



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON AB T5J 2R7
(780) 496-5026 FAX (780) 496-8199

NOTICE OF DECISION 0098 606/10

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 November 15, 2010 respecting a complaint for:

Roll Number 4240768	Municipal Address 4250 137 Avenue NW	Legal Description Plan: 9422939 Block: 26 Lot: 7
Assessed Value \$10,262,500	Assessment Type Annual – New	Assessment Notice for: 2010

Before:

Darryl Trueman, Presiding Officer
Terri Mann, Board Member
Brian Frost, Board Member

Board Officer:

Karin Lauderdale

Persons Appearing: Complainant

Steven Cook

Persons Appearing: Respondent

Tony Mah, Assessor
Tanya Smith, Law Branch

PROCEDURAL MATTERS

The parties indicated no objection to the composition of the Board. At a previous hearing regarding related appeals and involving the same parties the Presiding Officer advised that he and the person appearing on behalf of the Complainant had formerly served at the same time as appointees to the municipal government board. Neither the presiding officer nor either of the parties felt that this suggested a conflict or bias for the purpose of this hearing.

The oath was administered, and/or the witnesses remained under oath from previous hearings with respect to the evidence they were to provide.

BACKGROUND

The subject property is a power centre, located in the Clareview Campus subdivision of Edmonton. The subject is improved, with 50,861 square feet of total leasable area. The total leasable area consists of 28,165 square foot Junior Anchor and 22,696 square foot of CRU space. A portion of the site (approximately 20,000 square feet) is unimproved. The balance of the property is paved parking.

ISSUES

The Complainant initially delineated 13 issues (C-1 p.9). At the hearing, the Complainant presented evidence on two issues:

1. What is the appropriate rental rate to be applied; and
2. Whether there ought to be an excess land adjustment applied to the subject.

LEGISLATION

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

s.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.

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

It is the Complainant's position that the assessment is neither fair nor equitable. In particular, the Complainant submitted that the lease rate of \$16.50 per sq. ft. applied by the City of Edmonton for the Junior Anchor is too high. The Complainant provided 15 market lease rate comparables and 11 equity comparables (C-1 p.12-13). Based on sale and equity comparables, the Complainant sought a revision from the \$16.50 per sq. ft. lease rate applied by the City of Edmonton, to a \$13.00 per sq. ft. lease rate (C-1 p.17).

The Complainant further submitted that, based on a review of the restrictive covenants on title, no development is permitted on the remainder of Lot 7 (the subject) and this would eliminate the potential for excess land value (C-1 p.15).

The Complainant provided the applicable portion of the restrictive covenant in question for the Board's review. The Complainant submitted that the proper interpretation of the applicable provision was that the subject owner was precluded from permitting *any* development on the subject lands (C-1 p.45). As a result, the Complainant submits that no excess land in fact exists on the subject's site. Therefore, the value applied by the City of Edmonton to the excess land (22,338 square feet at \$8.50 per square foot totaling \$189,500) should be removed altogether from the assessment (C-1 p.42-46).

In reducing the market rent for the Junior Anchor to \$13.00 and removing the value applied the excess land to "0", the Complainant arrived at a reduced 2010 assessment of \$8,902,000 (C-1 p.17).

POSITION OF THE RESPONDENT

It is the Respondent's position that the assessment is both fair and equitable, and that the assessment should be confirmed.

The Respondent provided additional information respecting the Complainant's market lease comparables (R-1 p.11). This information included location, size, effective and expiry date of leases. The Respondent criticized some of the Complainant's lease comparables on the basis that the effective dates of those leases were several years prior to the valuation date, rendering their lease rate less reliable as an indicator of market value. In addition, the Respondent provided 2010 assessment information for market lease comparables. The latter supported the subject's assessment.

The Respondent also provided 18 market lease comparables (R-1 p.12). The data included the location, size, effective and expiry date of the leases, however, it did not list the address of the properties. The average net rent per square foot supported the \$16.50 lease rate applied by the Respondent.

The Respondent also provided 8 equity comparables for junior anchor properties in the north side of Edmonton, with sizes similar to the subject (R-1 p.18). These equity comparables supported the assessment.

Finally, the Respondent provided an excerpt from a publication, CREER 2009 Colliers Real Estate Review, (R-1 p.14,15), indicating lease rates of \$16 - \$22 per square foot range were typical for a Junior Anchor property generally within the City.

It was the Respondent's position that businesses were developed on the subject property subsequent to the restrictive covenant being placed on title, and that therefore the restrictive covenant did not disallow development altogether. The Respondent provided a listing of the subject which advertised for development in the area of the subject that the Complainant had contended was "undevelopable". The Respondent noted that the listing, initiated by the property owner, was a marketing strategy to attract development within the same area that the Complainant had contended was not "developable". (R-1 p.18 – 23).

DECISION

The decision of the Board is to confirm the assessment of \$10,262,500.

REASONS FOR THE DECISION

As regards Lease Rate:

- The Board was persuaded by the Respondent's lease comparables. The Respondent's 18 lease rate comparables ranged from \$11.50 per square foot to \$23.00 per square foot and averaged \$16.88 per square foot on a city-wide basis, and \$18.00 per square foot for those on the north side. For those leases with 2007 – 2009 effective dates, the north average was \$20.50 per square foot, supporting the \$16.50 per sq. ft. lease rate used in the assessment.
- The Complainant provided 15 lease rate comparables. The Respondent provided an analysis of the Complainant's comparables, further stratified as to date of the lease, actual rate used in the assessment for the comparable property and the size range of each comparable. The Board as well noted that the lease rate used in the assessments of the Complainant's north side comparables supported the lease rates used for the assessment of the subject. Further, the most recent of the Complainant's lease rate comparables were post-facto (September 2009) and the remaining lease rate comparables ranged from \$11.00 to \$16.00 per square foot, with effective dates largely 3 – 6 years old.

As Regards Excess Land:

- The Board was persuaded by the Respondent's argument. The Complainant's position was that the restrictive covenant precluded any development on the excess land. The Respondent's position was that the restrictive covenant precluded only development to a use as enumerated (C-1 p.45(b)(i. - v). The Board found that the current development was pre-dated by the restrictive covenant is evidence that some development has in fact been accomplished and that the restrictive covenant does not preclude all development.

Dated this 10th 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
Canadian Property Holdings (Alberta) Inc.