



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 739/11

Altus Group
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 February 7, 2012, respecting a complaint for:

| Roll Number | Municipal Address | Legal Description | Assessed Value | Assessment Type | Assessment Notice for: |
|-------------|--------------------------|--|----------------|-----------------|------------------------|
| 10005542 | 2903 137 AVENUE NW | Plan: 0320655 Block: 150 Lot: 2E | \$4,354,500 | Annual New | 2011 |

Before:

James Fleming, Presiding Officer
James Wall, Board Member
Petra Hagemann, Board Member

Board Officer: Segun Kaffo

Persons Appearing on behalf of Complainant:

Jordan Nichol

Persons Appearing on behalf of Respondent:

John Ball

PROCEDURAL MATTERS

The Board Members indicated that they had no bias with regard to this file. The parties indicated that they had no objection to the composition of the CARB.

PRELIMINARY MATTERS

It should be noted that due to considerable delays experienced as a result of the City's preliminary challenge of the validity of Altus CARB complaints, including filing of a leave to appeal the CARB decision of the preliminary hearing in the Court of Queen's Bench, the Assessment Review Board (ARB) administration determined it would be unable to meet the deadlines set out in s. 468 (1) of the Municipal Government Act (MGA), and s. 53 (b) of Matters Relating to Assessment Complaints. Accordingly, the ARB administration requested and obtained a Ministerial extension to hear the affected roll numbers, including the subject property in 2012 under the authority of s. 605(2) of the MGA.

BACKGROUND

The subject property forms part of Belmont Town Centre, a neighbourhood shopping centre located at the southwest corner of 137th Ave and Victoria Trail. This shopping centre was built from 1997 to 2006 and has a land use code of DC2 (621). The subject is assessed using the income approach.

ISSUE(S)

There are nine issues outlined in the Complainant's brief (C-1, pg 3), however only 1, 3,4,5,8 and 9 were determined to apply to this case.

Are the rental rates of the Commercial Retail Unit (CRU) space (3,001-5,000 sq ft) and the rental rate of the Restaurant excessive?

LEGISLATION

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.*

s 468(1) Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

*(b) before the end of the taxation year to which the complaint that is the subject of the hearing applies,
whichever is earlier.*

(2) Despite subsection (1), in the case of a complaint about a supplementary assessment notice, an amended assessment notice or any tax notice other than a property tax notice, an assessment review board must render its decision in writing in accordance with the regulations.

s 605(2) *When this Act or the regulations specify a certain number of days or a day on or by which*

(a) something is to be done, or

(b) proceedings are to be taken,

the Minister may by order specify another number of days or another day for doing it or taking proceedings.

Matters Relating to Assessment Complaints Regulation AR 310/2009

s 53 *For the purposes of section 468(2) of the Act, an assessment review board must render its decision and provide reasons for that decision, including any dissenting reasons,*

(b) within 210 days from the date that a complaint was filed, in the case of a hearing before a composite assessment review board.

POSITION OF THE COMPLAINANT

The Complainant presented the CARB with a 42 page brief (C-1) outlining evidence in support of a requested reduction in the 2011 assessment from \$4,354,000 to \$3,958,000. The contention is that the CRU (3,001 – 5,000 sq ft) rate is excessive and should be reduced from \$20.00/sq ft to \$18.50/sq ft and the rental rate for the Restaurant be reduced from \$30.00/sq ft to \$23.00/sq ft (C-1, pg 13).

To support a reduction in the assessment of the CRU space to \$18.50/sq ft, the Complainant submitted the following evidence:

- The rent roll as of July 2010 (C-1, pg 18) indicates the average rent for the CRU (3001-5000) space is \$17.60/sq ft.
- Four CRU lease comparables (C-1, pg 20) with lease start dates ranging from Nov. 2006 to Nov. 2009 indicate a median rent of \$18.50/sq ft.
- Ten equity comparables located throughout the City ranging in size from 3,278 sq ft to 11,019 sq ft illustrate a median assessment of \$17.50/sq ft.

The Complainant submitted this evidence to illustrate that the CRU space should be reduced from \$20.00/sq ft to \$18.50/sq ft.

To support a reduction in the assessment of the Restaurant space from \$30.00/sq ft to \$23.00/sq ft, the Complainant presented the CARB with the following evidence:

- Seven current market leases of restaurants (C-1, pg 20) located throughout the City of Edmonton. These comparables have lease start dates ranging from June 2009 to Nov. 2010, they average approximately 1,500 sq ft in size and have a median rent of \$25.00/sq ft.

- Three restaurants ranging in size from 8,200 sq ft to 11,470 sq ft (C-1, pg 21) indicate a median assessment of \$23.00/sq ft.
- The Complainant further submitted 12 age based comparable pad restaurants. The median rents for restaurants built after 2007 is \$37.00/sq ft, the median rental rate for restaurants built between 2000 and 2004 is \$23.37/sq ft and the median for restaurants built between 1982 and 1999 is \$22.50/sq ft.
- In addition age based comparables for fast food restaurants indicate a median rent of \$33.85/sq ft for 2008 and newer buildings, \$23.50/sq ft for restaurants built between 2000 and 2004, \$25.98/sq ft for restaurants built from 1998 to 1999 and \$23.00/sq ft for restaurants built from 1985 to 1990.

The Complainant suggests this evidence supports a reduction for the restaurant space from \$30.00/sq ft to \$23.00/sq ft and requests the 2011 assessment be reduced to \$3,958,000.

POSITION OF THE RESPONDENT

The Respondent provided the CARB with a 114 page brief (R-1) which contained information on the methodology used in mass appraisal, maps and photos of the subject property and details of its 2011 assessment.

The evidence included a market survey (R-1, pg 21-24) based on information provided by the owner of the subject property. This survey showed sizes, lease dates and lease rental rates in the subject property for the years 2006, 2007, 2008 and 2011. The Respondent contends that the escalation in the subject property's lease rates over this period of time support the specific rates used in the 2011 assessment.

In support of their argument that it was necessary to time adjust the lease rates, the Respondent referred to ARB Order 0659/2010-P (R-1, pg 67) which states, "*time adjusting market rents to the valuation date is no less critical than time adjusting sales or any other market data to the valuation date*".

In questioning, the Respondent stated that there is no difference recognized in the assessment by the City in a rental rate applied to fast food restaurants or restaurant pads. The Respondent informed the CARB that the rental rate applied to these two categories of rental throughout the City in 2011 is \$30.00/sq ft.

The Respondent agreed that the lease renewals in the subject may represent step up leases.

The Respondent suggested that MGB Order 054/10 (R-1, pg 32) is supportive of the fee simple basis of assessment applied to the subject.

The Respondent requested that the CARB confirm the 2011 assessment of the subject property at \$4,354,500.

DECISION

The Complaint is allowed and the assessment is reduced to \$4,036,500

REASONS FOR THE DECISION

Although the Complainant identified 6 of the 9 issues identified on page 3 of C1, during the hearing, the only items in dispute were the assessed rental rates for the CRU's from 3001 to 5,000 sq. ft. in size and the assessed rate for the Restaurant Pad on the site which is developed with a Tim Horton's Restaurant.

The chart below summarizes the rates discussed in the appeal;

| *all Rates are per sq. ft. | Assessed Rate | Requested Rate | Actual Rate | Assessment Comparable Rates |
|----------------------------|---------------|----------------|-------------------|-----------------------------|
| CRU's 3001 to 5000 | \$20.00 | \$18.50 | \$17.10 – \$18.10 | \$17.50 |
| Restaurant Pads | \$30.00 | \$23.00 | \$10.23 | \$23.00 |

The CARB considered all of the evidence and argument.

To support the rate for the CRU space the Complainant provided four lease comparables (C-1, pg 20) which with a median of \$18.50 supported the requested rate. The six Assessment comparables (C-1, pg 21) supported a rate of \$17.50.

The Respondent represented that the assessed rates for the subject were reasonable based on an analysis of the leases in the subject (R-1, pg 21-24)) which they indicated showed an increase in the rental rates from 2006 to 2011. The Respondent provided no evidence that the assessed rates were typical in the area.

Although the CARB recognized that there might be some issues concerning age of some of the leases and the dissimilarity in age of the comparables, the CARB concluded that the rates provided for the lease comparables by the Complainant were reasonable, particularly when they were also well supported by the equity comparables. In addition, there was little evidence from the Respondent supporting the assessed rate in the subject from the market, nor was there sufficient evidence refuting the comparability of either the lease or equity comparables. Furthermore, the CARB noted that the rates the Respondent was using to argue the current assessed rates were in fact step up rents which had been negotiated in the past and would not necessarily mirror the current market. Accordingly, the CARB accepts the analysis of the Complainant and reduces the assessed rate on requested CRU space to \$18.50.

With respect to the Restaurant/Restaurant Pad request, the pattern of evidence was very similar. The Complainant provided seven lease comparables which supported their request for \$23.00. They also provided three assessment comparables which supported their rate request for \$23.00. (C-1, pg 20-23)). The Respondent, on the other hand supplied no evidence or compelling argument to support the City claim for a rate of \$30.00.

In evaluating the request, the CARB accepted the reasonableness of the Complainant's arguments for similar reasons outlined in the reason for reducing the CRU assessed rate. However, the CARB also took the opportunity to review the information on Restaurant Fast Food age comparables contained on page 23 of C1. The Tim Horton's lease began in 2001. The CARB noted that the Complainant had suggested the two comparables built between 2000 and 2004 as outlined in the "box" (R-1, pg 23) supported their \$23.00 request. The CARB however concluded that because the "box" only contained 2 comparables and because the leases were

signed in 2004, it would be more robust to also include the other two comparables built in 1998 and 1999 in order to give better representation in terms of data points, and to provide properties of ages that more effectively bracket the age of the subject. Thus in adding these 2 properties (9930 170 St. & 3903 34 St.) , the average and the median are \$25.00 per sq. ft. Accordingly, the CARB concludes the rate for the Tim Horton's should be \$25.00 per sq. ft.

Substituting these lease values in the City's Neighbourhood Shopping Centre Valuation Summary (R-1, pg 20) results in a value (rounded) of \$4,036,500 as noted above..

DISSENTING OPINION AND REASONS

There were no dissenting opinions and reasons.

Dated this 8th day of February, 2012, at the City of Edmonton, in the Province of Alberta.

James Fleming, 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, RSA 2000, c M-26.

cc: BELMONT GP LTD