



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
Phone: (780) 496-5026

NOTICE OF DECISION NO. 0098 936/11

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 30, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
2710697	10539 124 Street NW	Plan: 6065HW Block: 23 Lot: 4	\$1,471,000	Annual New	2011

Before:

James Fleming, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member

Board Officer: Segun Kaffo

Persons Appearing on behalf of the Complainant:

Walid Melhem, Agent, Altus Group

Persons Appearing on behalf of the Respondent:

John Ball, Assessor, City of Edmonton

PRELIMINARY MATTERS

[1] Due to delays experienced as a result of Court challenges and other matters, the CARB 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 Regulation. Accordingly, the CARB 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.

[2] When asked by the Presiding Officer, the parties indicated no objection to the composition of the CARB and the CARB members indicated no bias in the matters before them.

[3] At the outset of the hearing, the Respondent advised they had a recommendation for a reduced value. The parties met to consider the change which ultimately was not accepted by the Complainant. The details and reasons for the change will be outlined under the party positions.

BACKGROUND

[4] The property is a Boston Pizza Restaurant in a freestanding building with a total area of 4,878 square feet (sq. ft) on 9,996 sq. ft. of land. The property was built in 1958 with the most recent substantive renovation carried out in 1978. The property is zoned CB1, has a Land Use Classification (LUC) of 210, and is valued on the Income Approach to Value (IAV).

ISSUE(S)

[5] The Complainant noted 7 issues on the Complaint form, later reduced to 5 (Numbers 1 - 5) at the commencement of the hearing (C-1, pg. 3). In the hearing, the Complainant addressed only 3 issues moderated largely by the requested change in condition:

- i. Should the building be considered in Fair rather than Good condition?
- ii. What is the best evidence of lease rate for the subject, \$13.00 as requested by the Complainant or \$20.00 as used in the (revised) City Income Detail Report (R-1, pg. 3)?
- iii. What is the appropriate capitalization rate (cap rate); 9.50% requested by the Complainant, or 7.5% used in the (revised) City Income Detail Report (R-1, pg. 3)?

LEGISLATION

[6] *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

[7] The Complainant provided a 42 page document (C-1) in which he argued that the subject property condition should be reduced from Good to Fair due to the age of the property and what he described as poor property attributes as exemplified by limited parking, unpaved back lane and limited visibility (exposure).

[8] While acknowledging that the current lease rate was \$18.27 per sq. ft. for the subject, the Complainant argued they were \$12.75 per sq. ft. for comparable leases. The Complainant provided lease and assessment evidence which he believed supported \$12.00 to \$16.00 per sq. ft. (C-1 pages 20 & 21). The Complainant said that the assessed lease rate of \$23.00 per sq. ft. (subsequently reduced to \$20.00 per sq. ft in the recommendation) was too high. Based on the comparables, the complainant requested a rate of \$13.00 per sq. ft. which was roughly midway between the average and the median of the comparables.

[9] With respect to the cap rate, the Complainant provided 5 assessment comparables (3 of which were in Fair condition, and 2 of which were in average condition) showing the assessed cap rate which demonstrated a median cap rate of 9.00% (C-1, pg. 22).

POSITION OF THE RESPONDENT

[10] The Respondent provided an 86 page document (R-1) in which he noted that the following changes to the attributes of the property were made after a review of the assessment. The assessed rent was reduced from \$23.00 to \$20.00 per sq. ft., the cap rate was increased from 7.0% to 7.5% and the condition was changed from Good to Average. The impact of these changes was to reduce the assessment to \$1,191,000 and the Respondent was making a recommendation to accept that value (R-1, pg. 3).

[11] The Respondent noted however, that they had retained the Classification of Restaurant good (RESTGD) because the quality of the subject, in their opinion, was consistent with “chain-like” quality finishes which is an important distinction in the restaurant market.

[12] The Respondent provided Income Detail Reports (i.e. assessment attribute details) for 4 restaurant comparables (R-1, pages 27 – 30) all of which were within 5 blocks of the subject, and 3 of which shared the same LUC (210) as the subject. These comparables had assessed rents from \$18.00 - \$23.00 per sq. ft. and cap rates from 7.5% to 8.5%. Two of the facilities were classed as Restaurant Average, one as Restaurant Good, and one was actually a plaza (upscale strip centre).

[13] The Respondent argued that the two closest comparables were a lower classification (Restaurant Average) and yet were assessed at rates consistent with the subject. They argued that this lower classification also influenced the cap rates, but they noted that the cap rates on the two closest comparables were close and in one case identical to the cap rate for the subject.

[14] In commenting on the Complainants evidence, the Respondent noted that all of the lease comparables were located in office buildings of 4 stories or more. This they said resulted in different operating costs and building restrictions which meant the properties were not sufficiently comparable.

[15] With respect to the 5 cap rate assessment comparables of the Complainant, the Respondent pointed out that all but one were in significantly different and inferior locations and in different types of properties, and so their cap rates could not be considered comparable to the subject.

DECISION

[16] The Complaint is allowed in part, and the assessment is reduced to the amount contained in the Respondents recommendation at \$1,191,000.

REASONS FOR THE DECISION

[17] The CARB considered all of the evidence and argument. First, with respect to the issue of condition, the Complainant's only argument about condition was a commentary from the owner (C-1, pg. 24) that talked about the "site amenities". There was little evidence that site amenities contributed to "condition", nor was there any compelling evidence that other "similar" restaurants had received a lower condition and thus had been treated differently than the subject, particularly given the reduction from Good to Average condition contained in the Respondent's recommendation.

[18] Accordingly, due to insufficient evidence, the CARB puts little weight on the argument for a change in condition and thus finds that the subject is in average condition.

[19] In the matter of the lease rate, the CARB agrees with the Respondent that all of the Complainant's lease comparables are located in larger facilities (generally office buildings), noting also the different LUC (225 for the comparables vs. 210 for the subject). The CARB accepted the assessed rents put forward by the Respondent for (neighbouring) restaurants, which tended to support the assessed rent of the subject at \$20.00 per sq. ft. and as well, the actual rent (\$18.27 per sq. ft.) for the subject tended to support a "market rent" in that range. For the CARB to accept the request of the Complainant, it would have needed to see evidence that similar freestanding restaurants had rents similar to the rent requested (\$13.00 per sq. ft.), or that there was a direct correlation between rents for restaurants in office buildings and rents for restaurants not in office buildings. There was little evidence presented to support either of those situations, and so the CARB can find no reason to support a change in the assessed rental rate (as revised).

[20] In the matter of the cap rate, from its experience, the CARB is not convinced that the locations of the Complainants comparables were in fact similar to the location of the subject. In addition, the types of properties, 2 shopping centres, and 2 Jewelry stores were definitely not comparable to the subject. Finally, 3 of the 5 comparables were in Fair condition, while the subject is in Average condition. Similarity and comparability are critical in making an equity argument, and therefore the CARB puts little weight on the evidence of the Complainant because of the lack of similarity noted above.

[21] Finally, the CARB spent some time reviewing the Respondent's comparables on pages 27 and 28 of R-1. Both these Comparables are classified as "Restaurant Average" and thus they are somewhat inferior compared to the subject which is "Restaurant Good".

	A	B	C
	10539 124 St.	10802 124 St	10810 124 St.
Quality	RESTGD	RESTAUNT	RESTAUNT
Rental Rate	\$20.00	\$20.00	\$18.50
Cap Rate	\$7.5%	8%	7.5%
Condition	Average	Average	Average
	Subject	Col Mustard	Cosmos
Size (sq. ft)	4,878	1,815	5,032

[22] The chart above sets out the subject and 2 neighbouring properties and from the addresses, one can notice the close proximity of all 3. If one notices the size, and relates it to the Quality, it shows that similar size restaurants (A & C) compare well except for the Rental Rate which can be reasonably accounted for in the better quality of the subject property. Similarly, the smaller property, (B) has a relatively higher rent which would be anticipated due to its smaller size. The CARB concludes that this analysis provides additional support for confirmation of the recommended assessment above.

[23] Finally, the CARB notes that the Respondent introduced the sale of the Royal Pizza 12225 118th Street as a strong comparable, supporting the assessment. The CARB concludes that the Inglewood area is not directly similar to the 124th St area, and as well, with the revision to the attributes of the subject, the comparability between the two, in terms of their attributes, is much less relevant. Accordingly, the CARB put little weight on this information.

DISSENTING OPINION AND REASONS

[24] There was no dissenting opinion.

Dated this 23rd day of May, 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: MARTIN BERNSTEIN
ESTHER J BERNSTEIN
CORAL THOMPSON