



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON AB T5J 2R7
(780) 496-5026 FAX (780) 496-8199

NOTICE OF DECISION NO. 0098 600/10

Harley Court (2004) Ltd.
400 630 8 Avenue SW
Calgary, AB T2P 1G6

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 November 12, 2010, respecting a complaint for:

Roll Number 3263555	Municipal Address 10045 111 Street NW	Legal Description Plan: NB Block: 10 Lot: 38-40
Assessed Value \$29,846,000	Assessment Type Annual - New	Assessment Notice for 2010

Before:

Hatem Naboulsi, Presiding Officer
George Zaharia, Board Member
Judy Shewchuk, Board Member

Board Officer: Karin Lauderdale

Persons Appearing: Complainant

Todd Dear, Senior Legal Counsel
Michelle Pink, Property Manager

Persons Appearing: Respondent

Tracy Ryan, Assessor, City of Edmonton
Cameron Ashmore, Barrister & Solicitor, City of
Edmonton

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

The Respondent requested that the parties be sworn in or affirmed. The Complainant's and Respondent's witnesses were affirmed.

PRELIMINARY MATTERS

The agent who originally filed the complaint, and enumerated the issues to be dealt with, has had the agent authorization revoked, resulting in the property manager and the senior legal counsel

for the property owner handling the assessment complaint of the subject property. Consequently, the number of issues were reduced from the twenty-one listed on the original complaint to the current three.

The Respondent raised the concern that the “rebuttal document” (ultimately marked as Exhibit C-2) that had been filed in a timely manner with the Board, had not been filed as required with the Respondent. The hearing was adjourned briefly to allow the Respondent to review the “rebuttal document”. Upon resumption of the hearing, the Respondent stated that the rebuttal document could be entered as evidence and the hearing proceeded.

BACKGROUND

The subject property is a multi-storey office tower located in the Oliver neighbourhood at 10045 111 Street NW. The building has 138,464 square feet of leasable office space and there are 147 underground parking stalls. The building has been classed as a “B” building, but for the 2010 assessment year, the City has changed the class from “B” to “A”.

ISSUES

1. Is the assessment of the subject property in excess of its market value?
2. Are valuation parameters, including rent rate and building classification, applied by the assessor correct and equitable?
3. Is the subject property assessed in contravention of s.293 of Municipal Government Act and Alberta Regulation 220/04?

LEGISLATION

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

Duties of assessors

293(1) *In preparing an assessment, the assessor must, in a fair and equitable manner,*

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

(2) *If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

(3) *An assessor appointed by a municipality must, in accordance with the regulations, provide the Minister with information that the Minister requires about property in that municipality.*

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

1. The Complainant agrees that the income approach to establishing value of the subject property is appropriate since office properties such as the subject “trade in the market place based on their ability to produce income” (Exhibit C-1, page 11).
2. The Complainant takes exception to the change in building classification from “B” to “A”. Historically, this building has been classed as a “B” building, but for the 2010 assessment, the class was changed to “A”, despite the fact that there were no structural, cosmetic or other material changes (Exhibit C-1, page 11). The City is the only known source to classify the subject as an “A” class building in spite of the fact that market information, including leasing reports and property brochures continue to classify the subject as a “B” class building.
3. The Complainant submitted third party reports that identified the subject as a class “B” building. Colliers International included the subject with the Government District Class “B” buildings (Exhibit C-1, page 30). Cushman Wakefield included the subject with the 124th Street District Class “B” buildings (Exhibit C-1, page 36). Altus Insite included the subject with the Government District Class “B” buildings (Exhibit C-1, page 44).
4. In discussion with the Respondent, the Complainant was advised of five criteria to determine a building’s classification:
 - i. Default to last year’s classification unless the building is new construction,
 - ii. 3rd party report and information such as brokerage reports,
 - iii. Inclusion of significant renovations or building upgrades,
 - iv. Review of current and historical lease rates, and
 - v. Major re-development of the building’s location – such as new amenities in the area, etc.(Exhibit C-1, page 15).
5. It is the position of the Complainant that four of the five City’s own criteria were not met, with only the review of current leases being a point for consideration. There is one lease at \$23.50 per square foot causing the change in building classification, with even this criterion in question since it is the argument of the Complainant that the “Net Effective Rate” is actually only \$13.75 per square foot, well below the City’s applied \$18 per square foot typical rent for class “A” buildings.

6. As a class “B” building, the subject property would have a typical lease rate of \$15 per square foot applied to the rentable space to establish value. The \$18 per square foot typical lease rate applied to the subject as a class “A” building is inequitable (Exhibit C-1, page 11).
7. The Complainant alleges that the City increased the typical lease rate to be applied to the subject based on one 2009 lease with a face rate of \$23.50 per square foot, and as such, the City deemed the subject to be in line with other “A” class buildings. The property owner does not refute a face rate of \$23.50 per square foot, but argues that weight must be given to the tenant improvements required to achieve this face rate. In fact, the “Net Effective Rate” of \$13.75 per square foot is based on a discount rate of 10%. “In Total, \$725,747 in leasing inducements and \$139,308 in leasing commissions were provided to this tenant in order to secure a deal at this caliber” (Exhibit C-1, page 14).
8. The Complainant requested the Board to reduce the 2010 assessment to \$25,270,000.

POSITION OF THE RESPONDENT

1. The assessment of the subject property was determined using the “mass appraisal” methodology which involves the following process:
 - Properties are stratified into groups of comparable property,
 - Common property attributes are identified for each group, and
 - A uniform valuation model is calibrated for each group using market information incorporating the property attributes (Exhibit R-1, page 3).
2. The suburban office inventory is divided into seven market areas as identified by the Real Estate Community, the subject being located in the 124th Street market area. Within these market areas, the buildings are classed according to “A”, “B”, and “C” (Exhibit R-1, page 11).
3. The City collects income information annually from property owners to determine typical values such as rental rates, expense ratios, and vacancy rates, etc. that would be applied to a property to predict assessed values (Exhibit R-1, page 11). In response to the Respondent’s request for information (RFI), the owner’s representative submitted information that included rent roles, and revenue and expense statements (Exhibit R-1, page 26 – 34).
4. It was determined, based on the rental information provided by the owner, that the subject property was capable of generating rents equivalent to class “A” buildings located in the 124th street market area and therefore the classification of the building was changed from the historical “B” to the new “A” for the 2010 assessment year.
5. The Respondent argued that the \$23.50 per square foot lease rate identified by the Complainant had not been the cause of the change in building classification since that rent had not been disclosed by the property owner in the information submitted to the

City March 5, 2009. The Respondent addressed a request for information that the property owner had completed and included two operating statements as at December 31, 2007 and 2008, as well as rent rolls for 2007 and 2008. In these rent rolls, the lease rate of \$23.50 does not appear (Exhibit R-1, pages 26 – 34).

6. The City utilized a typical market rent for all office space within the suburban office inventory, and in the case of the subject, it was classed as an “A” office building in the 124th Street District with a rental rate of \$18 per square foot utilized in determining assessed value (Exhibit R-1, page 35). The \$18 per square foot rental rate was established by examining new leases or renewals of existing leases from February 1, 2008 to April 1, 2009 that showed rental rates ranging from \$16 to \$22 per square foot resulting in an average of \$18.65 per square foot and a median of \$18 per square foot (Exhibit R-1, page 35).
7. The Respondent argued that if tenant inducements were necessary to secure a tenant as a result of market conditions, then the inclusion of such an allowance would be “market”. However, in the market place there is no way to determine if the typical market rent is inclusive of tenant inducements, and the Complainant had not provided evidence that it is so. However, if it was proved that tenant inducements are in fact typical, then the capitalization rates would have to be adjusted to account for lower net operating incomes (Exhibit R-1, page 23). In support of this position, the Respondent provided an illustration of what would happen to the capitalization rate if leasing costs, tenant improvements and cash allowances were subtracted from the net operating income (NOI). In the example, a property that sold for \$25,000,000 based on an NOI of \$1,800,000 would have a cap rate of 7.2%. The same property, with the NOI reduced by \$600,000 to allow for leasing costs, tenant improvements and cash allowances, would see the cap rate fall to 4.8% to generate the same \$25,000,000 sale price (Exhibit R-1, page 101).
8. Five “Market Perspectives” of available and vacant space, including the subject, were included to provide estimated asking rates for office space in the 124th Street and Government districts (Exhibit R-1, pages 43 – 49). The asking rate for 12,729 square feet of space in the subject was \$22 per square foot (Exhibit R-1, pages 48).
9. The Respondent included third party reports addressing building classifications and rental rates specific to the subject property. For the second quarter of 2009, Colliers International classed the subject as a “B” Building in the Government district identifying the rental rate for Harley Court as \$22 per square foot (Exhibit R-1, page 54). As well, Colliers International provided rental information for the various market areas – Downtown and Suburban, showing that the average rents for the second quarter of 2009 for the 124 Street district where the subject is located ranged from \$16 to \$18 per square foot and the top rates were at \$22 per square foot (Exhibit R-1, page 88).
10. The Respondent requested that the Board confirm the 2010 assessment of the subject property at \$29,846,000.

DECISION

The decision of the Board is to confirm the 2010 assessment at \$29, 846,000.

REASONS FOR THE DECISION

1. The Board finds that upon review of the July 2008 rent roll provided by the property owner, there was a total of 73,579 square feet of space that was rented out for \$18 to \$22 per square foot (Exhibit R-1, page 29). This space was more than fifty percent of the 138,464 square feet of leasable office space shown by both the Respondent and the Complainant (Exhibit R-1, page 17) and (Exhibit C-1, page 2).
2. The Complainant provided no evidence as to the costs of the tenant improvements that were being argued should reduce a base rental rate. In a decision of the Municipal Government Board (MGB) Board Order: MGB 048/03 in a matter between Omers Realty Corporation and Sears Canada Inc., and the City of Edmonton, it was stated *“The MGB believes that if tenant inducements are to be assigned a specific value, the value in this case would have to represent the typical value of inducements received by typical anchor tenants in the market place. Legislation dictates that the assessment of a particular property must reflect the typical market conditions for properties similar to that property.”* (Exhibit R-1, page 184)
3. The Complainant relied upon third party reports to support his position that the subject property was a class “B” building. However, in two of the reports, the third parties included the subject in the “Government District” where the typical market rents for “B” class buildings is in the \$22 per square foot range. The Respondent also included third party reports addressing building classifications, and Colliers International had classed the subject as a “B” class building in the Government District.
4. As well, Colliers International provided rental information for the various market areas – Downtown and Suburban, showing that the average rents for the second quarter of 2009 for the 124 Street District, where the subject is located, ranged from \$16 to \$18 per square foot and the top rates were at \$22 per square foot. For the Government District, Colliers showed the average rents for class “B” buildings to be in the \$21 - \$22 per square foot range, which is \$4 per square foot higher than the typical rent applied by the City to “A” class buildings in the 124 Street District.
5. Other than third party reports, the Complainant did not provide evidence to support his argument that the subject building was similar to other class “B” buildings in the 124 Street District, instead arguing that the previous class “B” designation of the subject should not be changed. However, the Respondent is mandated by legislation that properties are valued by the “mass appraisal” methodology which involves stratifying properties into groups of comparable property, identifying common property attributes for each group, and calibrating a uniform valuation model for each group using market information incorporating the property attributes. By applying this methodology to the subject for the 2010 assessment year, the Board agrees with the Respondent that the subject is properly classed as an “A” building.
6. The Complainant had advised that in discussion with the Respondent, the Respondent had identified five criteria to determine a building’s classification. However, it was not stated if all five criteria had to be met to change a building class. Evidence was provided that the rental rates being achieved by the subject fell into a 124th Street District “A” class

building with a typical rental rate of \$18 per square foot. As well, because of the boundaries used by the different third parties and the Respondent, the district of the subject appeared to be blurred. Although two of the third parties rated the subject as a class “B” building, they included the subject in the “Government District” that demands rental rates in the \$22 per square foot range. This would more than support the Respondent’s changing the class of the subject to “A” in the 124th Street District with a typical market rent of \$18 per square foot, rather than the \$15 per square foot that is applied to “B” class buildings in the 124th Street District.

7. The Board is satisfied that the subject property was not assessed in contravention of s.293 of Municipal Government Act and Alberta Regulation 220/04. Section 293(1) directs the assessor to prepare an assessment in a fair and equitable manner by (a) applying the valuation and other standards set out in the regulations, and (b) following the procedures set out in the regulations. The Complainant did not provide any evidence that this was not done.
8. The Board is persuaded by evidence and arguments presented, that the 2010 assessment of the subject property at \$29,846,000 is fair and equitable.

DISSENTING DECISION AND REASONS

There was no dissenting decision.

Dated this 29th day of November, 2010, at the City of Edmonton, in the Province of Alberta.

Presiding Officer

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, R.S.A. 2000, c.M-26.

cc: Municipal Government Board