



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 784/11

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 13, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
4240768	4250 137 Avenue NW	Plan: 9422939 Block: 26 Lot: 7	\$11,578,500	Annual New	2011

Before:

John Noonan, Presiding Officer
Brian Hetherington, Board Member
Howard Worrell, Board Member

Board Officer:

Annet Adetunji

Persons Appearing on behalf of Complainant:

Walid Melhem, Altus Group Ltd

Persons Appearing on behalf of Respondent:

Tim Dmytruk, Assessor, City of Edmonton
Tanya Smith, Barrister & Solicitor, City of Edmonton

PROCEDURAL MATTERS

At the onset of the hearing both parties advised that this complaint would entail similar, carried-forward evidence and argument from the prior hearing dealing with roll # 3773587. This complaint had two components, a junior anchor retail space and a restaurant. Matters relating to the restaurant were entirely new and separate, but the issue(s) involving the junior anchor space were the same as in the previous hearing with some additional evidence regarding comparables.

BACKGROUND

The subject property is located at 4250 137 Avenue and occupies a 226,365 square foot lot that comprises a portion of the Clareview Town Centre. This power centre was constructed in 1995 and is located in the Clareview Campus subdivision. The roll number includes a 28,165 square foot Junior Anchor Future Shop and a 4,500 square foot restaurant, Bo'Diddley's Pub & Grill. This Complaint relates to the lease rates utilized for the 2011 Assessment. The subject roll number also includes some additional rental spaces and excess land, which are not at issue.

ISSUE(S)

The Complainant's presentation contained a schedule of issues:

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality, and physical condition attributed by the municipality to the subject property are incorrect, inequitable and do not satisfy the requirement of Section 289 (2) of the MGA.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality with regards to the assessment roll was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, nor correct.

At the hearing, the Composite Assessment Review Board (CARB) heard evidence and argument on the following issues:

1. Are the rental rates attributed to the Junior Anchor and restaurant spaces equitable?

2. Are the rental rates attributed to the Junior Anchor and restaurant spaces in excess of market rates?

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.

Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

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

POSITION OF THE COMPLAINANT

The Complainant provided a 42-page brief identified as C-1. This brief contained an executive summary, issue statement, maps, photos, assessment proforma, rent roll, market lease comparables and assessment lease rate comparables.

Assessment details were provided that showed the Junior Anchor, Future Shop was assessed at \$18.00 per square foot and Bo' Diddle's Pub & Grill was assessed at \$26.50 per square foot. In comparison to market rates for Junior Anchor and restaurant properties, the 2011 assessment overstated the potential gross income for those parts of the subject property. Assessment comparables showed that the Junior Anchor space had been inequitably assessed.

Future Shop

A rent roll showed that Future Shop was paying a base rent rate of \$12.34 under a lease commencing November 2, 1996 until April 30, 2016 with no indicated escalations.

This rental rate of \$12.34 is lower than the market lease rate average of the five lease comparables provided by the Complainant. Details of these five lease comparables are included in the following chart that shows market lease rates ranged from \$12.50 to \$21.00 per square foot and an average of \$16.02 per square foot.

Market Lease Rate Comparables

Roll Number	Address	Age	Space Type	Start Date	NLA	Rent/sq.ft
3928355	10340 34 Avenue	1994	Retail	30/09/2003	24,508	\$12.50
9968021	6510-Gateway Blvd	1999	Junior Anchor	7/08/1999	27,390	\$13.61
9978884	3803-Calgary Trail	1982-1999	Junior Anchor	29/09/2009	34,585	\$16.00
9978884	3803-Calgary Trail	1982-1999	Junior Anchor	22/12/2005	8,826	\$17.00
6841928	12222-137Avenue	1981	Junior Anchor	1/07/2007	13,664	\$21.00
					Average	\$16.02
					Requested	\$16.00
	Subject Actual Lease					
4240768	4250 137 Avenue	1995	Junior Anchor	11/02/1996	28,165	\$12.34

The Complainant also provided six equity comparables for Junior Anchor tenants that showed assessments rates from \$12.50 to \$15.75 per square foot with a median of \$15.25. In comparison, the subject is over assessed at \$18.00 per square foot.

Assessment Lease Rate Comparables

Roll Number	Address	Age	Space Type	NLA	Rent/sq.ft.
3820271	3312-Gateway Blvd	1991	Junior Anchor	35,557	\$12.50
3928355	10340 34 Ave	1994	Junior Anchor	24,508	\$12.50
9995725	13616 137 Avenue	2002-2003	Junior Anchor	25,351	\$15.25
9995725	13616 137 Avenue	2002-2003	Junior Anchor	23,570	\$15.25
9988390	13530 137 Avenue	2001-2002	Junior Anchor	40,574	\$15.75
9988390	13530 137 Avenue	2001-2002	Junior Anchor	28,077	\$15.75
				Median	\$15.25
				Requested	\$15.50
	Subject 2011 Assessment				
4240768	4250 137 Avenue	1995	Junior Anchor	28,165	\$18.00

Bo'Diddley's Pub & Grill

Details of six comparable "CRU- Restaurants" were included in the following chart which showed market lease rates ranging from \$10.00 to \$19.00 per square foot with an average of \$16.75. In comparison, the subject is over assessed at \$26.50 per square foot.

Market Lease Rate Comparables

Roll Number	Address	Age	Space Type	Start Date	NLA	Rent/sq.ft
3021649	9104 179 Avenue	1984	Restaurant	1/12/2009	3,000	\$17.25
5210463	550 Hermitage Rd	1987	Restaurant	1/08/2009	2,880	\$10.00
5404447	11702 34 Street	1972	Restaurant	1/07/2009	2,500	\$13.00
5210463	550 Hermitage Road	1987	Restaurant	1/05/2009	1,300	\$14.50
3193844	13010 50 Street	1988	Restaurant	1/04/2010	1,250	\$17.00
9980561	13803 42 Street	2005	Restaurant	1/11/2010	2,836	\$19.00
					Average	\$15.13
					Median	\$15.75
					Requested	\$16.75
	Subject 2011 Assessment					
4240768	4250 137 Avenue	1995	Restaurant	1/12/1996	4,500	\$26.50

The Junior Anchor and CRU- Restaurant of the subject property are in excess of market value as shown by the charts. The Complainant provided a Requested Value Proforma which showed that by using the market rates for Future Shop at \$16.00 per square foot and Bo' Diddley's at \$16.75 per square foot, the subject property's overall assessment would be reduced from \$11,578,500 to \$10,455,000.

POSITION OF THE RESPONDENT

The Respondent told the Board that the Future Shop situation was directly related to a complaint heard by the same Board earlier in the day (Roll # 3773587), while the restaurant was a distinct issue.

In reviewing the Complainant's list of Junior Anchor lease comparables, the Respondent observed that the first two leases were irrelevant as they were dated 1999 and 2003; also, lease # 2 was not in a power centre; lease # 4 was a fitness centre, which tended to lease at lower rates; lease # 5 was the only one that was directly comparable and at a rate of \$21.00 per square foot, it more than justified the City's application of a typical \$18.00 per square foot rate.

The Respondent referred to the presentation made in Roll # 3773587 regarding the stratification of Junior Anchor tenants into categories Class A (Better) and Class B (Lower), with the latter category comprising the retail operations in the TJX group of companies, including HomeSense and Winners stores.

The Respondent explained that there are two assessment rates for Junior Anchor retail, \$18.00 for Class A and \$12.50 for Class B. In explaining where some other rate was suggested in the Complainant's Assessment Lease Rate Comparables, for example \$15.75 or \$15.25 per square foot, this in fact was as a result of blending the Class A and B rates of 2 or more Junior Anchor spaces in the same property.

The Board was referred to a December 6, 2011 decision of the CARB (roll 9988390) dealing with the different assessment rates applied to Class A and Class B Junior Anchor stores. That complaint dealt with a power centre known as Skyview Centre Phase 1, home to two of the equity comparables used by the Complainant at this proceeding. It was explained as follows in that decision: *"The blended rate of \$15.75 p.s.f applied to the subject Junior Anchor space is derived from Class A space at \$18.00 p.s.f and Class B space at \$12.50 as categorized by the Respondent. The rates are weighted to arrive at the value of \$15.75 p.s.f. In regards to the subject property, the Class B space consists of 28,007 s.f at \$12.50 p.s.f and the Class A space of 46,574 s.f at \$18.00 p.s.f."*

In further illustration, the Respondent presented a chart of six power centres in different parts of the city, showing rates for Junior Anchor tenants achieved by blending the \$18 rates paid by the Class A tenants, such as Office Depot, Staples, Michaels and Home Outfitters, with the \$12.50 rates applied to the Class B tenants such as Winners and HomeSense.

The Respondent also presented 12 leases dating from March 2007 to January and October 2010 for Junior Anchor spaces of 20,000 to 50,000 square feet. These leases ranged from \$17 to \$24.75 and the post facto October 2010 lease was at \$27 per square foot. The average lease rate of the twelve comparables was \$20.87 per square foot.

With regard to the restaurant, the Respondent noted that of the Complainant's six comparables presented, the first five were much older and in developments classified as neighborhood shopping centres. The subject restaurant is located in Clareview Town Centre, which is classified as a power centre on an arterial road. All the comparables had considerably smaller leasable

areas than the subject and one was a small pizza delivery facility and another was a fast food outlet. In contrast, Bo' Diddley's Pub & Grill is a large sit-down restaurant.

The Respondent clarified that there are two categories of restaurants; Restaurant Pad and CRU-Restaurant. Both of these categories are further sub-categorized as sit-down or fast food. The subject falls into the CRU-Restaurant sit-down category and is assessed at a \$26.50 per square foot rate as are all others in that category. In support of that rate, the Respondent presented a list of 19 CRU-Restaurant comparables of 2,500 - 6,500 square feet, with leases dating from January 2008 to June 2010, showing average and median lease rates of \$28.52 and \$28.00 per square foot.

DECISION

The CARB confirms the assessment of \$11,578,500.

REASONS FOR THE DECISION

As mentioned, the evidence and argument presented at this hearing with regard to the junior anchor space occupied by Future Shop was very similar to that heard at the previous hearing, roll 3773587. There, two comparables were presented to show assessment inequity, and that market lease rates were below the typical rate attributed to the subject. At this hearing, six assessment comparables were advanced to show inequity including the two comparables from roll 3773587. Five comparables, including one from the previous hearing, were presented to show that market lease rates were below the typical \$18 assigned by the Respondent to the subject Future Shop.

Addressing market lease rate comparables, the Respondent observed that the three most recent leases presented by the Complainant averaged \$18 per square foot, the rate applied in the assessment. As well, the Respondent presented 11 leases dating from March 2007 to January 2010 plus a post facto October 2010 lease for Junior Anchor spaces of 20,000 to 50,000 square feet. These leases ranged from \$17 to \$24.75 and the post facto October 2010 lease was at \$27 per square foot. The average of the twelve comparables was \$20.87. The CARB found the Respondent's market lease comparables were generally more recent than those advanced by the Complainant, and were power centre comparables for junior anchor space. The market lease evidence supports the assessed rate of \$18.

The Complainant's equity argument for the junior anchor space rests on the comparison of an "A" junior anchor rate (\$18) to two "B's" (assessed at \$12.50) and four properties with reported rates of \$15.25-\$15.75. The Assessor explained that these \$15+ rates were the result of blending two or more "A" and "B" junior anchors, resulting in a blended overall rate. The panel editorialized at the hearing that the introduction of a weighted, blended rate was less than transparent. However, the CARB is now informed as to how the \$15 rates were calculated, even if taxpayers are not. Just as the evidence was similar to that for roll 3773587, the reasons are the same regarding the issue of assessment equity, and the Board urges interested parties to consult that decision. The CARB determined that equity had been preserved by the creation of "A" and "B" junior anchor sub-classes with differing lease rates, as this mechanism recognized a two-tier market for junior anchor space.

Regarding the subject restaurant space, the Complainant's evidence was confined to market lease rate comparables. The Respondent pointed out that several of these comparables were fast food or pizza delivery outlets, and the others were in developments dissimilar to the subject's power centre location. The Respondent presented some leasing information for nineteen sit-down comparables drawn from neighbourhood centres, power centres, and "box" developments which showed average and median rental rates at \$28.52 and \$28 per square foot. The CARB preferred this evidence over that of the Complainant because of the number of comparables cited, all categorized as sit-down restaurants, the same designation as the subject. Although there was a substantial range in rents (from \$21.50 to \$38.25 excluding the high and low outliers) the Complainant's requested \$16.75 per square foot was beyond a reasonable request in light of the Respondent's market evidence.

Dated this 28th day of February, 2012, at the City of Edmonton, in the Province of Alberta.

John Noonan, 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: Canadian Property Holdings (Alberta) Inc.