

NOTICE OF DECISION NO. 0098 154/12

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:
3167806	10177 107 Street NW	Plan: B2 Block: 6 Lot: 141	\$1,818,000	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: BANKS INTERNATIONAL TRADING CORP

Edmonton Composite Assessment Review Board

Citation: Banks International Trading Corp. Represented by Altus Group v The City of Edmonton, 2012 ECARB 948

Assessment Roll Number: 3167806
Municipal Address: 10177 107 Street NW
Assessment Year: 2012
Assessment Type: Annual New

Between: **Banks International Trading Corp.**
Represented by 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 CARB. In addition, the Board members indicated no bias in the matter before them.

[2] The parties presenting evidence were sworn in.

Background

[3] The subject property is located in the Downtown district of the City of Edmonton on 10177 107th Street NW. The property consists of a 7,448 square foot (sq ft) lot with a 6,488 sq ft building footprint. The main floor leased space comprises 6,163 sq ft, and the basement has 3,516 sq ft of lower restaurant space. The building was constructed in 1963 with an effective year of 1985, and the 2012 assessment for the subject property is \$1,818,000.

Three issues were argued before the CARB:

- Should the assessed market rental rate for the main floor space be confirmed at \$21.00 per sq ft or reduced to \$8.50 per sq ft?
- Should the assessed market rental rate for the basement storage space be confirmed at \$2.50 per sq ft or reduced to \$1.50 per sq ft?
- Should the capitalization rate of 7% applied by the municipality be increased to Complainant's requested 7.5%?

Legislation

[4] The *Municipal Government Act* reads:

Municipal Government Act, RSA 2000, c M-26

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.

[5] The CARB gave consideration to the meaning of market value and to the requirements of an assessment made pursuant its market value.

(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.

[6] The CARB gave consideration to what the assessment must reflect.

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

[7] The *Matters Relating to Assessment and Taxation Regulation* reads:

Matters Relating to Assessment and Taxation Regulation, Alta. Reg. 220/2004

s 2 An assessment of property based on market value

- a) must be prepared using mass appraisal,
- b) must be an estimate of the value of the fee simple estate in the property, and
- c) must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[8] The Complainant introduced the subject property as a stand-alone restaurant built in 1963 and located in the Downtown district of the City of Edmonton. The building is coded with the manual building class “Restaurant Good” (RESTGD). The Complainant argued that the designation of the property as a “good” restaurant was incorrect and that the building was older than the comparables offered by the Respondent.

[9] The Complainant argued that the 2012 assessment is incorrect and should be reduced to reflect a main floor lease rate of \$8.50 per sq ft, and a basement rent of \$1.50 per sq ft. The CRU vacancy allowance of 5%, CRU shortfall allowance of \$6.00 per sq ft, and structural reserve of 2% are not in dispute. The resulting net operating income (NOI) is \$53,948. Capitalized at 7.5%, the NOI would yield a requested 2012 assessment in the amount of \$694,500.

[10] In support of the suggested lease rate of \$8.50 per sq ft, the Complainant presented the rent roll for the subject property (C-1, p 17) which indicates lease rates for the subject property of \$8.08 per sq ft for the main floor and zero for the basement space.

[11] The Complainant offered additional support for the suggested lease rate from three Lease Rate Comparables (C-1, p 18) for restaurants in the Downtown Edmonton district. The average of the three comparables as listed was \$10.00 per square foot.

- The first comparable is a property located two blocks from the subject leased at \$8.50 per sq ft.
- Comparables two and three both show gross leases amounts, each at \$20.00 per sq ft. When operating costs are subtracted, the net lease rates are \$12.89 and \$8.63 per sq ft respectively.

[12] With respect to the Complainant’s argument regarding a fair basement rent for the subject property, a chart of eight properties with basement storage areas was presented that indicated an across-the-board rate of \$1.50 per sq ft (C-1, p 19). The requested assessment incorporates a rent rate of \$1.50 per sq ft for the basement storage space of the subject property as compared to the assessed value of \$2.50 per sq ft.

[13] The Complainant also provided the assessments of five main floor lease comparables to demonstrate that the assessments of these properties and the subject are significantly higher than the lease rates achieved (C-1, p 18). The Complainant noted that these assessments ranged from 38% to 106% higher than the lease rates, with the subject property assessed at 160% higher than indicated by its lease rate.

[14] Regarding the argument that the capitalization rate for the subject property is too low, the Complainant presented a chart with 17 assessment comparables located throughout the City of Edmonton, some of which have food outlets associated with the property, all with an 8%

capitalization rate (C-1, p 20). 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 outside the downtown core, and as such would have a higher exposure to risk.

[15] In rebuttal, the Complainant disputed the Respondent's lease comparables on the basis that higher lease rates for these properties could be attributed to availability of onsite parking and better location as evidenced by higher traffic volumes past the properties (C-2, p 3). He also noted that these properties were newer than the subject property (C-2, p 2) and that they were occupied by "brand name" tenants such as Boston Pizza, Red Robin, Swiss Chalet, and Original Joe's, as opposed to the subject, which was described as a family operation.

[16] In view of the above, the Complainant requested a reduction of the 2012 assessment to \$705,500.

Position of the Respondent

[17] In support of the 2012 assessment of the subject property, the Respondent presented four RESTGD market rent comparables of properties of similar age (R-1, p 33). The lease rates for these properties ranged from \$21.50 to \$29.09 per sq ft with an average of \$24.05 per sq ft. These were compared to the subject property, which is assessed at \$21.00 per sq ft.

[18] 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 (R-1, p 27). The assessment for all of these properties was \$27.00 per sq ft.

[19] 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 adjacent districts (C-1, p 26). The Respondent emphasized that all retail properties in the Downtown district were assigned a capitalization rate of 7% as was the subject property.

[20] The Respondent requested that the assessment be confirmed at \$1,818,000.

Decision

[21] The 2012 assessment of the subject property is reduced to \$1,402,000.

Reasons for the Decision

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

[23] The Board was not convinced that \$8.50 per sq ft is a typical lease rate that should be applied to the subject property, as the Complainant's three comparables averaging \$10.00 per sq ft do not support a rate of \$8.50 per sq ft. The Board was also not persuaded by the value of

\$21.00 per sq ft used by the Respondent in the assessment, as the Respondent's lease comparables tend to be for spaces located in superior locations and occupied by brand name restaurants that are different from the subject. Upon questioning, the difference between the RESTGD and "Restaurant Average" manual building classes was found to be accounted for primarily in the quality of interior finish. To account for average restaurants, the rate of \$15.25 and \$16.00 per sq ft was used in the assessment comparables provided by the Complainant.

[24] The Board is satisfied that the basement is used as part of the restaurant and that the basement lease rate is similar and equitable with other restaurant lower storage space at \$2.50 per square foot.

[25] Regarding the capitalization rate, the Board gave most weight to the arguments of the Respondent that the rate was due to the fact 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 rate due to the fact that all but one of the seventeen comparables presented were outside the Downtown district. The only property on this list that was in the Downtown district was not a restaurant. The Board therefore finds that the 7% capitalization rate is fair and equitable.

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