

**NOTICE OF DECISION      NO. 0098 155/12**

Altus Group Limited  
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:

| <b>Roll Number</b> | <b>Municipal Address</b> | <b>Legal Description</b>   | <b>Assessed Value</b> | <b>Assessment Type</b> | <b>Assessment Notice for:</b> |
|--------------------|--------------------------|--|-----------------------|------------------------|-------------------------------|
| 3169703            | 10250 106 Street NW      | Plan: B2 Block: 6<br>Lot: 173 / Plan: B2<br>Block: 6 Lot: 174 /<br>Plan: B2 Block: 6<br>Lot: 175 | \$3,497,000           | Annual<br>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.*

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cc: STARK CANADA ULC

## **Edmonton Composite Assessment Review Board (CARB)**

**Citation: Stark Canada ULC Represented by Altus Group Limited v The City of  
Edmonton, 2012 ECARB 1402**

**Assessment Roll Number:** 3169703  
**Municipal Address:** 10250 106 Street NW  
**Assessment Year:** 2012  
**Assessment Type:** Annual New

Between:

**Stark Canada ULC  
As Represented by Altus Group Limited**

Complainant

and

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

Respondent

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**DECISION OF  
Don Marchand, Presiding Officer  
John Braim, Board Member  
Brian Carbol, Board Member**

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### **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 providing evidence were sworn in.

### **Background**

[3] The subject property is located on the Southwest corner of 103<sup>rd</sup> Avenue and 106<sup>th</sup> Street in the Downtown district of the City of Edmonton. It features a 22,469 square foot (sq ft) lot, which is improved with a building with a main floor and basement footprint of 12,150 sq ft plus an upper level of 9,020 sq ft. The total space assessed is 30,595 sq ft. This includes an 11,542 sq ft main floor, a 10,935 sq ft basement, and an 8,118 sq ft upper. It was constructed in 1948 with an effective year built of 1976. The property is occupied by a restaurant, an art society and a business furnishing company. The 2012 property assessment utilized the income approach to valuation and \$3,497,000.

**Four issues were argued before the CARB:**

- Should the assessed market rental rate for the main floor space be confirmed at \$15.25 per sq ft or reduced to \$9.50 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 upper space vacancy allowance applied at 5% be confirmed or should the vacancy allowance be increased to 15%?
- 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 also 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:

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 restaurant space that is currently occupied by a restaurant and two other tenants.

[9] The Complainant argued that the 2012 assessment is incorrect. Per the Complainant's requested market value proforma, the reduction would be achieved by applying a lease rate of \$8.50 per sq ft to the main floor space, \$1.50 per sq ft to the basement space, and an upper CRU vacancy allowance of 15%. There is no dispute relative to the market rental rate applied to the upper space, the vacancy allowance applied to the main floor space, the shortfall allowance of \$4.50 per sq ft, and a structural reserve of 2% (C-1, p 13).

[10] Based the above rental rates, parameters and allowance, the resulting net operating income (NOI) would be \$150,245 as compared to the current assessment computed NOI of \$244,817. The NOI capitalized at 7.5% would yield a requested 2012 assessment amount of \$2,003,000.

[11] In support of the requested lease rates, the Complainant presented a current actual rent roll for the subject property which indicates a lease rate of \$8.50 per sq ft for the upper office, \$9.50 per sq ft for the restaurant, and \$8.00 per sq ft for the business furnishings company and a flat rate of \$500.00 for the basement storage space (C-1, p 19).

[12] The Complainant offered additional support for the suggested lease rate from four lease rate comparables (C-1, p 20) for restaurants in Downtown Edmonton.

- The first comparable is a neighbouring property leased at \$8.50 per sq ft.
- The second comparable is located two blocks away and leased at \$8.08 per sq ft.
- The third and fourth comparables both show gross lease amounts, each at \$20.00 per square foot. With operating costs subtracted, the net lease rates are \$12.89 and \$8.63 per sq ft respectively.

[13] 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 indicating an across-the-board rate of \$1.50 per sq ft (C-1, p 21). 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, especially in light of the low rental amount shown within the actual rent roll.

[14] The Complainant also provided the assessments of the same four main floor lease comparables to demonstrate that the assessments of these properties and the subject are significantly higher than the lease rates achieved.

[15] With respect to the argument that the capitalization rate for the subject property is too low, the Complainant presented a chart with 13 assessment comparables located throughout the City of Edmonton, some of which had food outlets associated with the property, and all with a capitalization rate of 8% (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.

[16] The Complainant also included four comparables to illustrate upper floor vacancy rates ranging from 10% to 30% compared to the subject property at 5%. The requested assessment incorporates an upper floor vacancy rate of 15%.

[17] In rebuttal, the Complainant refuted 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. He also noted that these properties are smaller in size and are higher profile kinds of establishments, some being chain restaurants as compared to the subject property which is one of a kind (C-2, p 3).

[18] The Complainant requested that the assessment be reduced to \$2,003,000.

### **Position of the Respondent**

[19] In support of the 2012 assessment of the subject property, the Respondent presented six market rent comparables of properties smaller than the subject property (R-1, p 21). The lease rates for these properties ranged from \$13.00 to \$25.00 per sq ft with an average of \$18.10 per sq ft compared to the subject property at \$15.25 per sq ft.

[20] 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 15). The lease rates for these properties ranged from \$14.00 to \$20.00 per sq ft with an average of \$16.69 per sq ft.

[21] 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 (R-1, p 14). The Respondent emphasized that, like the subject property, all retail properties in the Downtown district were assigned a 7% capitalization rate.

[22] The Respondent requested that the assessment be confirmed at \$3,497,000.

### **Decision**

[23] The Board's decision is to reduce the 2012 assessment of the subject property to \$2,732,000.

## **Reasons for the Decision**

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

[25] While the Board was not convinced by the Complainant's evidence that \$9.50 per sq ft is a typical lease rate that should be applied to the subject property, the Board was also not persuaded by the value of \$15.25 per sq ft used by the Respondent in the assessment.

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

[27] The Board was influenced by the Respondent's equity comparable #1 at \$14.00 per sq ft. However, since it is less than one half the size of the subject property, it would require a downward adjustment for economy of scale which, when applied, lends support to the upper end of the Complainant's range, the comparable cited at \$12.89 per sq ft.

[28] The Board was persuaded by the basement lease rate comparables provided by the Complainant and found that they support a rate of \$1.50 per sq ft for the subject property. The basement is currently providing a nominal amount of income to the property. The CARB heard that the lower level was used by all the tenants as well as the owner. The assessment rate of \$2.50 per square foot is the rate typically assigned to restaurant basement storage, as cold storage is usually associated with the space. The subject's lower level, however, does not have cold storage.

[29] The Complainant's evidence relative to the upper floor vacancy allowance rate requested is taken from four indicators. Each indicator has a different allowance given, one at 10%, the second at 15%, a third at 20%, and the fourth at 30%. Why a 15% allowance should be applied to the subject's space rather than the 5% was not explained. The rate of a vacancy allowance rate of 5% for the upper retail space within the assessment remains unchanged.

[30] Regarding the capitalization rate, the Board placed most weight on 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 rate due to the fact that none of the thirteen comparables presented were in the Downtown district. The Board therefore finds that the 7% capitalization rate is fair and equitable.

Heard commencing August 7, 2012.

Dated this 23<sup>rd</sup> day of August, 2012, at the City of Edmonton, Alberta.

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Don Marchand, Presiding Officer

### **Appearances:**

John Trelford, Altus Group

for the Complainant

Tim Dueck, Assessor, City of Edmonton

for the Respondent