# Edmonton Composite Assessment Review Board

**Citation: Altus Group v The City of Edmonton, 2014 ECARB 00642**

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| **Assessment Roll Number:** | 2194751 |
| **Municipal Address:** | 14635 121A AVENUE NW |
| **Assessment Year:** | 2014 |
| **Assessment Type:** | Annual New |
| **Assessment Amount:** | $4,228,500 |

Between:

**No 362 Cathedral Ventures Ltd represented by Altus Group**

Complainant

and

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

Respondent

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**DECISION OF**
**Petra Hagemann, Presiding Officer**
**Brian Frost, Board Member**
**Darryl Menzak, Board Member**

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## Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

## Preliminary Matters

[2] The Complainant advised that specific evidence regarding comparable leases was confidential information and fell under Freedom of Information and Privacy (FOIP). The Complainant asked that the Board seal the evidence as it related to those leased properties. The Respondent did not object.

[3] The Board agreed that pages 37, 38, 39 and 40 of the Complainant's Brief, (Exhibit C-1) would be sealed upon conclusion of the hearing.

## Background

[4] The subject property is a 124,973 square foot (sq ft) level site upon which is situated a 44,342 sq ft warehouse in average condition. There is 5,426 sq ft of main floor finished office space 4,984 sq ft of second flood finished office space. The building was built in 1965; site coverage 31.5%. The subject property is situated in the Dominion Industrial neighborhood of northwest Edmonton at 14635 – 121A Ave NW.

[5] The assessment was completed using the Direct Sales Comparison Approach to Value.

## Issues

[6] Is the assessment too high given the recent sale of the property for an amount less than the 2014 assessment?

[7] Should the Income Approach to Value have been utilized in calculation of the assessment of the subject property?

## Position of the Complainant

[8] The Complainant filed the complaint on the basis that the assessor had failed to recognize fair market value in the assessment of the subject property. The property was purchased by the owner in October 2010 for $2,550,000. Using the City of Edmonton Time Adjustment Factors, the Time Adjusted Sale Price (TASP) of the subject property, effective the July 1, 2013 valuation date, was $3,336,930.

[9] In support, the Complainant brought forward *697604 Alberta Ltd v Calgary* (City) [2005] A.B.Q.B. No.512 in which Madam Justice Acton referred to *Re Regional Assessment Commissioner, Region No. 11 and Nesse Holdings Ltd. et al.* 1984 CanLII 1857 (ON SC) which states:

> *"I think that generally speaking the recent sales price, if available…… is in law and, in common sense, the most realistic and most reliable method of establishing market value".*

Justice Acton then concluded:

> *"In my view, the foregoing errors demonstrate a failure on the part of the MGB to reasonably apprehend and apply the evidence before it to the principles of valuation set out in the applicable legislation. In particular, the MGB unreasonably refused to consider evidence of a recent sale that fell squarely within the statutory definition of market value."*

[10] Also cited was *Nesse Holdings Ltd. et al.* 1984 CanLII 1857 (ON SC) which states:

> *"The other methods of establishing market value such as recent sales of comparables, capitalization of income and depreciated replacement cost, are only hypothetical and indirect means of getting to the market value and are obviously less valuable than an actual recent free sale of the subject property."*

[11] The Complainant also brought forward the definition of market value from the Municipal Government Act.

[12] On the basis of sale price, the Complainant asked that the Board reduce the 2014 assessment to $3,336,930.

[13] The Complainant then addressed the Direct Sales Comparison Approach as used in the assessment, stating that the property is not owner occupied and would thus be valued by an

investor using the Income Approach to Value. The Complainant went on to quote "The Appraisal of Real Estate, Second Canadian Edition" (AIC), International Association of Assessing Officers (IAAO) and "Alberta Assessors' Association Valuation Guide "all of which supported his position that the Income Approach would best represent market value for the subject property.

[14] The Complainant stated the subject property was fully leased to a new tenant for $6.65 per sq ft. effective May 2011. The Complainant provided data on leases of similar buildings in the area showing they lease for between $4.00 and $6.50 per sq ft as well as third party reports from Avison Young and Colliers that suggested that the average of all industrial leases in Edmonton's northwest sector was $9.00 per sq ft for buildings of comparables size to the subject property and that they ranged between $6.25 and $9.50 per sq ft. The Complainant advised that due to age and condition, the lease rate for the subject property would fall near the low end of the range. The Complainant concluded that the market rent for the subject property should be $7.00 per sq ft.

[15] Using the same third party reports, the Complainant concluded that the appropriate vacancy rate to be used in the valuation would be 3.0%, operating costs should be $3.00 per sq ft, (for calculation of vacancy shortfall) and that a structural allowance of 2% would be appropriate.

[16] In support of the 8.00% capitalization (cap) rate used in the valuation, third party sale reports were provided for five comparable properties. The indicated cap rates ranged between 7.31% and 8.55%. Based on those comparables, the Complainant concluded that the Income Approach would result in a market value for the subject property of $3,392,500.

[17] The Complainant quoted *Bramalea Ltd. v British Columbia (Assessor for Area 9 (Vancouver))* (B.C.C.A) [1990] B.C.J. No. 2730 which stated in part that a taxpayer has the right to the lesser of an equitable assessment or market value. The Complainant also referred to the *Mountain View (County) v. Alberta (Municipal Government Board)*, [2000] A.J. No. 1042, 2000 ABQB594 wherein it was stated in part that if an assessment is greater than market value it should be reduced. Other Board orders that resulted in similar conclusions were also referenced.

[18] The Complainant stated that notwithstanding the income approach to value, which indicated the market value of the subject property was $3,392,500, the correct value according to two Queen's Bench decisions and an MGA definition was the sale of the subject property, time adjusted to the valuation date, of $3,336,930.

[19] The Complainant asked that the Board reduce the 2014 assessment for the subject property to $3,336,930.

## Position of the Respondent

[20] The Respondent defended the assessment on the basis that while the International Association of Assessing Officers (IAAO) and the Appraisal Institute of Canada recognize that all three approaches are valid in mass appraisal and that each may be used in certain circumstances, the majority of office/warehouse sale transactions involved owner occupiers. The market has been very active for this type of property. Accordingly the Direct Sales Comparison approach is employed.

[21] The Respondent provided a table displaying the sale of four properties similar to the subject that occurred between September 2010 and May 2013. The Respondent's comparable sales ranged in year built from 1965 to 1979; in total building size from 32,247 sq ft to 44,650 sq ft; in site coverage from 28% to 53%; and in office component from 9.6% to approximately 24%. The time adjusted sale prices (TASP) ranged between $109 and $154 per sq ft. The Respondent concluded that the $95 per sq ft assessment of the subject property, built in 1965, with 44,342 sq ft of space, (26% of which is finished office) and 31% site coverage was well supported.

[22] The Respondent provided a table displaying the assessment of six properties similar to the subject. The Respondent's comparables ranged in year built from 1963 to 1972; in total building size from 38,369 sq ft to 44,853 sq ft; in site coverage from 25% to 39%; and in office component from 10.7% to approximately 24%. The assessments ranged between $98.09 and $108.77 per sq ft. The Respondent concluded that the $95 per sq ft assessment of the subject property was fair and equitable.

[23] The Respondent noted that the Income Approach as used by the Complainant can be subject to wide deviation with a minor adjustment in parameters, suggesting that had an $8.00 rent been applied, rather than $7.00, the value would have been $4,215,000, which would have supported the assessment.

[24] The Respondent defended the use of mass appraisal, in this and all industrial assessments, on the basis that 65% of industrial properties are owner occupied and their values are determined, by buyers and sellers, on the basis of direct sales comparison. It is only logical, the Respondent concluded, that their assessments also be so determined.

[25] The Respondent asked that the Board confirm the 2014 assessment of the subject property of $4,228,500.

## Decision

[26] The Board confirms the 2014 assessment of 4,228,500.

## Reasons for the Decision

[27] The Board first considered the sale of the subject property. In regarding the third party report of the sale, the Board noted that evidence pointed to a change in the property status between the purchase date and the valuation date. At the time of purchase, the property was leased to a single tenant with one year left in the term. The net operating income was reported as being $216,185. The report stated the purchaser had already arranged for a new tenant upon expiration of the lease, which, on the basis of evidence given, produces an estimated net operating income of $262,338. The Board concluded this one factor alone may have influenced the purchaser's motivation, and brought question into whether the sale was truly at market. The Board further notes that no market sales evidence was presented by the Complainant in support of the sale price beyond the sale itself.

[28] The Board then considered the income approach as used by the Complainant. The income approach is dependent on the use of typical lease, vacancy and expense rates, all of which are dependent on the accuracy of market data. Then a cap rate must be derived which again is dependent on the accuracy of market data. A small deviation in any of the variables can affect

the valuation. The Board noted the Respondent's demonstration of how $1.00 per sq ft of increase in market lease rate could provide a value supportive of the assessment.

[29] The Board as well considered the Respondent's observation that the third of the Complainant's cap rate comparables occurred under duress while the fourth was a non arms length sale and that there was a wide deviation in site coverage between the fourth comparable and the subject property.

[30] The Board reviewed the Complainant's cap rate comparables and noted that their sale prices ranged between $76 and $110 per sq ft and averaged $99.20 per sq ft. This supports the subject property assessment of $95 per sq ft. The Board realizes however that the comparables' attributes were not analyzed.

[31] The Board considered the evidence put forward by the Respondent. The Board accepts that there was an age issue with two of the comparables and a site coverage issue with a third, however the Board also agrees with the Respondent's argument that in qualitative analysis as is the case with the Respondents Direct Sales Comparison Approach, differences can be considered in the overall analysis. The newer properties demonstrated sale prices per square foot of $154 per sq ft and $137 per sq ft required downward adjustment while the property with greater site coverage, at $109 per sq ft requires an upward adjustment. All suggested the $95 per sq ft assessment of the subject property was fair.

[32] The Board considered the equity comparables tabled by the Respondent and was satisfied that a tight range of $98.09 per sq ft to $108.77 per sq ft resulted in support of the $95 per sq ft assessment as being equitable.

**Dissenting Opinion**

[33] There was no dissenting opinion.

Heard June 23, 2014.
Dated this 7th day of July, 2014, at the City of Edmonton, Alberta.

Petra Hagemann, Presiding Officer

**Appearances:**

Adam Greenough, Altus Group
for the Complainant

Marty Carpentier, Assessor
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.*

# Appendix

## Legislation

**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.

## Exhibits

C-1 – Complainant's Brief (67 pages)
R-1 – Respondent's Brief (55 pages)