

**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:

BEREZAN MANAGEMENT LTD., Complainant

and

THE CITY OF CALGARY, Respondent

BEFORE:

**J. KRYSA, Presiding Officer
A. BLAKE, Member**

A hearing was convened on October 13, 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:	067080291
LOCATION ADDRESS:	815 – 8th Avenue SW
HEARING NUMBER:	56990
ASSESSMENT: (Excl. Exemption)	\$42,060,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is an 18,493 square foot (sq.ft.) parcel of land, improved with a 140,789 sq.ft. high rise office building, constructed in 1981 and known as Panarctic Plaza. It is comprised of 132,204 sq.ft. of office space, 8,585 sq.ft. of retail space, and 134 parking stalls on a base plate of 11,405 sq.ft. The total assessment equates to a unit rate of \$316.29 per sq.ft.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

There were no procedural or jurisdictional matters raised by the parties during the course of the hearing.

The parties were in agreement with the matter being heard and decided by a two member panel, and there was no objection to the composition of the Board.

PART C: MATTERS / ISSUES

The Complainant set out matter #3, an assessment amount, in section 4 of the complaint form.

At the hearing, the Complainant stated that the following issues were in dispute:

Issue 1: The assessment is inequitable in relation to the assessments of similar properties.

Issue 2: The assessment is incorrect as the market rent coefficient applied by the assessor exceeds the actual rental income of the subject property.

The Board noted that the issues put forth by the Complainant at the hearing, appear not to have been specifically set out in section 5 of the complaint form; however, as the Respondent did not raise an objection, the Board heard the evidence of the Complainant, as presented.

Issue 1

The Complainant argued that the assessment of the subject property is inequitable in relation to the assessments of similar properties, and that the subject property is assessed at a higher unit rate than some similar properties in superior locations.

In support of that argument, the Complainant submitted the assessments of three office buildings located within 5 blocks of the subject property. The assessed value of the three comparables range from \$205.00 to \$284.00 per sq.ft., in contrast to the subject property total assessment of \$316.00 per sq.ft. [C1, p.2].

The Respondent argued that the subject property has been assessed equitably in relation to the assessments of similar properties due to the mass appraisal methodology employed in the preparation of the assessments. In support of that argument, the Respondent submitted a summary listing of 20 class B office buildings in the same market area as the subject (DT2), to illustrate that the \$26.00 market rent coefficient assigned to the office area in the subject property, was also assigned to all other class B office buildings [R1, p.35].

In response to the Complainant's equity evidence, the Respondent argued that the Complainant's comparables were not in superior locations; and further the properties were dissimilar to the subject as one was a mixed use property, two were lower quality (class C) structures, one of which was significantly older than the subject; constructed in 1959 [R1, p.33].

Decision - Issue 1

The Board finds that the assessment of the subject property is equitable in relation to the assessments of similar properties.

The Board does not find the Complainant's comparable properties reveal an inequity, as the properties are significantly dissimilar from the subject in terms of building class, configuration and use, and year of construction; as such, it is expected that the unit rate of the comparable assessments would be lower than that of the subject property.

The Board is persuaded by the Respondent's evidence that the subject is equitably assessed; the \$26.00 market rate is being applied consistently in a mass appraisal methodology to the subject property, as well as to the other class B office buildings located in market area DT2, including the Complainant's "class B" equity comparable located at 700 4th Avenue SW.

Issue 2

The Complainant argued that the assessment is incorrect, as the market rent estimated by the assessor, exceeds the actual rental income of the subject property. In support of that argument, the Complainant submitted three rent roll reports from the subject property with effective dates of July 1, 2009, January 1, 2010 and May 1, 2010, which exhibited the following actual levels of income, in contrast to the income estimated in the preparation of the assessment [C1, pp.7-20]:

	01-Jul-09	01-Jan-10	01-May-10	Assessment
Monthly Base Rent	\$194,190	\$185,349	\$134,289	
Monthly Other Income	<u>\$30,607</u>	<u>\$28,434</u>	<u>\$28,824</u>	
Monthly Total Income	\$224,797	\$213,783	\$163,113	
 Annualized	 \$2,697,564	 \$2,565,396	 \$1,957,356	 \$3,563,122

The Complainant argued that the annualized levels of income, as evident above, would require further adjustment to reflect the cost of real estate commissions and tenant improvements, and that this actual level of income should be capitalized to establish an estimate of market value for assessment purposes.

The Respondent argued that the subject property is a typical class B office building, and the assessment has been prepared correctly in accordance with the legislated requirements. In support of the \$26.00 per sq.ft. office rent coefficient, the Respondent provided a list of 31 office leases commencing between July 01, 2008 and June 1, 2009, exhibiting rent rates ranging from \$18.00 to \$34.00 per sq.ft, and a median rent rate of \$27.80 [R1, p.36].

With respect to the actual vacancy rate, and its influence on the operating income of the subject, the Respondent submitted two Assessment Request For Information (ARFI) forms and corresponding rent roll reports from the subject property with effective dates of July 1, 2008 and April 1, 2009. The Respondent argued that although the subject exhibited a vacancy rate of 23.5% as of April 17, 2009, vacancy within the subject has not been a chronic, long term issue as the subject's stated vacancy rate was 0.65% as of July 8, 2008 [R1, pp. 22-31].

Decision - Issue 2

The Board finds that the assessment is correct, as the market rent estimated by the assessor reflects the typical market rental income of properties similar to the subject as of July 1, 2009, the valuation date for the current assessment.

The Board accepts that the subject property is a typical class B office building, located within the DT2 market area of the municipality, and that there are no physical characteristics inherent in the subject property that would render it unable to compete with other similar properties, as agreed to by both parties.

As a result of the finding that the subject is a typical office structure that is similar to other properties, the Board referred to the statutory requirements found in the legislation.

Matters Related to Assessment and Taxation Regulation, Alberta Regulation AR 220/2004

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.
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.

The Board finds that market rent and market vacancy coefficients have been applied consistently in the preparation of the assessments of the DT2 office inventory, meeting the requirements of mass appraisal.

Although it is unclear why the rate of \$26.00 per sq.ft. was selected as the "typical" market rent, when none of the leases were signed at that rate and the median rent rate evident is \$27.80 per sq.ft., the Board finds that the typical market rent coefficient is supported by the Respondent's lease analysis.

With respect to the Complainant's evidence and argument of a deteriorating market, the Board noted that the median rent rate of the (15) leases commencing in the first 6 months of 2009 was \$25.75 per sq.ft.; which the Board finds is further supportive of the market rent coefficient used in the preparation of the assessment.

The Board accepts that the recent vacancy in the subject has negatively affected the operating income subsequent to the valuation date, however, the legislation requires the current assessment to be an estimate of value as of July 1, 2009. There is no evidence to suggest that the property experiences a chronic or long term vacancy problem; rather the Respondent's evidence of the 2008 ARFI form and the 2008 rent roll indicates that the subject property has had a minimal level of vacancy as recently as last year.

In conclusion, the Board finds that capitalizing the actual income of the subject property derived from the leases currently in place, as asserted by the Complainant, would establish the value of the leased fee estate in the property, and not the fee simple estate in the property, as required by the legislation set out above.

PART D: FINAL DECISION

The assessment is confirmed at \$ 42,060,000.

Dated at the City of Calgary in the Province of Alberta, this 19th day of November, 2010



J. Krysa
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:

NO.	ITEM
1.	Exhibit C1 Evidence Submission - Complainant
2.	Exhibit R1 Evidence Submission - Respondent

APPENDIX "B"

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. R. Berezan	Representative of the Complainant
2. A. Gravelle	Representative of the Complainant
3. W. Krysinski	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.*