

NOTICE OF DECISION NO. 0098 152/12

Altus Group
780-10180 101 ST NW
Edmonton, AB T5J 3S4

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on August 7, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3169802	10242 106 Street NW	Plan: B2 Block: 6 Lot: 176	\$1,093,500	Annual New	2012

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.

cc: STARK CANADA ULC

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2012 ECARB 001013

Assessment Roll Number: 3169802

Municipal Address: 10242 106 Street NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Don Marchand, Presiding Officer

John Braim, Board Member

Brian Carbol, Board Member

Preliminary Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them.

Background

[2] The subject property is a 5,272 square foot building built in 1956 located in the Downtown subdivision of the City of Edmonton. The current use of the building is as a restaurant. The property has been assessed using the income approach to market value.

Issue(s)

[3] Is the market rental rate at \$16.00 per square foot applied by the municipality to the main floor space of the subject property correct?

[4] Is the capitalization rate of 7% applied by the municipality to the subject property correct?

Legislation

[5] 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

[6] The Complainant introduced the subject property as a garage constructed in 1956 that has since been converted into restaurant space and is currently occupied by a lower end type of restaurant.

[7] The Complainant argued that the 2012 assessment is incorrect and should be reduced. The reduction would be achieved by applying a lease rate of \$8.50/square foot; a vacancy rate of 5%; a CRU shortfall allowance of \$4.50/square foot; a structural reserve of 2% .The resultant net operating income (NOI) would be \$42,533. Capitalized at 7.5% this would yield a requested assessment amount of \$567,000 for 2012.

[8] In support of the requested amount the Complainant presented a non- time adjusted sale of the subject property in 2004 at \$300,000.(Exhibit C-1, p. 15)

[9] In support of the suggested lease rate of \$8.50/square foot, the Complainant presented the rent roll of the subject property (July 2010 to June 2015) dated March 12, 2012 which indicates a lease rate for the subject property of \$8.50/square foot.

[10] The Complainant offered additional support for the suggested lease rate from four Lease Rate Comparables (Exhibit C-1, p.21) for restaurants in Downtown Edmonton.

-the first comparable is a neighboring property leased at \$9.50/square foot

-the second comparable is located two blocks away and leased at \$8.08/square foot

-comparables three and four are gross leases which, when costs are backed out, produce lease rates of \$12.89/square foot and \$8.63/square foot.

-the average of the four comparables was \$9.78/square foot compared to the assessment of the subject at \$16.00/square foot.

[11] The Complainant also provided the assessments of the four lease comparables to demonstrate that the assessments of these properties and the subject are significantly higher than the lease rates achieved and argued that all of these assessments are too high.

[12] With respect to the argument that the Capitalization Rate for the subject property is too low, the Complainant presented a chart with thirteen Assessment Comparables located throughout the City of Edmonton, some of which have a food outlet associated with the property, all with a Capitalization Rate of 8%. (Exhibit C-1, p.22) The Complainant further argued that 7.5% would be a fair Capitalization Rate for the subject property in that although the subject is located in the Downtown district, it is older and as such would have a higher exposure to risk.

[13] In Rebuttal, the Complainant refuted the Respondent's lease comparables on the basis that higher lease rates could be attributed to on-site parking and a better location as evidenced by higher traffic volumes past the properties. (Exhibit C-2, p.3)

[14] The Complainant requested that the 2012 assessment of the subject property be reduced to \$567,000.

Position of the Respondent

[15] In support of the 2012 assessment of the subject property the Respondent presented three Market Rent Comparables (Exhibit R-1, p. 20). These comparables are all smaller than the subject property, and are located in the Downtown district of the City of Edmonton as is the subject property. The lease rates for these properties ranged from \$13.71/square foot to \$17.44/square foot with an average of \$15.16/square foot compared to the subject property at \$16.00 per square foot.

[16] Also, in support of the 2012 assessment of the subject property, the Respondent included four restaurant equity comparables from the Downtown district of the City of Edmonton (Exhibit R-1, p. 14). The lease rates for these properties ranged from \$14.00/square foot to \$20.00/square foot for an average of \$16.50/square foot. Comparable #2 at \$15.25 was also included in the Complainant's evidence.

[17] In support of the Capitalization Rate of 7%, the Respondent presented a map illustrating the distribution of retail property capitalization rates in the Downtown district and the districts adjacent to the Downtown district. The Respondent emphasized that all retail properties similar to the subject property in the Downtown District were assigned a Capitalization Rate of 7% as was the subject property.

[18] The Respondent requested that the 2012 assessment of the subject property be confirmed at \$1,093,500.

Decision

The 2012 assessment of the subject property is reduced to \$791,500.

Reasons for the Decision

[19] The Board considered the market lease rate comparables and assessment comparables from both the Complainant and the Respondent

[20] While the Board was not convinced by the Complainant's evidence that \$8.50 /square foot is a typical lease rate that should be applied to the subject property equally the Board was not persuaded by the value of \$16.00/square foot used by the Respondent in the assessment.

[21] The Board gave little weight to the Respondent's equity comparables #3 and #4 as they are located in a superior location to the subject property.

[22] The Board was most influenced by the Respondent's Market Rent comparable #1 at \$13.71/square foot. However since it is one half the size of the subject property would require an adjustment for economy of scale which, when applied, tends to support to the Complainant's position.

[23] The Board found that the lease rate provided from the Complainant was derived from a dated lease. It appears that no adjustment to the lease rate had been made since 2004.

[24] Regarding the Capitalization Rate, the Board gave most weight to the arguments of the Respondent that the rate was fair in that the same rate had been applied to all like retail properties in the Downtown district. Conversely, the Board placed less weight on the arguments of the Complainant for an increased capitalization rate in that none of the thirteen assessment comparables presented by the Complainant were located in the Downtown district. The Board therefore finds that the Capitalization Rate at 7% is fair and equitable.

Dissenting Opinion

[25] There was no dissenting opinion.

Heard commencing August 7, 2012.

Dated this 23rd day of August, 2012, at the City of Edmonton, Alberta.

Don Marchand, Presiding Officer

Appearances:

John Trelford, Altus Group
for the Complainant

Tim Dueck, Assessor, City of Edmonton
for the Respondent