



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
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NOTICE OF DECISION NO. 0098 934/11

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 April 27, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
6841928	12222 137 AVENUE NW	Plan: 7922542 Block: 35 Lot: 29	\$30,148,000	Annual New	2011

Before:

Patricia Mowbrey, Presiding Officer
Jasbeer Singh, Board Member
Mary Sheldon, Board Member

Board Officer: Karin Lauderdale

Persons Appearing on behalf of Complainant:

Walid Melhem, Altus Group

Persons Appearing on behalf of Respondent:

Tim Dmytruk, Assessor, City of Edmonton
Moreen Skarsen, Assessor, City of Edmonton
Tanya Smith, Law Branch, City of Edmonton
Mark Sandul, Assessor, City of Edmonton, observing

PROCEDURAL MATTERS

1. No allegation of bias was raised by any party to the proceedings nor by any member of the Board.

PRELIMINARY MATTERS

2. At the outset of its presentation, the Respondent requested to present to the Board as part of its evidence copies of recent CARB decisions. These decisions had not formed part of the Respondent's disclosure to the Complainant but had been forwarded to the Complainant subsequent to the disclosure date. The Complainant objected to this material being presented as evidence before the Board on the basis that this should have been disclosed within the proper disclosure timelines. The decision of the Board was to exclude these CARB decisions from evidence but the Board suggested that the Respondent could refer to this material in oral summary and argument.
3. During the presentation, the Respondent advised the Board that the parties had agreed to a change in the exemption percentages applicable to the subject. The recommendation was that the exemption percentage for City of Edmonton office space would be 1.776% for January 1 to January 31, 2010 and 2.412% for the period February 1 to December 31, 2011. The reason for the change was that the City of Edmonton had taken additional space to increase the total area. The Board noted that the Complainant agreed to this change and the decision of the Board was to change the exemption percentage for the City of Edmonton occupied space to 1.776% for January 1 to January 31, 2010 and to 2.412% for February 1 to December 31, 2010.
4. The Respondent objected to the rebuttal document that the Complainant wished to introduce on the grounds that this rebuttal document contained new evidence. The Complainant submitted to the Board that the rebuttal document was responding to the Respondent's evidence. After a short recess during which the Board reviewed the rebuttal document, the Board decided that all the evidence in the rebuttal document was new evidence, excepting pages 13 and 14 which had formed part of C-1. The Board was of the opinion that the rebuttal material did not relate to material presented in the Respondent's disclosure and accordingly, the decision of the Board was to allow only pages 13 and 14 of the rebuttal document C-2 to be entered as evidence.
5. During summary and argument, the Respondent requested that the Board consider an increase in the subject assessment on the basis that during the hearing, some information had been put forward that there was an error in measurement. The Complainant objected to this request. The Board adjourned and considered this request and decided that it could not consider this increase in size without specific confirmation of the area of the space in question. Therefore, the Board declined to consider an increase in the assessment of the subject on that basis.

BACKGROUND

6. The subject is a power centre located in the Baranow subdivision of the City of Edmonton and is known as "White Oaks Centre." The assessed area for the subject is 157,861 square feet.

ISSUE(S)

7. Is the 2011 assessment for the subject correct?
 - a. Is the lease rate applied to the junior anchor classification correct?
 - b. Is the lease rate applied to the CRU 1,001-3,000 sq. ft. classification correct?
 - c. Is the lease rate applied to the CRU 3,001-5,000 sq. ft. classification correct?
 - d. Is the lease rate applied to the CRU restaurant classification correct?

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

8. The position of the Complainant was that the 2011 assessment of the subject was incorrect.
9. With respect to the applicable lease rates for the junior anchor tenants of the subject, the Complainant submitted that the lease rate of \$18.00 per square foot, used by the Respondent in the 2011 assessment, is too high. The Complainant argued that the junior anchor space in the subject was currently leased for \$11.03 per square foot. The Complainant argued further that similar properties were assessed at lease rates between \$9.00 and \$12.50 per square foot, with a median of \$11.00 per square foot (C-1, page 23). The Complainant presented to the Board a chart of market lease rate comparables for the junior anchor classification (C-1, page 21). This chart demonstrated a median lease rate of \$10.00 per square foot and the Complainant suggested that this evidence supported a lease rate for the junior anchor tenants of \$12.00 per square foot. Based on this evidence, the Complainant proposed that a lease rate of \$11.00 per square foot should be applied to the junior anchor tenants.
10. With respect to the applicable lease rates for the CRU 1,001-3,000, space of the subject, the Complainant submitted that the lease rate of \$18.00 per square foot, used by the Respondent in the 2011 assessment, was not correct. The Complainant argued that the CRU 1,001-3,000 space in the subject was currently leased for \$16.05 per square foot.

The Complainant argued further that assessments of similar space ranged from \$14.00 to \$17.00 per square foot with a median of \$16.00 per square foot (C-1, page 23). The Complainant proposed that this evidence supported a lease rate for the CRU 1,001-3,000 space of \$16.00 per square foot.

11. With respect to the applicable lease rates for the CRU 3,001-5,000 space of the subject, the Complainant submitted that the lease rate of \$16.00 per square foot, used by the Respondent in the 2011 assessment, was not correct. The Complainant argued that the actual lease rate for the CRU 3,001-5,000 space in the subject was \$14.75 per square foot. The Complainant presented to the Board two market lease rate comparables (C-1, page 21) to show that market lease rates for this type of space had a median value of \$14.50. The Complainant proposed that this was an appropriate lease rate for the CRU 3,001-5,000 space.
12. With respect to the CRU restaurant space of the subject, the Complainant submitted that the lease rate of \$26.50 per square foot, applied by the Respondent in the 2011 assessment, was not correct. The Complainant argued that the actual lease rate for this type of space in the subject was \$22.29 per square foot and that similar properties had been assessed with a median value per square foot of \$22.00. The Complainant also presented six market lease rate comparables for CRU restaurant space with a median value of \$20.69 per square foot (C-1, page 22). The Complainant proposed that an appropriate lease rate for this type of space was \$23.00 per square foot.
13. Further, with respect to the CRU restaurant space, the Complainant presented a list of restaurant comparables listing the age, rent, net leasable area, location and LUC of each comparable (C-1, page 25). The Complainant stated that this list demonstrated that restaurants in newer buildings tended to command higher lease rates but that the difference between lease rates for restaurants in power centers or neighborhood shopping centers was negligible.
14. The Complainant argued that the lease rates applied by the Respondent to various types and sizes of space made no sense in that they did not reflect economies of scale. As well, the Complainant reminded the Board that the fee simple was to be assessed, not the tenant.
15. The Complainant noted for the Board that there were size discrepancies between the areas reported in a 2010 rent roll provided by the Complainant and the area measurements used by the Respondent in the 2011 assessment.
16. The Complainant presented the Board with a rent roll for the subject (C-1, page 19) and a comparison of the actual lease rates with the assessed rates (C-1, page 13). Also presented was an actual rent roll pro forma (C-1, page 15). On C-1, page 14, the Complainant presented a requested market value pro forma which resulted in a requested value for the subject of \$21,722,500. However, upon questioning by the Respondent, the Complainant noted that he had neglected to include the value of some office space in that pro forma. After some recalculation, including the office space, the Complainant changed his requested value to \$25,413,500.

POSITION OF THE RESPONDENT

17. The Respondent argued that the 2011 assessment of \$30,148,000 for the subject was correct.
18. The Respondent expressed to the Board that the assessments are prepared using mass appraisal and indicated that this mass appraisal technique provided a consistency in assessing similar properties. In the case of the subject, the income approach to value was appropriate and was used to assess all shopping centre properties. The Respondent also submitted that the stratification of properties into groups with similar qualities provided fairness and equity in assessments.
19. In addition, the Respondent advised the Board that the lease rates for the various types of spaces used in preparing assessments are derived from the request for information forms received from property owners of similar types of spaces. Therefore, the lease rates used in the assessments for various types of leased space are the rates that are considered typical in the market as they are derived from actual lease rates on the request for information forms received from owners.
20. With respect to the correct lease rate for the junior anchor space, the Respondent advised the Board that the junior anchor classification was divided into two types for assessment purposes. Some junior anchors were classified as “better” and some were classified as “lower”. In the case of the subject, the junior anchor space was in the “better” category and the Respondent argued that some of the junior anchor comparables presented by the Complainant belonged in the “lower” category. The Respondent advised that the difference in the two classifications were one of the level and quality of finishing (R-1, page 43). The Respondent argued further that comparing junior anchor space in the same sub-classification would be of the most assistance in establishing value. The Respondent noted for the Board that only one of the Complainant’s junior anchor lease comparables was located in a Power Center and argued further that this made those comparables of less assistance in establishing value for the subject. The Respondent stated that the comparables presented by the Respondent for the junior anchor “better” category supported the assessed lease rate of \$18.00 per sq ft for the subject space.
21. With respect to the correct lease rate for the CRU 1,001-3,000 space, the Respondent noted that the Complainant did not provide any market lease rate comparables (R-1, page 39). The Respondent provided a chart showing space located on 137 Avenue, close to the subject, with the corresponding lease rates. The average lease rate for those comparables was \$26.07 for leases dated January, 2009 to June 30, 2010. The Respondent argued that this evidence supported the assessed lease rate of \$18.00 per sq ft for the CRU 1,001-3,000 space in the subject.
22. With respect to the correct lease rate for the CRU 3,001-5,000 space, the Respondent noted for the Board that the Complainant provided only two comparables, one of which was located in a neighborhood shopping centre which, the Respondent argued was an inferior location. The comparables presented by the Respondent, some of which were identified as being located on 137 Avenue, close to the subject, showed an average lease

rate for this type of space in the amount of \$29.91 per square foot (R-1, page 40) which supported the 2011 assessment of \$16.00 per sq ft of the subject space.

23. With respect to the correct lease rate for the CRU restaurant space, the Respondent provided a list of market lease rate comparables for CRU –Sit-Down Restaurants, similar to the subject space (R-1, page 41). The list is entitled “Neighborhood, Power, Box Rent Analysis, CRU-Restaurant (Sit Down).” The Respondent argued that Power Centers tended to be newer properties and tended to have higher lease rates. The Respondent argued further that age, location, level and quality of finishing were significant determining factors in assessing value for the CRU restaurant space. The Respondent noted for the Board that of the Complainant’s comparables for the CRU restaurant space, only one was located in a Power Center. The Respondent argued that the median lease rate of \$28.00 per square foot for the CRU restaurant space shown in the Respondent’s list on R-1, page 41 supported the assessed value of \$26.50 per square foot for the CRU-restaurant space in the subject.
24. The Respondent provided a list of LUC codes with the corresponding descriptions (R-1, page 33) and argued that the best comparables in each category of space would be located within the same land use code. The Respondent provided an example that space in a Power Centre, LUC 244, should not be compared with space in a neighborhood shopping centre, LUC 240, nor with space in a regional shopping centre, LUC 242. The Respondent argued that Power Centers are usually located on arterial roads, are newer and achieve higher lease rates.
25. The Respondent requested that the Board confirm the 2011 assessment of the subject at \$30,148,000.

DECISION

26. The decision of the Board is to confirm the 2011 assessment of \$30,148,000 for the subject property. The decision of the Board is to change the exemption percentage for the City of Edmonton occupied space of the subject to 1.776% for January 1, 2010 to January 31, 2010 and to 2.412% for February 1, 2010 to December 31, 2010

REASONS FOR THE DECISION

27. The Board reviewed the lease rates presented by the Complainant and the Respondent for the junior anchor tenants of the subject and concluded that the lease rate of \$18.00 per square foot applied by the Respondent in its assessment of the subject is correct. The Board noted that in the Complainant’s evidence, some of the leases for the junior anchor space of the subject are dated and that would have a lowering effect on the lease rates. The Board noted that in the Respondent’s submission all properties in the shopping center category are treated in the same manner and, with respect to junior anchor spaces, all spaces in that classification are divided into two groups, “better” or “A” space and “lower” or “B” space. In the opinion of the Board, it is appropriate and more conclusive of value to compare the junior anchor space of the subject to junior anchor space in the same sub-classification. In that regard, the Board noted, that in the submission of the Respondent, it was indicated that the comparables presented by the Complainant for

junior anchor space, were classified by the Respondent, as being in the “lower” category. The junior anchor space of the subject, as explained by the Respondent is in the “better” category and therefore, the Board is of the opinion that the assessment comparables presented by the Complainant are of little assistance in establishing value for the junior anchor space of the subject.

28. The Board noted that some of the Complainant’s equity comparables for junior anchors are not located in Power Centers. The subject is located in a Power Centre and, in the opinion of the Board, Power Centers can be distinguished from other shopping centers in terms of location, age and higher lease rates attained. Therefore, the Board concludes that for all categories of space of the subject, the best comparables would be located in Power Centers.
29. With respect to the appropriate lease rates for CRU space 1,001-3,000 square feet, the Board’s conclusions also include the opinion referenced above that the best comparables would be located in a Power Center. The Complainant presented five equity comparables for this type of space. However, the Board noted that only two are located in a Power Centre (LUC code 244). The other comparables are located in neighborhood shopping centers, (LUC code 240). As outlined above, the Board agreed with the Respondent that a location in a Power Center is a superior location and the comparables of most assistance in establishing value for the subject should be similarly located. The Board also notes that the Complainant did not provide any market lease rate comparables for the CRU 1,001-3,000 space. The Board concludes that the lease rate applied in the 2011 assessment for the CRU 1001-3,000 square feet space at \$18.00 per square foot is correct.
30. With respect to the appropriate lease rates for the CRU 3,001-5,000 space, The Complainant supplied two market lease rate comparables, one of which was located in a Power Center. The Complainant did not provide any equity comparables for this type of space. In the opinion of the Board, there would have to be more information and evidence provided to convince the Board that the lease rate of \$16.00 per square foot applied to this type of space in the 2011 assessment was incorrect.
31. With respect to the appropriate lease rate for CRU restaurant space in the subject, the Board noted that only two of the market lease comparables and none of the equity comparables provided by the Complainant are located in a Power Center. In the opinion of the Board, the comparables are of less assistance in establishing value for the subject. In addition, the Board reviewed the chart presented by the Complainant showing restaurant comparables by age. The Board noted that the comparables mentioned in each age category vary widely by location. As well, the Board noted that in each of the older age categories, there are lease rates higher than those in the newest age category and that some of the comparables are in Power Centers and some are in other types of shopping centers. The Board concluded that there is little evidence provided by the Complainant to successfully challenge the CRU Restaurant lease rate of \$26.50 per square foot applied in the 2011 assessment of the subject and is considered correct.
32. In summary, the Board concluded that the Complainant lacked convincing evidence to challenge the lease rates applied, in the current assessment of the subject to the Junior Anchor space, the CRU 1,001-3,000 space, 3,001-5,000 space or the CRU Restaurant space, were incorrect. The Board agreed with the Respondent that location and age are

significant factors and that the best comparables in establishing value for the categories of space in the subject would be found in Power Centers.

33. As well, the Board noted that the lease rates applied in the 2011 assessment of the subject to the various categories of space are derived from information received from request for information forms submitted by other property owners with similar spaces. The Board is of the opinion that this is a fair and equitable way to ascertain lease rates for the subject.
34. The Board noted that the Complainant expressed that the classification of some spaces, such as junior anchor spaces, into “better” and “lower” indicated that it is the tenant which is being assessed and not the fee simple. The Complainant also argued that there should be economies of scale considered, that there should be a difference in value between a larger and a smaller space. The Board is of the opinion that what is being assessed is the space with various factors affecting value such as age, location, level and quality of finishing.
35. The Board concluded that the 2011 assessment of \$30,148,000 for the subject is correct, fair and equitable.
36. With respect to the change in exemption percentages for the City of Edmonton occupied space of 1.776% from January 1 to 31, 2010, and 2.412% from February 1 to December 31, 2010, the Board noted the agreement of the parties to the change and confirmed the change.

DISSENTING OPINION AND REASONS

37. There was no dissenting opinion

Dated this 21st day of May, 2012, at the City of Edmonton, in the Province of Alberta.

Patricia Mowbrey, 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: WHITE OAKS CENTRE LTD