



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 177/10

Altus Group Ltd
17327 - 106A Avenue
Edmonton AB
T5S 1M7

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 3, 2010, respecting a complaint for:

Roll Number 7097538	Municipal Address 10537 82 AVENUE NW	Legal Description Plan: I Block: 63 Lot: 8,: 9
Assessed Value \$2,787,000	Assessment Type Annual New	Assessment Notice For: 2010

Before:

Board Officer: Kyle MacLeod

Lynn Patrick, Presiding Officer
George Zaharia, Board Member
Judy Shewchuk, Board Member

Persons Appearing: Complainant

David Fu – Altus Group

Persons Appearing: Respondent

John Ball, Assessor, City of Edmonton
Veronika Ferenc-Berry, Attorney, City of
Edmonton

PRELIMINARY MATTERS

The Respondent submitted that of the eight issues set forth in the Complainant's written submissions, four were not set out in the Complaint Form and therefore evidence and arguments in support of these issues should be excluded from the hearing.

The Complaint Form, Section 5 – Reasons for Complaint, sets forth the following:

"The areas being assessed are excessive and cap rate should be 7.5%. Ground floor occupied by bank branch and retail store. Basement area occupied by bank branch and retail store."

The Complainant's disclosure, marked as Exhibit C-1, listed eight issues.

The Respondent's position with respect to the issues in the matter is that according to *Matters Relating to Assessment Complaints Regulation* (MRAC), the Board must not hear any matter in support of any issue not set forth in the Complaint Form.

The Respondent requests the Board delete the issues numbered 5, 6, 7 and 8 on the basis that only the area being assessed and the capitalization rate are raised as issues by the Complainant.

The Complainant's position is that the additional matters raised in the list of eight issues are not new but are extensions of the matters raised in Section 5 of the Complaint Form. The Complainant submits that the request to adjust the area, capitalization rate and rental rates implies the issue of fairness and equity in respect to the process of arriving at the typical net operating income and of the market value derived from the process.

It is the decision of the Board that following the deletion of issues 5, 6 and 7, the remaining issues 1, 2, 3, 4 and 8 are issues properly before the Board and arise from the reasons listed in s. 5 of the Complaint Form.

The reasons in the complaint Form deal with rental rates applied by the Respondent in the assessment and those are mentioned in issues 1, 2 and 8. The capitalization rate mentioned in the Complaint Form is raised in issues 3 and 4. For these reasons the objection by the Respondent is resolved by the deletion of issues 5, 6 and 7 from the disclosure as well as any matters of evidence that are contained Exhibits C-1 and C-2.

BACKGROUND

The property is located at 10537 82 Avenue NW in the City of Edmonton and consists of a retail structure that contains a retail bank on the west side of the structure and a retail Commercial Retail Unit (CRU) on the east side of the structure. The structure consists of a main floor area of 6,218 square feet and a basement floor area of 6,218 square feet located on an 8,716 square foot parcel of land assessed at \$2,787,000.

ISSUES

Is the 2010 assessment fair and equitable?

LEGISLATION

The Municipal Government Act, R.S.A. 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.

Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009;

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.

s. 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

s. 13(1) For the purposes of section 468 of the Act, a decision of an assessment review board must include

- (a) a brief summary of the matters or issues contained on the complaint form,

POSITION OF THE COMPLAINANT

The Complainant initially addressed a matter relating to basement assessment for the subject property noting the assessment details indicated the basement area had been assessed twice and requested the Board order the assessment be amended to reflect a single assessment depending upon the Board's findings with respect to the appropriate rental rate issue.

The Complainant also requested the sealing of the two binders submitted as part of its disclosure package. The binders contain complete copies of the leases the Complainant cited in its material relating to its request to reduce the basement rental value to \$1.00/ sq. ft. The Complainant submitted full copies of the leases from which it had extracted quotes on basement leases not bearing any rent because the area was not revenue generating. This was in response to Board commentary from previous hearings that the Board was limited in consideration of the point not having the full document to refer to in considering the request. The sealing order would prevent the business sensitive information in those leases from being accessed by competitors of parties to the leases.

Main Floor Rental Rate

The Complainant requests that the bank space and the CRU space be separated for the purpose of determining the correct typical rate for each portion. The bank space consists of 4,249 square feet and the CRU consists of 1,969 square feet. The Complainant acknowledges that the rental rate of \$27.00/ sq. ft., presently assessed against the entire floor space, is correct only as the bank portion of 4,929 square feet. The correct rental rate for the CRU retail space is \$15.00/ sq. ft. In support of the request for a rental rate of \$15.00/ sq. ft. the Complainant provided a copy of a Renewal of Lease document dated the 29th of April, 2009, relating to the CRU retail space in the subject for the period beginning July 1, 2009 to June 30, 2011 for a sum of \$30,100. This equates to approximately \$15.00 per square foot. The Complainant submits this rate is supported as well by comparable retail developments along Whyte (82) Avenue. The Complainant referred to the 'Capitalization Rate Review – Whyte Avenue' contained in its disclosure package noting there are 8 comparables listed and the median main floor rate is \$20.88/ sq. ft. with rates ranging from \$13.75/ sq. ft. and \$27.00/ sq. ft. thus putting the requested CRU rate of \$15.00/ sq. ft. within an appropriate range.

Basement Floor Rental Rate

The Complainant submits that in the practice of leasing there is generally no rental rate applied to areas such as mezzanine or basements because they are not viewed as revenue generating. Therefore, the Complainant requests the rate for the basement area be reduced from \$4.50/ sq. ft. to the nominal rate of \$1.00/ sq. ft.

In support of this argument the Complainant submitted the Altus Mezzanine, Basement & Garden Centre Analysis which provides samples of leases for a variety of types of retail properties to show that tenants and landlords consider the basement space should be treated as non revenue generating. The Complainant seeks to bring this practice to the assessment process by suggesting it should be applied through use of *Matters Relating to Assessment and Taxation Regulation* (MRAT) which says an assessment based on market value must reflect typical market conditions for similar properties.

Capitalization Rate

The 'Capitalization Rate Review for Banks' study produced by the Complainant contained 21 bank comparables, approximately half of which were in the NW sector of the City where the subject is located while the remainder were fairly evenly spread throughout the remaining three quadrants. The capitalization rates range from 7.5% to 9% with the bank pad average at 7.72% compared to the subject at 7%. The Complainant's *Capitalization Rate Review – 97 Street* contained 9 comparables ranging from 8% to 8.5%, the median of which is 8%. The Complainant's Whyte Avenue capitalization rate study contains 8 comparables, one of which is a bank, in which the median is 7.5% which supported the request for an increase in respect to the subject to 8%.

POSITION OF THE RESPONDENT

The Respondent acknowledged that the main floor space is demised into two parts consisting of the bank space of 4,249 square feet and the CRU space of 1,969 square feet and that it erred in doubling the basement assessment. However, the Respondent submitted that it had made an error in the typical rental rate for the entire main floor space and that a more realistic rate is \$30.00 per square foot, notwithstanding that the mass appraisal process using market information was arrived at using a rental rate of \$27.00/ sq. ft. The Respondent requested the Board amend the assessment to \$2,722,000. The amount is the product of reducing the assessment for the basement error correction to \$2,476,563 and then increasing the assessment to \$2,722,000 to reflect the application of a rental rate of \$30.00/ sq. ft. to the entire main floor space. In support of the request to increase the rental rate for the main floor to \$30.00/ sq. ft. the Respondent cited Section 467 of the *Municipal Government Act* for the authority to do so and MGB Board Order 112/02, wherein the MGB upheld the interpretation of the Act that the assessor may request an ARB to increase an assessment provided proper notice is given to the complainant.

The Respondent contends the Old Strathcona area of Whyte Avenue (82nd Avenue) is a distinctive area of unique retail and restaurant activity attracting high volumes of traffic and pedestrians. The Respondent offered 12 comparables in support of the requested \$30.00/ sq. ft. rental rate however there were few specifics given of the comparables other than that they were located between 103 Street and 106 Street on 82 Avenue, the spaces were less than 3,600 square feet and the rental rate range was between \$21.80/ sq. ft. and \$40.82/ sq. ft. With one exception the start dates for those rentals were between 2005 and 2009.

DECISION

The decision of the Board is to reduce the 2010 assessment to \$2,476,500 based upon the error made by the Respondent in the double assessment of the basement space.

REASONS FOR THE DECISION

The Board noted the Complainant agreed with the \$27.00/ sq. ft. main floor rental rate for the bank space of 4,249 square feet used by the Respondent in the assessment. The increase sought by the Respondent was based upon 12 comparables which in the view of the Board lacked enough detail to enable the Board to determine whether they were in fact comparable.

The lease renewal of the CRU space of 1,969 square feet tendered in support of the request by the Complainant to reduce the rental rate for that portion of the main floor to \$15.00/ sq. ft. as typical was rejected by the Board as valid evidence in support of rates on Whyte Avenue in the Old Strathcona area. The lease renewal, although for a term of 2 years, contains a 6 month right of termination clause which, in the view of the Board, changes the character of the tenancy from that of a typical lease. The Board is unable to place sufficient weight on that matter to support a reduction of the rate to \$15.00/ sq. ft. Other evidence provided by the Complainant in respect to the capitalization rate issue disclosed there are comparable properties in the area in the range of \$22.00/ sq. ft. to \$27.00/ sq. ft. with an average of \$23.00/ sq. ft. however when inputted to the income calculation it did not change the assessment by more than 5% and the Board declined to make that adjustment.

There was insufficient evidence presented by the Complainant to show that the typical rental rate for basement space for banks on Whyte Avenue is at \$1.00/ sq. ft. The Board accepted the evidence of the Respondent that all banks in the area that had basement space used the space in its operations as secure space and that they were assessed using the rate of \$4.50/ sq. ft. The Respondent acknowledged that the basement space was assessed twice and that the assessment should be revised to correct that error. The Board did not accept the argument by the Complainant that as the basement space was not an income producing nor was it capable of being income producing that it ought to receive a nominal rental rate.

The Board agreed with the Respondent that banks typically use such space as part of its operations but not part of its public access area therefore it has a value but not a retail value.

The Board found the bank comparables submitted by the Respondent in support of the 7% capitalization rate as being pertinent to the subject due to the proximity to the subject and their identical usages. The Complainant's comparables were either of differing uses or not in proximity and the Board gave them little weight.

Dated this 3rd day of August, 2010, at the City of Edmonton, in the Province of Alberta.

Lynn Patrick
Presiding Officer

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, R.S.A. 2000, c.M-26.

CC: NASSER, IQBAL/SCOTIABANK
BANK OF NOVA SCOTIA PROP INC.
MUNICIPAL GOVERNMENT BOARD