



ASSESSMENT REVIEW BOARD

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10019 103 Avenue
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NOTICE OF DECISION NO. 0098 937/11

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 May 3, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
6291009	13440 97 Street NW	Plan: 4036RS Block: 11 Lot: 25	\$1,081,000	Annual New	2011

Before:

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

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Walid Melhem, Agent, Altus Group

Persons Appearing on behalf of 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. 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.

BACKGROUND

[3] The subject is an A & W outlet of 2,191 sq. ft on a 24,559 sq. ft. site zoned CSC at 13440 – 97 Street. The building was constructed in 1992, and the assessment was prepared based on the Income Approach to Value (IAV).

ISSUE(S)

[4] The Complainant noted 8 issues on the Complaint form, later reduced to 5 at the commencement of the hearing (Numbers 1 -5, Ex. C1 pg 3).

[5] In the hearing, the Complainant addressed only 3 issues.

- a) What is the correct Capitalization rate (cap rate)?
- b) What is the correct lease rate?
- c) Does the property have an excess land component, and if so what is the area of the excess land?

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

[6] The Complainant provided eight assessment comparables from various areas of the City to support their request for a cap rate of 7.0%. Four of the comparables were assessed using a 7.5% cap rate, and these four were in the same 212 LUC as the subject. The rest were assessed at 8.0% except the last one which was assessed at 8.5%. They were built between 1995 and 2006

and all but one were in Average condition.. The Board was asked to increase the cap rate on the subject from 7.0% to 8.0%.

[7] The Complainant provided six market lease rate comparables (3 of which are located in the north, the same quadrant as the subject) with an average lease rate of \$22.42 per square foot (p.s.ft), with a median of \$24.00 p.s.ft. Their requested lease rate was \$23.00 p.s.ft. almost midway between the average and the median rates. The Land Use Classification (LUC) of the comparables was different than the subject, with five of them listed as 240 as opposed to the 212 classification for the subject property. The first comparable was post facto (Oct. 2010).

[8] The Complainant argued that there was no excess land on the site based on their review of the City of Edmonton Zoning By-Law 12800. They highlighted portions of the By-Law which discussed Vehicular Parking Requirements, Required Off-street Vehicular Accessory Parking, and the CSC (Shopping Centre Zone) requirements (Ex. C1 pgs. 21 – 31). Application of these requirements they argued, would necessitate use of the entire site. They argued that the site had the minimum 29 parking stalls required for the By-Law, and that the balance of the site was required to meet landscaping and other site requirements (Ex. R1 pg 13, para. 12).

POSITION OF THE RESPONDENT

[9] To support the assessed lease rate, the Respondent provided a chart of details (including rental rates) from ten freestanding fast food outlets (Ex. R1, page 29). The rents for these comparables ranged from \$28.50 p.s.ft. to \$46.00 p.s.ft. which the respondent noted supported the subject's assessed rent at \$30.00 p.s.ft. This chart also included traffic counts, but no definitive relationship was argued based on these numbers. It was also noted that the chart contained three new leases and seven renewals, and while renewals are acknowledged as being weaker than new leases in demonstrating "current" market value, the Respondent noted the fact that rents were "much" higher than the assessed rent, and could be discounted significantly and still provide support for the assessed rent.

[10] To support the cap rate, the Respondent offered comments challenging the similarity of the comparables. It was also noted that the A&W on Kingsway Ave. had a 7% cap rate.

[11] To demonstrate the existence of excess land, the Respondent included an analysis of site usage (Ex. R1 pg 22) which demonstrated that application of all of the requirements still showed excess land of 9,967 square feet. based on a 15% site coverage allowance.

[12] To further support their argument for existence of excess land, the Respondent included a chart (Ex. R1, pg. 35) which showed site coverage, assessed lease rate and the existence of oversized land. All of these properties' (represented to be "Fast Food" outlets), had oversized land and an assessed lease rate of \$30.00 p.s.ft. (the same as the subject). This, they argued, demonstrated that the subject was treated in a similar manner to similar properties.

DECISION

[13] The subject property assessment is reduced to \$980,500.

REASONS FOR THE DECISION

[14] The CARB considered all the evidence and argument.

[15] Given the nature of the evidence, it is possible to consider the lease rate and the cap rate in the same discussion. The CARB reviewed the Assessment Comparable Chart provided by the Complainant (Ex C1, pg. 17). The first four of the comparables are all fast food outlets with the same 212 LUC as the subject. The assessed rental rates for 3 of the 4 comparables are at \$30.00 p.s.ft., once again identical to the assessed rate of subject. The CARB found that it needed to go no further than the Complainant's comparables to find good support for the assessed rental rate at \$30.00 p.s.ft. and so confirms the assessed rental rate. The CARB notes that the balance of the comparables in the Complainants' page 17 were of a different LUC (240 vs. 212), and the CARB was not provided with any information to assess the similarity between the classifications.

[16] The same Complainants' chart shows that the "similar" comparables noted above all have a cap rate of 7.50%. This chart was the only cap rate information submitted by the Complainant. The Respondent submitted limited argument against the comparables (Ex. R1 pg. 28) and little evidence on cap rates for similar properties. Accordingly, the CARB finds that the evidence of the Complainant is the best evidence for the cap rate, and increases the cap rate to 7.5%, the same rate used in the Complainants' first four comparables.

[17] In the matter of whether there is excess land contained on the site, the CARB recognizes the nature of the Complainants' argument, however there were no calculations provided or examples given by the Complainant as to how the By-Law requirements would apply to the specific subject site. Accordingly, the CARB was unable to adequately assess the Complainant's argument that there was no excess land and thus the CARB finds that there is insufficient evidence to conclude that there was no excess land.

[18] It should also be noted that the Respondent provided an analysis to show that in their opinion there was excess land.

Dated this _____ day of _____, 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: W E ENTERPRISES LTD