

## **Edmonton Composite Assessment Review Board**

**Citation: Bruce Alton, TSH Properties Ltd. v The City of Edmonton, 2014 ECARB 00284**

**Assessment Roll Number:** 10006732  
**Municipal Address:** 1281 91 Street SW  
**Assessment Year:** 2014  
**Assessment Type:** Annual New  
**Assessment Amount:** \$4,116,500

Between:

**Bruce Alton, TSH Properties Ltd.**

Complainant

and

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

Respondent

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**DECISION OF**  
**Peter Irwin, Presiding Officer**  
**Judy Shewchuk, Board Member**  
**Lillian Lundgren, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

### **Preliminary Matters**

[2] The Complainant handed out copies of two presentation packages to the Board and the Respondent; however, the Respondent objected to them, stating that he had not seen them before. The Board decided not to allow these packages, in accordance with the *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009, section 9(2) which states that "a composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."

[3] The Respondent stated that it had a recommendation to reduce the assessment as a result of removing the excess land value from the assessment; however, as the recommendation was not accepted by the Complainant, the Board proceeded with the merit hearing.

### **Background**

[4] The subject property is a two storey office building with an underground parkade located in the Ellerslie Industrial area of southwest Edmonton. The subject has a gross leasable area of 12,540 square feet (sf) and was built in 2004. It was assessed by using the income approach to valuation.

## **Issues**

[5] Is the subject property assessment correct?

(a) Is AA Suburban Office Building the correct classification of the subject property?

(b) Is the Year-Over-Year assessment increase proof that the assessment is incorrect?

## **Position of the Complainant**

[6] It is the position of the Complainant that the subject property has been assessed too high compared to the market, based on an incorrect reclassification from an "A" office building to an "AA" office building and also based on an incorrect value attributed to surplus land, further evidenced by an increase in assessment that is inconsistent with market conditions. The Complainant provided the Board with an evidence package in support of his position.

## **Year-over-Year Increases**

[7] The Complainant stated that the current owner bought the subject property in 2010 for \$2,700,000. Although the 2011 assessment was initially \$3,767,000, this was reduced to \$2,395,000 after discussion with the assessor.

[8] The Complainant noted that the proposed 2014 assessment was 71.2% higher than the 2011 assessment of \$2,395,500. He further noted that the assessment of \$4,116,500 for 2014 was a 40.2% increase compared to the 2013 assessment of \$2,936,000. Furthermore, he also noted that, during the time period 2011 to 2014, for south side Edmonton class A office properties, assessments only went up 23%, and for AA office properties, only up by 32%.

[9] The Complainant submitted that the changes in actual market values did not support a 71.2% increase and referred to a list of Land Title Transfers as further evidence. Included were 31 title transfers for Edmonton office properties that occurred between July, 2010 and June, 2013.

[10] The Complainant also referred to a CB Richard Ellis table of average sales of south side owner-occupied properties showing average unit prices of \$261.29/sf in 2011, \$277.76/sf in 2012, and \$288.86/sf in 2013 as further indication of market value increases that were far less than City's calculations.

[11] Based on a 23% increase in values for class A buildings, the Complainant submitted that the assessment of the subject property should be \$2,946,465.

## **Building Classification**

[12] The Complainant stated that his understanding of the office building classes are defined as follows:

AA: Highest rents. Encompasses premium quantitative attributes and premium qualitative attributes.

A: Rents lower than AA offices. Generally, quantitative attributes are slightly inferior to AA. Encompasses a high number of qualitative attributes; some or all may be inferior to AA.

[13] The Complainant noted that the subject property was classified as an “A” office building for the assessments of 2011, 2012, and 2013 and then was reclassified to “AA” for the 2014 assessment year. He stated that no material changes were made to the building that would prompt a reclassification. As a result of the reclassification, the rental rate used in the assessment calculation changed from \$17/sf to \$22/sf.

[14] The Complainant submitted that, if a rental rate of \$19/sf was applied to the office space of 11,814 sf, and if there was no excess land value, and all other values used in the assessment calculation remained the same, the resultant assessment would be \$3,383,070, and that was his requested assessment value.

[15] With respect to achieving AA “highest rents”, the Complainant stated that six new neighbouring and competing office buildings have been constructed since his was built in 2004:

Building Name	Address	Size	Year Built
The Steppes East Building	1253 – 91 Street SW	40,691 sf	2007
The Steppes West Building	1253 – 91 Street SW	25,408 sf	2007
Mancap Building	1104 – 95 Street SW	15,470 sf	2005
OIS Building	1453 – 91 Street SW	13,575 sf	2010
Morrison Hershfield Building	1603 – 91 Street SW	28,007 sf	2010
Landmark Business Centre	1103 – 95 Street SW	>40,000 sf	2013

[16] These have added 160,000 sf of additional space on the south side of Ellerslie Road. He reviewed a number of photographs of these buildings and submitted that, because they were newer and had superior finishes, mechanical systems and features, they would attract higher rents than the subject property and be more representative of class AA buildings. Upon questioning, the Complainant did not know if any were “AA”. Further, he did not have any actual rental information; other than an asking rate of \$27/sf for the Landmark Business Centre. He also stated that six additional office/commercial buildings are currently under construction. Furthermore, as his building is not only older, but is also stick-built (vs. steel and concrete construction), and does not have other features such as an elevator or commercial lobby, it would not be able to generate the highest rents.

[17] The Complainant stated that the subject property has two tenants: (1) a main floor tenant paying \$22/sf (but that rate includes the use of custom designed office furniture in all offices, boardroom furniture, and kitchen appliances; as these represent approximately \$3/sf, the actual net rental rate is only \$19/sf); and (2) the upper floor tenant which is the building owner whose rate was set by an internal, non-arms-length leasing transaction, not a market rate. He noted that the rental rate assigned to “A” classified office buildings for assessment purposes was \$19/sf.

[18] The Complainant’s disclosure package included a 27 page lease document between the owner and the main floor tenant. He submitted that the section on Office Furniture confirmed that the tenant was leasing the furniture, i.e. the part of the rental rate was for the furniture lease. Upon questioning he confirmed that the furniture and improvements stay with the owner upon lease expiry. He also confirmed that the lease had pre-determined step-up rates and that the rate for June 15, 2013 to June 14, 2014 was \$23.50/sf.

## Surplus Land Value

[19] The Complainant stated that an additional "other value" of \$225,000 for excess land was added to the 2014 assessment, which contributed to the 40.2% increase over the 2013 assessment. He submitted that any excess land was located on the south and east sides of the property. The south side was needed for parking and access to the rear (east) side. The rear area could not be further developed because it is needed to accommodate a driving turning radius for entry to the underground parkade and for trucks to reach the rear shipping and receiving doors. Also, the rear grass area is steeply sloped and would require an expensive retaining wall which would negate any positive value from a new building or additional parking stalls. In his opinion, the Complainant submitted that any excess land on the subject property would have no value.

[20] In answer to a Board question, the Complainant acknowledged that he had not attempted to value the subject property based on comparable sales, just title information. In other words, his disclosure did not include any sales comparable evidence that the subject property would not sell for the assessed value. He also acknowledged that the information in the title transfer spreadsheets was based on gross areas of the buildings.

## Rebuttal

[21] The Complainant submitted a rebuttal in response to the Respondent's disclosure. This included pictures and information on the nearby competing office buildings, and the lease with his main floor tenant.

[22] The Complainant acknowledged an error in his disclosure and that a 32% (versus 23%) increase in "A" class buildings would have resulted in a value of \$3,162,000 (not \$2,945,850).

[23] The Complainant confirmed that a nearby comparable, the Landmark Business Center, was in fact built in 2013, not 1999 as the Respondent had suggested. (It seems that there was a 1999 building with a similar name: the Landmark Homes office complex).

[24] In regard to the RFI documents, the Complainant stated that, due to a misinterpretation of the RFI, the amount for furniture included in the lease costs should have been \$89,000, not \$17,800. The \$17,800 represented one-fifth of the cost (i.e. the \$89,000 was spread evenly over the five years of the lease).

[25] The Complainant further submitted that the rental rate included a significant amount for space finishing as well as unmovable furniture (boardroom table, front desk area, kitchen, etc. He estimated the inducement value at \$100/sf, or \$538,400. Amortized over 25 years (4%/year) would be a value to the tenant of \$21,536/year or \$107,680 over the life of the lease. By adding the \$10,000 that was used for enclosing open areas to the \$107,680 for inducements, and recalculating the net effective rent, he came up with \$15.07/sf, which in his view was firmly in the "A" area.

[26] In summary, the Complainant requested a zero surplus land value as well as an "A" office classification, which would result in a rental rate of \$19/sf, for which the combined effect would reduce the assessment to \$3,383,000.

## Position of the Respondent

[27] It is the Respondent's position that the subject property was improperly classified as an "A" office building in the Southside Area (SSA) in the past and is now more appropriately classified as an "AA" office building. However, the Respondent concedes that a value attributed to "excess land" on the property is incorrect and should be removed from the assessment. The Respondent provided the Board with documentary evidence, containing information on the derivation of the assessment using the income approach, as well as sales and equity comparables. It also contains information on Mass Appraisal, the City of Edmonton's assessment approach, Factors Affecting Value, Provincial Assessment Quality Standards, the Law and Legislation governing assessment in Alberta, and a CARB decision from 2012.

## Surplus Land Value

[28] The Respondent stated that the City applies an additional land value wherever a building has more land than is required for its current developments, the logic being that there is value in the surplus land for further development or subdividing potential. The value is calculated by examining the amount of land required to satisfy zoning and parking bylaw requirements, and then applying a value for the remainder. After reviewing the location of the building on the site, as well as site influences and encumbrances on title, the Respondent is recommending that the surplus land value be reduced to zero and that the assessment be reduced to \$3,891,500.

## Building Classification

[29] After discussing the stratification of the AA and A suburban office building classes, the Respondent stated that the assessor looks at certain quantitative and qualitative attributes to determine which classification a building falls into, according to the following tables:

QUANTITATIVE MEASURES	
Effective Year Built	Gross Leasable Area
# of Storeys	Lease Rates

QUALITATIVE MEASURES	
Interior Finish	Exterior Finish
Condition	Quality
Parking	Lot Location
Transit Access	Traffic Exposure

[30] After reviewing the photos of the building, as well as aerials and maps, the Respondent stated that, in his opinion, some qualitative measures such as the interior and exterior finish, the quality of landscaping, ample parking, the balcony, etc. supported the AA classification.

[31] The Respondent submitted that the property was incorrectly classified as an A office building in the past, in an effort to recognize the difficulties the property was having leasing up vacant space at the time. This was not the appropriate way to account for the vacant space in that the commercial assessment department has a "chronic vacancy policy" that should have been used.

[32] The Respondent submitted that current rents in a building are one of the quantifiable factors in determining the classification of a building, because the rental rate encompasses most of the attributes considered in determining market value. The information provided by the owner in the 2013 Request for Information (RFI) indicated that there was 5,384 sf of leased space on the main floor and that the five year lease commenced in June of 2011. The Respondent calculated the rent to be approximately \$22.75/sf, including a tenant improvement allowance of \$17,800 and tenant inducements of \$10,000. After removing the effects of the allowances, the *net effective rate* for the term of the lease was \$21.72/sf. Given that the lease commenced in 2011, and comparing it to the 2012 assessed rate of \$19.50/sf, the Respondent concluded that the lease supported the “AA” classification of the subject property. It was noted that tenant improvement allowances are typically not deducted when analyzing a rental rate because that money is being put into improving the property. It was only deducted in this instance because the Complainant had indicated that the allowance was actually for furnishings, not tenant improvements in the traditional sense.

[33] The Respondent explained that, for assessment purposes and the purpose of mass appraisal within the confines of the *Municipal Government Act*, RSA 2000, c M-26, *typical* rental rates are used, *not actual* rental rates in place. Current economic rents or market rents are used to form the basis of the valuation as opposed to actual rents because in many cases, the actual rents reflect historic revenues derived from leases negotiated before the valuation date. In the case of “AA” class office buildings in the SSA, a rate of \$22/sf has been found to be the typical rate. The Respondent provided a 2014 Fairness and Equity Chart of all of the other “AA” class office buildings in the SSA and noted that the \$22/sf rate had been applied to all of them.

#### Year-over-Year Increases

[34] The Respondent submitted that the mere fact of a large percentage increase without more evidence is not enough information to draw the conclusion that the assessment is too high. The Board was referred to a number of ARB and MGB decisions that ruled that each year’s assessment is independent of previous assessments. Although the property sold in 2010 for \$2,700,000 (considerably less than the current assessment), there was no proof that the transaction price was reflective of market value for assessment purposes. The Respondent’s position was that one sale does not necessarily dictate market value and because the sale was so dated, it was not considered for valuation purposes.

[35] In further support of the City’s valuation of the subject property, the Respondent referred to a Capitalization Rate Analysis showing a table of twelve sales of suburban office properties. For these properties, the median adjusted cap rate was 6.38% and the average was 6.43%. Although the cap rate is not an issue with this complaint, the Respondent submitted that the table explains the 6.5% cap rate used by the City.

#### Surrebuttal

[36] The Respondent acknowledged a mistake related to the two different Landmark properties. Whereas the Complainant was referring to the Landmark Business Centre at 1103 – 95 Street built in 2013, the Respondent’s comments referred to the Landmark Homes office complex comprised of several buildings built between 1999 and 2008. The Respondent explained that construction of the Landmark Business Centre property started in 2012 and continued in 2013 and was therefore assessed for 2014 by using the cost approach, not the income approach.

[37] The Respondent noted that there are issues with market rents related to the office market and that, depending on supply and demand for space and the negotiating power of the parties, there may be inducements to lease that will impact the “net” rent received by the owner.

[38] With respect to Tenant Inducements, the Respondent referred the Board to the Alberta Assessor’s Association Valuation Guide for Office Buildings, it states: “in order to establish the typical net market rent in situations where tenants receive inducements, it is necessary to analyze the terms and conditions of these inducements ... which can consist of one or more of: leasehold improvements, cash payments, periods of free rent, and lease buy-outs.”

[39] The most common form of inducement is the provision of Tenant Improvement (TI) Allowances, and the Guide also states that: “Since the valuation procedure presented in this guide is based on the net effective rent for finished space, the income analysis incorporates the value of leasehold improvements. Because of this approach, **inducements that are attributable to leasehold improvements should not affect the net market rents used in the assessment of a property. Therefore, no deduction or adjustments to the Base Rent should be made for inducements attributable to leasehold improvements.**” The Respondent submitted that, for assessment purposes, TIs are not deducted when analyzing a rental rate because that money is value being put back into the owner’s property. Furthermore, if it were proven that TIs were typical in the market place, then typical TIs would have to be calculated; and if TIs were applied to the subject property, then the cap rate applied would also have to be calculated inclusive of TIs. In other words, a typical TI allowance would have to be determined and applied to the stabilized income of each cap rate indicator. The difficulty that the City has encountered in past attempts to determine typical TI allowances was that too little data was received during the RFI process.

[40] The Respondent stated that, if there was a hypothetical typical TI allowance of \$4.00/sf (based on the Complainant’s calculation of \$21,536/yr for 5,384 sf), this would result in an indicated cap rate of 5% instead of 6.5%, and referred to a revised table of cap rates (Exhibit R-2, page 66).

[41] In summary, the Respondent requested that the Board reduce the assessment of the subject property to \$3,891,500, based on the removal of the excess land value from the proforma calculation.

### **Decision**

[42] The property assessment is reduced to \$3,891,500.

### **Reasons for the Decision**

[43] The Board accepts the Respondent’s recommendation to remove the surplus land value from the assessment and reduce the assessment to \$3,891,500, based on the Complainant’s information provided related to restrictive covenants, limitations to further development due to the location of the building, lot setback requirements, access to the underground parking, and potential need for an cost-prohibitive retaining wall.

### **Is AA Suburban Office Building the correct classification of the subject property?**

[44] With respect to the assertion that the subject property is inferior to the Complainant’s comparables (his competition), the Board finds that, from a review of the qualitative attributes,

his comparables (AA office buildings) may have some superior features, such as finish, amenities, mechanical systems, etc. However, based on a review of the quantitative measures, the Board finds the evidence to be insufficient to establish that his comparables were superior to the subject property. They may have had one or a few more storeys, they may have been newer, but were not significantly newer, differences in gross leasable areas were not in evidence, and, perhaps most importantly, their ability to attract higher rents was not established.

[45] While the Complainant provided evidence that the actual rental rate for its main floor tenant was \$23.50/sf, he did not provide evidence that \$3.00 of that rate was specifically for tenant improvements and should therefore be deducted from the net rent to arrive at a lower net effective rent. Also, the figure of \$89,000 for furniture leasing over the five year term was not backed up with evidence. Therefore, the Board was unable to accept the Complainant's suggested net effective rent revised calculation of \$15.07/sf.

[46] The Board notes that, if the Complainant's net effective rent figures were accepted, this could potentially result in a cap rate of 5% being used in the proforma, which in turn would have a significant upward impact on the assessment.

[47] The Board finds the Respondent's 35 equity comparables of all AA office buildings in the SSA showing typical rental rates of \$22/sf to be compelling evidence of the equity of the AA classification. The Board notes that, while six of these comparables are regarded as the Complainant's competition because of their close proximity, and the assertion was made that they were superior to his building and would therefore attract higher rents, no evidence was brought forward to show that they actually do achieve higher rents.

[48] For the above reasons, the Board finds that the subject property is correctly classified as an AA office building.

Is the Year-Over-Year assessment increase proof that the assessment is incorrect?

[49] While the Complainant provided some information on title transfers for three years leading up to the valuation date, the Board was unable to determine the comparability of those properties to the subject property due to a wide range of building ages and sizes, gross areas instead of net leasable areas. The Board placed little weight on the data.

[50] With respect to the CB Richard Ellis report of average sales over the last three years, without further data on the types and characteristics of properties included in the graph, the Board was not able to place much weight on it.

[51] While there is a significant difference between the current assessment and the sale price of the subject property in 2011, there is no evidence that the sale price represented market value.

[52] Furthermore, the year over year increase in the assessment is not proof of an incorrect assessment.

[53] In summary, the Board finds the original assessment of the subject property not to be correct, based on the mutually agreed upon zero surplus land value and that the correct assessment is reached by calculating the proforma income approach valuation with a zero amount for excess land, and all other variables in the proforma unchanged from the original calculation.



Heard May 29, 2014.

Dated this 25<sup>th</sup> day of June, 2014, at the City of Edmonton, Alberta.



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Peter Irwin, Presiding Officer

**Appearances:**

Bruce Alton, TSH Properties Ltd.  
for the Complainant

James Cumming  
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.*

## Appendix

### Legislation

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.

The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009 reads:

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

### Exhibits

C-1 – Complainant’s Disclosure

C-2 – Complainant’s Rebuttal

R-1 – Respondent’s Disclosure, including Law & Legislation

R-2 – Respondent’s Surrebuttal