



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 803/11

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 6, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9961687	10235 101 STREET NW	Plan: 8822518 Lot: 79B	\$131,473,500	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
Moreen Skarsen, Assessor, City of Edmonton
Cameron Ashmore, Solicitor, City of Edmonton
James Cumming, Assessor, City of Edmonton, observing
Vasily Kim, 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 down-town 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, 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, pages 1-3 and 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.

BACKGROUND

5. The subject building is known as the *Oxford Tower* and is located in the financial district of downtown Edmonton. The *Oxford Tower* is sub classed as an AA high rise office building and contains 325,143 square feet of office space in addition to various *CRU* and storage space complete with underground parking.
6. 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)

7. 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 \$131,473,500 fair and equitable?
 - 2) Has the correct market lease rate for office space (\$31.00 per square foot for AA space) been utilized in preparing the 2011 assessment for the subject property?
 - 3) Has the tax exempt status been applied correctly for the 2011 assessment of the subject property?

LEGISLATION

8. ***Municipal Government Act, RSA 2000, c M-26***

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

9. The Complainant presented evidence (C-1 & C-2) and argument for the CARB's review and consideration.
10. The Complainant presented leasing information which included current office leases within the subject property (C-1, page 11) as well as leases in other AA properties (C-1, p. 12 & 13) to support a requested revision to the lease rates utilized in the 2011 assessment. The Complainant is requesting an office lease rate of \$25.00 per square foot for the subject property.

11. The Complainant referenced the Alberta Assessors' Association Valuation Guide (C-1, p. 41-47) to illustrate the importance of utilizing lease data near the valuation date to determine market lease rates in property assessments.
12. The Complainant referenced third party market data (C-1, p. 48-53) 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.
13. To illustrate the Complainant's claim that the subject property was over assessed, the Complainant presented an actual income analysis of the subject property (C-1, p. 40) that when combined with the assessed capitalization rate of 7.5% produced a valuation for the subject property of \$82,644,500. The Complainant did not rely on the actual income analysis as the basis for the requested reduction to the 2011 assessment.
14. The Complainant noted that the City had performed a data correction (C-1, pp. 16-17) 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 \$31.00 to \$29.00 per square foot for AA 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 experienced at the valuation date.
15. The Complainant also noted a variance between the assessed office and storage areas versus actual areas but during the course of the hearing agreed to accept the areas presented in the Respondent's pro-forma (C-1, p. 17).
16. The Complainant presented rebuttal evidence (C-2) which graphed lease rates (data sourced from both the Complainant and the Respondent) from January 2010 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 \$25.00 per square foot for AA properties.
17. The Complainant noted that the sale of the subject property for \$115,000,000 on Dec. 16, 2011 (introduced by the Respondent) further supported a reduction to the 2011 assessment. While the transaction was post-facto (after the July 1, 2010 valuation date), when time adjusted back to the valuation date it would indicate a value of \$96,000,000.
18. In summary the Complainant requested the 2011 assessed market lease rates for office space be revised to \$25.00 per square foot for the subject property. This revision to office lease rates would reduce the 2011 assessment from \$131,473,500 to \$107,007,000 (C-1, p. 18).

POSITION OF THE RESPONDENT

19. Respondent provided the CARB with a 215 page document (R-1) that included mass- The 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 down-town class A class office properties (also including class AA, AH and AL buildings).

20. The subject property under appeal is comprised of one high-rise building, namely the *Oxford Tower* classified as an AA down-town office building
21. Upon questioning by the Respondent, the Complainant confirmed that the only issue before the CARB was the market rent for the office space applied to determine the assessment value for the property.
22. 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 down-town office inventory; and the same was done in respect of the subject property under appeal (R-1, p. 29-30).
23. The typical market rental rates used for the 2011 assessment were \$31 per square foot for the class AA buildings in the down-town office district.
24. 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 down-town office properties.
25. As a consequence of this review and analysis (R-1, p. 81-84), the Respondent lowered the typical market rental rates for class AA properties to \$29 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, p. 29).
26. 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, p. 81-84).
27. During cross-examination, the Respondent testified that new leases in respect of all class A properties (including AA, AH and AL) had been included in the analysis (R-1, p. 81) and further tests established that the market rates in respect of all sub-classes varied in a similar manner.
28. The Respondent argued that the Complainant’s market rental rate tables (Exhibit C-1, p. 10-11) 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.
29. The Respondent questioned the accuracy and reliability of the Complainant’s analysis (C-2, p. 2-6) that relied on a very limited data set confined to a brief six-month period immediately prior to the valuation date of July 1, 2010.

30. The Respondent further argued that the size of data set has 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 (Exhibit R-1, pages 81-84).
31. The Respondent also questioned the merits of the third-party industry information (C-1, p. 48-53) 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.
32. The Respondent pointed out that the Complainant's use of 'linear regression' as shown on graphs in the rebuttal (C-2, p. 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.
33. 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 analyzed through a quadratic regression model to arrive at the recommended typical rental rates.
34. The Respondent submitted a recommendation that the percentage for the exemption of the City of Edmonton to be confirmed at 0.76% and Alberta Health Services be reduced to 0% (C-1, p. 86-87) based on rent roll information. The reduction for Alberta Health Services was due to new rent roll information which indicated they were no longer a tenant in the subject property as of the 2011 valuation date.
35. The Respondent requested the CARB approve the recommended revised lower 2011 assessment of \$123,401,500 based on typical office rental rates of \$29 per square foot for the class 'AA' building included in the roll number under appeal.

DECISION

36. The decision of the CARB is to reduce the 2011 assessment of the subject property from \$131,473,500 to \$123,401,500 as recommended by the Respondent.
37. The decision of the CARB with respect to the 2011 tax exempt status of the subject property is to confirm the exemption at 0.76% for City of Edmonton leased space and to reduce the exemption to 0% for space that had been previously leased to Alberta Health Services.

Roll Number	Original Assessment	New Assessment
9961687	\$131,473,500	\$123,401,500

REASONS FOR THE DECISION

38. The CARB noted that the Complainant's trend analysis for the down-town office rental rates was confined to a brief six-month window with a limited number of leases in a few buildings. The CARB was persuaded by the Respondent's argument that inclusion of just a few more leases could shift the linear regression trend line considerably, putting in question the reliability of such analysis.
39. 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 down-town office buildings; that included *AA*, *AH* and *AL* sub-classes, and therefore the blended rate could not be directly applied to the subject property. Accordingly, the CARB assigned less weight to such industry information.
40. The CARB was persuaded by the Respondent's mass-appraisal methodology applied to establish typical market rates for the down-town office properties, in keeping with the legislative requirements and relying on actual leasing information obtained from the property managers and owners.
41. The CARB placed considerable weight on the Respondent's analysis of three years' actual lease data in respect of all down-town *A* class office properties. The quadratic regression applied to a large data set provided more reliable and credible trend indicators. The CARB found the results obtained through such rigorous methods to be worthy of more merit and weight.
42. Although the Complainant raised the issue of a tax exempt portion of the subject property as an issue on the complaint form and as the Complainant provided no further evidence in this regard, the CARB accepts the Respondent's recommendation to confirm the exemption for the City of Edmonton at 0.76% and Alberta Health services at 0%. The CARB notes that Alberta Health Services was no longer a tenant in the subject property as of the valuation date for the 2011 assessment.
43. The CARB placed considerable weight on the Respondent's arguments that upon receiving 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 rental rates to the previous year's assessments. The new rates, determined in consultation with industry experts were applied to the affected 2011 valuations and revised assessments were mailed to all affected property owners.

DISSENTING OPINION AND REASONS

None noted.

Dated this 5th day of March , 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: CPP INVESTMENT BOARD REAL ESTATE HOLDINGS INC
OXFORD PROPERTIES CANADA LTD