

Edmonton Composite Assessment Review Board

Citation: Altus Group for Melcor Reit Gp Inc v The City of Edmonton, 2014 ECARB 01570

Assessment Roll Number: 3508405

Municipal Address: 11748 Kingsway NW

Assessment Year: 2014

Assessment Type: Annual New

Assessment Amount: \$3,045,500

Between:

Altus Group for Melcor Reit Gp Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Petra Hagemann, Presiding Officer
Darryl Menzak, Board Member
Taras Luciw, Board Member

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 objected to the Respondent submitting their sur-rebuttal document on the grounds that it is not allowed as per legislation. Reference was made to *Matters Relating to Assessment Complaints* (MRAC) s 8(2)(c) which reads:

The complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

[3] Should the Board permit the Respondent to present their sur-rebuttal, the Complainant further objected to the content suggesting that it is new evidence and should be disallowed.

[4] The Respondent advised the Board that sur-rebuttal is allowed as per MRAC s 8(2)(c). In many cases it is in the form of testimonial evidence provided at the hearing. In this case, the Respondent as a courtesy to the Complainant provided the sur-rebuttal evidence three days prior

to the hearing granting the Complainant sufficient time to prepare a response for the hearing. The nature of the sur-rebuttal deals with the time adjustment factor for the office rental rates which was questioned in the Complainant's rebuttal of the Respondent's evidence.

[5] The Board allows the sur-rebuttal. Although not specifically referred to in MRAC, a sur-rebuttal is a challenge of a rebuttal and an accepted practice in a tribunal hearing. With respect to the contents of the sur-rebuttal, the Board will make a decision on the admissibility as evidence once the Board has reviewed this document.

Background

[6] The subject property known as Stanley building II, built circa 1971 is a two storey class B suburban office building located at 11748 Kingsway Avenue in the City of Edmonton. It is assessed on the income approach based on 17,202 square feet (sq ft) of office space and 1,131 sq ft of storage space.

Issues

[7] Should the office lease rate in the subject be reduced to \$12.00/sq ft to adequately reflect market rent as of the valuation date?

[8] Should the storage space be reduced from 1,131 sq ft to 411 sq ft?

Position of the Complainant

[9] The Complainant filed this complaint on the basis that the assessment of the subject property is in excess of market value.

[10] The Complainant advised the Board that the best source of comparable market rents are leases within the subject and its sister building located on the adjoining property. Four leases ranging in start date from March 2011 to January 2013 with lease rates ranging from \$8.00/sq ft to \$12.00/sq ft indicate that \$12.00/sq ft would be a more appropriate market rent for the subject.

[11] The Complainant submitted three further comparable leases located in Circle Square. One lease with a start date of Jan 2014 is listed at \$13.50/sq ft and two commencing October 2012 and September 2011 at \$14.00/sq ft. The Complainant indicated that Circle Square is a superior quality building compared to the subject property which would explain the higher lease rates.

[12] In response to the comment made by the Respondent that the January 2014 lease rate in Circle Square is post facto, the Complainant noted that this lease was included to illustrate that the trend has been flat and not increased as suggested by the Respondent's time adjustment factor which suggested a 20% increase in the eighteen months prior to the valuation date.

[13] The Complainant referred to the 2014 Suburban Valuation Rates utilized by the City noting that the office lease rates for B class buildings in District 118 is \$15.00/sq ft however, for C class buildings the lease rate drops significantly to \$10.00/sq ft. The Complainant suggested that a classification of "low B" or "high C" would more accurately describe the subject and a \$12.00/sq ft office lease rate would reflect fair market value.

[14] The Complainant advised the Board that the storage area should be reduced from 1,131 sq ft to 411 sq ft.

[15] In rebuttal, the Complainant reproduced the six leases provided by the Respondent used in the lease rate study. These were plotted on a graph to illustrate that in District 118 the time adjustment factor is nearly flat from January 1, 2012 to December 2013 and not 20% as suggested by the Respondent. This trend is further supported by the post facto lease supplied by the Complainant. The average of the leases in the Rental Rate Study is \$12.75/sq ft with a median of \$12.00/sq ft supporting the requested reduction to \$12.00/sq ft.

[16] The Complainant directed the Board to previous CARB and MGB decisions as well as a decision of the Nova Scotia Court of Appeal in respect of mass appraisal. These decisions note that in the mass appraisal process most assessments will be appropriate most of the time; in some cases, some will not be and more intense review is required. If an error, supported by market evidence is found, that should be given consideration. In summary, the assessment should be fair, equitable and represent market value.

[17] The Complainant requested the Board reduce the assessment of the subject property to \$2,373,000 to reflect a \$12.00/sq ft office lease rate and a storage area of 411 sq ft.

Position of the Respondent

[18] The Respondent reviewed the mass appraisal process and the income approach used in determining the assessment of the subject property.

[19] The Respondent requested that the assessment for the subject property be revised from \$3,045,500 to \$2,936,000. This reflected a reduced office rental rate based on their adjusted 2014 Rental Rate Study for class B suburban office buildings in District 118. The time adjusted net rental rates used in the study averaged \$15.13/sq ft, with a median rate of \$14.13/sq ft which resulted in the rate of \$14.50/sq ft applied to the revised assessment of the subject vs the original \$15.00/sq ft. The Respondent reminded the Board that the City is mandated to use typical rather than actual rental rates.

[20] The Respondent critiqued the Complainant's comparable leases as follows: lease #1, located in Circle Square commencing January 2014 was post facto and should not be considered; lease #2 located in the subject dated January 2013 was not submitted to the City and therefore not included in the lease rate study; leases #3, #4, and #5 were the only leases used in the study; leases #6 and #7 were older (March and September 2011) and therefore also should not be used in the study. Furthermore none of the leases were time adjusted and therefore not reflective of the market.

[21] In response to the Complainant's request to reduce the storage space from 1,131 to 411 sq ft, the Respondent indicated that there is no evidence to substantiate this. The 411 sq ft reported by the owner of the subject property in the 2013 request for information (RFI) referred to gross leasable area variance which is related to the measuring of the office space and not the storage area in the basement. The Respondent noted that this issue was not brought up during the inspection of the subject when all parties (owner, agent and Respondent) were on site and when this could have been measured and verified.

[22] The Board reviewed the Respondent's sur-rebuttal document and found that indeed it was in direct response to the Complainant's rebuttal which challenged the time adjustment factor used in the assessment. In response to the comment from the Complainant that the City could have reasonably anticipated the question regarding the time adjustment factor and could have included it in their brief, the Board found that it could not have been anticipated since the Complainant did not submit any evidence in respect to time adjustment of the lease rates in their documentary evidence. The Board accepted the Respondent's sur-rebuttal into evidence.

[23] The Respondent submitted that leases of all B class buildings throughout the suburban area were used as there were not sufficient leases in each district to come to a reliable conclusion on district specific time adjustments. These leases were plotted, analyzed and a trend line illustrated an upward trend from January 2012 to July 2013. The resulting time adjustment factor was then applied to all lease rates in the suburban B class buildings.

[24] The Respondent requested the Board reduce the 2014 assessment of the subject as per their recommendation to \$2,936,000.

Decision

[25] The decision of the Board is to accept the Respondent's recommendation and reduce the assessment of the subject from \$3,045,500 to \$2,936,000.

Reasons for the Decision

[26] The Board examined the evidence presented by the Complainant and finds the following in respect to the requested reduction in the office lease rate to \$12.00/sq ft.

[27] The Board reviewed the seven leases provided by the Complainant of which four were in the subject and sister building (also under appeal) and three in the Circle Square building. The Board heard the Complainant state that in most cases the leases in the subject property are the best indicator of market value. However the lease rates in one property may be influenced by a variety of factors such as the duration of the leases and management decisions. Two of the leases are ten year terms at \$10.00/sq ft and \$10.75/sq ft and one lease at \$8.00/sq ft commenced three years prior to valuation date.

[28] When the Board questioned the Complainant as to his reasoning for the below typical leases, he suggested that the subject falls somewhere between a low B and a high C classification; however he did not request a change in the classification for the subject property. The Board was not convinced that this statement warranted a change in the lease rate of the subject property.

[29] The Board reviewed the leases in the Circle Square building which had office lease rates closer to the City's "typical". During questioning, the Complainant indicated that the reason this property generated higher rates than the subject was because its superior quality to the subject; however no evidence was provided to compare the qualities of the two buildings. The Board was not persuaded by this comment.

[30] The Board examined the Respondent's evidence. It is aware that the City is mandated to use typical rather than actual rental rates in determining assessments in the mass appraisal process. The subject is classified as a B class building in suburban District 118. The rental rate study for this district included six leases, three of which were from the subject. These leases

ranged from \$10.00/sq ft to \$16.00/sq ft. When time adjusted to valuation date, they averaged \$15.13/sq ft with a median of \$14.13/sq ft. Accordingly the City revised their “typical” office lease rate to \$14.50/sq ft. The Board is satisfied that the subject’s leases were represented in the study in determining a typical office lease rate for district 118.

[31] The Complainant questioned the validity of the time adjustment factor applied to the leases in the lease rate study. The Complainant’s comparable leases indicate that the trend was flat during the eighteen months prior to valuation date. Furthermore it was stated that using lease rates throughout the City to determine a time adjustment factor was unfair as it did not consider the district specific factors which could affect leases either positively or negatively. The Board was not persuaded by this argument.

[32] The Board accepts the Respondent’s premise that as each suburban district may not have sufficient leases to come to a reliable conclusion as to the trend in market leases in its area, it is prudent to include all suburban leases to determine the time adjustment factor for each class. The Board finds that as there were only six leases available in District 118, it was not a significant sample to determine the trend in the market.

[33] The Board is satisfied that the revised \$14.50 office lease rate is typical of B class buildings and a fair rate to apply to the assessment of the subject property.

[34] In respect to the issue regarding the difference in the size of the storage space of 411 sq ft rather than the assessed 1,131 sq ft, the Respondent advised the Board that this area as per the owner’s RFI referred to the measuring of the office space and is not the storage area in the basement as claimed by the Complainant. The Complainant did not provide the Board with any information such as drawings to support his claim; therefore the Board placed little weight on this evidence.

[35] It is the Board’s mandate to determine the correct, fair and equitable assessment of a property under appeal and is legislated not to alter that assessment unless it is proven not to reflect market value. The Complainant did not convince the Board with sufficient compelling evidence that the assessment of the subject is incorrect and therefore accepts the recommendation of the Respondent to reduce the office lease rate to \$14.50/sq ft and the assessment to \$2,936,000.

Dissenting Opinion

[36] There was no dissenting opinion.

Heard September 3, 2014.

Dated this 26th day of September, 2014, at the City of Edmonton, Alberta.

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

Petra Hagemann, Presiding Officer

Appearances:

Chris Buchanan, Altus Group

for the Complainant

Marsali Huolt, City of Edmonton

Steve Lutes, City of Edmonton

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

- C-1 Complainant’s Brief
- C-2 Complainant’s Rebuttal
- R-1 Respondent’s Brief
- R-2 Respondent’s Surrebuttal