

## Edmonton Composite Assessment Review Board

**Citation:** Altus Group v The City of Edmonton, 2013 ECARB 00802

**Assessment Roll Number:** 9971413

**Municipal Address:** 10203 - 184 Street NW

**Assessment Year:** 2013

**Assessment Type:** Annual New

Between:

**Altus Group**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Steven Kashuba, Presiding Officer**  
**Martha Miller, Board Member**  
**Mary Sheldon, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the composition of the Board. The members of the Board did not report any bias or conflict of interest with respect to this file.

[2] At the outset of their presentation, the Respondent requested that the Board not consider pages 28-38 and paragraph #2 on page 42 of their submission in Exhibit R-1. In support of this request, the Respondent presented Exhibit R-2 containing an excerpt from *Hearings Before Administrative Tribunals* which states, in part, that "*It is important, however, for agencies to realize that pre-filings are merely collections of paper. Absent consent, they do not become evidence until entered in evidence, explained or otherwise dealt with by a participant or witness at the hearing.*" The Board accepted the Respondent's request and excluded the noted sections.

[3] Later in the hearing, the Respondent lodged an objection to the contents of the Complainant's rebuttal document, Exhibit C-2. It was their position that several pages within the rebuttal document were no longer relevant because these were in response to specific sections contained within Exhibit R-1, which were no longer before the Board.

[4] The Board recessed to consider the request of the Respondent and ruled that pages 5-16 of the Complainant's rebuttal document should not be considered as they were not in direct response to the evidence presented by the Respondent.

## **Preliminary Matters**

[5] The parties agreed that, where relevant, evidence, arguments and submissions would be carried forward from Roll #9971414 to this file.

## **Background**

[6] The subject is a large warehouse with a building area of approximately 50,964 square feet and a main floor office area of 11,165 square feet. Built in 1998, the subject is located in the Morin Industrial Neighborhood of Edmonton. The subject has a site coverage of approximately 36% and the building is in average condition. The current assessment of the subject is \$6,367,000.

## **Issue**

[7] Is the assessment of the subject correct when taking into consideration its sale price?

## **Legislation**

[8] ***The Municipal Government Act, RSA 2000, c M-26, reads:***

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

## **Position of the Complainant**

[9] In support of the request for a reduction in the assessment amount of the subject, the Complainant submitted Exhibit C-1, Appellant Disclosure and Witness Report of the Property Owner, consisting of 107 pages, and Exhibit C-2, Appellant Rebuttal and Witness Report of the Property Owner, consisting of 26 pages.

[10] The subject sold on February 4, 2009 as part of the sale of a three-property complex (this and two adjacent properties). The total price for the three-property complex was \$15,000,000. When time adjusted by a factor of 1.0276 to the valuation date of July 1, 2012, the sale price for the complex is \$15,648,000.

[11] At the time of sale, a value for each of the three properties was not established by the seller and purchaser—the price was \$15,000,000 for the complex. By dividing the overall value by the overall square foot area of the complex, the Complainant arrived at a time-adjusted value

of \$92.83 per square foot for the entire complex. When this value is applied to the area of the subject of 50,966 square feet, the resulting time-adjusted sale price for the subject is \$4,731,000.

[12] The Complainant noted that this time-adjusted sale price for the subject of \$4,731,000 is well below the subject's current assessment of \$6,637,000.

[13] In 2012, the Composite Assessment Review Board (CARB) established the market value of the subject at \$4,283,000 (Exhibit C-1, pages 92-98). By applying a time adjustment factor of 1.0324 to this amount, the resulting value is \$4,421,769. The Complainant stated that this would indicate that the assessment of \$6,637,000 is too high.

[14] An appraisal of the subject was completed in November of 2008. A value for the complex of \$15,800,000 was determined to be appropriate (Exhibit C-1, pages 19-86). By applying a time-adjustment of 1.0276 to this figure, an amount of \$16,236,000 is derived. This translates to \$96.31 per square foot. Applying this amount to the floor area of the subject indicates a value of \$4,908,500 (Exhibit C-1, page 11).

[15] The Complainant also submitted information dealing with relevant legislation, the role of mass appraisal in an assessment complaint, the onus of proof and the balance of probabilities standard, and the element of fairness and equity (Exhibit C-1, page 99-107).

[16] By way of rebuttal, the Complainant submitted an Appellant Rebuttal and Witness Report of the Property Owner (Exhibit C-2, 26 pages).

[17] As outlined under the heading **Procedural Matters** the Respondent lodged an objection to the contents of the Complainant's rebuttal document. It was their position that several pages within the rebuttal document were not proper rebuttal material since that information was not in response to material contained in the Respondent's evidence.

[18] Since the Board's decision was that only pages 1-4 and pages 17-26 of Exhibit C-2 would be considered, the Complainant elected to make no further submission or comment about the rebuttal document.

[19] The Complainant summarized their position by submitting that the sale of the subject provides the best evidence of its market value. Since the sale of the subject, time-adjusted to the valuation date of July 1, 2012, is \$4,731,000, the Complainant argued that this is the amount at which the subject should be assessed.

[20] In the opinion of the Complainant, the request for a reduction in the assessment amount is also supported in the appraisal report (Exhibit C-1). The appraisal report sets the market value of the three parcels, one of which is the subject of this appeal, at \$15,800,000. By taking this sales amount and dividing it by the total floor area of each of the parcels and establishing a time-adjusted sales value per square foot, the resulting value of \$4,908,500 for the subject indicates that the subject is over-assessed.

### **Position of the Respondent**

[21] In support of the request to have the Board confirm the 2013 assessment of the subject, the Respondent submitted the following three documents: Exhibit R-1 (Property Tax Account) 54 pages, Exhibit R-2 (Administrative Law II) 4 pages, and Exhibit R-3 (Notice of CARB decision) 7 pages.

[22] As discussed under the heading **Procedural Matters** , the Board accepted the Respondent's request that pages 28-38 and paragraph 2 on page 42 of Exhibit R-1 not be considered.

[23] Turning to sales comparables, the Respondent presented four comparables (Exhibit R-1, page 22) in support of the assessment.

[24] The Respondent noted that three of the comparables are located in Industrial Group 17, in contrast to the location of the subject in Industrial Group 2. This Industrial Group 2 is a superior location as the subject is located on a major road. In response to questioning, the Respondent noted that three of the comparables are newer than the subject.

[25] The Respondent noted that the range of time-adjusted sale prices per square foot of the comparables is from \$126.68 to \$151.57. In the opinion of the Respondent, this evidence supports the assessment per square foot of the subject at \$124.93.

[26] As for the Complainant's evidence, the Respondent asked the Board to place little weight upon the sale of the subject. In the opinion of the Respondent, the sale was part of a multiple parcel sale which resulted in a sale price below market value.

[27] In the opinion of the Respondent, transactions which feature multiple parcel sales present special considerations and should be researched and analyzed prior to being used for valuation purposes. This is especially true if the multiple parcel complex is not operated as a single economic unit. In this case, the complex of which the subject is a part is not operated as a single economic unit.

[28] In particular, the Respondent noted that, at the time of sale, the complex was encumbered with below market leases. While the entire 168,520 leasable area of the complex was leased, of that leasable area, 74,910 square feet was leased at below market rates of \$4.85 per square foot to February, 2011.

[29] In support of this position (that below market leases have a negative effect on a sale price and reflect the leased fee estate), the Respondent referred to a CARB decision, *Altus Group v. The City of Edmonton*, 2012 ECARB 000598 (Exhibit R-1, page 40).

[30] Failing to consider an adjustment in a case where the sale of a property is encumbered by a below market lease meant that the requirement to value the property at the fee simple valuation process was being ignored.

[31] The Respondent pointed out that 74,910 square feet of the complex was leased at \$4.85 per square foot, whereas the appraisal report presented by the Complainant stated that a market rent would be \$7.75 to \$8.25 per square foot.

[32] In the opinion of the Respondent, the fact that the entire area 168,520 square feet of the complex was fully leased at the time of sale and 74,910 square feet was leased at below market lease rates, brings into question the reliability of using the sale of the subject to reflect its true market value.

[33] The Respondent concluded their presentation by pointing out that the Complainant did not present any sales comparables, other than the sale of the complex of which the subject is a

part. In this regard, the Respondent submitted that the Board should not rely upon the sale of a property that was part of a multiple parcel sale.

[34] In contrast, the Respondent submitted that the Board can rely upon the four sales comparables presented by the Respondent as reflecting the market value of the subject.

[35] For these reasons, the Respondent requested that the Board confirm the assessment of the subject at \$6,367,000.

### **Decision**

[36] It is the decision of the Board to confirm the assessment of the subject for 2013 at \$6,367,000.

### **Reasons for the Decision**

[37] The Board places considerable weight upon the Respondent's four sales comparables. Although three of the four comparables are located in an inferior neighborhood grouping, those same three are superior in age to the subject. When the appropriate upward and downward adjustments for these characteristics are made, the range of time-adjusted sales prices per square foot fully support the current assessment of the subject.

[38] When considering the market value of the subject, the Board places little weight upon the Complainant's position that the sale of the subject in 2009, adjusted to the valuation date of July 1, 2012, results in a fair determination of its market value.

[39] With respect to the sale of the subject as part of a multiple parcel sale, the Board accepts the position of the Respondent that the precise selling price of the subject was not established at that time.

[40] The subject sold in 2009 as a part of a multiple parcel sale for \$15,000,000. The definitive selling price of the subject was not established. Since the sale price of each parcel was not apportioned, neither the seller nor the purchaser, the Board cannot rely upon the Complainant's submission of the sale of the subject in 2009 as reflecting the true market value.

[41] The Board also finds that the Complainant's method of calculating a per square foot value, which is the same for each parcel comprising the complex, is flawed. In this case, the Complainant assigned the same square foot value to the subject as to the other two parcels even though the subject exhibits some differing characteristics.

[42] The Board also finds that at the time of sale the entire 168,250 square feet of leasable area in the complex was leased but that 74,910 square feet of that amount was subject to below market lease rates.

[43] Since the complex, of which the subject is a part, is encumbered by below-market leases remaining in place for a fairly lengthy period of time, the Board accepts the Respondent's argument that it is the leased fee estate that sold and not the fee simple estate. As a result, the Board cannot rely upon the encumbered sale which occurred in 2009 to reflect the market value of the subject.

[44] Little weight is placed by the Board upon the appraisal report submitted by the Complainant. Two of the comparables, relied upon in the sales comparison approach contained in that appraisal, occurred outside of Edmonton and do not necessarily reflect market conditions of the subject in a specific neighborhood.

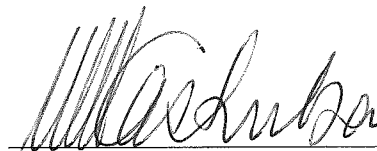
[45] It is for these reasons that the Board concludes that the assessment of the subject should not be disturbed. The Board confirms the 2013 assessment at \$6,367,000.

**Dissenting Opinion**

[46] There was no dissenting opinion.

Heard commencing September 19, 2013.

Dated this 11<sup>th</sup> day of October, 2013, at the City of Edmonton, Alberta.

A handwritten signature in black ink, appearing to read 'Kashuba', is written over a horizontal line.

Steven Kashuba, Presiding Officer

**Appearances:**

Adam Greenough  
for the Complainant

Suzanne Magdiak  
Tanya Smith  
for the Respondent

*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.*