



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 584/10

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 between November 29 and 30, 2010 respecting a complaint for:

Roll Number 9978884	Municipal Address 3803 Calgary Trail NW	Legal Description Plan: 0021129 Block: 32 Lot: 5
Assessed Value \$64,990,000	Assessment Type Annual - New	Assessment Notice for: 2010

Before:

Patricia Mowbrey, Presiding Officer
Howard Worrell, Board Member
Petra Hagemann, Board Member

Board Officer:

Segun Kaffo

Persons Appearing: Complainant

Gilbert Ludwig – Wilson Laycraft
Patrick Leclair – Hudsons Bay Co/Zellers Inc.
Brock Ryan – Altus

Persons Appearing: Respondent

Brennen Tipton, Assessor
Rebecca Ratti, Law Branch

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to the file.

All parties giving evidence during the proceedings were sworn.

Although two appeals were filed on this roll number, both parties agreed to consolidate the appeals into one merit hearing. The parties however agreed to split the presentation of evidence

and arguments between the Zellers portion of the power centre represented by Wilson Laycraft, and the remainder of the power centre represented by Altus.

PRELIMINARY MATTERS

1. The Complainant requested that the evidence of the Zellers representative and the Respondent's evidence in relation to the Zellers portion of the assessment be heard first, to enable the representative to return to Toronto on November 30. The Respondent agreed to the proposal but requested that both the Zellers and Altus appeal on the roll number be considered as one hearing, and that one decision be issued in respect of both, to which the Complainant agreed.
2. The parties indicated that an agreement had been reached to reduce the assessment of the subject property to \$61,969,000. The adjustment to the assessment was based on a reduction of \$3,020,700 representing the value of \$50/sq ft for the 60,414 sq ft of unfinished and vacant CRU space. The Respondent put forward this recommendation and the Complainant (Altus) accepted. Both parties agreed that this recommendation is exclusive of the Zellers portion of the appeal.
3. The Board notes that the parties agreed on the preliminary matters and accordingly granted both parties' requests.

BACKGROUND

The subject property is a power centre built in 1995 and located at 3803 Calgary Trail, Edmonton. The property consists of total leasable area of 377,856 square feet of which 90,098 square feet is occupied by Zellers as an anchor tenant.

ISSUES

The Complainant(s) had attached a schedule listing numerous issues on the complaint form(s). However, most of those issues had been resolved by the parties and the issues left to be decided were as follows:

1. Is the assessment of the Zellers portion of the subject property in excess of market value?
2. Is the assessment of the Zellers portion of the subject property fair and equitable in comparison with similar premises?
3. Is the increase in the rental rate from \$7 to \$9 for the Zellers premises justified?

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.*

POSITION OF THE COMPLAINANT

The Complainant argued that the \$9.00/sq. ft. assessment rate applied to the Zellers store is too high. The Complainant submitted that a rate of \$7.00/sq. ft. has been consistently applied in prior years and there is no reason given by the Respondent to increase the rate considering the recessionary conditions that prevailed during the valuation period.

The Complainant submitted that stores such as Wal-Mart, Canadian Tire, Costco and Home Depot typically attract higher lease rates as a result of physical differences between the types of premises, and are therefore not comparable. In addition, food stores such as Superstore are also not comparable because they require superior structural and finishing, such as heavier floors and refrigeration. The Complainant argued that the most comparable properties to the subject would be other Zellers or Bay stores operating in the municipality or in other major centres.

The Complainant provided a chart of leasing activity for Zellers' properties (CA-1, tab 11) that indicated a lease rate range of \$4/sq. ft. to \$8/sq. ft. The Complainant submitted that the most recent lease transaction for a stand alone Zellers store is a lease rate of \$4/sq. ft. located in the City of Calgary.

The Complainant also provided a lease analysis of big box free standing stores located in Edmonton and other municipalities indicating a range of lease rates from \$6.85/sq. ft. to \$10/sq. ft. and averaging \$7.63/sq. ft. (CA-1, tab 14).

The Complainant further provided several news articles, as well as a study on Retailing in Canada by TNS Retail Forward/PricewaterhouseCoopers (CA-1, tab 8) in support of his argument that the retailing environment remains challenging, with downward pressures on rents and store closings due to increased competition from foreign companies.

The Complainant submitted that the increase in the lease rate from \$7/sq. ft. to \$9/sq. ft. is not justified and requested a reduction of the Zellers portion of the assessment from \$9/sq. ft. to \$7/sq. ft.

POSITION OF THE RESPONDENT

The Respondent submitted that the subject property is assessed fairly and equitably with an assessment rate lower than Wal-Mart, Superstore and Home Depot because it is considered to have inferior structure when compared to those properties. The Respondent submitted an equity chart indicating the assessed rates range from \$10.00/sq. ft. to \$11.50/sq. ft. for Wal-Mart, Superstore, Canadian Tire, Rona, Home Depot and Costco (RA-1, tab 5, pg. 43). A further equity chart (RA-1, tab 5, pg. 44) listed the Complainant's properties including HBC, Home Outfitters

and Zellers and showed assessed rates from \$5.25/sq to \$16.50/sq. ft. These properties are located in enclosed shopping malls and power centres.

The Respondent submits that these equity comparables support the current assessment of \$9/sq. ft acknowledging that the subject property is assessed higher than enclosed shopping center anchor tenants but lower than a stand alone Costco.

The Respondent argued that the leasing analysis (CA-1, tab 14) provided by the Complainant suggests that most of the leases are old (2000-2006), whereas the Respondent has provided lease comparables commencing in March 2007 (RA-1, tab 4, pg. 24). The Respondent further argued that some of the properties provided by the Complainant are located outside the Edmonton market place and should not be relied upon.

The Respondent submitted that the subject Zellers property had been under assessed previously due to an oversight, and the current increase in the assessment rate is a correction.

DECISION

The Board accepts the Respondent's recommendation to reduce the CRU portion of the power center in the amount of \$3,020,700.

The decision of the Board is to reduce the Zellers portion of the assessment from \$9,805,500 to \$8,713,000 for a reduction of \$1,092,500.

The decision of the Board is to reduce the total 2010 assessment for the entire power centre from \$64,990,000 to \$60,877,000.

REASONS FOR THE DECISION

The Board reviewed the following evidence submitted by the Complainant and the Respondent:

- Exhibit C-A1 and R-A1 for the Zellers portion of the hearing;
- Exhibit C-B1, C-B2, C-B3 and R-B1 for the power center CRU portion of the hearing.

The Board considered the Complainant's analysis of the 2009 and the 2010 taxation years (CA-1, tab 1) noting that the subject property assessment rate increased from \$7 per sq. ft. to \$9 per sq. ft. but that also the capitalization rate had increased from 7% in 2009 to 8% in 2010. The capitalization rate was not an issue before the Board.

The Board recognizes that the capitalization rate increase is a reflection of the status of the subject power center. The power centre is in transition, has a significant vacancy in the CRU portion, which affects the retail activity representing an increased investment risk.

The Board considered the Complainant's comments (CA-1, pg. 3) that there exists a hierarchy of rents in large formal retailers with full line department stores located in enclosed malls attracting lesser rents, through to home improvement stores standing on their own pad sites at a higher rent range. A stand alone or power center Zellers would be placed at a higher rate than an enclosed department store and at a lesser rate than a Wal-Mart.

The Board notes that there should be a greater disparity between the large box stores such as Costco and the smaller Zellers store. The Zellers store lacks the structural qualities of Costco, Wal-Mart, Superstore or Home Depot in terms of ceiling height, floor loads, refrigeration and loading facilities.

The Board noted that the Respondent provided a lease and assessment rate analysis (RA-1, tab 4, pg. 24) outlining typical rents for anchor and junior anchor retail tenants. However the Respondent gave verbal evidence that only two of the leases are comparable and support the analysis. These tenants are unidentified by name and location due to FOIP and therefore the Board was unable to make a fair comparison to the subject property.

The Board was presented with an equity chart consisting of 25 equity comparables for large stand alone retailers (RA-1, tab 5-pg. 43) showing a range of equity values from \$10.00/sq. ft. for Costco stores to \$11.50/sq. ft. for Wal-Mart.

The Complainant provided to the Board an equity chart for 17 of their Bay, Zellers and Home Outfitters stores that had equity values ranging from \$5.25/sq. ft. to \$16.50/sq. ft. (CA-1, tab 1).

The Board noted that the subject property assessed at \$9/sq. ft. is below the equity comparables of the large stand alone retailers that the Respondent provided (RA-1, tab 5, pg 43). The Board noted that the subject property is unique in that it is the only stand alone Zellers store in Edmonton.

The Board is of the opinion that if a Costco assessment rate is \$10/sq ft, and an enclosed mall Zellers assessment rate is \$6/sq. ft., a more appropriate assessment rate for the subject stand alone Zellers property is \$8/sq. ft. considering the size, structure and hierarchy of equity rates in Edmonton.

It was brought to the Boards attention by the Respondent that the assessment rate for the subject property had not been increased in prior years and the increase from \$7/sq. ft. to \$9/sq. ft. was a “catch-up”. No written evidence was provided to the Board to support the increase.

The Board reduces the Zellers portion of the assessment from \$9/sq. ft. to \$8/sq. ft. maintaining the 8% capitalization rate. This reduces the Zellers assessment from \$9,805,500 to \$8,713,000.

The Board finds that the 2010 assessment of \$64,990,000 reduced to \$60,877,000 is fair and equitable.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

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

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: Municipal Government Board
Zellers Inc. & Hudson's Bay Company c/o Wilson Laycraft
First Capital (Southpark) Corporation