

## **Edmonton Composite Assessment Review Board**

**Citation: Luxor Land Ltd v The City of Edmonton, 2014 ECARB 00681**

**Assessment Roll Number: 3245958**

**Municipal Address: 10056 109 STREET NW**

**Assessment Year: 2014**

**Assessment Type: Annual New**

**Assessment Amount: \$43,918,000**

Between:

**Luxor Land Ltd as represented by its designated  
agent Colliers International Realty Advisors Inc**

Complainant

and

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

Respondent

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**DECISION OF**  
**Petra Hagemann, Presiding Officer**  
**Brian Frost, Board Member**  
**Martha Miller, 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.

### **Background**

[2] The subject property, known as the Associated Engineering Building, is a multi storey office building located in the Government District on the south west corner of 109 Street and Jasper Avenue. The building, comprising 165,265 square feet (sq ft) of leasable area, (156,161 sf of office, 2,451 sq ft of CRU and 6,653 sq ft of restaurant space), falls within the BH classification and is in average condition. It has been assessed using the Income Approach to Value.

### **Issues**

[3] Has an incorrect lease rate been utilized in the valuation of the subject property, resulting in an assessment in excess of market value?

### **Position of the Complainant**

[4] It is the Complainant's position that the 2014 assessment of the subject property is incorrect on the basis that:

- (a) The subject property has been assessed utilizing a typical office lease rate of \$18.50 per sq ft whereas market evidence suggests that an office lease rate of \$16.00 per sq ft should be utilized. Recalculation of the 2014 assessment using a \$16.00 per sq ft lease rate would suggest that the appropriate assessment would be \$38,620,500.
- (b) The subject property has been assessed at \$265.74 per sq ft of leasable area whereas similar and better quality and/or higher class buildings have been assessed at an average of \$245.72 per sq ft. Once adjustments are made to the average to account for newer buildings and differences in gross leasable areas, the assessment of the subject property, to be fair and equitable, should be assessed at \$240.00 per sq ft, or \$39,663,500.
- (c) The 2014 assessment is 22.2% greater than the 2013 assessment whereas property values for office buildings, according to the City of Edmonton web site, have increased by a factor of 1.0403%. Applying the time adjustment factor to the 2013 assessment would suggest that the appropriate 2014 assessment would be \$37,390,000.

[5] In support of a reduced lease rate, the Complainant provided a summary of five leases, four of which were in BH class buildings. The fifth was in a BL class building. One was in the subject property. The lease rates ranged from \$12.00 to \$17.00 per sq ft and averaged \$16.00 per sq ft. As well, a summary of a further five leases in superior class buildings were summarized, reflecting a range of \$15.00 to \$18.00 per sq ft and averaging \$16.00 per sq ft. The Complainant concluded that the appropriate lease rate as evidenced by the comparables should be \$16.00 per sq ft.

[6] In rebuttal, the Complainant critiqued the Respondent's Class BH lease comparables, noting that inclusion of leases beyond the 12 months immediately preceding the valuation date skewed the result. The Complainant noted that in the period of July 1, 2012 to July 1, 2013, the leases averaged \$16.61 per sq ft and reflected a median of \$16.00 per sq ft.

[7] In support of the equity argument, the Complainant summarized the assessments of eight class A and B buildings. The assessments ranged from \$225.75 to \$267.95 per sq ft and averaged \$245.72 per sq ft. On the basis that four of the eight equity comparables were superior class A buildings, \$240.00 per sq ft would be an equitable assessment for the subject property.

[8] As to the time adjusted 2013 assessment, the Complainant conceded that there was no real basis for the argument other than to present an "acid test" as to the correctness of the assessment as determined in the other two methods.

[9] The Complainant requested that the Board reduce the 2014 assessment for the subject property to \$38,620,500.

### **Position of the Respondent**

[10] It is the Respondent's position that the 2014 assessment of the subject property is both fair and equitable. The Respondent summarized the City of Edmonton Mass Appraisal Brief stating that all properties such as the subject are assessed in a consistent manner utilizing the income approach to value. Further, they are assessed on a fee simple basis, where typical lease, vacancy, expense and capitalization rates are utilized in determining a fair assessment.

[11] The Respondent included within the evidence a chart of all downtown valuation rates by building class, confirming in part that the correct lease rate for assessment of the subject property

within the Class BH category is \$18.50 per sq ft. In support of this conclusion, the Respondent provided a list of all known leases in class BH buildings that were signed between January 2012 and April 2013. After time adjustment they averaged \$18.98 per sq ft and reflected a median of \$18.57 per sq ft.

[12] The Respondent critiqued the Complainant's lease comparables, noting that none were time adjusted, four of the ten were a different class, four included inducements that were not reported in the Request for Information (RFI) and two were post facto. The Respondent further argued that the conclusion in the Complainant's rebuttal failed to apply a time adjustment.

[13] The Respondent, in support of fairness and equity, provided a list of all class BH assessments. They ranged from \$151.50 for a building with chronic 25% vacancy to \$253.44, where most of the assessments fell. The Respondent stated that the subject, at \$227.95 per sq ft, was equitably assessed, even with its recognized chronic vacancy of 10%.

[14] The Respondent stated that the Complainant incorrectly calculated the assessments per square foot of the equity comparables, noting that only the office space should have been used in the calculation. As a result, four of the Complainant's equity comparables were incorrect.

[15] The Respondent requested that the Board confirm the 2014 assessment of \$43,918,000.

### **Decision**

[16] The Board reduces the 2014 assessment of the subject property to \$41,440,000.

### **Reasons for the Decision**

[17] Based on the argument as presented by both parties, the Board concluded that the lease rate as utilized in the income approach was the prime factor in determining the correct assessment of the subject property.

[18] The Board quickly concluded that time adjustment of the 2013 assessment is not only unconventional, but given past decisions regarding the relevance of previous years' assessments, was of no value in determining the correctness of the current assessment (*Maguire v The City of Edmonton* (October 31, 2007, ARB), unreported; *Lamond v The City of Calgary*, MGB DL 063/07; *Shinkaruk v The City of Edmonton*, MGB DL 085/05) .

[19] The Board reviewed the equity data as provided by both parties. The Board recognizes that the assessment per sq ft has been calculated by the Respondent on the office portion of the subject property only. The Board has made the appropriate adjustments to arrive at the Complainant's requested assessment per sq ft based on the value of the office portion only. The Board is satisfied that the range of \$151.50 per sq ft to \$253.44 per sq ft supports both the Respondent's assessment of \$227.95 per sq ft and the Complainant's request (Board adjusted), of \$193.35 per sq ft. The Board placed less weight on the equity argument.

[20] The Board reviewed the Complainant's first five lease rate comparables. The Board took note of the Respondent's argument that the Complainant's third comparable, a BL class building was inappropriate for comparative purpose. However the Board noted that the remaining comparables, at \$16.00, \$17.00, \$17.00 and \$18.00 per sq ft exhibit strong support, not for a \$16.00 per sq ft lease rate as suggested by the Complainant, but for a \$17.00 per sq ft lease rate

that, given their negotiation four months either side of the valuation date, required little or no time adjustment.

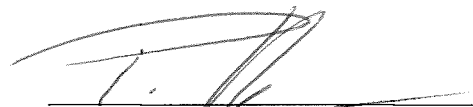
[21] The Board considered the Complainant's five additional comparables, while the Board placed little weight on the leases in the four class A buildings because of their lack of comparability, however, the Board noted that the leases in the two class BH buildings, at \$15.00 and \$16.00 per sq ft provided support for a valuation day lease rate of \$17.00 after a time adjustment.

[22] The Board placed most weight on the Complainant's analysis of the Respondent's Government sector class BH building leases and is satisfied that when the analysis is more finely tuned to identify only those leases within the 12 months prior to the valuation date, a non time adjusted average of \$16.61 per sq ft supports a \$17.00 per sq ft lease rate.

[23] The Board concludes that a lease rate of \$17.00 per sq ft is appropriate for the subject property, which when utilized in recalculation of the Income Approach, results in a value of \$41,440,000.

Heard July 21, 2014.

Dated this 19<sup>th</sup> day of August, 2014, at the City of Edmonton, Alberta.

  
Petra Hagemann, Presiding Officer

**Appearances:**

James Phelan  
Stephen Cook  
for the Complainant

Darren Davies  
Steve Lutes  
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.

### Exhibits

Exhibit C-1 Complainant’s Evidence – 29 pages

Exhibit C-2 Complainant’s Rebuttal Evidence – 10 pages

Exhibit C-3 Complainant’s Evidence – 6 pages

Exhibit R-1 Respondent’s Evidence – 97 pages