

NOTICE OF DECISION NO. 0098 148/12

Altus Group
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

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 August 7, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3941457	10235 184 STREET	Plan: 9323361 Lot: 1A	\$8,238,500	Annual New	2012

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.

cc: YORK REALTY INC

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-001028

Assessment Roll Number: 3941457
Municipal Address: 10235 184 STREET
Assessment Year: 2012
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Dean Sanduga, Presiding Officer

Jasbeer Singh, Board Member

Mary Sheldon, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. In addition, the Board members indicated they had no bias on this file.

Background

[2] The subject property is a large warehouse on a 5.3 acre (231,639 square feet) industrial land zoned 'IM' in Morin Industrial area in NW Edmonton. The warehouse with a main floor area of 75,370 square feet was built in 1996 and has been assessed in 'average' condition. The site coverage on the parcel of land is 33%. The total 2012 assessment for the land and the improvements is \$8,238,500.

[3] The subject property was sold in February 2009 as one part of a package comprised of three adjoining properties (10203 – 184 Street, 10235 – 184 Street and 18330 – 102 Avenue). The sale price for the entire package, comprised of the three properties with a total main floor area of 168,575 square feet, was \$15,000,000. The sale price was not explicitly apportioned to the three components of the package.

Issue(s)

[4] Is the 2012 assessment for the subject property fair and equitable?

Legislation

[5] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

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

[6] The Complainant filed this complaint on the basis that the subject property assessment of \$8,238,500 was inequitable and in excess of market value. In support of this position, the Complainant presented a 99-page assessment brief (Exhibit C-1) and a 27-page document rebutting the Respondent’s evidence to the Board (Exhibit C-3). The Complainant also provided a separate, more legible copy of a November 2008 appraisal report that was also included in the assessment brief. This 69-page document was accepted as Exhibit C-2.

[7] The Complainant advised the Board that the subject property was sold for \$6,706,510 in February 2009 and the time adjusted sale price (TASP) on the valuation date (July 01, 2011), using the city’s time adjustment factors was \$6,334,299 or \$84.04 per square foot. The Complainant explained that the best indication of market value was the sale of the subject property (Exhibit C-1, page 8).

[8] The Appraisal carried out in November 2008 had indicated a market value of \$15,800,000 for the entire package. Based on this appraisal value, the time adjusted market value of the subject has been shown to be \$ 6,672,128 or \$88.52 per square foot (C-1, page 9).

[9] The Complainant claimed that this appraisal had relied on direct sales comparison approach as well as the income approach to arrive at the indicated market value.

[10] The Complainant also provided a copy of the Board decision in respect of a 2010 assessment appeal that had accepted the Complainant's argument, and lowered the assessment value on the basis of the subject's sale in February 2009 (C-1, page 89).

[11] In response to questions by the Respondent and the Board, the Complainant agreed that each of the three components of the sale package had separate tax roll numbers, legal descriptions and if required, could be sold in the market as individual entities.

[12] During questioning by the Respondent and the Board, the Complainant agreed that there were differences among the components of the sale package and no adjustments had been applied, but argued that the differences in terms of land area, main floor area and site coverage were nominal, would offset each other and not cast any significant shadow on the Complainant's apportioning of the package sale price on the basis of the main floor area of the components (C-1, page 8).

[13] The Complainant presented a 27-page rebuttal document to the Board (C-3) and argued that many of the sales comparables provided by the Respondent were too seriously flawed to serve as good comparables in this instance. Two of the properties had Federal Government as significant tenants that boosted the market value of these properties because of the quality of tenants, lease rates and tenures. The Complainant argued that the sales of these properties were unusual and should not be used as representative of typical market valuations (C-3, page 2).

[14] The Complainant cited third-party independent reports (C-3, pages 3-22) to highlight the premium rental rates paid on the Federal Government leases that boosted the sale price of the concerned properties. This fact makes such sales atypical and not representative of the market. The Complainant demonstrated this aspect by showing the SAR (Sales to Assessment Ratios) as high as 189.6% (C-3, page 2).

[15] The Complainant pointed out that two of the other sales comparables provided by the Respondent (#3 located at 9330 – 45 Avenue and #5 located at 7612 – 17 Street) had significant amounts of equipment and upgrades that added value to the property. Although the City does not treat this as additional value and discount the transaction price to arrive at the true value of the building improvements, the market does acknowledge the value and prices the property accordingly. The Complainant argued that these two comparables must also be excluded from the Board's consideration (C-3, page 2).

[16] The Complainant stressed that in view of the actual sale of the subject property, its time adjusted sale price was the best indicator of its market value and any assessment value higher than this would make it inequitable and unfair. Based on a time adjusted sale price of \$84.04 per square foot, the Complainant requested that the 2012 assessment be reduced to \$6,334,000 (C-1, page 8).

Position of the Respondent

[17] The Respondent presented a 37-page assessment brief (Exhibit R-1) and a 44-page law & legislation brief (Exhibit R-2) to the Board. The assessment brief included seven sales comparables and six equity comparables that support the subject's 2012 assessment of \$8,238,500.

[18] The Respondent stated that all sales comparables, except one, had only one building on site, and were generally comparable in terms of building size, condition, location and main floor

finished office space. The time adjusted sales price in respect of these comparables ranged between \$109.55 and \$203.16 per square foot. The subject had been assessed at \$109.31, below the lowest value of the range.

[19] The Respondent provided a set of six equity comparables with assessment values ranging between \$115.19 and \$126.94. All these properties were in the NW industrial quadrant of the city, as was the subject, and showed substantial similarity with the subject in terms of age, site coverage, and main floor area. This clearly supported the subject's assessment at \$109.31 per square foot.

[20] The Respondent stated that the City relies on direct comparison approach in case of industrial warehouse properties as a large portion of these were owner-occupied and reliable rental rate data was not available.

[21] The Respondent stated that when the contents of the paragraph 4.6.3 from IAAO's 'Standard on Mass Appraisal of Real Property', quoted by the Complainant, were read in entirety, it supported the direct comparison approach as equally valid. The Respondent quoted from the Appraisal Institute's publication *'Also, income capitalization can be particularly unreliable in the market for commercial or industrial property where owner-occupants outbid investors.'* (R-1, page 23).

[22] The Respondent stated that the three properties included in the package (including the subject) that sold for \$15 million in Feb 2009, were quite dissimilar in major attributes like lot size, building size, site coverage, exposure and access. These all required adjustments but the Complainant had not done so. This raises questions about the purchase price allocation approach and the results that should not be relied upon.

[23] The Respondent stressed that the Complainant's appraisal report (C-2) could not be relied upon as, in the absence of the concerned appraiser, questions about the use of below market lease rates, effective ages of the comparable properties, treatment of properties with multiple buildings on site, and adjustments for location and age could not be adequately addressed.

[24] The Respondent contended that the mass appraisal methodology used by the City produced more equitable and reliable results and requested the Board to confirm the 2012 assessment of \$8,238,500.

Decision

[25] The decision of the Board is to reduce the 2012 assessment to \$6,334,000 as fair and equitable.

Reasons for the Decision

[26] The Board noted that both parties were in agreement that the subject property was sold, as one part of a three property package, in February 2009, for a total value of \$15 million.

[27] The Board also noted that;

- a. There was difference in the assessment value of \$8,238,500, as applied by the Respondent and \$6,334,000, as requested by the Complainant.
- b. These differing valuations resulted from the Respondent's use of the legislated mass-appraisal methodology based on the direct sales comparison approach and the Complainant's reliance on time adjusted sale price of the subject's February 2009 sale.
- c. The Complainant's approach ignored differences like area of the land parcel, building area, site coverage, exposure and access that exist in the three properties included in the sales package and could influence the valuation of each property component.
- d. The Respondent's approach ignored the February 2009 sale of the subject, although as a part of a bigger sales package.
- e. Many of the Respondent's questions regarding the Complainant's November 2008 appraisal report (C-2) were not adequately addressed, particularly;
 - i. The use of below market lease rates that would result in a lower income and thus lower valuation.
 - ii. The effective ages of the comparable properties.
 - iii. Treatment of properties with multiple buildings on site.
 - iv. Nature and extent of adjustment required for location and age of the comparables used in the appraisal and whether such adjustments were applied or not.

[28] Section 1(1)(n) of the *Municipal Government Act*, defines "market value" as 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.

[29] The Honourable Madam Justice L.D. Acton of the Court of Queen's Bench reaffirmed the concept of relying on the sale of the property itself in *697604 Alberta Ltd v. Calgary (City of)*, 2005 ABQB 512 at paragraph 24.

[30] The Board is satisfied that even if the allocation of the total package sale price to the individual three components could be further refined to better reflect the characteristics of each portion, the Complainant's use of a simplistic approach to apply the overall per unit price of the main floor area, to each of the components can, for the purpose of assessment valuation, be deemed fair and equitable.

[31] The Board noted significant issues with the Respondent's sales comparables, particularly the influence of atypical Federal government leases in two cases and the inclusion of substantial amounts of machinery and upgrades in two other cases. However, in view of the fact that the determining factor was the sale of the subject, the Board assigned little weight to the Respondent's sales and equity comparables or to the Complainant's November 2008 appraisal document.

[32] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board is satisfied that the Complainant's reliance on the February

2009 sale of the subject to arrive at the time adjusted unit value for assessment purposes was valid and consistent with the legislation as well as the case law mentioned herein.

[33] The Board reduces the 2012 assessment to \$6,334,000 based on the time adjusted sale price of \$84.04 per square foot.

Dissenting Opinion

[34] There was no dissenting opinion.

Heard commencing August 7, 2012.

Dated this 22nd day of August, 2012, at the City of Edmonton, Alberta.

Dean Sanduga, Presiding Officer

Appearances:

Walid Melhem
for the Complainant

Will Osborne
for the Respondent