



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 741/11

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 6, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10067622	9204 ELLERSLIE ROAD SW	Plan: 0626978 Block: 1 Lot: 8	\$10,535,500	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:

Chris Buchanan
Jordan Nichol

Persons Appearing on behalf of Respondent:

Alana Hempel
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 is part of a two year old retail shopping centre located at 9204 Ellerslie Road in the City of Edmonton. The assessed area is 25,471 square feet and the zoning is CSC. The subject property is valued based on 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) restaurants and the CRU bank pads 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.*

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 \$10,535,500 to \$9,425,000. The contention is that the rental rate for the restaurant is excessive and should be reduced from \$34.00 to \$23.00 per square foot (/sq ft) and that the rent for the bank pad should be reduced from \$40.00 to \$28.00/sq ft, (C-1, pg 14).

To support a reduction in the rent for the restaurant pad, the following evidence was provided:

The Complainant provided the CARB with the rent roll of the subject property as of May 2010 (C-1, pg 19). The start dates of the leases are in 2008 when the subject was built. The rents for the banks range from \$27.00/sq ft to \$36.00/sq ft with a median of \$31.68.

Seven market lease rate comparables were provided (C-1, pg 21) indicating a median rent of \$23.00/sq ft. These properties were located throughout the City, had lease start dates ranging from June 2009 to Nov. 2010. The buildings ranged in year built from 1984 to 2003.

Six assessment comparables (C-1, pg 22) were submitted to the CARB located throughout the City. They are comparable in age to the subject, and are all assessed at \$30.00/sq ft.

The Complainant contends that based on the above evidence the assessment of the restaurant is excessive and should be reduced to \$23.00/sq ft.

To support a reduction in the rent for the bank pad, the following evidence was provided:

The rent roll (C-1, pg 19) as of May 2010 shows the rent of the subject bank as \$36.00/sq ft. This lease commenced in 2008 when the subject was built.

The Complainant provided the CARB with ten bank pad lease comparables located throughout the City. The ages of these properties range from 1967 to 2000. The start dates of the leases are current and range from March 2009 to Nov. 2010. The median of the rental rates of these comparables is \$28.00/sq ft and the median assessment of these bank pads is \$31.00/sq ft.

The Complainant further submitted 11 assessment comparables for bank pads throughout the City. Most are similar to the subject in size, the ages range from 1967 to 2001 and their assessments range from \$25.00/sq ft to \$30.00/sq ft with a median of \$30.00/sq ft.

The Complainant suggests the above evidence is supportive that the assessment for the bank pad of the subject is excessive and should be reduced to \$28.00/sq ft.

Taking the above two adjustments into account, the Complainant requests the 2011 assessment for the subject be reduced from \$10,535,500 to \$9,425,000.

POSITION OF THE RESPONDENT

In support of the 2011 assessment the Respondent provided a 180 page brief (R-1) which referred to mass appraisal methodology, maps and photos and included general information on the subject property's assessment. Information related to the validation of the sale of the subject property was provided as well. The brief also contained a rent roll for the subject and judicial and Board orders.

The Respondent suggested to the CARB that the sale of the subject property offers good evidence that the assessment is correct. In this regard the Respondent provided the City's validation support documents which included land titles documentation as to the sale of the subject in March 2010 at \$11,000,000; compared to the subject property's assessment as at July 1, 2010 at \$10,535,500.

¹The Respondent put forward 42 restaurant lease comparables located in various parts of the City including in the vicinity of the subject. These lease comparables offered actual lease rental rates for restaurant areas in buildings constructed in 2008 similar to the subject as well as buildings which were older. It is the Respondent's contention that the restaurant lease comparables clearly show that rates are higher in newer improvements than those which are dated. In addition the well located properties in similar locations to the subject achieve higher rents than in less desirable areas. The 2007 and 2008 lease rate comparables indicated an average of \$36.98/sq ft and a median of \$36.77/sq ft. The subject's restaurant's space is assessed at \$34.00/sq ft.

The Respondent on page 90 of R-1 suggests that seven new restaurants with a mixture of fast food and sit down premises are leased at a rate of \$34.00/sq ft.

The Respondent indicated that six new banks were constructed within one block of the subject property and exhibited lease rates in the \$33.50/sq ft to \$42.00/sq ft range. The Respondent noted that the subject bank filed a caveat on the title of the subject property claiming an interest in the amount of \$250,000 for its investment in fixtures in the demised premises. The Respondent suggested that the current rental rate of \$36.00/sq ft on the subject bank space may be low because of the tenant having provided for the improvements.

To clarify the effect on the lease rate that the fixtures referred to in the bank's caveat has on the subject, the Respondent provided argument related to valuing the fee simple estate in the subject property. The Respondent brought to the CARB's attention MGB Order 054/10 (R-1, pg 85) where the MGB agreed that an assessment must *"be an estimate of the value of the fee simple estate in a property"*.

The Respondent requested that the CARB confirm the 2011 assessment of the subject property at \$10,535,500.

DECISION:

The appeal is denied and the assessment is confirmed.

¹ Subsequent to the hearing, the Respondent submitted a written request that the CARB seal R-1, pages 69-74. It should be noted the Respondent's specific references to the lease rate comparables on restaurants was the reason for the request. The Respondent's request was granted by the CARB.

REASONS:

Although the Complainant identified 6 of 9 issues they intended to rely on as outlined on page 3 of C-1, the only issues argued were the rental rates for CRU Restaurants (request \$23.00/sq ft) and for CRU Bank Pads (request \$28.00/sq ft).

CRU Restaurants

The Complainant provided 7 lease comparables from around the City which supported a rent of \$23.00/sq ft. As well, they provided details on the 6 restaurants in the subject which showed rents from \$27.00 to \$36.00 /sq ft (C-1, pg 21). Finally, they provided 6 assessment comparables all of which had assessed rates of \$30.00/sq ft.

The Respondent provided details of comparable leases which showed a median of \$36.77/sq ft. In addition, they also provided details on 7 leases which commenced between 2008 and 2010 which yielded a median rate of \$26.00/sq ft. The Respondent provided lease details for 6 tenants in close proximity to the subject. All of these leases commenced in 2008 and were for rates in excess of \$30.00/sq ft

Finally, in general support of the market, the Respondent provided information on a sale of the property for \$11,000,000 (almost \$500,000 in excess of the assessment) in March 2010, three months before the valuation date. The Complainant had no compelling arguments to dispute the validity of this sale.

The CARB considered this evidence and argument. While the CARB acknowledged the leases were current, they had concerns with the age of the comparables (C-1 pg 21) noting that 6 of the 7 comparables dated to the 1980's. As well, the CARB noted that the comparables were located all over the City, and while 3 were in Millwoods, the CARB notes that the area of the subject is more upscale and thus not similar/comparable with those suggested as comparable by the Complainant. The CARB had the same criticism for the Restaurant assessment comparables which were not demonstrated to be in a comparable area or of a comparable age.

This must be seen in contrast with the Respondent's evidence which included 6 neighbouring comparables which supported the assessed rate.

Finally, the CARB concluded that the sale of the subject around the valuation date for an amount in excess of the assessed value provided additional comfort that the assessed rates were reasonable.

Thus, in the case of Restaurant CRU's the CARB was concerned at the comparability of leases put forward by the Complainant because of the location, the age of the buildings and the fact that the selection had not included any of the many comparables available in the area. Accordingly, the CARB is convinced that there was insufficient evidence to disturb the assessed rate of \$34.00/sq ft and that this rate for the Restaurant CRU's is reasonable.

Banks/Bank Pads

Similar to the Restaurant CRU evidence, the Complainant put forward 10 bank lease comparables which they indicated supported their request for a rate of \$28.00/sq ft. They also included assessed rates for these comparables which ranged from \$27.00 to \$40.00/sq ft, with the majority at \$30.00. They also provided an additional 11 assessment comparables which were all assessed at \$30.00 and suggested that the CARB should note that some of the properties had actual leases in excess of their assessed values. This would be similar to the situation that would exist if the CARB were to grant the rate requested in the subject.

The Respondent provided anecdotal information on 6 banks in close proximity to the subject, built between 2006 and 2009. They represented that the three banks built in 2009 are leased for at least \$40.00/sq ft and therefore provide good support for the \$40.00 assessed rate used by the City for the subject. In addition, in pointing out that the actual rate for the subject lease is \$36.00 the Respondent noted that from the title there was a lease interest in favour of the tenant, and that when this interest is added to the rental rate in accordance with Alberta assessment guidelines, this also supports the City's \$40.00 rate.

The CARB reviewed the Complainant's evidence and argument. As noted above, the CARB is aware from general knowledge that the Ellerslie area is one of the fastest growing areas in Edmonton. As a result it is experiencing significant commercial development. While the CARB has concerns that the Respondent has not provided adequate support for their rate choice, the fact remains undisputed by the parties that there were 6 Banks constructed in the area within the past 5 years and that any request for a revision of an assessed rent should have included some analysis of similar types of properties in the immediate area. It should therefore come as no surprise that the CARB is concerned that the properties put forward by the Complainant as comparables were not comparable in terms of location, age of the improvement, and the general selection criteria chosen by the Complainant. Accordingly, the CARB finds that the rate on the Bank/Bank Pads should remain as assessed.

As was noted above, the CARB concluded that the sale of the subject around the valuation date for an amount in excess of the assessed value provided additional comfort that the assessed rates were reasonable.

Summary

The CARB found that the rates for the CRU Restaurants and the Bank should remain as assessed and therefore the assessment is confirmed as noted above.

DISSENTING OPINION AND REASONS

There were no dissenting opinions or reasons.

Dated this 9th 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: ELLERSLIE GP LTD
FIRST CANADIAN PROPERTIES CORPORATION