

## Edmonton Composite Assessment Review Board

**Citation: CVG v The City of Edmonton, 2013 ECARB 00860**

**Assessment Roll Number:** 10125192  
**Municipal Address:** 4999 98 Avenue NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**CVG**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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### DECISION OF

**Petra Hagemann, Presiding Officer**

**Mary Sheldon, Board Member**

**Martha Miller, Board Member**

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### Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

### Preliminary Matters

[2] At the outset of the hearing, the Respondent stated that although they had given proper disclosure to the Complainant, an administrative oversight resulted in late disclosure to the Assessment Review Board. The Respondent was aware that under section 9(2) of the *Matters Relating to Complaints Regulation* (MRAC), AR 310/2009, "A composite assessment review board *must not* hear any evidence that has not been disclosed in accordance with section 8". Section 8 sets out the disclosure requirements, which the Respondent did not meet in this case. However, the Respondent also noted that under section 10(3) of MRAC, the Board may exercise its discretion to abridge the disclosure deadlines so long as there is "written consent of the persons entitled to the evidence or other documents."

[3] In response, the Complainant stated that he had received the Respondent's disclosure with sufficient time to review its contents. In the interest of fair play, he expressed that he was willing to provide written consent to abridge the disclosure deadline. His consent would permit the Respondent to present their evidence on the hearing date.

[4] Based on the above, the Board determined that abridging the disclosure deadline would not be prejudicial to the parties, and thus, granted the Respondent's abridgement request.

### Issue(s)

[5] The Complainant had noted a number of issues in the assessment brief (Exhibit C-1, page 1); however, the Complainant advised the Board that only three issues remained to be determined:

- Is the subject properly classified by the municipality as an “A” class building for assessment purposes?
- What is the appropriate lease rate to apply to the office space in the subject?
- What is the appropriate capitalization rate to apply in the income valuation of the subject?

### Legislation

[6] **The *Municipal Government Act*, RSA 2000, c M-26, reads:**

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

### Background

[7] The subject is known as “Twin Atria” and is located in the Eastgate community in east central Edmonton. It is a four story multi-tenant building constructed in 1982. The total area of the building is 367,396 square feet (sq ft) of which 18,727 sq ft is devoted to CRU space and 347,539 sq ft devoted to office space. There is also underground and surface parking. The subject is rated as an “A” building by the municipality. For the 2013 assessment, the municipality applied a lease rate of \$18/sq f for the office area, \$18.75/sq ft and \$10.00/sq ft for the CRU tenancies as well as \$100 per month for the underground parking. The municipality applied a vacancy rate of 6.50% for the office space and the net operating income (NOI) was capitalized at 6.75%. The subject’s assessment includes excess land valued at \$1,039,500. The total 2013 assessment for the subject is \$85,400,000, valued by the income approach.

## **Position of the Complainant**

[8] The Complainant provided the Board with a disclosure package (Exhibit C-1) as well as appraisal documentary evidence (Exhibit C-2) in support of the position that the current assessment of the subject is excessive. The Complainant advised the Board that he agreed with the size figures used by the Respondent in the assessment of the subject and also agreed with the value placed on the excess land for the purpose of the assessment.

### ***Issue 1 – Is the subject properly classified as an “A” building?***

[9] With respect to the issue of the classification of the subject, the Complainant argued that the subject should be assessed as something less than an “A” possibly as low as a “B” building. To support this argument, the Complainant provided some photographs of the subject (Exhibit C-1, pages 20-21) along with photographs of “B” buildings in the same neighborhood (Exhibit C-1, pages 9-14). The Complainant submitted that these photographs demonstrated that the subject was more similar in finish to the “B” buildings. The Complainant advised that the subject has a small foyer, an irregular configuration and older tenant improvements and that these factors showed that the subject should be classified as less than an “A” building.

[10] The Complainant also provided details of a lease of office space in the subject that had been signed in June, 2012 for \$16/sq ft (Exhibit C-1, page 28). The Complainant argued that this market rent very near the valuation date demonstrated that the office space lease rate of \$18 applied by the Respondent in the valuation of the subject was excessive and did not reflect the market. The Complainant submitted that, in attempting to classify a building, it was important to look at recent lease rates being achieved in a building rather than just considering the finish of a building.

[11] As further evidence that the subject should not be classified as an “A” building, the Complainant presented a chain of emails (Exhibit C-1, page 5-6). The Complainant stated that this information showed that upgrades and improvements would be needed for space which was soon to be vacated. In the opinion of the Complainant, if the subject were truly an “A” building, such upgrades would not be required.

[12] The Complainant also argued that the subject is only given an “A” building classification as a result of the many government tenancies rather than looking at market rent for this area of Edmonton.

[13] During questioning the Complainant agreed that in the appraisal submitted for the subject (Exhibit C-2), the subject was referred to as an “A” building (Exhibit C-2, appraisal page 1) and is in superior condition (Exhibit C-2, appraisal page 19).

### ***Issue 2: What is the appropriate lease rate to apply to the office space?***

[14] With respect to the issue of the appropriate lease rate to apply to the office space, the Complainant argued that, since in his opinion the subject was not properly classified as an “A” building, it was incorrect to apply the typical “A” building lease rate of \$18 to the subject office space.

[15] The Complainant pointed out that the neighboring office buildings are assessed using rental rates for the office space of \$14 (Exhibit C-1, page 2). He also reminded the Board that an office lease was signed in the subject near the valuation date for \$16/sq ft.

[16] The Complainant pointed out to the Board that the appraisal had recommended a lease rate of \$17/sq ft for the office space in the subject (Exhibit C-2, appraisal page 31).

[17] The Complainant reconstructed a pro forma for the Board using a \$16/sq ft lease rate figure for the subject office space. He stated that this was the best example of market rent for the subject. Should the Board however conclude that the subject be classified as a "B" building, then the typical \$14/sq ft lease rate for the office space would be applicable.

***Issue 3: What is the appropriate capitalization rate to apply?***

[18] With respect to the appropriate capitalization rate to apply in the income analysis of the subject, the Complainant provided six sales of properties which, in the opinion of the Complainant are similar to the subject (Exhibit C-1, page 3). The range of capitalization rates of the comparables was from 6.12% to 7.77%. The Complainant argued that this evidence showed that it would be appropriate to apply a 7% capitalization rate to the subject rather than the 6.75% used in the assessment.

[19] The Complainant provided supporting documents from the Network for these sales comparables (Exhibit C-1, pages 22-27) and confirmed during questioning that he had used in his analysis the actual sale, income and capitalization rates stated therein.

[20] The Complainant also pointed out that in terms of equity the neighboring class "B" buildings were all valued using a capitalization rate of 7% (Exhibit C-1, page 2).

[21] The Complainant requested that the Board apply a capitalization rate of 7% to the reconstructed net operating income based on an office lease rate of \$16/sq ft, typical vacancy and structural allowance to arrive at a value for the subject of \$72,249,529. When the value of the excess land is added, the total new value for the subject would be \$73,289,029 (Exhibit C-1, page 3).

[22] The Complainant also provided a rebuttal document (Exhibit C-4) which illustrated that the capitalization rates used in the Respondent's sales comparables differed substantially from the capitalization rates for those sales found in the Network documents (Exhibit C-4, pages 2-11).

[23] In conclusion, the Complainant requested that the Board reduce the current assessment of the subject to \$75,000,000 (Exhibit C-1, pages 4).

**Position of the Respondent**

[24] The Respondent provided the Board with documentary evidence (Exhibit R-1), (R-2) law and legislation and sur-rebuttal (Exhibit R-3) as well oral evidence in support of the 2013 assessment.

[25] The Respondent noted that the actual leasable area of the subject is 348,021 sq ft based on the rent roll of the subject provided to the municipality (Exhibit R-1, page 21). The Respondent provided a revised pro forma (Exhibit R-1, page 14) which included this amended size and which resulted in a value for the subject of \$85,604,500. The Respondent advised that the amended figures would be used for the 2014 assessment. The Respondent noted that the Complainant had agreed with the amended size figures as well as the value of the excess land for the purpose of the assessment.

***Issue 1: Is the subject properly classified as an "A" building?***

[26] The Respondent stated that the subject is an "A" class building and pointed out the process for determining the class of a building. The Respondent also provided photographs of both "A" class and "B" class buildings to demonstrate differences in finishing.

[27] The Respondent provided leasing documents from Avison Young which describes the subject as an "A" building (Exhibit R-1, page 46). The Respondent also pointed out that the appraisal documentation provided by the Complainant describes the subject as an "A" building with well maintained, attractive, superior facilities (Exhibit C-2, appraisal page 1).

***Issue 2: What is the appropriate lease rate to apply to the office space?***

[28] The Respondent stated that legislation mandates that mass appraisal must be used in calculating market value (Exhibit R-1, pages 113-128). Like properties are grouped together with common property attributes for the properties in each group. A common valuation model is utilized for each group using market information.

[29] The Respondent submitted that the subject was an EGA class "A" building and the rental rate applied to this group is \$18/sq ft (Exhibit R-1, page 41). The Respondent noted that that rate was unchanged since 2012 (Exhibit R-1, page 43). The most current leasing data for the EGA Class "A" group shows a time adjusted median rent of \$20.82 and an average time adjusted rent of \$21.45 (Exhibit R-1, page 42). The Respondent argued that this supported the current assessment of the subject.

[30] The Respondent acknowledged that there was a lack of recent leasing activity in the EGA Class "A" group and that most of the data was from the subject. The Respondent also submitted that the lease for \$16/sq ft for office space in the subject reported by the Complainant had not been provided to the municipality in the most recent RFI request.

[31] The Respondent also provided equity charts for each of the class "A" and class "B" buildings in the EGA area (Exhibit R-1, pages 43 and 44) and argued that this demonstrated that the subject was assessed fairly and equitably.

[32] With respect to the \$17 lease rate suggested in the Complainant's appraisal of the subject, the Respondent advised that the Board should place little weight on this information since real estate appraisal is inconsistent with the process used for mass appraisal.

***Issue 3: What is the appropriate capitalization rate to apply?***

[33] The Respondent advised that the comparables used by the Complainant to support a change in the capitalization rate were all "B" buildings and not comparable to the subject, an "A" building.

[34] The Respondent also argued that the Complainant's sales comparables used actual sale and income data from third party sources. The Respondent stated that third party documents should not be used in determining market valuation since the information is not subject to the same investigative process used by the municipality in the mass appraisal process.

[35] The Respondent reproduced the Complainant's sales comparables (Exhibit R-1, page 24) and provided an analysis showing what the resulting cap rates would be if those sales had been analyzed consistent with the municipality's process.

[36] The Respondent also provided a suburban capitalization rate analysis to determine the cap rate for suburban "A" buildings similar to the subject (Exhibit R-1, page 29).

[37] In sur-rebuttal, the Respondent demonstrated how the income information and capitalization rates determined by the Network information showed considerable variation from the values as determined by the municipality's process.

[38] The Respondent requested that the Board confirm the 2013 assessment of the subject at \$85,400,000.

### **Decision**

[39] The decision of the Board is to confirm the 2013 assessment.

### **Reasons for the Decision**

[40] The Board reviewed the Complainant's evidence in support of their request to reduce the classification of the subject from an "A" to a "B" class using a lower office lease rate of \$16.00 and a capitalization rate of 7% resulting in a reduced assessment of \$75,000,000.

[41] The Board examined the information of the three properties in Eastgate Business Park submitted as equity comparables to the subject. These buildings are classified as "B" with a typical rental rate of \$14.00/sq ft and a typical capitalization rate of 7% applied to their assessment. From the photos provided, the Board could not determine if these buildings were similar to the subject in all the factors affecting its classification such as interior and exterior condition and finish, location and general appeal and therefore could not support a change in the classification.

[42] The reconstructed rent roll provided by the Respondent as received by the RFI, indicated that the average actual rent in the subject for office space is \$18.00/sq ft. The Respondent had requested RFIs from two other "A" buildings in the Eastgate area, however only received information on the Twin Atria buildings and thus used the actual of the subject as typical for the assessments of all "A" class buildings. The most recent leases which commenced in 2010 had net leases as follows: unit #107 at \$15.16, unit #108B at \$23.00, unit #303 at \$18.00 and unit #401 at \$21.25. The Board recognizes this as evidence that the subject could and did attract lease rates representative of an "A" building.

[43] The Board noted the most current lease in the subject for unit #106 which commenced June 1, 2012 at \$16.00/sq ft. In questioning, the Respondent indicated that it had not been included in the RFI for the subject and even if it had, it would not have changed the \$18.00 rate since it only represented 1,548 sq ft of a total leasable area of 368,517. The Board agreed with the Respondent and did not place much weight on this evidence.

[44] The Board considered the Complainant's argument that \$11.00/sq ft tenant improvements would be required to attract new tenants especially once Environment Canada vacates approximately 20% of the subject July 2013. The Board found no evidence as to the actual cost of future tenant improvements, what would be considered typical in the marketplace and if in

fact they would be necessary to attract new tenants. The Board placed little evidence on tenant improvements as a reason for adjusting the office lease rate in the subject.

[45] The Board reviewed the six sales comparables submitted by the Complainant as evidence to change the capitalization rate from the assessed 6.75% to 7%. The first three sales were downtown hi rise buildings and in the opinion of the Board, not comparable to the subject. The property located at 10238 124 Street was part of a 9 building portfolio acquisition making this sale somewhat questionable. The remaining two sales suggested a cap rate somewhat higher than the assessed 6.75%. The Board however is of the opinion that third party publications such as the Network are difficult to evaluate as it is unclear what parameters were used in establishing the cap rates. It is important that the methodology is consistent is the derivation and application of the factors used to calculate the cap rate. For example if the Network uses actual income figures, it should not be used in conjunction with the typical data the City is mandated to use in the assessment process. The Board placed little weight on the evidence of the sales comparables as support to increase the cap rate to 7%.

[46] The Board noted that the market value of \$76,000,000 as determined in the appraisal submitted by the Complainant was based on the Leased Fee Estate of the subject property as of March 31, 2012. Considerable discussion ensued around the leased fee and fee simple interest as a means of determining market value. The Board is aware that as per the MGA the municipality is obligated to assess properties based on the fee simple estate using typical market data.

[47] In the appraisal the subject was described as a Class "A", well maintained, attractive building, with a good location along 50<sup>th</sup> Street with proximity to major roadways. It further states that occupancy is 99.6%, and that contract rents in some cases are above market. Description and analysis of the improvements indicates that the *'Twin Atria is a superior quality suburban office complex'* and that *"rental suites are demised and improved to good quality standards"*. The Board finds that these statements support the "A" classification applied to the assessment of the subject.

[48] The Board reviewed the six sales comparables in the appraisal used to establish a capitalization rate. Three sales were found not to be comparable as they were in Calgary, a different market and the three sales in Edmonton support the 6.75% cap rate applied to the assessment of the subject.

[49] The Board further examined the Discounted Cash Flow Analysis using future benefits and converting them into present value by applying an appropriate yield rate. The Board is of the opinion that this valuation process to determine market value employs various assumptions which cannot be verified and may not be reliable. Therefore little weight was placed on this process.

[50] In summary, the Board finds that the appraisal supports the "A" classification as well as the 6.75% capitalization rate used in the assessment.

[51] The Board finds that the subject has been assessed correctly and confirms the 2013 assessment at \$85,400,000.

**Dissenting Opinion**

[52] There was no dissenting opinion.

Heard commencing August 14, 2013.

Dated this 4<sup>th</sup> day of September, 2013, at the City of Edmonton, Alberta.

  
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Presiding Officer

**Appearances:**

Peter Smith  
for the Complainant

James Cummings  
Tanya Smith  
for the Respondent

*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.*