



## ASSESSMENT REVIEW BOARD

Churchill Building  
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Edmonton AB T5J 0G9  
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### NOTICE OF DECISION NO. 196/11

RALPH BEREZAN, 1362353 ALBERTA LTD.  
210 - 8399 200 STREET  
LANGLEY, BC V2Y 3C2

The City of Edmonton  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on September 29, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10006543	4445 Calgary Trail NW	Plan: 0321729 Unit: 1	\$32,902,000	Annual New	2011

#### Before:

Patricia Mowbrey, Presiding Officer  
Brian Carbol, Board Member  
Mary Sheldon, Board Member

**Board Officer:** Jason Morris

#### Persons Appearing on behalf of Complainant:

Katherine Bienias  
Ralph Berezan, 1362353 Alberta Ltd.

#### Persons Appearing on behalf of Respondent:

James Cumming, Assessor, City of Edmonton  
Tanya Smith, Law Branch, City of Edmonton

## **BACKGROUND**

The subject property is an 8-floor office building of approximately 150,000 square feet located on Calgary Trail South just north of Whitemud Drive. It was constructed in 1981.

## **PRELIMINARY MATTERS**

### **Preliminary Issue #1 - Disclosure**

The Respondent raised a preliminary issue with regard to the Complainant's disclosure. The parties largely agreed on the facts. Certain rent roll information had been attached to the complaint form. In April of 2011, what was described as "highlights" of an appraisal of the property performed in March of 2010 were forwarded by email to the Respondent, and formed the basis of conversations between the Complainant and the Respondent. That information was not sent to the Assessment Review Board at that time. The Complainant then disclosed the entirety of the March 2010 appraisal on August 29, 2010. The deadline for the Complainant's disclosure included in the notice of hearing was August 15, 2010. The city also noted that the disclosure documents provided did not include expected witness testimony or time estimates.

The Respondent indicated that after having received the "highlights" information from the Complainant, the City's representative asked for the entire appraisal document. The Complainant indicated that he did not receive any request of that nature.

The Respondent argued that in accordance with sections 8 and 9 of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009, because the disclosure was late and because it did not include the required information, it could not be accepted as evidence.

The Respondent further argued that because the Complainant had no information, the Board should accept the recommendation of the city.

The Complainant argued that it was within the discretion of the board to choose to accept evidence, and argued that the purpose of the hearing is to reach a fair assessment of the property, not solely to abide by procedural requirements.

### **Relevant Legislation, *Matters Relating to Assessment Complaints Regulation*, AR 310/2009**

#### **Disclosure of evidence**

**8(1)** In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

**(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:

- (a) the complainant must, at least 42 days before the hearing date,
  - (i) 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 sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

- (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

...

#### **Failure to disclose**

**9(1)** A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

**(2)** A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

### **Decision on Preliminary Issue of Disclosure**

The Board finds that the materials submitted by email in April 2010 cannot be accepted as evidence because they were not sent to the Assessment Review Board as required 8(2)(a)(i) of MRACR. The Board finds that the materials disclosed on August 29, 2010 cannot be accepted as evidence because they were not sent to the parties prior to the deadline of August 15, 2010 as required by section 8(2)(a)(i) of MRACR. Under section 9(2) of MRACR neither of those two pieces of information can be accepted as evidence.

With regard to the information that was attached to the Complainant's complaint form, the Board notes that this information was provided to the Respondent and to the Board well in advance of the disclosure deadline for submission. The Board considers the arguments made by the Respondent that the failure to include expected witness statements, written arguments, and summary of testimonial evidence, is also in violation of section 8(2)(a)(i) of MRACR. However, given the evidence that there has been correspondence between the parties with regard to the issues in dispute, the Board finds that it would be in accordance with natural justice to allow this evidence to be admitted.

### **Preliminary Issue #2 – Recommendation**

The Respondent indicated that after having reviewed the rental rates of similar properties in the area, the assessment of the subject property should more correctly have used a rental rate of \$16, not \$17. As such, the Respondent was recommending a reduction in the assessment of the subject property from \$32,902,000 to \$31,283,000.

The Complainant indicated his agreement with this recommendation.

### **LEGISLATION**

#### ***Municipal Government Act, RSA 2000, c M-26***

s 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.

### **DECISION**

Roll Number	Original Assessment	New Assessment
10006543	\$32,902,000	\$31,283,000

In consideration of the recommendation of the Respondent and the Complainant's agreement with that recommendation, the Board finds that an assessment of \$31,283,000 for the subject property would be fair and equitable.

Dated this 29<sup>th</sup> day of September, 2011, at the City of Edmonton, in the Province of Alberta.

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Patricia Mowbrey, Presiding Officer

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*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.*

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cc: 1362353 ALBERTA LTD