CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of a complaint filed with the City of Calgary Assessment Review Board pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000 (the Act).

BETWEEN:

Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

BEFORE:

J. Krysa, PRESIDING OFFICER
J. Kerrison, MEMBER
B. Jerchel, MEMBER

A hearing was convened on June 24 and 25, 2010 in Boardroom 11, at the office of the Assessment Review Board, located at 1212 - 31 Avenue NE, Calgary, Alberta in respect of the property assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	**067048108**
LOCATION ADDRESS:	**700 – 6 Avenue SW**
HEARING NUMBER:	**58674**
ASSESSMENT:	**$61,730,000**

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a downtown, mid-west core 23 storey office building known as the Bantrel Tower. It was constructed in 1968, on a 19,511 square foot (sq.ft.) parcel of land, and has a total area of 225,207 sq.ft. comprised of office space (220,130 sq.ft.), retail space (3,831 sq.ft.), and storage (1,246 sq.ft.), on a base plate of 11,000 sq.ft., plus 31 parking stalls.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. At the commencement of the hearing the Respondent raised the following jurisdictional matter:

A request that the Board dismiss the complaint pursuant to s.2(1) of Alberta Regulation 310/2009, *Matters Relating to Assessment Complaints Regulation*, due to the absence of any evidence in support of the requested value of $15,430,000 set out on the complaint form. The Complainant's submission requested a value of $40,831,371 (including exempt component) at page 48 of Exhibit C1.

With respect to this matter, the Board denied the Respondent's request to dismiss the Complaint. The Board agreed with an earlier decision of the Calgary Assessment Review Board (J009/2010-P) submitted by the Complainant (Exhibit C5) for the same reasons.

PART C: MATTERS / ISSUES

The Complainant indicated the following matters in section 4 of the complaint form:
1. the description of the property or business
2. the name or mailing address of an assessed person or taxpayer
3. an assessment amount
4. an assessment class
5. an assessment sub-class
6. the type of property
7. the type of improvement

At the commencement of the hearing, the Complainant withdrew matters 1, 2, 4, 5, 6, and 7, and stated he would be providing evidence and submissions only on matter number 3, an assessment amount. The Complainant set out 15 reasons for complaint in Section 5 of the Complaint form. At the commencement of the hearing, the Complainant stated only the following issues condensed from the reasons in Section 5 of the complaint form were in dispute:

Issue 1: Characteristics and physical condition of the property as of December 31, 2009
Issue 2: The valuation standard of market value
Issue 3: Fairness and Equity

The Complainant submits that a correct, fair and equitable assessment value is $39,790,000.

Issue 1: Characteristics and physical condition of the property as of December 31, 2009

The Complainant submitted evidence of leases that had commenced, or were negotiated or signed up to December 31, 2009 (subsequent to the July 1 valuation date). He indicated that these lease rates reflected the improvement's characteristics and physical condition as at December 31, and should be used in the calculation of market value for assessment purposes. (Exhibit C1 pgs 59 – 74) Based on the location in the DT2 mid-west core, the Complainant suggested a typical market rent of $24.00. There was limited evidence submitted with respect to specific physical attributes or building classification due to uncertainty over what class the building is currently assessed at, however the Complainant did submit a request to reallocate lease spaces from office area to retail and storage based on rent roll information included in exhibit C1.

The Respondent's evidence indicated that the building is currently classified as a B Office at a $26.00 typical market rent rate.

Decision- Issue 1 Characteristics and physical condition of the property as December 31, 2009

The Board finds the Complainant's position that the market rental rate as at the December 31 "condition date" is not appropriate in the calculation of an assessment at market value. As an assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year, lease rates that reflect typical market conditions as of July 1 are fundamental. There was no evidence provided to the Board that the characteristics and physical condition of the property had changed between July 1, the valuation date and December 31, the "characteristics and physical condition date" set out in *Municipal Government Act* s.289(2), to warrant a reduced July 1 net rental rate. With respect to the reallocation of space, the Board noted that the areas reported are inconsistent between the rent rolls included in the Complainant's and Respondent's exhibits, and further, inconsistent with the third party reporting agency evidence as well. As the variance is considered minor, and without any conclusive evidence to rely on, the Board will not disturb the assessment for this reason.

In this instance, the Board will not rule on the stratification of the property in net rent zone DT2, as a class B, or B- as there was limited evidence in this regard for the Board to make that determination. Notwithstanding, the Board is very concerned about the capricious and misleading nature of the Respondent's evidence, to both the Complainant in an apparent attempt to be elusive with the subject's classification and related coefficients, and to the Board. The Board noted that had the Respondent been forthright about the stratification and corresponding coefficients the Assessor relied on, the Complainant would not have had to speculate on that matter in his submissions to the Board.

The Board also found the Respondent's Exhibit R1 confusing and contradictory. For example:

- Page 50 indicates that rental rates assigned to B class office buildings in DT2 range from $24 to $26, however, page 95 indicates that all are B class buildings at $26. Further contradicting the Respondent's evidence were the City of Calgary's Assessment Summary Reports included at pages 19 to 41 of the Complainant's rebuttal (Exhibit C8), indicating that at least 8 of the 20 comparables were classed either B-, B+ or A2, and not Class B buildings as indicated on page 95 of Exhibit R1. The Complainant's rebuttal commencing at page 99 of Exhibit C1-A, casts further doubt on the Respondent's basis of equity.

- Although the Respondent provided a "Quality Class" document at pg 9 with a list of specific attributes and physical characteristics as the determining factor of a property's classification for mass appraisal purposes, the evidence suggests that properties are arbitrarily assigned a rental rate from year to year with little regard to the physical attributes. The Board accepts the Complainant's position that market reporting agencies and BOMA rarely alter a building class from year to year.

Issue 2: The valuation standard of market value (Rent, Vacancy, Capitalization Rate)

The parties were in agreement that the valuation standard applicable to the subject property was market value pursuant to s.6(1) of the Act, and that of the 3 recognized approaches to value, the income approach was most appropriate. Excluding the matter of lease area allocation decided in issue #1 above, the parties were also in agreement with the inputs (excluding the capitalization rate) applied to the retail, parking and "other" components of the building, therefore only the valuation inputs of the 220,130 sq.ft. office component was in dispute, as well as the overall capitalization rate for the property. The chart below indicates the rent, vacancy and capitalization rate utilized by the Assessor in the preparation of the assessment, as well as the corresponding values requested by the Complainant.

Inputs	Current Assessment	Complainant's Request
B Office Market Rent {DT2}	$26.00/sq.ft.	$22.00/sq.ft.
B Office Typical Vacancy	8.0%	15.0%
Capitalization Rate (All Components)	8.0%	9.0%

With respect to the inputs noted above, several sub issues arose regarding the proper methodology of determining these inputs which the Board will address.

- **Issue 2A:** Establishing typical market rent as of the valuation date

Should lease rate data of the 12 month period preceding the valuation date be time adjusted to the valuation date?

Is it appropriate to consider the date a lease is negotiated and signed, or does the commencement date of a lease reflect the market lease rate as of that date?

- **Issue 2B:** Establishing a typical vacancy rate

Should an assessment at market value take into consideration sublease vacancy in addition to headlease vacancy?

- **Issue 2C:** Establishing an appropriate capitalization rate

Should a calculated typical capitalization rate of a historical sale be recalculated to reflect changes in market rent, and vacancy since the sale date?

Decision - Issue 2 The Valuation Standard of Market Value - **Rent**

The Board finds that the correct rental rate for the subject office building in net rental zone DT2 is $22.00/sq.ft.

Both parties presented tenant roll information of the subject property outlining the leases in place as of April 13, 2009 for the Respondent (Exhibit R1 pg 23), and as of Jan 26, 2010 for the Complainant (Exhibit C1 pg 55). As many of the subject property leases have commencement dates as far back as 1998, they are of limited value to the Board in determining the market value of the fee simple estate as of the valuation date of July 01, 2009. The Board noted that there were no new or renewal leases in the subject, commencing in the second quarter (Q2) of 2009.

In light of the argument that office rental rates were in decline prior to, or subsequent to the valuation date, the Board looked to Class B leases signed in the second quarter (Q2) of 2009, to determine an appropriate lease rate for the subject, and examined the relationship to leases signed in Q1 and prior, within the evidence from both parties.

From Exhibits R1 (pg 49) and C1 (pg 72 and 73), the following DT2 leases were identified as commencing in Q2 2009:

Class	Building	Month	Area	Rate	Assessed	Variance	Source	Total
B	Manulife House	May	5050	$22.00	$26.00	($4.00)	R1 p49	$111,100
B	Manulife House	Jun	2410	$22.00	$26.00	($4.00)	R1 p49	$53,020
B	Canadian / Emerson	May	32574	$32.00	$26.00	$6.00	R1 p49	$1,042,368
B	Elveden	Apr	10893	$28.00	$26.00	$2.00	R1 p49	$305,004
B	Elveden	May	4052	$23.00	$26.00	($3.00)	R1 p49	$93,196
B	Panarctic Plaza	Apr	3000	$18.00	$26.00	($8.00)	R1 p49	$54,000
B	Place 800	Apr	1008	$29.00	$26.00	$3.00	R1 p49	$29,232
B+	MacFarlane/400 Club	May	2766	$20.00	$26.00	($6.00)	C1 p72	$55,320
B+	MacFarlane/400 Club	May	4104	$22.00	$26.00	($4.00)	C1 p72	$90,288
B	Canada Life Tower	June	3886	$27.00	$26.00	$1.00	C1 p73	$104,922
		Total	**69743**					**$1,938,450**
		Mean		$24.30				
		Weighted Mean		$27.79				
		Median		$22.50				

In this instance as the lease within the Canadian/Emerson building was deemed to be atypical in size (3 times the next largest lease area) with no apparent economy of scale adjustment, the Board relied on the mean and median for a determination of a typical market rental rate range. The Board chose to rely on a lease rate near the median, due to the Q2 leases in the nearby MacFarlane/400 Club (at $20 and $22/sq.ft.), as well as the evidence that the subject was historically classed as a class B- office, and no major physical changes have taken place. As a result, the Board concluded that the Complainant's request of $22.00/ sq.ft was a reasonable estimate of typical market rent on the valuation date of July 01.

In light of the above leases, and their relationship to the leases commencing in prior and subsequent periods included in both parties submissions, the Board was persuaded to accept that Exhibit C4, a third party downtown office market report, appropriately reflects the downtown Class B office market, with Class B office rent rates at June 30, 2009 (Q2) to be approximately $23/sq.ft. The chart in Exhibit C4 also exhibits the following Class B approximate average rental rate values for the prior periods, and indicates that the decline in rental rates started to accelerate in the fourth quarter of 2008.

Quarter	**Rental Rate**
2008Q2	$36.00
2008Q3	$35.00
2008Q4	$31.00
2009Q1	$27.00
2009Q2	$23.00 (Current valuation date)

The Board further noted that these values are supported by the CB Richard Ellis and Avison Young reports at pages 6 to 11 of Exhibit C8 and the combined evidence, serves to support the Complainant's time adjustments to rental rates in rebuttal Exhibit C8.

Issue 2A: Establishing typical market rent as of the valuation date

- Should lease rate data of the 12 month period preceding the valuation date be time adjusted to the valuation date?

The valuation date is set out in legislation and in the opinion of the Board, time adjusting market rents to the valuation date is no less critical than time adjusting sales or any other market data to the valuation date. In a dynamic market, the average or median market rent of the preceding 12 month period will obviously be higher or lower (depending on the direction of the market) than the typical market rent as of the valuation date.

- Is it appropriate to consider the date a lease is negotiated and signed, or does the commencement date of the lease reflect the market lease rate as of that date?

In the opinion of the Board, validating lease agreements is as important as validating sales, and anything that may have affected a lease rate should be identified and taken into consideration. Lease renewals, with no exposure to the market, and lease agreements signed well in advance of the commencement date may or may not reflect market rent for that property. The Board appreciates that an assessor may not receive all of the information it requests of an assessed person, however the legislation provides an avenue to ask for the information required to properly analyze market data.

Decision - Issue 2 The Valuation Standard of Market Value - **Vacancy**

The Board finds that a correct typical vacancy rate for the subject property is 15%.

The evidence provided by both parties suggests that (headlease) vacancy rates for downtown class B office buildings range from 6.8% to 8.73% as of the valuation date, with the subject property exhibiting an actual headlease vacancy rate of 19.35% as of April 13, 2009 from the Assessors Request For Information form (ARFI) (Exhibit R1 pg 23), and 21.26% as of January 26, 2010 (Exhibit C1 pg 57). The evidence further indicates that, excluding a brief period around the peak of the market in 2007, the subject has had a history of chronic vacancy dating back since at least 2002, likely in part due to a relatively low ratio of parking stalls to total lease area at approximately 1:7250 sq.ft.; while the range for Class B offices is from approximately 1:1,000 sq.ft. to 1:4,000 sq.ft. (Exhibit C1 pgs 76 – 96, 118).

Although a rate of 8% appears to be a reasonable estimate of typical headlease vacancy as of the valuation date for this class of building, the unique characteristics of the subject property, confirmed by it's operating history demonstrate that it is not similar to the other properties with which it has been grouped for mass appraisal purposes. As a result, the typical market coefficients applied to the mass appraisal group, are not appropriate for the subject property.

Issue 2B: Establishing a typical vacancy rate

Should an assessment at market value take into consideration typical sublease vacancy in addition to headlease vacancy?

The Complainant provided evidence of a sublease vacancy rate of 7.56% in Class B offices in the downtown net rent zones, and argued that this vacancy should also be deducted from the net operating income that is capitalized into a value for the subject property (Exhibit C1 pgs 77–96). The Complainant also argued that the sublease vacancy competes directly against vacant headlease space and further, that landlords contractually maintain control over vacant sublease space, although no direct evidence was provided to substantiate this argument.

The Respondent argued that as building owners are currently receiving rent for the vacant space by way of the headlease, the income generated by the building and the resulting value are unaffected by the sublease vacancy.

The Board referred to s.2 of Alberta Regulation AR 220/2004, *Matters Relating to Assessment and Taxation Regulation*

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

With respect to s.2(b), the fee simple estate in the property reflects the value of all interests in a property, including leasehold interests, as described in the Respondent's Exhibit R1 at page 8, "*The concept of Fee Simple requires the capture of **all** interests in a property, that of both lessor and lessee. The only way to capture this is through the application of current "Typical Market" coefficients in the calculation of Net Operating Income.*"

Typical market conditions (reflected in the coefficients) as per s.3(c) should reflect overall market vacancy rates regardless of who is legally in control of the properties via a lease contract (Fee Simple). In the same way that a lease contract above current market rates would reflect a negative leasehold interest to the lessee, sublease vacancy would also reflect a negative leasehold interest to the lessee.

The Board finds that although sublease vacancy is a component of typical market vacancy, there are dissimilarities from headlease space that must be taken into account. For example, contractual influences with respect to a lessor's potential control of the space, the typical marketing process of sublease space vs. headlease space, the different motivations of a headlease vs. a sublease lessor, the shorter remaining terms of sublease space, etc. As a result the Board finds that vacant sublease space cannot be awarded the same significance as vacant headlease space, however it clearly does represent a negative leasehold interest to the current tenant, and a future loss in value to the landlord when the headlease expires. To that effect, sublease vacancy represents a risk that the current headlease income is unsustainable, and the Board finds that this risk should be accounted for in the selection of an overall capitalization rate.

Decision - Issue 2 The Valuation Standard of Market Value - **Capitalization Rate**

The Board finds that an appropriate capitalization rate is 9%.

Both parties provided the Board with sales comparables in their submissions, including sales from the "Beltline" market area that the Board found were not comparable to the subject. Of the 7 sales of Class B downtown office buildings between 2006 and 2008, five were in the DT2 net rent zone, and exhibited capitalization rates of 8.55% (Mar 2007 sale) to 9.89% (May 2008 sale) calculated from typical market rents and vacancies at the time, as per MGB BO 145/07 (Exhibit C1 pgs 126-128).

The Respondent submitted a chart indicating the capitalization rates applied to various classes of offices for the current and prior assessment, as well as three, third party Q2 capitalization rate summaries indicating current valuation date capitalization rates ranging from a low of 8.0% to 9.25% (Exhibit R1 pg 84). For Class B offices a rate of 8.0% was applied in the preparation of the current subject assessment, from 7.5% in the previous year, and the rationale for the selected capitalization rate was set out on pages 85 and 86.

The Board is mindful of the fact that the Assessor is obligated to determine an appropriate capitalization rate in the absence of any recent sales activity, and as with any subjective criteria, the Board is prepared to allow considerable latitude in that regard. The Board generally accepts the considerations set out on pages 85 and 86 of Exhibit R1, however in light of the significant amount of sublease vacancy in the market, the evidence of approximately 3 million sq.ft. of new office space currently under construction and coming on the market in the near future, the evident decline in typical market rents prior to and subsequent to the valuation date, (all of which appear to confirm that that the office market has changed direction since the 2007 and 2008 office sales); the selection of a capitalization rate at the lowest end of the range at 8%, appears to be very aggressive.

The Board notes that whereas an Assessor's typical market coefficients are generally determined from historic data up to the valuation date, participants in the market generally look forward in time. The selection of an appropriate capitalization rate is the assessor's only way to reconcile the differences, especially in a reversing market. Further, the trend of the market could be confirmed during the six month assessment preparation period if market data subsequent to the valuation date (post facto) is not ignored.

Issue 2C: Establishing an appropriate capitalization rate

Should a calculated typical capitalization rate of a historical sale be recalculated to reflect changes in market rent, and vacancy since the sale date?

Recalculating a capitalization rate of a historical sale using current typical market data would imply that regardless of economic changes in the marketplace, sale prices would remain constant and capitalization rates would be the variable. As is evident over time, sale prices of properties change to reflect the market conditions at the time of the sale; capitalization rates are a reflection of risk and market sentiment at a point in time, the sale date.

Issue 3: Fairness and Equity

The Complainant submitted that market rent rates for offices in classes A and C were adjusted downward from the prior years' assessment, however the same adjustment was not applied to class B offices, rather that the Assessor had merely re-classed some offices upwards to maintain a rental rate equal to that of the previous year, resulting in an inequity between classes. The Respondent provided limited evidence in this regard, but argued that the current rent rates represented typical lease rates for the current assessment year, and provided a list of comparable B class offices all assessed with a $26.00 rental rate coefficient (Exhibit R1 pg 95). As referenced at point 1 on page 3 of this decision, the building classes set out were put into question by the Complainant's rebuttal evidence (Exhibit C1A and C8).

Decision - Issue 3 Fairness and Equity

The Board finds that the decision to revise the market rent coefficient to $22.00 as part of issue 2 above, would effectively address the matter of equity with other classes of offices, which have been adjusted downwards from the prior assessment year.

PART D: FINAL DECISION

The assessment is revised from $ 61,730,000 to $ 40,030,000. It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 27 day of JULY, 2010.

J. Krysa

J. Krysa
Presiding Officer

APPENDIX "A" DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.		**ITEM**
1.	Exhibit C1	Complainant's Brief
2.	Exhibit C1-A	Complainant's Rebuttal Evidence
3.	**Exhibit C2*	*Comparable Sales Evidence*
4.	**Exhibit C3*	*Market Change Evidence*
5.	**Exhibit C4*	*Colliers International – Calgary Office Market Report*
6.	**Exhibit C5*	*Calgary Assessment Review Board Decision J009/2010-P*
7.	**Exhibit C6*	*Complainant's Rebuttal Evidence Part 1 of 3*
8.	**Exhibit C7*	*Complainant's Rebuttal Evidence Part 2 of 3*
9.	**Exhibit C8*	*Complainant's Rebuttal Evidence Part 3 of 3*
10.	Exhibit R1	Respondent's Brief (251 pages)
11.	**Exhibit R2*	*Appendix A – Municipal Government Board Decisions*
12.	**Exhibit R3*	*Appendix B – Judicial Review of MGB Order 145/07*

*Note: Exhibits in italics were entered as evidence in File 58668 (Decision #0659-2010) and cross-referenced by the parties in the hearing of this Complaint.

APPENDIX 'B" ORAL REPRESENTATIONS

PERSON APPEARING		**CAPACITY**
1.	Scott Meiklejohn	Representative of the Complainant
2.	Harry Neuman	Representative of the Respondent
3.	Andy Czechowskyj	Representative of the Respondent

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.*