

**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:

***661377 Alberta Ltd., (as represented Wilson Laycraft, Barristers & Solicitors),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***T. B. Hudson, PRESIDING OFFICER
J. Joseph, MEMBER
R. Kodak, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 068106293

LOCATION ADDRESS: 150 9 AV SW

FILE NUMBER: 65926

ASSESSMENT: \$102,900,000

This complaint was heard on the 23rd day of October, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *T. Koenig*
- *G. Kerlake*

Appeared on behalf of the Respondent:

- *L. Gosselin*
- *A. Czechowskyj*

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

[1] There were no procedural or jurisdictional matters raised by the Parties.

Property Description:

[2] The subject property is a 30 storey office tower commonly known as Encana Place, constructed in 1979 at 150 9 AV SW, in downtown Calgary. The property includes 375,841 square feet (sf.), of office space, and 442 sf. of main floor retail space, for a total of 376,283 sf.; plus 50 underground parking stalls. The property is currently assessed based on the income approach to value, using typical 2012 assessment parameters for a Class A- quality office building in the DT1 economic zone. The total assessment amount is \$102,900,000, or approximately \$273 per square foot (psf.).

Issues:

[3] The Complainant indicated the assessment amount as the matter of concern on the Complaint Form.

[4] The Complainant clarified that in their view, the current assessment amount exceeds market value; and further, that equity would be achieved if the subject property was assessed using typical 2012 assessment parameters for a class B quality office building in the DT1 economic zone.

Complainant's Requested Value: \$87,530,000, or approximately \$232 psf.

Board's Finding in Respect of Each Matter or Issue:

The Board finds that based on the evidence, the current assessment amount for the subject property is a reasonable estimate of market value; and further, that assessment equity has been achieved for the subject property by calculating the assessment using typical 2012 value parameters for a class A- quality office building in the DT1 economic zone.

Complainant's Position on Market Value

[5] In terms of market value, the Complainant argued that the subject property was constructed in 1979, and has had only one occupant since April 1, 1982. That occupant is expected to vacate the building late in 2012 or early in 2013. At that time, the Complainant suggested that due to its size, the building will likely need to be retrofitted to accommodate multiple tenants. In this regard, significant capital investment will be necessary to bring the building up to current standards, and to meet the expectations of new prospective tenants.

[6] In order to estimate the impact on current market value, the Complainant introduced the example of the former EUB building located at 640 5 AV SW, that was recently retrofitted in order to meet market expectations. The EUB building was also constructed in 1979 and, similar to the subject, has had only one occupant until December 2010.

[7] The EUB building owner invested approximately \$10.9 million or \$43.16 psf., upgrading and retrofitting the building, in order to make it "marketable" to new prospective tenants. Based on these costs, the Complainant estimated that the subject property would require investment of approximately \$16 million to accomplish the same purpose, (page 33 of Exhibit C1).

[8] The Complainant argued that this demonstrates that there is increased investment risk associated with the subject property, which impacts negatively on current market value.

[9] When the estimated cost of the retrofit is deducted from the current assessment amount, the result is \$86,900,000, which is very close to the requested equitable assessment amount of \$87,530,000.

Respondent's Position on Market Value

[10] The Respondent submitted a list of seven sales of downtown office buildings (page 77 of Exhibit R1), that transacted between July 2010, and August 2011. The unit rates for the seven sales exhibit a range of values from \$162 psf., to \$391 psf. Two of the sales were in the DT1 economic zone, a Class C quality building for \$391 psf., and Class B- building for \$274 psf.; values which support the \$273 psf. assessed value of the subject property.

[11] The Respondent conceded that three of the buildings sold after the July 1st valuation date on August 23, 2011, two were court ordered sales, and two were non-arms length transactions. However, they still constitute good indicators of the market value of downtown office buildings.

[12] The Respondent also submitted an Alberta Data Search report (page 78 of Exhibit R1), on the court ordered sale of another office building located at 903 8 AV SW, that transferred on April 1, 2010 for \$298 psf. In addition, the Respondent included a Land Titles transfer, and an Affidavit of Value document (page 80 and 81 of Exhibit R1), related to the June 2012 re-sale of this same property for \$473 psf.

[13] The Respondent argued that the court ordered sales in particular, are valid indicators of market value, because the process requires the purchase price to reflect fair market value. In any event, they would represent a floor for market value.

[14] The Respondent also noted that there was no comparable sales evidence before the Board that would support the unit value assessment of \$232 psf., requested by the Complainant.

[15] The Respondent suggested that the Complainant was merely speculating about the investment necessary for the subject property to compete in the market place after the current occupant vacates the building.

[16] As per the decision of Madam Justice R. E. Nason in Altus Group v. Calgary (Composite Assessment Review Board), 2011 ABQB 739, (Exhibit 2(a)); the Respondent suggested that the Board should not rely on what may occur in the future, but rather on the fact that the subject property was entirely leased with no vacancy on both December 31, 2011; and on the valuation date of July 1, 2011.

Complainant's Position on Assessment Equity

[17] In support of the equity issue, the Complainant provided an analysis of a group of nine office buildings located in the DT1 economic zone, that they considered to be very similar to the subject property with respect to the key factors, components, and variables used by the Respondent to assign a quality class to office tower properties, (page 42 of Exhibit C1).

[18] The Complainant argued that the nine buildings are not just similar to the subject, but that all are in fact superior, at least in terms of location within the DT1 economic zone, the plus 15 connections, and the net rentable retail space.

[19] The Complainant noted that all nine of the comparable properties were assigned a quality class B by the assessor, and assessed based on the following typical 2012 quality class B value parameters. The contrasting 2012 quality class A- value parameters used to calculate the current assessment for the subject property are shown in **bold**.

- Office Rental Rate \$19.00 psf. (**\$20.00 psf.**)
- Office Vacancy Rate 5.00% (**5.00%**)
- Office Operating Cost Shortfall \$17.00 psf. (**\$18.00 psf.**)
- Retail Rental Rate \$16.00 psf. (**\$32.00 psf.**)
- Retail Vacancy Rate 8.00% (**5.00%**)
- Retail Operating Cost Shortfall \$20.00 psf. (**\$20.00 psf.**)
- Non-Recoverable Cost Allowance 2.00% (**2.00%**)
- Capitalization (Cap) Rate 7.50% (**6.75%**)
- Parking Rate \$400.00 per stall per month (**\$475.00**)
- Parking Vacancy Allowance 2.00% (**2.00%**)

[20] Based on the foregoing analysis, the Complainant concluded that the current assessed value does not meet the requirement for a fair and equitable assessment. In order to achieve equity, the Complainant requested that the assessment amount be recalculated, using the B class quality value parameters to a total of \$87,530,000.

[21] The Complainant submitted court decisions in support of the use of equity for valuation purposes: Mountain View (County) v. (Municipal Government Board), [2000] A.J. No. 1042, 2000 ABQB 594, (Exhibit C2 (a) Tab 2), and Bramalea Ltd. v. British Columbia (Assessor of Area #9- Vancouver) (1990) 76 D.L. R. (4th) 53 (B.C.C.A.), (Exhibit C2 (a) Tab 1).

Respondent's Position on Assessment Equity

[22] In response to the Bramalea and Mountain View decisions cited by the Complainant, the Respondent relied on the decision of the BC Supreme Court in Bentall Retail Services Inc. v. Vancouver Assessor, Area 09, 2006, Carswell BC 582. In reviewing the Bramalea decision, the BC Supreme Court held that:

"Bramalea does not stand for the proposition that the taxpayer is entitled to the lower of a specific equitable value, or a specific actual value. There is a range of values which might constitute equitable value. Bramalea stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside the range of values that is equitable, that an adjustment is required."

[23] The Respondent argued that: quote, "For equity to even be considered, it must first be shown that the assessment is not within the range of market value, and it is respectfully submitted that the Complainant has failed to demonstrate that" end quote, (page 5, clause 22 of 30, Exhibit R2).

Board's Decision: The assessment is confirmed at \$102,900,000.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF November 2012.



T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2 (a) and (b)	Complainant Legal Brief
3. R1	Respondent Disclosure
4. R2	Respondent Legal Brief
5. R2 (a)	Nation Decision 2011 ABQB 739

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.*

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<i>Decision No. 2317/2012-P</i>		<i>Roll No 068106293</i>		
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Commercial	Downtown Office	Assessment Class/ Amount	Market Value/Equity