orders supported the Respondent's consistent use of sale year NOI amounts.

[28] Evidence from the Respondent showed that Cresa Partners, a local industry consulting company, showed the United Place property as a Class "B" property, as has the Respondent. The characteristics of this property such as location, floorplate size and so on also fit within the ranges of criteria for Class "B" properties.

[29] The Respondent stated that there was no evidence in the Complainant's disclosure to support its contention that the Centennial Building sale was motivated by the purchaser's desire to assemble a redevelopment site.

[30] The 2.0 percent vacancy allowance for parking income was discontinued because of the very tight rental situation in downtown. A newspaper article from the Calgary Herald explained the parking market and supported the decision to discontinue making a parking vacancy deduction in assessing downtown office properties. The Respondent provided no other evidence in support of its current practice because the Complainant relied on nothing more than its opinion that a parking vacancy allowance should continue to be deducted.

#### **Board's Reasons for Decision:**

[31] Having regard to the input parameters of the income approach, the CARB accepted the Complainant's position that the Police Headquarters property should be removed from the Class "C" office vacancy study and that the Burns Building should be included as a DT3 property and that United Place should be reclassified as a "C" office and included in the study.

[32] Notwithstanding that The City of Calgary might offer vacant space for rent to non-municipal users from time to time, its properties do not compete directly with properties owned and operated for the income that they can produce. The Police Headquarters building does not compete with other downtown office properties for tenants. It is a municipally owned property occupied by municipal tenants.

[33] The Burns Building properly fits into the DT3 economic zone. It is a registered heritage resource property but so are other Stephan Avenue properties that are not within the DT8 zone. In the same block is the Calgary Public Building which contains office space as well as some of the Performing Arts Centre facilities. That building is in DT3. The CARB received no evidence to support the inclusion of the Burns Building in DT8.

[34] United Place is currently classified by the Respondent as a "B-" office property. The Complainant provided the CARB with a lengthy analysis that showed that the property fit well within the criteria used by the Respondent in determining the "C" class property quality classification. Rather than use its own data, which is the data used to classify property for assessment purposes, the Respondent chose to use third party summaries of property criteria. The Complainant pointed out variances in the compilation and presentation of such data. One of the key locational features, in the findings of the CARB, is the presence of a +15 walkway connection. Whereas the majority of the downtown "B" properties have +15 connections, the walkway system does not connect to the subject block or to any immediately adjacent blocks.

[35] Having established that there are shortcomings in the Respondent's Class "C" vacancy study, the Complainant requested that the vacancy rate be increased from 9.0 percent to 11.25 percent. There are 26 properties in the Complainant's revised 2014 study summary. The CARB has concern about the very wide disparity in vacancy rates. Of the 26 properties, eight had zero percent vacancy. Six had vacancy of more than 25 percent and two of those were over 50 percent. The remaining 12 properties tended to support an overall vacancy rate of seven to eight percent. The conclusion of the CARB was therefore that the 9.0 percent rate allowed by the Respondent was not unreasonable even if it was derived from data that the CARB found to be lacking.

[36] The Respondent has historically allowed for vacancy losses for all property types (i.e., office, retail, storage, parking). For the 2014 tax year, no vacancy loss allowance is provided on parking income. The Complainant points out that the rate has been 2.0 percent for the past

several years. There are properties in the Respondent's vacancy study that have zero percent vacancy in the office sector but those properties receive the vacancy allowance granted to all properties in the same class. In other words, the rate is consistently applied in keeping to the requirements of mass appraisal. The Complainant's argument is for consistency from one year to the next. The CARB finds that while there must be consistency in application of vacancy and other rates within property classes and during any particular year, there is no legislated requirement for valuation procedures to remain the same year over year. The CARB therefore finds that the Complainant's argument appears to be a reasonable one, but there is no support from legislation that compels the CARB to change the Respondent's current practice. That practice is consistent as far as 2014 downtown office property assessments are concerned.

[37] The Respondent relied upon one Class "C" downtown office property sale for the extraction of the capitalization rate for the entire class. The Complainant argued that there were motivational factors that impacted the price that was paid for the property. Other than the Complainant's hearsay testimony that the acquisition was intended to complete the assembly of a redevelopment site, there was no evidence to that effect before the CARB. Further, even if the purchaser was assembling a redevelopment site, there was no evidence to show that the purchase price was impacted in any way. The CARB acknowledges that the purchaser owned other property in the block but it has no basis upon which to reject the Centennial Building as a valid sale for the purpose of capitalization rate analysis.

[38] The CARB dislikes reliance on a single property sale for the extraction of a capitalization rate. The Centennial Building sale described above is an example of a sale that has been questioned as a valid indicator of market value so the evidence comprises a single, disputed sale. The CARB recognizes that it is common practice for the Respondent and other assessors to rely upon data from transactions that occurred during a single year but that practice has potential to produce faulty results if only one sale is analyzed and unknown circumstances affected the sale price. While there is no obligation to extend the period of time for market analysis, there is no reason to limit the analysis to a single year when there is minimal data available (i.e., just one property sale). A market analysis extending backwards in time by one, two or more years is possible. A thorough analyst should want to have as much information available as possible even if it means having to make adjustments to some of the older data. This leads the CARB to the conclusion that the adjusted sale of the Burns Building leasehold estate is worthy of analysis. The sale was an indicator of the actions of market participants. While the leasehold estate sale is perhaps a weaker indicator than an open market, arms-length transaction involving a fee simple estate sale, it is nevertheless an indicator that assists an analyst in measuring market activity. It is not possible to definitively split weight on the two available sales (Centennial Building fee simple estate and Burns Building leasehold estate) without evidence showing whether fee simple and leasehold estate sales are perceived differently in the market from the perspective of investment risk etc.. From a qualitative perspective, the CARB finds that there is no support for any change to the 5.75 percent capitalization rate currently being applied to office buildings in this class.


[39] The CARB gave careful consideration to the Complainant's issue of the proper NOI to use in a capitalization rate extraction process. The Complainant's argument is valid. The best analysis of a sale comes from consideration of all factors that were prevalent at the date of sale. The Complainant's analysis used only typical rents (as established by the Respondent) as at the date of each sale. The difference is that the Complainant's methodology picked the rent from the date of sale rather than from a "nearby" valuation date. The CARB finds this to be a superior method of measuring factors that would have impacted the decisions of the participants in the sale transaction.



[40] While the CARB finds the Complainant's analysis method to be superior, it cannot concur with the outcome of the analysis of the Centennial Building. After a thorough analysis of office rent rates around the January 2012 date of sale, the rent indicators were of the order of \$13.00 per square foot but the Complainant found \$14.00 to be the rate. The CARB has no compelling evidence or argument to stray from the indicated \$13.00 rate in the analysis. The rate of \$13.00 per square foot is coincidentally the same as the rate which has been used by the Respondent in analyzing the sale. The outcome is that the capitalization rate of 5.61 percent is accepted as the most realistic and reasonable rate coming from the sale.

[41] The CARB gave no weight to the Respondent's evidence showing that Altus Group, the Complainant, used different analysis methods in its complaints filed for 2013. The situation is similar to the Respondent's change of practice in granting an allowance for parking vacancy. Market conditions and attitudes and actions of market participants change from time to time and a diligent study of the market will adapt to those attitudes and actions.

DATED AT THE CITY OF CALGARY THIS 18th DAY OF July 2014.

  
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W. Kipp  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1A	Complainant Disclosure
2. C1B	Complainant Capitalization Rate Disclosure
3. R1	Respondent Disclosure
4. C2	Complainant Rebuttal
Note: Exhibits C1B, R1 and C2 were disclosure documents common to several other files in addition to 74676	

*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.*

**FOR ADMINISTRATIVE USE**

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Office	High Rise	Income Approach	Vacancy Capitalization Rate