



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 885/11

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 March 21, 2012, respecting two complaints filed on behalf of the owner.

| Roll Number | Municipal Address | Legal Description | Assessed Value | Assessment Type | Assessment Notice for: |
|-------------|---------------------|--------------------------------------|----------------|-----------------|------------------------|
| 10013223 | 11120 170 STREET NW | Plan: 0325373 Block: 9 Lot: 9 | \$1,873,000 | Annual New | 2011 |
| 10008264 | 18403 111 AVENUE NW | Plan: 0323378 Block: 1 Lot: 3A | \$1,539,000 | Annual New | 2011 |

Before:

Don Marchand, Presiding Officer
Brian Carbol, Board Member
Mary Sheldon, Board Member

Board Officer: Segun Kaffo

Persons Appearing on behalf of Complainant:

Walid Melhem, Altus Group

Persons Appearing on behalf of Respondent:

John Ball, Assessor , City of Edmonton

PRELIMINARY MATTERS

- The Parties at the onset of the hearings affirmed to tell the truth. No objection was raised as to the composition of the CARB panel. In addition, the Board members indicated no bias with respect to this file.
- Further, at the outset of the hearing the Parties advised the CARB that there were common issues, some common evidence, and some common arguments relative to the two properties scheduled for the March 21, 2012 hearing. The CARB accepted the evidence and arguments, identified as being in common and to be carried forward, to each subject property under complaint. Hence this Board Order includes both roll numbers.
- The issues set out were canvassed with the Parties. The Complainant advised that the issues were contained in items numbers 2, 3, 4, and 5, as shown on the SCHEDULE OF ISSUES and advised that any other issue on the SCHEDULE OF ISSUES would not be argued.
- The Respondent asked that three issues, which were not included on the complaint form, not be allowed under Section 9(1) Matters Relating to Assessment Complaints Regulation (AR310/2009); “A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.”. The issues cited were excess land, zoning, and parking and landscaping requirements. When questioned by the Board, the Respondent indicated that the issues were included in the Complainant’s disclosure exhibit (C1), and that he had responded to these issues within Exhibit (R1).
- The Board determined that the three issues form part of the argument for a fair and equitable assessment amount, and underlined that the Respondent had an opportunity to respond to the issues as part of his arguments, and therefore ruled that the arguments on these issues would be allowed.
- Further, the Respondent recommended that the market value rate per square foot used in the calculation of excess land on the subject property be reduced to \$18.00 per square foot from \$23.03 per square foot resulting in a reduced assessment to **\$1,421,500.**
- This recommendation was not accepted by the Complainant.

BACKGROUND AND THE SALIENT FACTS :

The following chart sets out the salient facts relative to both properties:

| Salient Fact | Roll Number 10008264 | Roll Number 10013223 |
|------------------------|------------------------------------|------------------------------------|
| Property Address | 18403 - 111 avenue NW | 11120 – 170 street NW |
| Building Names | Tim Horton’s | Tim Horton’s |
| Type of Property (LUC) | Drive-in/sit-down Restaurant (212) | Drive-in/sit-down Restaurant (212) |
| Land Size | 40,254 square feet | 40,777 square feet |
| Building Size | 3,030 square feet | 3,050 square feet |
| Year Built | Year 2003 | Year 2005 |
| Zoning | IB (Industrial Business District) | CB2 (General Business District) |
| Assessment Methodology | Income Approach | Income Approach |
| | | |

| Salient Fact | Roll Number 10008264 | Roll Number 10013223 |
|-------------------------------------|--------------------------------|-----------------------------|
| Estimated Net Leasable Area | 2,878 (95% of actual) | 2,898 (95% of actual) |
| Typical rental assessment rate | \$30.00 per square foot | \$30.00 per square foot |
| *Typical Vacancy Allowance | 5 % | 5 % |
| *Typical Structural Allowance | 2 % | 2 % |
| *Typical Shortfall Recovery Rate | \$6.00 per square foot | \$6.00 per square foot |
| Typical Capitalization Rate | 7.5 % | 7.0 % |
| Typical Site Coverage | 15 % | 15 % |
| Actual Site Coverage | 8 % | 7 % |
| Amount of excess land | 20,075 square feet | 20,463 square feet |
| 2011 Assessment | \$1,539,000 | \$1,873,000 |
| Oversize Land Adjustment | \$478,799 Revised to \$361,350 | \$729,599 |
| Requested Oversize Land Adjustment | none | \$471,339 |
| | | |
| Respondent's Recommended Assessment | \$1,421,500 | Confirmation at \$1,873,000 |
| | | |
| Complainant's Requested Assessment | \$759,500 | \$1,235,500 |

* Same allowance used by both parties

ISSUE(S)

Is the market value assessment of the subject property fair and equitable, specifically:

1. Is the assessment of the value of excess land fair and equitable?
 - a. As to the amount of land considered to be in excess.
 - b. As to the market value rate per square foot being applied to the excess.
2. Is the lease rate applied within the Income Approach methodology for the subject properties fair and equitable?
3. Does the correct capitalization rate, as applied within the Income Approach methodology, create the assessment of the subject properties that is fair and equitable?

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

In this Act,

(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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.*

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 presented evidence and argument on roll number 10008264 and carried forward his submissions to roll number 10013223.

Roll number 10008264

1. With respect to the issue of the amount and value of any excess land, the Complainant submitted to the Board a calculation of the amount of excess land on the subject property. The Complainant noted for the Board that the parties agreed that the zoning for the subject was IB and presented evidence to the Board of the requirements of the bylaws for parking, landscaping setbacks and parking facilities for this property.

1a. Based on the requirements of the bylaw it is the Complainant's opinion that there was no excess land for the subject. However, according to the calculations presented by the Complainant, the excess land for the subject would amount to 770.58 square feet (Exhibit C-2, page 4). The Complainant argued that the Respondent's method of applying a 15% site coverage for all properties similar to the subject would result, in this case, in the subject not complying with all required bylaws. The Complainant noted the Respondent's argument in the sur-rebuttal that the Complainant's measurements of the perimeter of the subject were flawed which would affect the calculation of setbacks needed and hence, the amount of excess land. However, the Complainant did not alter his submission as to the amount of excess land.

1b. The Complainant argued further that the market value per square foot which the Respondent recommended to be applied to the excess land is flawed. The Complainant presented a chart of three sites, zoned IB, where the rates applied were \$14.23, \$17.98 and \$14.68. The Complainant submitted that a value of \$14.68 per square foot would be appropriate to apply to

any excess land on the subject property as this is the rate applied to the vacant IB parcel across the road.

2. With respect to the lease rate applied, the Complainant presented his amended pro forma which applied a \$23 per square foot lease rate rather than that of the City which applied a \$30 per square foot lease rate. In support of this, the Complainant presented a chart of seven market lease rate comparables ranging from \$15.50 to \$28.00 per square foot- the average being \$22.42 and the median being \$24.00. He submitted to the Board that these comparables were all classified as restaurant/fast food establishments and that the range of lease rates for those comparables supported a lease rate of \$23 per square foot for the subject.

3. With respect to the capitalization rate applied in the valuation of the subject, the Complainant argued that the Respondent had applied a 7.5% capitalization rate in its valuation of the subject. The Complainant submitted that a capitalization rate of 8% was appropriate and submitted a chart of the capitalization rates of six properties comparable to the subject. In each of those comparables, a capitalization rate of 8% had been supplied.

The Complainant in summary requested that the Board accept a lease rate of \$23 per square foot for the subject property as well as an 8% capitalization rate and an excess land component of 770.58 square feet which is considered to be miniscule and requested an assessment of **\$759,500**.

Roll number 10013223

1. With respect to the issue of the amount and value of any excess land, the Complainant advised the Board that this subject was zoned CB2 and presented to the Board the bylaw requirements for parking, landscaping, setbacks and loading facilities for properties zoned in that fashion (Exhibit C-1, pages 25-36).

1a. In his original submission, the Complainant had indicated that there was no excess land. However, upon a recalculation at the hearing based upon the bylaw requirements for land zoned CB2, the Complainant concluded that for this subject, there would be 14,757.35 square feet of excess land. The Complainant argued that his calculations were correct and based upon the actual site coverage of the subject and argued further that the method used by the Respondent of applying a 15% site coverage to all properties of this kind was not correct.

1b. The Complainant did not contest the market value rate of \$31.94 per square foot being applied as the rate for the CB2 excess land.

2. With respect to the issue of the lease rate to be applied in valuing the subject, the Complainant argued that the \$30 rate applied by the Respondent was too high. The Complainant presented his amended pro forma which applied a \$23 per square foot lease rate. In support of this, the Complainant presented a chart of seven market lease rate comparables ranging from \$15.50 to \$28.00 per square foot- the average being \$22.42 and the median being \$24.00. He submitted to the Board that these comparables were all classified as restaurant/fast food establishments and that the range of lease rates for those comparables supported a lease rate of \$23 per square foot for the subject.

3. With respect to the capitalization rate applied in the valuation of the subject, the Complainant argued that the 7% capitalization rate applied by the Respondent was too low. In support, the Complainant presented the same chart as represented for roll number 10013223, six

properties comparable for the subject, all of which were valued with a capitalization rate of 8%. (Exhibit C-1, page 18).

In summary the Complainant requested that the Board apply a \$23 per square foot lease rate to the valuation process of the subject as well as an 8% capitalization rate. With respect to the excess land, the Complainant requested that the 14,757 square feet of excess land be valued at the City's rate of \$31.94 per square foot. In total, the Complainant requested that the Board reduce the 2011 assessment of the subject to **\$1,235,500**.

POSITION OF THE RESPONDENT

Roll number 10008264

1. With respect to the matter of the assessment of excess land the Respondent maintained that there is a substantial amount of excess land associated with the subject property. A calculation was presented to address the relationship among building size, land size, public area of the building, required parking and landscaping areas based on a typical 15% land coverage. The Respondent went on to cite from an Alberta Municipal Government Board order (MBG 002/07) wherein it states at paragraph 148; *"Typical Rents do not include a value for excess land"*, and at paragraph 157 *"excess land has value and must be added to capitalized income using typical lease rates"* and at paragraph 172 *"...It would be unfair and inequitable to exempt certain properties from the calculation of **excess land** merely because the amount of **excess land** is very minute."*

1a. Based on an actual site coverage of 8% in comparison with a 15 % typical site coverage a total of 20,075 square feet is deemed to be in excess or oversized land.

1b. Respondent recommended that the market value rate per square foot used in the calculation of excess land on the subject property be reduced to \$18.00 per square foot from \$23.03. No supporting evidence for the \$18.00 rate was presented.

2. In support of the lease rate for the subject property the Respondent presented a chart containing 10 lease rates for fast food franchises from across the City. The lease rates ranged from \$28.50 per square foot to \$46.00 per square foot compared to the subject property which leases for \$30.00 per square foot.

3. In support of a capitalization rate of 7.5% for the subject property the Respondent included General Retail Assessment Summaries for four properties similar to the subject property all with a capitalization rate of 7.5%.

The Respondent recommended that the calculation rate for excess land on the subject property be reduced to \$18.00 per square foot from \$23.03 per square foot resulting in a recommended assessment of **\$1,421,500**.

Roll number 10013223

1. The Respondent request that the references cited for roll number 10008264 be carried forward to this roll 10013223.

1a. Based on a actual site coverage of 7% in comparison with a 15 % typical site coverage a total of 20,463 square feet is deemed to be in excess or oversized land.

1b. The Respondent advised that the market value rate per square foot used in the calculation of excess land on the subject property is \$31.94 per square foot- the rate for surrounding CB2 vacant lands. No supporting evidence for the \$31.94 rate was presented.

2. The Respondent requested that the evidence for roll number 10008264 be carried forward to this roll 10013223. The Respondent concluded that the lease rate of \$30.00 per square foot is a rate similar to lease rates for fast food franchises from across the City.

3. The Respondent indicated that the capitalization rate of 7.0% for the subject property is based on the subject's location. The subject's rate of is similar to other properties with superior location like those on 170th street or Whyte avenue.

The Respondent requested a confirmation of the assessment of the subject property at **\$1,873,000.**

FINDINGS

1a. An assessment of property based on market value must reflect typical market conditions for properties similar to that property. The typical site coverage of 15% for the 2011 assessment is based on similar fast food drive-in/sit-down restaurant sites.

1b. The typical market value rate of similar IB excess lands is \$14.68 for roll number 10008264 and \$31.94 for roll number 10013223.

2. The typical market rental rate of similar fast food drive-in/sit-down restaurant space is \$30.00 per square foot.

3. The Capitalization rate of 7.5% applied within the income approach methodology for roll number 10008264 is similar to the rate applied to other similar General Retail properties.

4. The Capitalization rate of 7.0% applied within the income approach methodology for roll number 10013223 is similar to the rate applied to other similar General Retail properties.

DECISIONS

Roll number 10008264 is amended from \$1,539,000 to **\$1,355,000.**

Roll number 10013223 is confirmed at **\$1,873,000.**

REASONS FOR THE DECISION

The use of the typical site coverage of 15% for similar fast food drive-in/sit-down restaurant for the 2011 assessment year ensures a consistent application of a methodology for all the similar properties, where the net income when capitalized is not capturing the entire value of the property.

The two subjects, which are very similar in their size and site coverage, are being assessed similarly even though roll number 10008264 is located on IB zoned lands and roll number 10013223 is located on CB2 lands. The by-laws for the different zoning require different parking, setback and landscaping requirements. The difference is in the per unit rate commanded in the market place of the different zoned properties and their locations.

There is a question as to whether or not the excess lands support the same per unit value as the lands valued within the typical site coverage for the subject. In the case of roll number 10008264 the CARB received evidence that a similar and bordering IB zoned parcel was assessed at the rate of \$14.68 per square foot. The parties provided no evidence to support or dispute the per unit rate used for the excess lands identified in roll number 10013223 therefore the CARB will not be disturbing the per unit rate used in this assessment.

The market rental rates and the capitalization rates used in the preparation of the assessment for both roll numbers are considered equivalent to the rates of similar property. The CARB reviewed all the comparables provided by both parties, both the market rent lease information and the capitalization rates concluded from the sales information. Weight was given to the comparables most similar to the subject. Market lease rental rates and capitalization rates garnered from properties with commercial rental units as part shopping complexes, or non-stand alone properties were given less weight.

Dated this 16th day of April, 2012, at the City of Edmonton, in the Province of Alberta.

Don Marchand, 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: THE TDL GROUP CORP/GROUPE TDL CORPORATION

For MGB Administrative Use Only: *From D. H. Marchand*

| <i>Decision No.</i> | | <i>Roll No. 10008264 and 10013223 Edmonton</i> | | |
|---------------------|-------------|--|--------------------|--|
| <u>Subject</u> | <u>Type</u> | <u>Property Sub type</u> | <u>Issue</u> | <u>Sub Issue</u> |
| CARB | (2) Retail | Stand alone | Income Approach | Net Market Rent/Lease rates Capitalization Rates Excess Land (amount & rate) |
| | | | | |