

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01666

Assessment Roll Number: 9971414

Municipal Address: 18330 - 102 Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Steven Kashuba, Presiding Officer

Martha Miller, Board Member

Mary Sheldon, Board Member

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.

[2] At the outset of their presentation, the Respondent requested that the Board not consider pages 27-37 and paragraph #2 on page 41 of their submission in Exhibit R-1. In support of this request, the Respondent presented Exhibit R-2 containing an excerpt from *Hearings Before Administrative Tribunals* which states, in part, that "*It is important, however, for agencies to realize that pre-filings are merely collections of paper. Absent consent, they do not become evidence until entered in evidence, explained or otherwise dealt with by a participant or witness at the hearing.*" The Board accepted the Respondent's request and excluded the noted sections.

[3] Later in the hearing, the Respondent lodged an objection to the contents of the Complainant's rebuttal document, Exhibit C-2. It was their position that several pages within the rebuttal document were no longer relevant because these were in response to specific sections contained within Exhibit R-1, which were no longer before the Board.

[4] The Board recessed to consider the request of the Respondent and ruled that pages 4-20 of the Complainant's rebuttal document should not be considered as they were not in direct response to the evidence presented by the Respondent.

Preliminary Matters

[5] There were no preliminary matters.

Background

[6] The subject property is a medium-sized warehouse with a building area of 42,238 square feet and a main floor office area of 6,997 square feet. Built in 1996, the warehouse is located in the Morin Industrial Neighborhood on 2.6 acres of land, has a site coverage of 37%, and is in average condition. The current assessment is \$4,623,500.

Issue

[7] Is the assessment of the subject correct when taking into consideration its sale price?

Legislation

[8] 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.

Position of the Complainant

[9] In support of their request for a reduction in the assessment amount of the subject property, the Complainant submitted two documents: Exhibit C-1, Appellant Disclosure and Witness Report of the Property Owner, consisting of 131 pages, and Exhibit C-2, Appellant Rebuttal and Witness Report of the Property Owner, consisting of 30 pages.

[10] The subject property, and the two adjacent properties, sold on February 4, 2009 for \$15,000,000. By taking the total floor area of the three warehouses and applying the floor area of the subject warehouse to the selling price, a figure of \$3,758,475 is derived. When time-adjusting this amount to the valuation date of July 1, 2012 by a factor of 1.0276, a value of

\$3,920,842 is computed. This amount is well below its current assessment of \$4,623,500 (Exhibit C-1, page 8).

[11] By taking the time-adjusted sale price of the subject property of \$3,920,842 and dividing it by the total floor area of 42,239 square feet, results in a value of \$92.83 per square foot as opposed to the current assessment value of \$117.41 per square foot.

[12] However, the same three properties are currently assessed for a total of \$19,945,000 (the subject property is currently assessed at \$4,623,500, while the adjacent two properties of 10235 – 184 Street and 10203 – 184 Street are assessed at \$8,954,500 and \$6,367,000, respectively), well above their time-adjusted selling price of \$15,648,000

[13] In addition, the Composite Assessment Review Board (CARB) established the market value for the subject property at \$3,582,000 in 2012. By applying a time-adjustment factor of 1.0324 to this amount, results in a value of \$3,698,000. This would also indicate that the assessment of \$4,623,500 is too high.

[14] An appraisal report of the three-building complex was completed in November of 2008. A value of \$15,800,000 was determined (Exhibit C-1, pages 17 – 51). By applying a time-adjustment of 1.0276 to this figure to bring it up to the valuation date of July 1, 2012, an amount of \$16,236,000 is derived. This translates to \$96.31 per square foot. By applying this amount to the floor area of the subject of 42,237 square feet for the subject warehouse, results in a value of \$4,068,000 (Exhibit C-1, page 9).

[15] In further support of their position, the Complainant presented a court decision, *697604 Alberta Ltd., v Calgary (City)*, 2005, A.B.Q.B. No. 512, (Exhibit C-1, pages 89 – 96), an *Ontario High Court of Justice Divisional Court* decision, (Exhibit C-1, pages 97 – 99), and a CARB decision, *Altus Group v The City of Edmonton*, 2012 ECARB 001061 (Exhibit C-1, pages 101 – 104).

[16] As for relevant legislation, the Complainant submitted (Exhibit C-1, pages 106 – 131), the concept of mass appraisal in an assessment complaint, the onus of proof, the balance of probabilities standard, and the element of fairness and equity.

[17] By way of rebuttal to the evidence submitted by the Respondent, the Complainant submitted an Appellant Rebuttal and Witness Report of the Property Owner (Exhibit C-2). However, in having regard for the Board's decision to exclude a number of pages from Exhibit C-2 (see Procedural Matters, above), the Complainant elected to make no further submission or comment about the rebuttal document.

[18] The Complainant summarized their position by submitting that the sale of the subject property provides the best evidence of its market value. Since the sale of the subject property, time-adjusted to the valuation date of July 1, 2012, is \$3,921,000, it then follows that this is the amount at which the subject property should be assessed.

[19] Their request for a reduction in the assessment amount is also supported by the appraisal report, which sets the market value of the three parcels at \$15,800,000, time-adjusted to the valuation date of July 1, 2012, for a value of \$16,236,000. By taking this sales amount and

dividing it by the total floor area of the subject warehouse, results in a value of \$96.31 per square foot. By applying this value to the floor area of the subject warehouse of 42,237 square feet, results in a value of \$4,068,000.

[20] In conclusion, both the time-adjusted sales value of \$3,921,000 for the subject property and the appraisal report establishing a value of \$4,068,000, indicate that the subject property is over-assessed. It is the request of the Complainant to reduce the assessment of the subject property from \$4,623,500 to \$3,921,000.

Position of the Respondent

[21] In support of their request to have the Board confirm the assessment, the Respondent submitted the following three documents: Exhibit R-1 Property Tax Account, consisting of 54 pages, Exhibit R-2, Administrative Law Information consisting of 4 pages, and Exhibit R-3, Notice of CARB Decision, consisting of 7 pages.

[22] As for the issue of the market value of the subject, the Respondent presented four sales comparables (Exhibit R-1, page 22) in support of the assessment. Three of the four sales comparables occurred in the same quadrant of the City (sales #1, 3, and 4), while one sales comparable (sale #2) occurred in another quadrant of the City. Each of the four sales comparables exhibited characteristics similar to that of the subject property in terms of effective age, condition, site coverage, and total building area.

[23] The time-adjusted values of the sales comparables ranged from \$106 to \$174 per square foot, while the assessment was set at \$109 per square foot. In the opinion of the Respondent, these values fully support the assessment.

[24] As for the Complainant's evidence, the Respondent asked the Board to place little weight upon the sale of the subject property. It was their opinion that transactions which feature multiple-parcel sales present special considerations and should be researched and analyzed prior to being used for valuation purposes. This is especially true if the sale of multiple-units is not operated as a single economic unit, as is the case with the subject property. The subject property sold as a part of a multiple parcel sale. This resulted in a sale price well below market value.

[25] According to the Respondent, the subject property was encumbered with below market leases at the time of sale. The entire 168,520 square feet of the subject was fully leased. Of this amount, 74,910 square feet was leased at below market rates of \$4.85 per square foot. In this regard, even the appraisal report indicated that the market rent for similar warehouses commanded a rate from \$7.75 to \$8.25 per square foot. This brings into question the reliability of using the sale of the subject property to reflect its true market value.

[26] In support of their position, the Respondent made reference to a CARB decision, *Altus Group v. The City of Edmonton*, 2012 ECARB 000598 (Exhibit R-1, page 39). Failing to consider an adjustment in a case where the sale of a property was encumbered by a lease, meant that the requirement to value the fee simple estate in the property was being ignored.

[27] The Respondent concluded their presentation by pointing out that the Complainant did not present any sales comparables, other than the sale of the subject property. As a result, the Board should not rely upon the sale of the subject property that was a part of a multiple parcel sale to reflect its true market value.

[28] In contrast, the Respondent submitted that the Board can rely upon the four sales comparables they presented to reflect the market value of the subject property.

[29] The Respondent concluded their presentation by requesting the Board to confirm the assessment of the subject property at \$4,623,500.

Decision

[30] It is the decision of the Board to confirm the assessment of the subject property for 2013 at \$4,623,500.

Reasons for the Decision

[31] The Board places considerable weight upon the Respondent's four sales comparables. The sales occurred in the same quadrant of the City, exhibited similarities in terms of effective age of construction, condition, site coverage, total main floor area, and total building area. Three of the four sales comparables range in value from \$106 to \$174 per square foot, thereby fully supporting the assessment value per square foot of the subject property which is set at \$109 per square foot.

[32] When considering the market value of the subject property, the Board places little weight upon the Complainant's position that the sale of the subject in 2009, adjusted to the valuation date of July 1, 2012, results in a fair determination of its market value.

[33] The subject property sold in 2009 for \$15,000,000 as a part of a multiple-parcel sale. The definitive selling price of the subject property was not established. Since the sale price of each parcel was not apportioned, the Board cannot rely upon the Complainant's submission of the sale of the subject in 2009 as reflecting its true market value.

[34] The Board also considered that at the time of the sale the entire 168,520 square feet of the subject property was fully leased, and that 74,910 square feet were leased at below market rates.

[35] Since the subject property was encumbered by a below market lease, the Board accepts the Respondent's argument that it is the leased fee estate that sold and not the fee simple estate. As a result, the Board cannot rely upon the encumbered sale of the subject to reflect its true market value.

[36] The Board placed little weight upon the appraisal report submitted by the Complainant as two of the sales comparables occurred outside of the City. These sales comparables do not necessarily reflect the specific market conditions of the subject property in a particular neighborhood in the City.

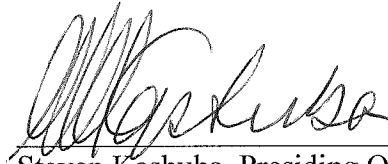
[37] It is for these reasons that the Board concludes that the assessment of the subject property is correct and should not be disturbed.

Dissenting Opinion

[38] There was no dissenting opinion.

Heard commencing September 19, 2013.

Dated this 11th day of October, 2013, at the City of Edmonton, Alberta.

A handwritten signature in black ink, appearing to read 'Steven Kashuba', written over a horizontal line.

Steven Kashuba, Presiding Officer

Appearances:

Adam Greenough
for the Complainant

Suzanne Magdiak
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.