



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
Phone: (780) 496-5026

NOTICE OF DECISION NO. 0098 779/11

Altus Group
17327 106A Avenue
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 on February 1, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3043957	10201 JASPER AVENUE NW	Plan: NB Block: 2 Lot: 79 / Plan: NB Block: 2 Lot: 79-81 / Plan: NB Block: 2 Lot: 80 / Plan: NB Block: 2 Lot: 81	\$62,355,500	Annual New	2011

Before:

Larry Loven, Presiding Officer
Jack Jones, Board Member
Jasbeer Singh, Board Member

Board Officer: Karin Lauderdale

Persons Appearing on behalf of Complainant:

John Trelford, Altus Group

Persons Appearing on behalf of Respondent:

Tracy Ryan, Assessor, City of Edmonton
Cameron Ashmore, Solicitor, City of Edmonton
James Cumming, Assessor, City of Edmonton, observing

PRELIMINARY MATTERS

1. Upon request by the Respondent, all witnesses were affirmed or sworn-in, prior to hearing their testimony.
2. The Respondent requested that the order of the hearing of the complaint files on the agenda before the CARB be arranged by building class in order to enable a smooth and logical flow and to avoid jumping from one class of downtown office properties to another. With the agreement of both parties, the CARB accepted the suggested sequence of hearings as presented by the Respondent.
3. The Respondent objected to certain content in the Complainant's rebuttal document, properly disclosed to the Respondent, on the grounds that such information constituted new evidence and therefore should not be considered by the CARB. The Complainant complied with the Respondent's objection by removing, prior to its submission to the CARB, all such information as objected to by the Respondent.
4. The Complainant objected to the Respondent's surrebuttal document that had been disclosed to the Complainant, on the grounds that the information contained therein constituted new evidence that had no relevance to the Complainant's rebuttal and such information should have been included in the Complainant's initial disclosure.
 - a. The Complainant further argued that if the Respondent's surrebuttal was allowed by the CARB, the Complainant would be compelled to call a witness with expertise in statistics to give testimony regarding information contained in the Respondent's surrebuttal. The Complainant stated that this could result in a request for postponement to allow for time to prepare a response to the Respondent's surrebuttal.
 - b. The Respondent argued that the subject surrebuttal contained no new information, but rather was a representation of the previously disclosed information to better address the issues raised in the Complainant's rebuttal; and further stated that if the Complainant was allowed time to obtain the expertise of a statistics analyst then, the Respondent may also feel compelled to do the same, resulting in a request for further postponement.
 - c. The CARB, without considering the merits of the information contained in the Respondent's surrebuttal, proposed that the issue of the Respondent's surrebuttal be addressed as and when the same was presented in the course of the hearing, at which time the CARB would be in a better position to determine if any or all of the Respondent's surrebuttal should be allowed. The Complainant accordingly agreed to hold its objection.
 - d. When the Respondent presented the surrebuttal to the CARB and the Complainant objected to its contents, the CARB recessed, deliberated and decided to allow a part of the Respondent's surrebuttal contents (R-2, pp. 1-3, 5), as the same constituted a representation of the Respondent's earlier evidence. The other parts of the Respondent's surrebuttal were disallowed as these were determined by the CARB to constitute new evidence that could have been a part of the Respondent's initial disclosure.
5. The Respondent requested that in the interest of expediency and efficiency, the same hearing panel (that is, the same three members), should hear the complaints pertaining to other

downtown office properties that were not on the agenda for this CARB, but were scheduled for hearings a week later.

- a. The Complainant objected to any changes in the original or planned schedule of hearings to meet the Respondent's preferences, as that could compromise the fairness of the proceedings and possibly introduce bias.
- b. The CARB recessed to consider the Complainant's objection and found that any changes to the CARB composition for the following week would not serve the interest of fairness and natural justice. However, at the outset of the second hearing on the revised schedule, the Complainant withdrew its objection in this matter and agreed to allow the Respondent's request to have the same CARB (panel of same three members) hear the remaining downtown office complaints.
- c. With the agreement of both the Complainant and the Respondent, the CARB advised the CARB Officer of the requested changes to the schedules.

BACKGROUND

6. The subject property, known as the *Enbridge Tower*, is located in the financial district of downtown Edmonton. The *Enbridge Tower* is sub-classed as an *AL* high rise office building and contains 183,148 square feet of office space in addition to various *CRU* and storage space complete with underground parking.
7. The subject property has been assessed utilizing the income approach to valuation, established by applying market lease rates to the various building components and a 7.5% capitalization rate.

ISSUE(S)

8. The complaint form listed a number of issues that have since been abandoned by the Complainant with the only remaining issues being:
 - 1) Is the 2011 assessment of the subject property at \$62,355,500 fair and equitable?
 - 2) Has the correct market lease rate for *AL* office space (\$26.00 per square foot) been utilized in preparing the 2011 assessment for the subject property?

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

9. 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.
10. 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

11. The Complainant presented evidence (C-1 & C-2) and argument for the CARB's review and consideration.
12. The Complainant presented leasing information which included current office leases within the subject property (C-1, p. 10) as well as leases in other *AL* properties (C-1, pp. 11-12) to support a requested revision to the lease rates utilized in the 2011 assessment. The Complainant requested an office lease rate of \$20.50 per square foot for the subject property.
13. As further support for the requested lease rate revision, the Complainant provided the rent roll for the subject property as of July 31, 2010 (C-1, pp. 20-24).
14. The Complainant referenced the Alberta Assessors' Association *Valuation Guide* (C-1, pp. 31-37) to illustrate the importance of utilizing lease data near the valuation date to determine market lease rates in property assessments.
15. The Complainant referenced third party market data (C-1, pp. 38-43) to illustrate market trends and ranges of asking lease rates for properties in the same market area and of a similar classification as the subject property. The Complainant noted that the data presented indicated that the subject property was over assessed with respect to the market lease rate applied to office space.
16. The Complainant presented an actual income analysis of the subject property (C-1, p. 30) that when combined with the assessed capitalization rate of 7.5% produced a valuation for the subject property of \$24,028,000 in order to illustrate the Complainant's claim that the subject property was over assessed. The Complainant did not rely on the actual income analysis as the basis for the requested reduction to the 2011 assessment.
17. The Complainant noted that the City had performed a data correction (C-1, pp. 15-16) on the 2011 assessed office lease rates based on data received from the 2011 request for information from property managers. The data correction revised the 2011 assessed market lease rates for office space from \$26.00 to \$23.00 per square foot for *AL* classed space. The Complainant noted that the data correction was an indication of errors in the 2011 assessment and that the correction did not go far enough to adjust for actual market conditions existing at the valuation date.
18. The Complainant presented rebuttal evidence (C-2) which graphed lease rates (data sourced from both the Complainant and the Respondent) from July 2009 onward to represent a declining market in office lease rates approaching the valuation date of July 1, 2010. The evidence presented indicated a trend at the valuation date towards the requested office market lease rates of \$20.50 per square foot for *AL* properties.
19. In summary the Complainant requested the 2011 assessed market lease rates for office space be revised to \$20.50 per square foot for the subject property. This revision to office lease rates would reduce the 2011 assessment from \$62,355,500 to \$49,851,500 (C-1, p. 17).

POSITION OF THE RESPONDENT

20. The Respondent provided the CARB with a 164 page document (R-1) that included mass-appraisal methodology used for the assessment, relevant case-law, excerpts from *The Appraisal of Real Estate*, Appraisal Institute of Canada; relevant text references from the *Valuation Guide*, Alberta Assessors Association; rent rolls in respect of the subject property; data sets used to derive the typical market rental rates; and “*Time Adjustment Factors*” derived from a statistical analysis of the reported rental rates in respect of the Edmonton downtown class A class office properties (also including class AA, AH and AL buildings).
21. The subject property under appeal is comprised of one large AL class building, referred to as *The Enbridge Tower* in the financial sector of the Edmonton downtown office district.
22. Upon questioning by the Respondent, the Complainant confirmed that the only issue before the CARB was the market rents applied to determine the assessment value for the property.
23. In response to a question from the Respondent, the Complainant confirmed that the “Rental Rates Summary” appearing in the Complainant’s submission to the CARB (C-1, pp. 11-12) provided the basis for the Complainant’s request for office rental rates lower than the assessment rate.
24. The Respondent advised the CARB that the governing provincial legislation required that the mass-appraisal methodology using typical market rents, typical vacancy rates, typical operational costs and capitalization rates be used for the entire downtown office inventory and the same was done in respect of the subject property under appeal (R-1, p. 22).
25. The typical market rental rates used for the 2011 assessment were \$26 per square foot for the office space in class AL buildings in the downtown office district.
26. After receiving the owner responses to Request for Information (“RFI”) for the 2012 assessment year, the Respondent realized that there had been a further decline in market rental rates, prior to the valuation date of July 01, 2010, that warranted a downward adjustment of the market rental rates applied at the time of original assessment of the downtown office properties.
27. As a consequence of this review and analysis (R-1, pp. 47-51), the Respondent lowered the typical market rental rates for class AL properties to \$23 per square foot. These lower rates were applied to all affected properties and new, revised, lower assessments were sent to all concerned, including the Complainant (R-1, pp. 27-28).
28. The Respondent advised the CARB that while the Complainant sought a much lower assessment valuation of \$49,851,500 (C-1, p. 17), based on lower market office rental rates of \$20.50 per square foot for class AL buildings, the Complainant had failed to provide any credible supporting information in support. Asking average rental rate of \$23-\$26 per square foot (C-1, p.42) was shown for all A class buildings and not just AL buildings. Hence, it could not be relied upon for the subject file.

29. During cross-examination, the Respondent testified that while averaging the market rents provided a reliable conservative basis for establishing typical market rental rates in a rising market, it did not work equally well in a declining market, as was the case for the subject assessment. As such, in consultation with expert authorities in the field, the Respondent developed a table of time adjustment factors that were used to derive lower typical rates used to revise assessments downward (R-1, pp. 47-51).
30. During cross-examination, the Respondent testified that new leases in respect of all class A class properties (including AA, AH and AL) had been included in the analysis (R-1, p. 47) and further tests established that the market rates in respect of all sub-classes varied in a similar manner.
31. The Respondent argued that the Complainant's market rental rate tables (C-1, pp. 11-12) used a very limited data set and if some other leases pertaining to the same period were included, the outcomes would support the Respondent's revised market rental rates.
32. The Respondent questioned the accuracy and reliability of the Complainant's analysis (C-2, pp. 2-5) that relied on a very limited data set confined to a less than twelve-month period immediately preceding the valuation date (July 01, 2010).
33. The Respondent further argued that the size of data set had direct impact on the quality and reliability of outcomes. While the Complainant had chosen to conveniently ignore recent leases that challenged the Complainant's position, the Respondent, on the other hand, had used an extensive set of leasing data spread over a three year period to establish the trends and develop "Time Adjustment Factors" to lend more credibility and reliability to the resulting market rental rates (R-1, pp. 47-51).
34. The Respondent also questioned the merits of the third-party industry information (C-1, pp. 38-43) since there was no indication as to the source or kind of input data used to infer the stated results. It was alleged that these third-party sources did not use the actual rent-rolls and it was not known whether any time adjustments had been applied. Hence, the Respondent cautioned the CARB to be wary of such charts.
35. The Respondent pointed out that the Complainant's use of 'linear regression' as shown on graphs in the rebuttal (C-2, pp. 2-5) was overly simplistic and highly questionable. The Respondent demonstrated the difference with a graph (R-2, p. 5) that showed linear and quadratic lines for the same data set.
36. The Respondent argued that the Complainant's preference to rely on "*actual leases signed on or around the valuation date*", as recommended in the Alberta Assessors' Association's *Valuation Guide*, while convenient, skews and misrepresents the trends on a linear regression line (C-2) and totally ignores the very next point in the same reference document that says, "*Actual leases within the first three years of their term as of the valuation date*". The Respondent, on the other hand, used its data set to: plot leases up to three years from the valuation date; and analyze it through a quadratic regression model to arrive at the recommended typical rental rates.
37. The Respondent requested the CARB approve the recommended revised 2011 assessment of \$55,535,000 based on typical office rental rates of \$23 per square foot for the AL building in the roll number under appeal.

DECISION

38. The decision of the CARB is to reduce the 2011 assessment of the subject property from \$62,355,500 to \$55,535,000 as recommended by the Respondent.

Roll Number	Original Assessment	New Assessment
3043957	\$62,355,500	\$55,535,000

REASONS FOR THE DECISION

39. The CARB noted that the Complainant's trend analysis for the downtown office rental rates was confined to a brief six-month window with a limited number of leases in a few buildings. The CARB considered the Respondent's argument that inclusion of just a few more leases could have resulted in a shift to the linear regression trend line and found that the reliability of such an analysis to be weak.
40. The third-party industry information provided by the Complainant was found to provide little support to the Complainant's position in that: the average asking rate of \$23-\$26 per square foot applied to the entire A class of downtown office buildings that included AA, AH and AL sub-classes; and, this blended rate could not be directly applied to the subject property. Accordingly, the CARB assigned less weight to such industry information.
41. The CARB found that was able to place weight on the Respondent's reliance on actual leasing information obtained from the property managers and owners to establish typical market rates for the downtown office properties and it accepted that this was in keeping with mass-appraisal methodology as required in the legislation.
42. The CARB found the Respondent's rigorous analysis of three years actual lease data in respect of all downtown A class office properties, through quadratic regression, provided a more reliable and credible indication of market trending and to be of greater merit and considerable weight.
43. The CARB finds it also places considerable weight on the Respondent's arguments that upon receipt of the actual leasing information from the property managers for the 2012 assessment year, the Respondent took effective steps to reflect the continuing downward trend in office rental rates from the previous year's assessments by mailing offers of revised assessments, based on new rates determined in consultation with industry experts, to the affected property owners.
44. In conclusion, based on its consideration of the above reasons, the CARB finds the recommended revised 2011 assessment of \$121,039,000 for the subject property, based on market office rental rate of \$23 per square foot for the subject property's AL classification, to be fair and equitable.

DISSENTING OPINION AND REASONS

None noted.

Dated this 22nd day of February, 2012, at the City of Edmonton, in the Province of Alberta.

Larry Loven, 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, RSA 2000, c M-26.

cc: TEN 201 JASPER AVENUE LTD