

## Edmonton Composite Assessment Review Board

**Citation: Altus Group v The City of Edmonton, 2013 ECARB 00675**

**Assessment Roll Number:** 3907771  
**Municipal Address:** 5204 23 Avenue NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**Altus Group**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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### DECISION OF

**Peter Irwin, Presiding Officer**  
**Lillian Lundgren, Board Member**  
**Darryl Menzak, Board Member**

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### Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matter before them.

[2] At the outset of the hearing, the parties advised the Board that some of the evidence and argument in this complaint will be the same in the following four complaints related to Roll Numbers 7817935, 9435546, 9940113, and 9947119.

### Preliminary Matters

[3] The Respondent objected to a new issue being raised by the Complainant, as it appeared that the Complainant was requesting that the reported size of the property be reduced by five percent. The objection was based on section 9(1) of the *Matters Relating to Assessment Complaints Regulation* (MRAC), as the description of the property was not an issue identified on the Complaint Form. The Board did not accept the objection because the size issue pertains to net leasable area in certain classes of property, which is relevant to the question of whether the subject property is assessed equitably. Equity is an issue that is properly within the Board's jurisdiction to determine.

[4] The Respondent objected to pages 79 through 86 of the Complainant's Rebuttal document (Ex. C-3), stating that it is new evidence that was not disclosed in accordance with section 8 of MRAC. Those pages included Assessment Detail Reports and *pro forma* with

additional information. The Board found that those particular pages do not respond to anything raised in the Respondent's disclosure. Therefore, the impugned pages could not be considered proper rebuttal evidence and, accordingly, were removed and returned to the Complainant.

[5] The Complainant objected to the admission of three pages of surrebuttal evidence from the Respondent. The first page of the impugned document is an excerpt from the *2012 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual*, which is a regulation pursuant to the *Municipal Government Act* (MGA). The remaining two pages of the document is an excerpt from a Sales Validation Questionnaire (RFI) in respect to the sale of 100 Manning Crossing, which is one of the Respondent's comparable properties. The Complainant argued that this material is not proper surrebuttal because it does not address any new information that was raised in rebuttal. The Complainant said that this information should have been in the Respondent's original submissions because it addresses a matter that was clearly raised in the original disclosure. The Respondent argued that the surrebuttal evidence directly addresses the contention made in rebuttal that a portfolio sale in general, and the sale of 100 Manning Crossing in particular, should never be used as a comparable. The Respondent said that the impugned documents are proper surrebuttal because they show that multiple parcel sales (or portfolio sales) can be used as comparables if they are appropriately allocated. The excerpt from the regulation shows this principle and the Sales Validation Questionnaire shows that the sale was allocated. The Board found that the impugned pages respond directly to new argument raised in rebuttal. Accordingly, the Board allowed the admission of the surrebuttal documents and entered them in evidence as exhibit R-3.

[6] The Respondent objected to two pages of the Complainant's sur-surrebuttal. A Board ruling on their admissibility was not necessary as the Complainant agreed to remove them.

### **Background**

[7] The subject property is a Tim Horton's Restaurant in southeast Edmonton, located at 5204 – 23<sup>rd</sup> Avenue in the Meyokumin Shopping Centre, which is part of the Millwoods Town Centre Neighbourhood. The 23,981 square foot (sf) lot is improved with a 2,810 sf building with an effective year built of 2003. The 2013 assessment was prepared by using the income approach to valuation and the 2013 assessment is \$1,231,500 (\$30.00/ sf).

### **Issues**

- [8] Is the subject property equitably assessed with similar properties?
- a. Is the subject property assessed in the same manner as similar properties?
  - b. Is the rental rate for the restaurant equitable?
  - c. Is the capitalization rate used to prepare the subject assessment equitable?
- [9] Is the subject property assessment correct?
- a. Is the rental rate for the restaurant correct?
  - b. Is the capitalization rate used to prepare the assessment correct?

## **Legislation**

### **[10] The *Municipal Government Act*, RSA 2000, c M-26, reads:**

s 1(1)(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;

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.

### **[11] The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/209, reads:**

#### **Disclosure of Evidence**

8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- a) the complainant must, at least 42 days before the hearing date,
  - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;
- b) the respondent must, at least 14 days before the hearing date,
  - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

- (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
- c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

### **Failure to disclose**

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

### **Position of the Complainant**

[12] The Complainant's position is that the assessment of the subject property is not equitable and is in excess of market value compared to other retail properties.

[13] The Complainant took the position that the subject property was not assessed in the same manner as similar properties. In support of the equity issue, the Complainant presented Exhibit C-2 which contains a data set of 92 comparable properties. The Complainant contends that this group of properties is assessed at 95% of the Net Leasable Area (NLA).

[14] The Complainant challenged the lease rate used by the City and argued that it was too high. In support of this position the Complainant presented 19 comparables of 'Restaurant Pad' leases (Exhibit C-1 page 14). There were 4 pads from the Southside with effective years built ranging from 1951 to 2002. The lease start dates ranged from June 2009 to August 2012 and the NLA ranged from 1,844 square feet to 13,900 square feet. The triple net leases ranged from \$14.61 to \$31.00 per square foot with an average of \$24.25 and a median value of \$25.07. The requested lease rate was \$25.00 per square foot versus the \$30.00 rate used by the City.

[15] The Complainant argued that the \$30.00 rental rate applied to the subject by the City is too high compared to similar retail properties. In support of the Complainant's equity argument, the Complainant also presented seven comparable properties where the lease rate applied by the City is \$26.00 per square foot. All of the comparables were from the Southside and considered

as 'Restaurant Good' by the City. The year built of the comparables range from 1986 to 1998 and the NLA from 808 to 10,114 square feet (Exhibit C-1 page 15).

[16] The Complainant argued that the 6.57% capitalization rate (cap rate) utilized by the City was too low and that it should be 7.00%. In support of the equity argument, the Complainant provided seven comparable properties where the City used a cap rate of 7.00%. The comparables are on the Southside and are either a 'Junior Anchor' or a 'Food Store'. The NLAs range from 22,189 to 112,402 square feet and the rents per square foot range from \$6.50 to \$15.50 per square foot (Exhibit C-1 page 15).

[17] The Complainant provided a cap rate study using actual Net Operating Income (NOI) and actual sale prices of comparable properties. The sales information was derived from 'The Network' which is a third party source for information on sales of all types of property. The Complainant defended the use of The Network cap rates because all retail properties sell on a leased fee basis.

[18] The Complainant argued the correctness of the cap rate used and provided further support for a cap rate of 7.00%. The Complainant provided 24 comparables with a median cap rate of 7.04% and an average cap rate of 7.16%. The comparables were located throughout the city and range in year built from 1952 to 2008. The cap rates were derived by using the actual net income and individual sale price of each property. The sales of the properties occurred from May 2011 to September 2012.

[19] The Complainant also argued that some of the lower cap rates could be excluded because one of the sales was a portfolio sale, four indicators had an upside potential and one sale was an outlier. Excluding these sales resulted in a median cap rate of 7.15% and an average cap rate of 7.24%.

[20] The Complainant provided rebuttal evidence (Exhibit C-3) in response to the City's evidence (Exhibit R-1). The Complainant took issue with various aspects of the evidence including, the use of market lease rates that were higher than the actual lease rates, leases that were old when compared to the valuation date, areas of the comparables were incorrect, portfolio sales which are invalid and that the City was mixing and matching assessment models.

[21] The Complainant also provided additional rebuttal evidence (Exhibit C-4) in response to the Respondent's evidence (Exhibit R-1) which included information from third party reports. In addition, the exhibit included several MGB Board Orders which addressed third party reports and the reasons why they should not be considered or be given minimal weight in a Board's decision.

[22] The Complainant provided rebuttal evidence (Exhibit C-5) in response to the Respondent's inclusion of a comparable which the Complainant considered to be an invalid sale because it was part of a portfolio sale. The Complainant considered the conditions of the sales transaction and the subsequent leases not to be typical and that the sale should not be included in the Respondent's analysis.

[23] The Complainant provided as rebuttal evidence (Exhibit C-6) a document titled "*Standard on Verification and Adjustment of Sales*" from the International Association of Assessing Officers (IAAO) which stated that multiple parcels sales should not typically be considered for analysis.

[24] In summation, the Complainant argued that the City of Edmonton for valuation purposes has stratified properties into different valuation groups. Properties are further stratified into shopping centers, retail groups, condominiums etc. The Complainant's position is that the subject property is not a shopping center but rather a sit down drive thru restaurant. The Complainant is requesting the Board to reduce the assessment to \$940,500.

### **Position of the Respondent**

[25] The Respondent presented the Board with an assessment brief containing 128 pages (Exhibit R-1) plus a Law & Legislation brief with 51 pages (Exhibit R-2). The Board was also presented with a three page surrebuttal that included a Multiple Parcel Sales excerpt from the Assessment Manual and portions of a Sales Validation Questionnaire.

### ***the equity issues***

[26] The Respondent submitted that the subject property was assessed in a fair and equitable manner. In support of this position, the Respondent referred the Board to an Equity Response (Exhibit R-1, pages 21 and 22). It states that "the City of Edmonton stratifies properties within valuation groups and values these groups within the mass appraisal model for that group of properties. There are two separate valuation groups ... for standard retail properties and for shopping centres. Each valuation group is further stratified into groups of similar properties." The subject property is valued within the Shopping Centre grouping of properties. All of the properties in the Shopping Centre group are valued in the same manner.

[27] The Respondent reviewed the City's methodology, outlined in the Equity Response. For the shopping valuation centre group, the City uses 100% of a property's NLA in its calculations of that property's market value. This methodology is supported by a study that the City developed.

[28] Based on the study that the City developed, the Respondent's Equity Response further noted that the retail valuation group, by contrast to the shopping centre group, typically uses 95% of the Gross Leasable Area (GLA) to arrive at the correct Net Leasable Area (NLA), based on a study that the City developed. The study showed that the typical ratio of the gross footprint to the NLA for the retail valuation group is that the NLA is typically 95% of the GLA. The Respondent stated that the City does not have a policy of assessing a group of properties at 95% of the NLA.

### ***rental rates***

[29] In support of the City's assessment of the subject property, the Respondent provided a table of rental rate equity comparables (Ex. R-1, pages 23 & 24) showing 18 shopping centre properties, including restaurants such as McDonald's, Boston Pizza, A & W, Starbucks and other Tim Horton's, all assessed at \$30.00/ sf. The effective year built of the comparables ranged from 1993 to 2009, compared to the subject's effective year built of 2003. The size of the comparables ranged from 1,470 sf to 12,561 sf, compared to the subject's 2,810 sf.

[30] The Respondent provided comments on the Complainant's equity comparables (Ex. R-1, page 27), noting that none of them were similar to the subject property: they were all from the retail group (none assessed by the shopping centre group); they were either food stores or junior anchors, not restaurants; and all were in poorer locations.

[31] With respect to the Complainant's Ex. C-2, consisting of 92 comparables, the Respondent was critical of the those comparables, stating that all of the examples except two were "Retail Plaza" type properties, not "Shopping Centre" type properties.

### *capitalization rates*

[32] The Respondent submitted that assessments are prepared using cap rates that are derived in the following way. The stabilized net operating income is divided by the time adjusted sale price to produce a cap rate. On the other hand, the Complainant is using cap rates published by The Network that are based on the actual net operating income.

[33] In support of the City's Cap Rate, the Respondent provided a table of Cap Rate equity comparables (Ex. R-1, pages 23 & 24) showing 18 shopping centre properties, including restaurants such as McDonald's, Boston Pizza, A & W, Starbucks and other Tim Horton's, all assessed with a 6.5% cap rate. The effective year built of the comparables ranged from 1993 to 2009, compared to the subject's effective year built of 2003. The size of the comparables ranged from 1,470 sf to 12,561 sf, compared to the subject's 2,810 sf.

[34] In defence of the City's use of a \$30.00 rental rate for assessment, the Respondent provided three tables of data for 148 restaurants (Ex. R-1, p. 19). The first table, for all 148 restaurants, showed a minimum rental rate of \$13/ sf and a maximum rate of \$42/ sf, a median rate of \$26.58/ sf and a mean rate of \$26.98/ sf. The second table, for restaurants newer than 2003, showed a minimum of \$17.00/ sf and a maximum of \$42/ sf, a median of \$30.00/ sf and a mean of \$30.04/ sf. The third table, for restaurants older than 2002, showed a minimum rate of \$13.00/ sf and a maximum of \$42.00/ sf, a median of \$26.00/ sf, and a mean of \$26.52. The Respondent submitted that, as a 2003 restaurant, the \$30.00 rate was the correct rate. The Respondent also drew the attention of the Board to the scatter diagram (Ex. R-1, p. 20) plotting net rents against effective year built.

### *the correctness issues*

[35] The Respondent also provided a table showing the City's Shopping Centre Capitalization Rate Analysis (Ex. R-1, p. 28) featuring 14 comparables. Three years of sales were analyzed, and the sale price of each was time-adjusted to the valuation date of July 1, 2012 by applying a time adjustment factor. The 2013 stabilized net operating income was divided by the time-adjusted sale price (T.A.S.P.) to derive the appropriate "fee simple" Cap rate. The range of the adjusted cap rates was 4.65% to 7.92%, with a median of 6.32% and an average of 6.34%.

[36] Upon questioning, the Respondent clarified that 7 of its 14 comparables were in common with the 24 comparables that were provided by the Complainant (Ex. C-1, p. 16).

[37] The Respondent also provided comments on the Complainant's sales comparables (Ex. R-1, p. 45), noting, for example, that the Network NOI could vary significantly from typical incomes, and therefore the Network cap rate could also vary significantly from the fee simple cap rate. The Respondent also noted that only 10 out of 24 of the Complainant's sales comparables were from the shopping centre group.

[38] The Respondent submitted that different methods of calculation produce different cap rates. The following table shows the Complainant's method of using an actual sale price and an un-adjusted NOI and the Respondent's method of using a time-adjusted sale price and the assessed NOI with typical incomes. The Complainant's method results in a higher cap rate.

	Actual	Altus	Altus	City	City	City
Address	Sale	Network	Network	T/A Sale	Assessed	Adjusted
	Price	NOI	Cap	Price	NOI	Cap
14103 23 Av	\$34,500,000	\$2,373,600	6.88%	\$35,904,150	\$2,428,277	6.76%
6655 178 St	\$3,800,000	\$267,448	7.03%	\$4,002,540	\$253,090	6.32%
2303 111 St	\$36,870,348	\$2,256,465	6.12%	\$38,385,538	\$2,256,249	5.81%

[39] In response to the Complainant's rebuttal, the Respondent presented exhibit R-3 in surrebuttal. This included excerpts from the 2012 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual regarding Multiple Parcel Sales, and also portions of a Sales Validation Questionnaire related to the sale of the property at 100 Manning Crossing. The Assessment Manual document stated that if a multiple parcel sale is included, the sale price must be apportioned to each parcel and that apportionment adjustments should only be made where information about the sale price apportionment is available or can be derived. The Respondent submitted that the sale of the 100 Manning Crossing property was part of a portfolio sale. A Request for Information indicated that a value was attached to that property and that it was a valid sale. The RFI confirmed a total sale price of \$20,872,000, but also noted that there was an appraisal made on the property, with an appraised value of \$21,400,000.

[40] With respect to the Complainant's concern that the subject is not a shopping center because it has an LUC 212 code, the Respondent stated that the subject property is located in a shopping centre and is not assessed based on the LUC code.

[41] In support of the City's cap rate, the Respondent referred to the Shopping Centre Analysis (Ex. R-1, page 28) and noted that, of the seven comparables that were also in the Complainant's package, the average was 6.46%.

[42] For independent support of the City's cap rate, The Respondent provided third party reports from Colliers International and CB Richard Ellis for Q2 2012 (Ex. R-1, pages 46 – 50). For Community Retail, the former report showed cap rate Low: 6.25% and cap rate High: 6.75%; the latter report showed, for Retail Regional, a cap range of 5.75% to 6.25% and for Retail Neighbourhood, a cap rate range of 6.0% to 6.5%. It was submitted that these numbers support the City's analysis.

[43] In summary, the Respondent requested the Board to confirm the assessment at \$1,231,500, based on a rental rate of \$30/ sf and a capitalization rate of 6.50%.

### **Decision**

[44] The property assessment is confirmed at \$1,231,500.

### **Reasons for the Decision**

[45] The primary issue in this complaint is whether the subject property is assessed equitably with similar properties. Having weighed the evidence, the Board finds that the Complainant's



evidence and argument does not establish that the subject property is inequitably assessed with similar properties.

[46] The Complainant stated that the City of Edmonton has a policy of assessing one group of retail properties based on 95% of the net leasable area (NLA), and assessing another group of retail properties based on 100% of the NLA. According to the Complainant, the ninety-two properties listed on pages 1 and 2 in Exhibit C-2 are assessed based on 95% of the NLA. This, the Complainant argued is unfair because the subject property is assessed at 100% of the NLA.

[47] The Respondent stated that the City of Edmonton does not have a policy of assessing a group of retail properties at 95% of the NLA. The Respondent stated that the Complainant's ninety-two comparables are classified as Retail Plaza properties and these comparables are assessed as follows. The NLA is derived by taking 95% of the gross footprint area, as it has been determined that 95% of the GLA will, in the majority of cases, provide the correct NLA for a retail property. Therefore, 95% of the GLA results in 100% of the NLA.

[48] The Board finds that the Complainant's equity comparables are not similar to the subject property because the comparables are stratified in the Retail Plaza group of properties and the subject property is in the Shopping Center group of properties. Furthermore, both groups of properties are assessed based on 100% of the NLA.

[49] The Complainant argued that the subject property is not equitably assessed with similar properties because the \$30.00 rental rate applied to the subject restaurant space is a different rate than that applied to similar retail properties. In support of this argument the Complainant provided assessment lease rate comparables for seven similar restaurants that are assessed using a rental rate of \$26.00 per square foot. However, the Board finds that the assessment comparables are not similar to the subject property because they are older. The comparables were constructed between 1986 and 1994, whereas, the subject property was constructed in 2003. Owing to the fact that the City of Edmonton applies a different rental rate to properties that were constructed prior to 2002, the comparables are not similar.

[50] The Complainant also argued that the subject property is not equitably assessed with similar properties because similar properties are assessed using a different capitalization rate than the 6.5% capitalization rate used to assess the subject property. The Board finds that the capitalization rate comparables are not similar because they are older properties that were constructed between 1968 and 1995/1979. Further, some of the comparables are located in inferior locations. For example, the comparables at 9115 - 51 Avenue, 9910 - 69 Avenue and 5120 - 122 Street are not located in shopping centers similar to the subject property.

[51] In addition to the issues on equity, the Complainant raised the issue that the subject property is incorrectly assessed. The Complainant challenged the \$30.00 per square foot rental rate applied to the subject property on the basis that it is not correct. In support of this position, the Complainant presented nineteen market lease rate comparables that have a median rate of \$25.00 per square foot. The Board finds that the comparables are not similar to the subject property because the majority of the comparables are older than the subject property. Except for one of the comparables, all were constructed prior to 2003 and are assessed at \$26.00 per square foot.

[52] The Complainant also challenged the 6.5% capitalization rate used to assess the subject property. The Complainant relied on twenty-four sales with a median rate of 7.15% to support the requested capitalization rate of 7%. The capitalization rates for each of these sales are the

rates published by The Network and are based on the actual net operating income (NOI) at the time of sale. The sale prices are not time adjusted to the valuation date of July 1, 2012. In order to be useful indicators of the market value for the subject property, the sale prices must be adjusted for the changes in market conditions between the sale date and the valuation date.

[53] The Board finds that the Complainant's capitalization rates are "leased fee" capitalization rates, and should not be used for assessment purposes. When the actual lease rents differ from the typical market rents and are used to derive the capitalization rate, the result is a "leased fee" capitalization rate. The capitalization rates must be derived and applied in a consistent manner.

[54] The Board finds that the Respondent's capitalization rates are more reliable because the Respondent consistently used the 2013 stabilized net operating income and the time adjusted sale price to derive the capitalization rate. The 6.5% capitalization rate used to assess the subject property is supported by the capitalization rates of the seven sales used by both parties. The average capitalization rate of these sales is 6.46%.

[55] Accordingly, the assessment is confirmed.

Heard commencing June 17, 2013.

Dated this 12<sup>th</sup> day of July, 2013, at the City of Edmonton, Alberta.



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Peter Irwin, Presiding Officer

**Appearances:**

John Trelford, Altus Group  
Jordan Nichol, Altus Group  
for the Complainant

Cameron Ashmore, City of Edmonton, Law Branch  
Chris Rumsey  
for the Respondent

*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.*