



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 642/10

Altus Group Ltd
17327 - 106A Ave
Edmonton, AB T5S 1M7

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 between November 22 and December 10, 2010 respecting a complaint for:

| | | |
|--------------------------------------|---|---|
| Roll Number 1029099 | Municipal Address 17720 102 Avenue NW | Legal Description Plan: 7920153 Block: 5 Lot: 12 |
| Assessed Value \$1,121,500 | Assessment Type Annual - New | Assessment Notice for 2010 |

Before:

Robert Mowbrey, Presiding Officer
Jim Wall, Board Member
Jasbeer Singh, Board Member

Board Officer: Annet N. Adetunji
Counsel to Presiding Officer: Peggy Kemp

Persons Appearing: Complainant

From Altus Group Ltd:

Stephen Cook, Director
Anthony Patenaude, Sr. Tax Consultant
John Trelford, Director
Keith Wensel, Witness

Ryan Penner, Barrister and Solicitor
Macleod Dixon LLP

Persons Appearing: Respondent

From the City of Edmonton:

Cameron Ashmore, Barrister and Solicitor
Aleisha Bartier, Barrister and Solicitor
Renee Gosselink, Assessor
Kevin Smyl, Assessor
Tracy Ryan, Assessor
Vasily Kim, Assessor
Brennen Tipton, Assessor
Darren Davies, Assessor

Andy Chopko, Appraiser/Consultant
Impact Property Advisors Ltd.

A. PRELIMINARY AND PROCEDURAL MATTERS

1. Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board.
2. The Respondent raised a number of preliminary issues stating that procedural fairness throughout the hearings was the goal. The Complainant stated that an adjournment was necessary, so that the Complainant can meaningfully respond to the procedural issues raised by the Respondent and possibly even come to an agreement with the Respondent on some of the issues.
3. The Board recessed, deliberated and rendered a decision to the parties. The decision was that an adjournment request would be granted and the hearing would continue a day and a half later.
4. When the hearing continued, Jim Wall, a Board member, advised the parties that he had a professional relationship with the Respondent's capitalization rate study witness, Andy Chopko. In addition, the Board member stated that he had known the Respondent's witness for 40 years and at one time had a mentoring relationship with the witness; and several years ago had shared office space with the witness. The Board member further stated that he also knew the Complainant's expert witness and was known to most of the veteran appraisers throughout the City. The Respondent confirmed that he had spoken with the witness and from their point of view, there was no bias. The Complainant was concerned with the perception of bias and requested the Board member to recuse himself.
5. The Board recessed, deliberated and rendered a decision. The decision given by the affected Board member was that he had considered the Complainant's objection, and believed that an informed and reasonable person viewing the question objectively would not reasonably believe that the circumstances described would give rise to any apprehension of bias. Therefore the affected Board member would not be recusing himself and the other Board members concurred.

The preliminary issues raised and the results are as follows:

6. Roll number to start with: There are 57 suburban office property and 5 parking lot files under appeal before the Board. The Complainant and the Respondent both stated that they would like to arrange the order of files on the docket. The Board advised the parties that since the Complainant initiates the Complaint, the Board does not see any problem with the method the Complainant has outlined and will proceed in the manner the Complainant has arranged the order of the files on the docket.
7. Decisions and Exhibits: Both parties agreed that each file would be opened individually and a written merit decision would be completed for each file. Both parties also agreed that the evidence and argument from this hearing will be carried forward to all the suburban office hearings. In addition, there was agreement as to how the exhibits were to be marked.
8. Summaries: The question was raised as to the summaries and the last word after all evidence had been given and cross examination had been completed. The Complainant asked for a two step process, whereby the Respondent would summarize first and then the Complainant would summarize and have the last word. The Respondent did not give an opinion, but

wanted consistency throughout the hearings. The Board advised the parties that the procedure would be what the composite assessment review board in Edmonton is using. The procedure is that after all evidence has been given and cross examination has been completed the Complainant gives its summary, the Respondent gives its summary and the Complainant has the last word. The Board could not see any reason to change the procedure of the Edmonton composite assessment review board.

9. Paneling of Witnesses: The question arose regarding whether the Complainant's witnesses would be allowed to answer questions on cross examination as a panel. The Board noted that the evidence given is a collective effort and that there is joint ownership of the written submissions. However, having said that, the Board required that the witness giving the evidence should be the witness that answers the cross examination regarding the testimony. The Board further advised the parties that caucusing for answers would be discouraged.
10. Expert Witnesses: The question arose whether the witnesses need to be formally qualified as "experts" to give opinion testimony or whether their qualifications go to weight. Opinion evidence could be received by the Board essentially because the issue on which the opinion being given was beyond the ken of ordinary people. The Board's decision is not to formally qualify the expert witnesses. The Board does not have to follow the same rules of evidence as a court. The Board will take note of the expert witnesses' qualifications and experience and place the appropriate weight on their testimony.
11. Swearing and Affirmation: Both parties agreed that the witness would be sworn in or affirmed prior to the witness giving testimony for the first time. The swearing or affirming of the witness would carry forward until all of the hearings are complete.
12. Issues common to all files: Since the issues of rental rates and capitalization rates are common to all files before the Board, both parties agreed to carry forward all evidence, arguments and cross examination during the hearing on Roll # 1560150 (the first file to be heard), to all other suburban office files before the Board.
13. Lead Files: Suburban Office files have been grouped by district and sub-class. The first file in each group will serve as the 'lead file' and all evidence, arguments and cross examination in respect of this file, will, with the agreement of both parties, apply to all other files in the group.
14. Excess Land: A few files on the list for hearing by the Board have issues pertaining to 'Excess Land'. Both parties were in agreement that all evidence, arguments and cross examination in respect of the first file with Excess Land component, will apply to all other files in the group.

B. BACKGROUND

15. The subject property is a one storey sub-class 'B' building known as Westgate Business Park. The property was constructed in 1980 and is located at 17720 102 Avenue, in the Westend Area. The subject property has a total leasable area of 7,756 square feet and the 2010 assessment is \$1,121,500.

C. ISSUES

16. Issue 1: Should the Respondent's capitalization rate study be excluded for non-compliance with sections 299 and 300 of the *Municipal Government Act (MGA)*, R.S.A. 2000, c. M-26?
17. Issue 2: What is the appropriate rental rate for the subject property?
18. Issue 3: What is the appropriate capitalization rate for the subject property?

ISSUE 1: SHOULD THE RESPONDENT'S CAPITALIZATION RATE STUDY BE EXCLUDED FOR NON-COMPLIANCE WITH SECTIONS 299 AND 300 OF THE MGA?

19. The Complainant brought forth a preliminary issue prior to the Respondent's expert witness, Mr. Chopko, giving testimony. The Complainant's issue was that the Respondent had not complied with sections 299/300 of the *MGA*. The Complainant advised the Board that the Complainant had requested the capitalization rate study from the Respondent under sections 299 and 300. The Complainant asked that Mr. Chopko's report be removed from the evidence under section 9(4) of the *Matters Relating to Assessment Complaints Regulation (MRAC)*, AR 310/2009 because they had not received an appropriate response from the Respondent and sections 299/300 had been breached. The sections are outlined as follows:

S.299 (1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

S.300 (1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

The MRAC:

Failure to disclose

S.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.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

20. The Respondent stated that this was the first they had heard of this preliminary application and stated that there was no section 299 request in the materials filed. The Respondent advised the Board that section 299(1) does not say a municipality must provide “all” that had been requested. The Respondent also noted that the two sections are different and that different information can be requested under each of them. The Respondent stated the information requested under section 299 is given solely to the owner of the property or the representative of the owner.

21. The Respondent advised the Board that section 27.3(1) of the *Matters Relating to Assessment and Taxation Regulation (MRAT)*, AR 220/2004 regarding key variables of valuation model does not say that capitalization rates and rental rates must be provided.

The MRAT:

Key factors and variables of valuation model

S.27.3(1) For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include

(a) descriptors and codes for variables used in the valuation model,

(b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and

(c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property.

(2) Despite subsection (1), information that is required to be provided under section 299 or 300 of the Act does not include coefficients.

22. The Respondent stated that the Complainant could have asked for a compliance review under section 27.6(1).

Compliance review

S. 27.6(1) In this section, “compliance review” means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.

(2) An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person’s request under section 299 or 300 of the Act.

(3) A request for a compliance review must be made within 45 days of the assessed person’s request under section 299 or 300 of the Act.

23. The Complainant produced an e-mail from the Government of Alberta, Municipal Affairs (Advisor, Stakeholder Relations/Assessment Services) advising the Complainant that the Minister cannot compel a party to disclose via a compliance review. The Complainant is not interested in the municipality being fined, but only interested in receiving the information.

24. The Complainant stated that section 27.3 only sets out the bare minimum of what has to be provided. Also, the Complainant stated that section 27.3 only talks about direct sales modeling and this property was assessed on the income approach. The Complainant stated that the legislators did not intend for no information to be provided about property assessed on the income approach.

25. After hearing the arguments from both parties, the Board recessed. After deliberating, the Board rendered its decision to both parties. The decision was that the capitalization rate study would not be excluded.

The reasons for the decision are:

26. The Board notes that the Complainant did not produce a copy of the letter requesting information from the Respondent under section 299 or 300. Therefore the Board cannot evaluate the request to determine if it was made properly.

27. The Complainant did not explain to the Board why “sufficient information to show how the assessor prepared the assessment” as stated in section 299 would necessarily include a capitalization rate study. A capitalization rate study used in preparing the assessment(s) of property might be part of “*sufficient information to show how the assessor prepared the assessment*” but the Board finds that a capitalization rate study prepared for the purpose of defending the assessment cannot be requested under section 299 or 300.

28. The Board also observed that the capitalization rate study was provided to the Complainant in compliance with the disclosure requirements set out in section 8(2) of *MRAC*. The Board sees no other reason to exclude the study and notes that a high quality decision is more likely to result if all the relevant evidence is presented to the Board.

The MRAC:

Disclosure of evidence

S.8(1) In this section, “complainant” includes an assessed person or taxpayer 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;

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant 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 respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

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

ISSUE 2: WHAT IS THE APPROPRIATE RENTAL RATE FOR THE SUBJECT PROPERTY?

Complainant’s Position

29. The Complainant (Altus) presented to the Board a binder of information comprising of the Complainant’s evidence (marked as Exhibit C-2S) in addition to a site specific document with 21 pages (marked as Exhibit C-1-11).

30. The Complainant argued that the Respondent had not been compliant with section 293 of the MGA in assessing the subject properties for the 2010 assessment year. The use of incorrect income approach calculations and assumptions had resulted in inaccurate assessed rents, low capitalization rates and site specific issues.

31. The Complainant argued that the valuation standards (included in section 293, MGA) do not permit the assessor to apply any ‘site specific values’ and therefore the assessments made are not fair in relationship to the sale prices, and the valuation inputs had also been derived through inappropriate market analysis. The Complainant stressed that the Respondent’s

departure from the practice of time adjusting sale prices had resulted in inaccurate and unfair results in respect of the subject property.

The MGA:

- S.293 (1) In preparing an assessment, the assessor must, in a fair and equitable manner,*
- a) Apply the valuation standards set out in the regulations, and*
 - b) Follow the procedures set out in the regulations.*

The MRAT:

- S.2 An assessment of property based on market value*
- a) Must be prepared using mass appraisal,*
 - b) Must be an estimate of the value of the fee simple estate in the property, and*
 - c) Must reflect typical market conditions for properties similar to that property.*

S.6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value.

32. The Complainant quoted from Colliers International, CB Richard Ellis, Avison Young and other third party reports and argued that all of the following factors clearly spoke in favor of lower rents and higher capitalization rates:
- Declining real estate values (CB Richard Ellis Report, C-2S, page 201);
 - Lower rent expectations (Colliers Report, C-2S, pages 228, 233 & 234);
 - Surplus office space in market and sublease vacant space (Avison Young Report, C-2S, page 233);
 - Elevated risk factors resulting from reduced availability of capital and increased economic uncertainty (Exhibit C-2S, page 9, para. 21).
33. The Complainant argued that the Respondent's use of rental data spanning a period from January 2008 to July 2009, provided inputs that were not indicative of market realities on the valuation date of July 01, 2009 (Exhibit C-2S, page 12, para 46).
34. The Complainant stressed that the inputs used by the City of Edmonton Assessment Department for typical rental rates, capitalization rates, and vacancy rates were not representative of the market place as of the valuation date of July 01, 2009 (Exhibit C-2S, page 11, para. 34).
35. The Complainant, basing its rental rate argument on the analysis of its own database, concluded that the Respondent was using rental rates well above what the market conditions would support (Exhibit C-2S, Pages 2-16). The Complainant also cited third party reports (Exhibit C-2S, pages 228-235).
36. The Complainant argued that their analysis and conclusions were based on using the time adjustment factors provided by the Respondent (Exhibit C-2S, page 275). These were also in keeping with the MGB Notices of Decision (DL 057/10, 058/10) and were consistent with

the methodology used by the Respondent, until the previous assessment period (2009). Such time adjustments could easily cater to increasing or decreasing market trends. The Respondent, not making the required time adjustments for its 2010 assessments, was not in keeping with the established practices, MGB directions or industry practices, and was inappropriate.

37. The Complainant argued that an increase in rental rates was unwarranted in view of independent third party information as well as its own City-wide analysis of typical market rates. The Complainant further argued that all rental rates for suburban office buildings should remain at previous year's assessment levels.
38. The Complainant produced its own rental analysis charts based on selected leases pertaining to the period from January 2008 to July 2009, for various districts and sub-classes, in support of its request for lower rents (Exhibit C-2S, Rents, pages 2-16).

Respondent's Position

39. The Respondent argued that the subject property's rental rate and capitalization rate are correct, as these were derived from the Mass Appraisal process through multiple regression analysis, and this methodology is consistent with Provincial Quality Standards, and has been tested by the audit, as set out in *MRAT*.
40. The Respondent presented the Board with two evidence binders (Exhibits R-2 and R-3) as support for the 2010 assessment on suburban office properties located in seven basic market areas of the City; R-2 consists of 13 sections numbered 1-13 and R-3 contains sections 14-17.
41. Section 1 confirms that assessments in the Province of Alberta must be carried out on the basis of mass appraisal. The Respondent quotes from The International Association of Assessing Officers, Property Appraisal and Assessment Administration, Chicago, Illinois, 1990, pages 88-89 and states:

“ single property appraisal is the valuation of a particular property as of a given date; Mass appraisal is the valuation of many properties as of a given date, using standard procedures and statistical testing”

“Also, mass appraisal requires standardized procedures across many properties. Thus valuation models developed for Mass appraisal purposes must represent supply and demand patterns for groups of properties rather than a single property”(Exhibit R-2, section 1-1).

42. The Respondent suggested that the Income Approach is the approach of choice, as it best reflects typical actions of buyers and sellers when purchasing income-producing properties. Ample information provided by owners with regard to both income and expenses reinforced this suggestion.
43. The resulting assessments were tested and the model's predictions of the value met Provincial Quality Standards as set out in *MRAT*. The audit is used to determine the accuracy of the City's predictions relative to the marketplace, and is a direct reflection on the accuracy of the model. The measure in this process is the calculation of ASRs (Assessment Sales Ratios).

44. The Respondent did not specifically argue about the ASR's applicability to specific properties. However, it is noted that the Complainant applied ASRs to the five sales comparables which the Complainant relied upon to indicate a capitalization rate. The Complainant time adjusted the sales prices of his sales comparables by a time adjustment factor used by the City for retail. The resulting ASRs ranged from .62 to 1.37 with a median of 1.04 and an average of 1.03 or within the range allowed by audit. However, it should be noted that two of the sales comparables (the Dell building and Rohit Business Centre) are not considered good indicators by the Board, because the Dell building required very extensive retro-fitting to convert an open call centre environment to corporate head offices and the other, Rohit Building, is owner occupied. When these two sales comparables are taken away from the total of five, the median becomes 1.23 or in other words, far above what would be considered realistic or acceptable in a Provincial audit. Refuting the Complainant's argument, the Respondent argued that the use of the retail time adjustment factor by the Complainant was not valid.
45. The Respondent provided a series of charts which show both the Respondent's assessed and the Complainant's proposed rental rates, vacancy rates, structural allowances, vacancy shortfall and capitalization rates for office properties located in various suburban areas of the City (Exhibit R-2, section 2).
46. The Respondent's rental rates and capitalization rates for suburban office buildings and the corresponding values requested by the Complainant are included in the table at page 14 of this document.
47. The Respondent provided information on both new and renewal leases and related trend lines for AA, A, B, and C buildings located in the seven individual suburban office market areas (Exhibit R2, section 3, pages 1-36).
48. The subject property is a 'B' class office building located in the Westend market area. The Respondent provided evidence of 7 leases (three new and four renewals) located in the Westend market area. The rental rates ranged from \$12.50 to \$14.00 per square foot with a median rate of \$13.00 per square foot and a mean of \$13.07 per square foot.
49. The Respondent indicated that erroneous conclusions from analysis had resulted in rates of \$17.00 per square foot and \$16.00 per square foot being applied to Westend area class 'A' and class 'B' buildings. Upon review, the Respondent revised these rates to \$15.00 and \$13.00 per square foot for class 'A' and 'B' Westend area office buildings. The Respondent argued that these rates being at or close to what the Complainant is seeking, is a coincidence and this did not relate to the fact that the senior assessor who had done the initial analysis was no longer an employee of the City of Edmonton.
50. The Respondent plotted the Complainant's lease information from their Rent Analysis (Exhibit C2-S pages 1-16) and argued that the Complainant's own lease information indicated a clear increasing trend in rental rates (Exhibit R-2, section 4).
51. The Respondent relied upon third party information from Colliers International, CB Richard Ellis and Altus. These studies are from the third quarter in 2008 and the second quarter of 2010, and although they are on a national basis they have sections which relate to Edmonton. The Respondent contends that this third party information confirms that rents for office space in the City of Edmonton were either rising or at least stabilized during the 2009 assessment

year. In addition to these, studies point to a rise in capitalization rates of Edmonton office buildings in the 0.5% - 1% range (Exhibit R-2, section 11).

52. Third party information from Colliers International was put forward which indicated some stabilization in rental rates across all property classes during the third and fourth quarters of 2009 (Exhibit R-2, section 13).
53. The Respondent provided the Board with comments on the Complainant's rental rate indicators (R-2, section 5, pages 1-13). The Respondent indicated which of the Complainant's rental rate properties were used by the Respondent in their study and provided various comments on whether or not certain ones were used in the Respondent's study and if not used, the Respondent's reasons for not using them.
54. The Respondent plotted all of the suburban rents from 2009 and 2008, included in the Complainant's evidence. The Respondent's analysis of these charts indicated a general increase in rents from one year to the next (Exhibit R-2, section 6).
55. The Respondent contends that rental rates used in the 2010 assessment must take into consideration the upward trend shown as opposed to the Complainant's contention that rental rates for suburban office buildings in Edmonton were at their peak in 2008 and declined steadily through 2009.
56. The Respondent provided third party information (Exhibit R-2, section 7) from Colliers International, CB Richard Ellis, Cushman and Wakefield and Avison Young as support of their rental projections. These publications are specifically for the greater Edmonton area with the exception of one article on a national basis.
57. The Respondent suggested that industry third party reports (Exhibit C-2S, pages 224-257) cited by the Complainant in support of rental rate arguments do not show breakdowns by sub-classification of suburban office buildings within any specific district and therefore, cannot be relied upon as accurate determinants of rental rate trends. The Respondent, on the other hand, did provide persuasive arguments in support of its contention that different districts in Edmonton's suburban office market, reacted differently to emerging market realities.
58. As a reference for asking rental rates, the Respondent provided a publication known as 'Altus Insite' which references available and vacant space summaries of various suburban office buildings including the subject, in the City of Edmonton (Exhibit R-2, section 8, page 212).

ISSUE 3: WHAT IS THE APPROPRIATE CAPITALIZATION RATE FOR THE SUBJECT PROPERTY?

Complainant's Position

59. The Complainant, quoting from MGB Notices of Decision (DL-057/10 and 058/10), argued that it is not equitable to apply capitalization rates from an actual rent analysis at the time of its sale to current market rent based net incomes (Exhibit C-2S, page 17, para. 82).

60. The Complainant stressed that time-adjusting the sale to valuation date using the same methodology and parameters, as used by the City in previous years, is the best and most reliable method of deriving a capitalization rate for assessment purposes (Exhibit C-2S, page19, para. 87).
61. The Complainant argued that the Net Income is based on projecting rental rates as indicated by actual leasing activity, with consideration for market trends, within the building and similar buildings around the time of the valuation date, and these rental rates need to be projected onto the entire building (Exhibit C-2S, page19, para. 88).
62. Using the following five sales in support of its arguments, the Complainant argued for capitalization rates of 8%, 8.5% and 9% for different classes of office buildings in different districts of the City.

| | Address | Class | Sale Date | Sale Price | Cap Rate | TASP PSF |
|----|----------------------------------|-------|-----------|--------------|----------|-----------|
| 1. | 14903 – 111 Ave (High Park) | ‘B’ | Sep ’07 | \$ 4,005,000 | 10.01% | \$140 PSF |
| 2. | 4445 – Calgary Tr. (Terrace Pl.) | ‘A’ | May ’08 | \$25,600,000 | 11.63% | \$158 PSF |
| 3. | 151 Karl Clark Rd. (Dell Bldg) | ‘AA’ | Jul ’08 | \$42,000,000 | 8.28% | \$239 PSF |
| 4. | 8616 – 51 Ave (Rohit Centre) | ‘B’ | Nov ’08 | \$14,750,000 | 5.31% | \$253 PSF |
| 5. | 5103 – Windermere (Greenboro) | ‘AA’ | Mar ’09 | \$21,500,000 | 7.10% | \$292 PSF |

63. The Complainant presented its Direct Comparison Approach and argued that the Respondent’s 2010 assessment values per square foot, when viewed in comparison against time-adjusted sale prices (TASP) yield unacceptably high Assessment to Sales Ratios (ASR) and thus support the Complainant’s contention that the Respondent’s assessment figures are too high (See table below):

| Building Name | Building Class | TASP Rate (\$ / sq. ft) | Assessed Rate (\$ / sq. ft) | ASR |
|-------------------|----------------|-------------------------|-----------------------------|------|
| High Park Corner | B | \$140 | \$183 | 1.30 |
| Terrace Plaza | A | \$158 | \$241 | 1.53 |
| Dell Building | AA | \$239 | \$301 | 1.26 |
| Rohit Bus. Centre | B | \$253 | \$191 | 0.76 |
| Greenboro | AA | \$292 | \$313 | 1.07 |
| Median: | | \$239 | \$241 | 1.26 |
| Average: | | \$216 | \$246 | 1.18 |

64. The Complainant further argued that the recommended assessment values would yield the desired and acceptable ASR values (between 0.95 – 1.05), as presented below:

| Building Name | Building Class | TASP Rate (\$ / sq. ft) | Recommended Assessment Rate (/sq.ft.) | ASR |
|-------------------|----------------|-------------------------|---------------------------------------|------|
| High Park Corner | B | \$140 | \$172 | 1.23 |
| Terrace Plaza | A | \$158 | \$216 | 1.37 |
| Dell Building | AA | \$239 | \$247 | 1.04 |
| Rohit Bus. Centre | B | \$253 | \$158 | 0.62 |
| Greenboro | AA | \$292 | \$259 | 0.89 |
| Median: | | \$239 | \$216 | 1.04 |
| Average: | | \$216 | \$211 | 1.03 |

65. The Complainant emphasized that the above approach would yield consistent and desired outcomes and asked that per square foot assessment be reduced to \$250 - \$260 for 'AA' buildings, \$210 - \$220 for 'A' buildings and \$160 - \$170 for 'B' buildings (Exhibit C-2S, page 23, para. 107).
66. The Complainant argued against the use of a 'trend-line' analysis for determining capitalization rates as this is not usually relied upon by an investor.
67. The Complainant challenged the Respondent's witness' reliance on a trend-line analysis by applying the Complainant's market rental rates to the assessed property values and showing a very significant increase in the capitalization rates, compared to the Respondent's conclusions (Exhibit C-6, pages 211-218).
68. The Complainant's witness (an employee of the Complainant and an accredited appraiser) presented national and global economic scenarios, correlation between bond rates and capitalization rates. He argued that the fundamentals of the real estate market changed drastically, for the worse, in July 2007 and this huge collapse could not be captured on a trend-line. The Complainant's witness further argued that the credit contraction caused by market uncertainty resulted in serious erosion of equity that needed to be reflected in much higher capitalization rates.

69. A summary of rental rates and capitalization rates, both assessed and requested, is as below.
This is also available at Exhibit C-2S, page 28, and Exhibit R-2, section 2, pages 3&4.

| District | Class | Rental Rates / PSF / Yr | | Capitalization Rates | |
|-----------------------|-------|-------------------------|-----------------------|-------------------------|-----------------------|
| | | Respondent's Assessment | Complainant's Request | Respondent's Assessment | Complainant's Request |
| 118 Avenue | A | \$19.00 | \$18.00 | 8.00% | 8.50% |
| | B | \$14.00 | \$14.00 | 8.00% | 8.50% |
| | C | \$10.00 | \$10.00 | 8.50% | 9.00% |
| 124 Street | AA | \$20.00 | \$18.00 | 8.00% | 8.50% |
| | A | \$18.00 | \$16.00 | 8.00% | 8.50% |
| | B | \$15.00 | \$15.00 | 8.00% | 8.50% |
| | C | \$11.00 | \$10.00 | 8.50% | 9.00% |
| 149 Street | A | \$17.00 | \$16.00 | 8.00% | 8.50% |
| | B | \$15.00 | \$14.00 | 8.00% | 8.50% |
| | C | \$12.00 | \$12.00 | 8.50% | 9.00% |
| East Gate (EGA) | A | \$21.00 | \$17.00 | 8.00% | 8.50% |
| | B | \$14.00 | \$12.00 | 8.00% | 8.50% |
| South Side A (SSA) | AA | \$25.00 | \$22.00 | 7.50% | 8.00% |
| | A | \$18.00 | \$17.00 | 8.00% | 8.50% |
| | B | \$17.00 | \$15.00 | 8.00% | 8.50% |
| Low Density | C | \$11.00 | \$10.00 | 8.50% | 9.00% |
| Whyte Ave (WAA) | A | \$19.00 | \$18.00 | 8.00% | 8.50% |
| | B | \$17.00 | \$16.00 | 8.00% | 8.50% |
| West End (WEA) | AA | \$18.00 | \$16.00 | 7.50% | 8.00% |
| | A | \$17.00* | \$15.00 | 8.00% | 8.50% |
| | B | \$16.00** | \$14.00 | 8.00% | 8.50% |

Note: ‘*’ The Complainant advised the Board that the Respondent had agreed to revise these rates down to \$15.00* and \$13.00** per square foot, as supported by the evidence.

Respondent's Position

70. The Respondent increased the capitalization rate to be applied to the net operating income of suburban office buildings in the 2010 assessment by 1% over the rate applied in 2009. This was the result of there being a limited number of current sales in the office market in Edmonton which made it impossible to determine an appropriate capitalization rate. The Respondent suggested to the Board that the 1% increase in capitalization rates for the 2010 assessment is adequately supported by various third-party information and in particular, by the independent study which was carried out (R-3, section 17).
71. Capitalization rates for 2009 assessments were determined using retail sales time adjustments. It was determined during the current valuation, because of the recent differences in the retail and office markets, that it was impossible to employ a similar methodology for the current assessment year. Testing using the retail time adjustments for the current valuation year did not line up with the market data for capitalization rates in the office market. Since there were no suburban office building sales during the evaluation period, the Respondent analysed a set of 29 sales used for the 2009 capitalization rate study and found that by applying the same (retail) time adjustment factors, the resulting capitalization rates bore no relationship with the previous year's capitalization rates and were totally inconsistent with market realities (Exhibit R-2, section 9, pages 40-41).
72. On cross examination of the Complainant, the Respondent questioned the reliability of the Complainant's five sales comparables, specifically the Dell Building and Rohit Business Centre. The Respondent asked the Complainant if either the vendors or the purchasers involved in these two properties had been contacted in order to validate the sales. The Complainant indicated this was not done. The Respondent suggested that the Dell building, which had been operated as a call center requiring substantial amounts of wide open space was purchased by the Servus Credit Union for their new head office. The Respondent suggested that substantial retrofitting both on the interior and the exterior of the original Dell building took place over several months after Servus's acquisition. Servus Credit Union is an owner user therefore the Net Operating Income would have to be projected to determine a sale capitalization rate.
73. The Respondent suggested that Rohit Business Centre was purchased by an owner user; therefore the Net Operating Income had to be projected in order to reflect a capitalization rate in this sale. When the Respondent asked the Complainant if this sale appeared to represent an outlier, the Complainant agreed. If these two questionable sale comparables are given very limited weight, the remaining three sales comparables would indicate a range in capitalization rates of 7.1% to 11.63% and a median of 10.01%.
74. The Respondent agreed with evidence from third party reports that capitalization rates at the time of valuation (July 2009) were higher than the previous year's figures. Acknowledging the prevalent trend, the Respondent adopted the capitalization rate figures at the upper end of the range reported by third party sources. The capitalization rate study commissioned by the Respondent fully supported this decision (R-3, section 17).
75. In the absence of sufficient current sales data, the independent capitalization rate study developed a trend-line analysis on Suburban Office Buildings. This was carried out using a total of 21 sales comparables of various types of income producing property located in the

City of Edmonton. The trend-line from 2007 to mid-2010 shows a steady but somewhat modest increase in capitalization rates over that time (Exhibit R-3, section 17, page 116).

76. The independent study also contained seven sales comparables with sale dates ranging from September 1, 2007 to September 1, 2009. The sales indicate an unadjusted range in capitalization rates from 6.27% to 8.46% and a stabilized rate from 6.08% to 7.8%. It should be noted that adjustments were made to allow for a 5% vacancy rate and a 2% rate for structural expenses. Based on this information the independent appraiser projected a capitalization rate for Edmonton's suburban office inventory as at July 1, 2009 of 7.25% to 7.5% for both A and B buildings and 8.25% to 8.5% for C buildings. It should be noted that the appraiser's final conclusions as to capitalization rates suggest lower rates than those which are being used by the Respondent (Exhibit R-3, section 17, pages 39-40).
77. The Respondent provided equity comparables (Exhibit R-2, section 12) in each sub-class within the seven suburban market areas involved in this hearing. These equity comparables were put forward in chart form and relate to all of the building types within the seven suburban office market areas. It is noted that one of the sub-classes within one of the areas had no equity comparables and that the largest number (35) were for 124 Street 'B' sub-class. The Complainant provided no equity argument.
78. The Respondent put forward references from the Alberta Assessors Association as to the Valuation guide for office buildings, 2009 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual by Alberta Municipal Affairs and Information on Mass Appraisal of Real Property from the International Association of Assessing Officers. The Respondent contends that his processes followed in performing the 2010 assessment were in line with these regulations and information (Exhibit R-3, section 14).
79. A substantial number of Board Orders was put forward by the Respondent. The Respondent contends these orders provide support for the methodology used by the Respondent pertaining to rental rates and capitalization rates and placed particular emphasis on MGB orders DL 057/10 and DL 058/10. It should be noted that the Complainant also used these two orders and quoted different sections than were quoted by the Respondent (Exhibit R-3, section 15).

D. DECISION

80. The decision of the Board is to revise the 2010 assessment to \$985,000 based on a rental rate of \$13.00 per square foot and a capitalization rate of 8%, as per the Respondent's request.

E. REASONS FOR THE DECISION

81. The Board notes that the Complainant argued for a rental rate of \$14 per square foot. The Board is persuaded that a rental rate of \$13 per square foot as requested by the Respondent is correct.
82. The Board was persuaded by the Respondent's independent capitalization rate study and 'trend-line' analysis and the conclusions (R-3, section 17).

83. The Board was persuaded by the Respondent's capitalization rate analysis and the rebuttal to the Complainant's capitalization rate argument. The Board accepts the Respondent's capitalization rate methodology which applied an increase of 100 basis points to capitalization rates used in completing the 2009 assessment of suburban office buildings in the seven market areas of the City.
84. The Board was not persuaded by the Complainant's capitalization rate trends arguments based on '2009 National Investor Survey' (Exhibit C-6, pages 18-44) as this survey pertained to the United States and not Canada.
85. The Board finds the Complainant's methodology might be acceptable if a sufficient number of current investment sales comparables were available. In this regard, the Board is persuaded that two of the five sales comparables (Dell and Rohit, Exhibit C2-S, pages 11-65) relied upon by the Complainant to establish capitalization rates were flawed. The Board questions the reliability in projecting a capitalization rate from such a small sampling of the remaining three sales.
86. Respecting the Complainant's witness, the Board found the presentation interesting, but found the macro economics did not lend itself well to the Edmonton market. There was insufficient evidence to show that the Edmonton market moved in tandem with the national market. As such the Board did not place a great deal of weight on the Complainant's witness.
87. The Board placed little weight on third party reports provided by the Complainant (C-6, pages 54-61) as these pertained to 'retail' and not 'suburban offices'.
88. Assessment to Sales Ratios (ASRs) are used to test the methodology used in valuing property each year for assessment purposes; ASR is the ratio of the assessment to the sales price. The closer the ratio is to 1, the better the assessment reflects market conditions. When the ASR analysis completed by the Complainant (Exhibit C-2S, page 23) was examined, the Board noted that while the average ASR is within the guidelines (.95 to 1.05), the overall individual ranges indicate substantial deviation. When the two unreliable sales comparables (Dell and Rohit) are removed from the total of five, the median becomes 1.23 as compared to the indicated median of 1.04 with Dell and Rohit included. Therefore, the Board was not persuaded by the Complainant's analysis of the ASRs indicated by the sales comparables.
89. The Board was persuaded by the graphs (R-2, section 4 pages 1-30) in which the Respondent combined the Complainant's rental rate indicators (Exhibit C-2S, suburban rent, pages 1-16) with the Respondent's. Upon review of these graphs of the combined data from the two parties, the Board finds that the Respondent's position that rents did rise between 2008 and the valuation day of July 1, 2009, is reasonable.
90. The Board notes the Respondent produced an equity argument (Exhibit R-2, section 12) to show that the subject property was assessed in a fair and equitable manner. These equity comparables reflected the similarities between the equity comparables and the subject property. The Complainant did not address the equity argument.

F. DISSENTING DECISION AND REASONS

91. There were no dissenting opinions.

Dated this 16th day of February, 2011, at the City of Edmonton, in the Province of Alberta.

Robert Mowbrey
Presiding Officer

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD

| <u>Exhibit No.</u> | <u>Item</u> |
|---------------------------|--|
| C-1-11 | Complainant's Disclosure and Witness Report |
| C-2S | Complainant's Addendum |
| C-4 | Complainant's Excerpts from the <i>MGA</i> , <i>MRAT</i> and <i>MRAC</i> |
| C-5 | Complainant's ARB Order |
| C-6 | Complainant's Main Rebuttal |
| C-6A | Complainant's Witness Report |
| C-7 | Complainant's Rebuttal – Combined Income Statements and Rent Rolls |
| R-1-11 | Respondent's Assessment Brief for Tax Roll # 1029099 |
| R-2 | Respondent's Master Suburban Assessment Brief 1 of 2 |
| R-3 | Respondent's Master Suburban Assessment Brief 2 of 2 |
| R-4 | Respondent's Ontario Court of Appeal Decision, 2010 ONCA 672 |
| R-5 | Respondent's Tax Court of Canada Decision, 2005 TCC 34 |

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
Melcor Developments Ltd.