

## **Edmonton Composite Assessment Review Board**

**Citation: Altus Group v The City of Edmonton, ECARB 2012-001088**

**Assessment Roll Number:** 9987696

**Municipal Address:** 6316 50 STREET NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**Altus Group**

Complainant

and

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

Respondent

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### **DECISION OF**

**James Fleming, Presiding Officer**

**Darryl Menzak, Board Member**

**Judy Shewchuk, Board Member**

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### **Preliminary and Procedural Matters**

[1] The parties had no objection to the composition of the panel, and no issues of bias were raised.

[2] Following the acceptance of the Complainant's rebuttal (Ex. C2) and after testimony on the rebuttal had commenced, the Respondent objected to the rebuttal evidence as the Complainant had not provided a summary of his written argument pursuant to the *Matters Relating to Assessment Complaints (AR 310/2009)* (MRAC) s. 8(2)(c).

[3] The Respondent objected to the rebuttal evidence by the Complainant on the grounds that it was not being presented in a clear succinct and simplified summary, and as such did not meet the test of proper rebuttal evidence as provided under the regulation.

[4] In response, the Complainant argued that their rebuttal evidence had been carefully highlighted for clarity and simplicity, and was confined to the Respondent's disclosure only. Further that the case law included in their rebuttal, did not contravene the regulation given the fact that it is settled in numerous jurisprudence that case law does not constitute new evidence in a hearing.

[5] The CARB was therefore left to make a determination on this point on whether the complainant was in compliance with the regulation on this point or not, which effectively will result in either allowing, or excluding the rebuttal evidence of the complainant into evidence.

[6] The issue then, is whether the clear wording and interpretation of applicable sections of the regulation would permit the CARB to accept or reject the Complainant's rebuttal evidence.

### **Decision on Procedural Matter**

[7] The CARB, upon careful consideration of the arguments on this point by both sides, noted that section 8 (2) (c) of the regulation indeed lends support on the given facts to admit the rebuttal evidence of the complainant into evidence based on these points:

- a. The rebuttal evidence as presented was timely and properly disclosed to the respondent
- b. The information provided in the rebuttal focused on the points which were contained in the Respondent's disclosure.
- c. The Complainant introduced case law, which relates to the issues of the hearing, and which has long been a settled issue to the effect that it does not create a disadvantage to the Respondent, and not constitute new evidence in a hearing.
- d. The Complainant specifically and diligently highlighted those aspects of his rebuttal that he would be discussing as his rebuttal evidence to the CARB

[8] As one would otherwise expect, the Respondent made no effort to raise objection to this rebuttal evidence, on the ground that it was improper until late in the hearing.

[9] The CARB decided that the Complainant had met the requirement for disclosure of their rebuttal and that a written summary was not required as their position was clear.

### **Background**

[10] The subject consists of two warehouses on a site of 1,303,193 square feet (29.92 acres) in the south east quadrant of the city. Building #1 is 183,600 square feet and is 100% complete having been constructed in 2009. Building #2 is 259,600 square feet and is 66% complete as of July 1, 2011. The total area of the buildings is 443,200 square feet for site coverage of 34%.

[11] Building #1 is assessed at \$11,763,603; building #2 at \$18,634,746; the land at \$8,973,502; and other site improvements at \$904,468 for a total of \$40,276,000.

[12] The subject is zoned DC2 with an effective IM designation and the improvements are assessed using the Cost Approach to value.

### **Issue(s)**

[13] Is the 2012 assessment fair and equitable?

### **Legislation**

[14] The Municipal Government Act reads:

***Municipal Government Act, RSA 2000, c M-26***

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**

[15] The Complainant submitted an evidence package of 49 pages (exhibit C-1).

[16] The Complainant submitted that the cost approach utilized by the Respondent “did not make sense” because the per square foot assessment of building #1, which is 100% complete, is \$64.07 while the assessment of the incomplete building #2 is \$71.78.

[17] The Complainant submitted that the correct improvement value, based on the Marshall & Swift Manual, is \$11,088,712 for building #2. When added to the undisputed assessment of building #1, the land, and the other improvements the total should be \$32,730,285 (exhibit C-1, page 11).

[18] As an alternative, the Complainant argued that the direct sales comparison approach should be used and presented three sales comparables (exhibit C-1, page 9) showing time adjusted sale prices (TASP) of \$67.66, \$78.37, and \$84.36 for an average of \$76.80 and a median of \$78.37 per square foot. The Complainant submitted that \$80 per square foot was an appropriate TASP. Accordingly the Complainant then calculated that the value attributable to building #1 was \$14,688,000 and the value attributable to building #2 was \$15,493,968 which resulted in a total value of \$30,181,968.

[19] As another alternative the Complainant argued equity (exhibit C-1, pages 12-13) and presented two assessment comparables, #1 at 5603-67 Avenue and #2 at 6312-50 Street, next to the subject. The Complainant submitted that based on equity the subject should be assessed at \$32,730,000.

**Position of the Respondent**

[20] The Respondent noted that the land value was not under question nor was the percentage completion for the improvement. The improvement was assessed using the cost approach since the building was incomplete. The improvement was classified as a good quality multi-tenant industrial flex building. Both buildings were classified the same. Building #2 was constructed with concrete tilt up panels and a steel frame. The assessment equates to 66% complete with the roof, steel frame, doors and floor having been completed.

[21] Building #1 which is complete, and not part of the appeal, had office finish while building #2, the improvement under appeal, did not have office finish. Included in the rates for the industrial flex building is 15% office finish. Building #1 had approximately 3- 4% office finish and the assessment had been adjusted accordingly.

[22] The Respondent provided the assessment calculation for the two buildings on the property in R-1 page 13. The calculation indicated the size of the buildings, the percentage complete and the depreciated replacement cost new (DRCN).

[23] The Respondent stated that it was the policy of the City of Edmonton to use the cost approach to in determining the assessment for an improvement that is not complete. In the manner the City utilizes the concept and treat everyone the same. The two buildings on the property are not identical but are classified the same under the Marshall Swift cost manual.

[24] Expanding on the policy in order to account for the differences, the Respondent advised that for an incomplete building (such as the subject), they calculated the cost based on the typical construction cost for a building of that quality, and then applied a calculated percentage completion. In the case of a completed building (such as Building #1), they were better able to assess the actual quality and amount of finishing, and so they applied a cost based on the “actual” quality/condition/finish.

[25] For example, they noted that building #1 only had 3% to 4% office finishing, whereas Building #2 was assessed as typical with a 15% office component. This would account for an (unidentified) portion of the difference in the “total” cost between the two buildings. The Respondent also pointed out, that the application of the 66% percentage completion on building #2 provided an adequate adjustment for the current condition.

[26] They further noted that as construction proceeded on building #2 and the exact nature and extent of finishing was known, the total cost would be adjusted to reflect the “actual” finishing. Of course they also pointed out that once both buildings on the site were finished and available for occupancy, the method of assessment would change to the appropriate method used for the similar properties in the inventory.

### **Complainant’s Rebuttal**

[27] The Complainant submitted a rebuttal package of 131 pages (Ex. C-2), and photographs of the Complainant’s assessment comparable at 5603 – 67 Avenue (Ex. C-3).

[28] The Complainant in his rebuttal, which was in essence various court and board decisions, requested that the Board take into consideration the cost approach and the valuation standard. Regardless of the approach used, it should not exceed market value.

### **Decision**

[29] The Complaint is allowed in part and the 2012 assessment is reduced to **\$34,981,000**.

### **Reasons for the Decision**

[30] The CARB noted the assessment per square foot for building one is \$64.07 per square foot (\$11,763,603 DRCN/183,594 square feet) (Ex.R-1 page 13). The assessment for the incomplete second building is \$71.78 per square foot (\$18,364,746 DRCN/259,591 square feet)

(Ex. R-1 page 13). On a per square foot basis the incomplete building is assessed \$7.71 per square foot higher than the building that is complete. The \$71.78 per square foot for the incomplete building also equates to approximately \$108.76 per square foot when complete. There was no argument with respect to the completion percentage of building two by either party.

[31] Under questioning by the CARB the respondent stated that they did not make a market adjustment to the subject's assessment. The assessment is calculated using a cost manual which includes a certain percentage of office finish and other attributes which may or may not be present at the time of completion.

[32] The CARB accepted the Complainant's position with respect to the cost approach and that the rate per square foot used to determine the replacement cost for building #1 should be similar to building #2. The Respondent failed to demonstrate to the satisfaction of the CARB that the difference in values between a "fully finished" building #1 and a 66% finished building #2 was justified.

[33] The CARB concluded that while market adjustments may be made to completed buildings which are assessed using the cost approach, it appears that no adjustments are made to buildings which are progressive or incomplete and assessed using the cost approach. The CARB noted that this approach may seem unfair given that the cost approach value could exceed the actual market value of a building which is incomplete.

[34] The CARB was persuaded that while the Respondent's approach may have a theoretical basis, the assessment of two similar buildings should adequately recognize that the value of an uncompleted building should be less on a per sq. ft. basis than the value of a "similar" completed building. This was not the case in this complaint, and in the absence of an explanation acceptable to the CARB (which could include a comparison of the cost approach for the two similar buildings), the CARB concluded the "incomplete" building #2 should be assessed at a rate less than the "completed" building #1.

[35] In considering the Complainant's first request using the DSC values (Ex. C1, pg.9), the CARB was concerned that the methodology used by the Complainant was flawed, because attempting to apply a percentage completion developed from the cost approach, to a value obtained from a DSC analysis, is not a legitimate appraisal and or assessment concept. Therefore little weight was placed on this approach.

[36] Next, the CARB reviewed the Complainant's two equity comparables. The CARB notes that one of the equity comparables (Ex. C, 1 pg. 13) located next door to the subject, was similar quality, better condition, and roughly the same age although it was smaller (118,800 sq. ft. versus 259,600 sq. ft. which might argue for a downward adjustment in the subject). This property was assessed (using the same method as was used for the subject) at \$83.54 per sq. ft for a 100% completed building.

[37] The CARB received no compelling evidence from the Respondent that would dispute the comparability of this equity comparable, and so based on similarity in location, quality and condition, the CARB is persuaded that this property represents the best evidence for the value of the subject at 100% completion.

[38] Accordingly, by applying the percentage completion (66%) to the 100% cost (\$83.54), results in a value for building #2 of \$14,314,344.

[39] After adding the value of building #1 and the land value, both as set out on page five of exhibit C1, the final value is (truncated) **\$34,981,000**, which is the value to which the assessment is reduced as noted above.

**Dissenting Opinion**

[40] There was no dissenting opinion.

Heard commencing August 28, 2012.

Dated this \_\_24\_\_\_\_ day of \_\_\_\_September\_\_\_\_, 2012, at the City of Edmonton, Alberta.

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James Fleming, Presiding Officer

**Appearances:**

Walid Melhem

for the Complainant

Blaire Rustulka

for the Respondent

For Official Use Only:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub Issue
CARB	Warehouse	Warehouse Multi Tenant	Cost Approach	Improvement Value