

## **Edmonton Composite Assessment Review Board**

**Citation: Altus Group v The City of Edmonton, 2013 ECARB 01109**

**Assessment Roll Number:** 3047354

**Municipal Address:** 6655 178 Street 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**

**Patricia Mowbrey, 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. The Board Members indicated there was no bias in the matter before them.

### **Preliminary Matters**

#### **Complainant's Position**

[2] The Complainant brought forward a Preliminary Matter, and provided evidence (Exhibit C-1, 100 pages), stating that the City does not have the authority to request an increase in the 2013 assessment. The Complainant requested that the Board invalidate the increase.

[3] Alternatively, the Complainant requested a postponement of the Merit Hearing pending receipt of the Court of Queen's Bench Decision in *East (Capilano) Shopping Centres Limited (as represented by AEC International Inc) v The City of Edmonton*, 2012 ABQB 445 [*Capilano*]. The Complainant later withdrew the request for postponement.

[4] The Complainant stated that the Respondent's request to increase the assessment of the subject was based on a change to the age of the food store, from its actual age of 1983, to its effective age of 1995 and was the basis of the increase in rental rate from \$14.50 to \$15.50 per sq ft which resulted in the assessment increase.

[5] The Complainant argued the change in age was an opinion only of effective age by the Respondent and was the basis of the increase in rental rate from \$14.50 to \$15.50 per sq ft which resulted in the assessment increase of the subject property.

[6] The Complainant presented Court of Queen's Bench decision and commentary from *Ag Pro Grain Management Services Ltd v Lacombe (County)*, 2006 ABQB 351 [*Ag Pro*], *Canadian Natural Resources Ltd v Wood Buffalo (Regional Municipality)*, 2012 ABQB 177 [CNRL], and *Capilano*. The Complainant noted that although *Ag Pro* was not considered in the 2012 CNRL decision, it was considered in the *Capilano* leave to appeal decision. The Complainant submitted that *Capilano* is the most recent of the three decisions, and is also the most relevant to the facts of this case. The Complainant then drew the Board's attention to the commentary in *Capilano*, but acknowledged that the Court of Queen's Bench decision remains pending.

### **Respondents Position**

[7] The Respondent indicated the change was a correction of an error from previous years assessments. The change correctly stated the effective age of the property at 1993. The Respondent informed the Board that the assessment rental rate is based on age, and the effective age of 1993 moved the subject property to the correct assessment age group, 1991 to 2007. The Respondent further noted that all properties within the age group have an assessment rental rate of \$15.50/sq ft. The change thus provides fairness and equity to food stores in the age group.

[8] The Respondent argued that the Complainant was asking the Board to make a decision declaring that a change to an assessment cannot be made; although section 462(1) of the *Municipal Government Act* (MGA) states that an assessment can be changed by the Board. Furthermore, it is unknown when the *Capilano* decision will be rendered, and until some direction from the court is received the current law stands.

### **Decision**

[9] The Complainant's request is denied and the Decision of the Board is to proceed to the Merit Hearing.

### **Reasons**

[10] The *Ag Pro* Court of Queen's Bench Decision, (C-1, Page 70) is distinguishable from the facts of this case in that the Court held that although the MGB had the jurisdiction to increase an assessment on appeal, its jurisdiction is conditional upon adherence to principles of procedural fairness, such as providing the appellant appropriate notice and a full opportunity to argue the issue (para 40). However, in the case before this Board, the Complainant was provided with sufficient notice about the Respondent's intention to request an increase to the assessment. As such, the Board finds that according to section 467(1) of the MGA, the City, with sufficient notice, can request a correction and increase to an assessment, and the Board has the jurisdiction to grant such a change, so long as the principles of procedural fairness are adhered to.

[11] The Board notes that both *CNRL* and *Capilano* are leave to appeal decisions. As such, the commentary contained in those decisions are considered *obiter dictum*, and although such comments provide insight into why the judge granted the leave to appeal, such comments are not binding law. The Board thus finds that until the laws change, or a decision of the court on the merits provides further direction, an Assessment Review Board can change an assessment. On this basis, the Board proceeded with the merit hearing.

## **Background**

[12] The subject property is located in the Callingwood South subdivision, Edmonton, at 6655 - 178 Street and is known as the Marketplace at Callingwood. It is classified as a neighbourhood shopping centre, and was constructed circa 1981 to 1990. The City assessed area is 218,850 sq ft, comprising two anchor tenants, Safeway food store and Shoppers Drug Store, along with 17 CRU spaces, and office space. The subject was assessed using the Income Approach to Value, for the 2013 assessment of \$57,571,000.

## **Issue(s)**

[13] Is the subject assessment equitable with assessments of similar properties?

(a) Should the subject be given the 95% size adjustment?

(b) Is the assessment capitalization rate too low?

[14] Is the subject assessment correct?

(a) Is the food store lease rate excessive?

(b) Are the space sizes allocated correctly?

## **Legislation**

[15] **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.

[16] **The *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004, reads:**

s 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**

[17] The Complainant presented written evidence (Exhibit C-2, Disclosure, 89 pages; Exhibit C-3, 95% Rental Area Analysis, 438 pages; Exhibit C-4, Rebuttal, 142 pages), and oral argument for the Board's review and consideration.

### **Issue 1 (a) Should the subject be given the 95% size adjustment?**

[18] The position of the Complainant was that the assessment of the subject was not fair and equitable, and the assessment was excessive. The Complainant argued that all retail properties should be assessed using the same method, and that the size of the property or the specific assessor should not affect the assessment method.

[19] The complainant provided a Fairness and Equity Analysis of Rental Area (C-2), which listed 92 properties and included the City of Edmonton Request For Information (RFI) rent rolls and Assessment Detail Reports on each property.

[20] The Complainant stated that the Respondent categorized retail assessment in two groups: one using 100% of rent roll size for assessment purposes, and the other using 95% of the leasable size (C-1, page 11). The Complainant argued that the subject property was treated inequitably because it was assessed using the 100% of the rent roll.

[21] The properties listed in Exhibit C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes which indicated the ratios had a median of 94% and an average of 92% overall. The chart also had a ratio of the City Assessment Proforma sizes to Rent Roll sizes which resulted in a median of 95%, and an average of 94%. The Complainant noted there was a close correlation between the two ratios to support a 95% adjustment.

[22] The Complainant provided a rent roll dated December 31, 2012, noting that the rent roll indicated a total leased area of 217,577 sq ft. Thus, with a 95% adjustment, the subject area would total 206,696 sq ft with a corresponding requested assessment value of \$46,254,000.

### **Issue 1 (b) Is the assessment capitalization rate too low?**

[23] The Complainant submitted that the 6.5% assessment capitalization rate was too low, and that a capitalization rate of 7.0% was more appropriate.

[24] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales (C-1, page 34), with the respective supporting network data sheets. The sales produced an average capitalization rate of 7.15% and a median of 7.04%.

[25] The Complainant further submitted that of the 24 sales presented, 6 should be excluded, as they were invalid for the following reasons: one was an 8 property portfolio sale; another was an old lease; others were leases with upside potential; and one was an outlier, (C-1, page 34). Excluding the 6 sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15%, supporting the requested 7.0% capitalization rate.

[26] The Complainant explained that the sales provided in the capitalization rate chart consisted of sales within the last 2 years. These sales presented a true reflection of the market using actual net operating income and unadjusted sales prices, resulting in a leased fee capitalization rate.

## **Issue 2 (a) Is the food store lease rate excessive?**

[27] The Complainant submitted that the assessed food store lease rate of \$15.50/sq ft was excessive and that \$13.00/sq ft is more reflective of the space.

[25] The Complainant provided the December 2012 rent roll for the subject property (C-1, pages 23-31), indicating the food store lease rate was \$10.42/sq ft, with a renewal date of October 2013.

[26] The Complainant argued that the food store buildings are often owned by the operators, thus, there are a small number of true lease rate comparables available. As well, food stores tend to have long term leases from 20 to 40 years.

[27] The Complainant stated that as CRU spaces age, the lease rates decrease; but in this case, it appears that age is not being fully recognized for the food store lease rates. The Complainant provided a percentage relationship of food stores and CRU space lease rates within the age groups, and concluded that in older properties, the requested \$13.00/sq ft rate equates to a similar percentage relationship in newer properties.

[28] The Complainant presented a Food Store Assessment Rate Comparables chart that was provided by the City. The chart organizes food stores into the following age groups: 2003 and newer; 1989-2002; and 1988 and older. Assessed lease rates were listed both for the food stores within the age group, as well as CRU spaces within the size and age group.

[29] The Complainant pointed out that although the subject food store was assessed at \$14.50/sq ft on the chart, the Respondent requested an increase in the rate to \$15.50/sq ft.

## **Issue 2 (b) Are the space sizes allocated correctly?**

[30] The Complainant brought to the Board's attention that a CRU bank space had been vacated and at the condition date of December 31, 2012, the space was cleared of equipment and furnishings. Based on these reasons, the space should be reallocated and the rate changed from a bank lease rate of \$28.00/sq ft to a CRU 5,000-10,000 sq ft lease rate of \$19.00/sq ft.

[31] The Respondent agreed and realized that the CRU space allocation in the corrected assessment (R-1, page 16) was incorrect, as it reallocated the bank space to the CRU 3,000-5,000 sq ft group, applying the lease rate of \$20.00/sq ft. The Board adjourned the Hearing for the Respondent to recalculate the assessment amount to reflect the respective changes for space allocation and lease rate.

[32] The Board reopened the Hearing and the Respondent withdrew the request for an increase in the 2013 assessment. The Respondent explained that with the space allocation change and a lower lease rate, the assessment remained the same at \$57,571,000. The \$15.50/sq ft rate for the food store space also remained as the assessment lease rate.

[33] With the change in space allocation and the lowered lease rate, there was no longer a space allocation issue, and the Complainant requested that the Board disregard the issue.

[34] The Complainant requested that the Board to reduce the subject assessment to \$46,254,000.

## **Position of the Respondent**

The following evidence was presented: Exhibit R-1, Assessment Brief, Law and Legislation, 206 pages; Exhibit R-2, Composite Assessment Review Board Decision, 10 pages; and oral argument for the Board's review and consideration.

### **Issue 1 (a) Should the subject be given the 95% size adjustment?**

[28] The Respondent submitted that there were two separate valuation groups for retail: one for standard retail/retail plazas and the other for shopping centres (R-1, pages 68-69). The two groups are different as they each use a different approach to calculate size. The Respondent explained the reason for the different approaches: the standard retail group, which includes owner occupied and small retail properties, historically returned minimal responses to the City's Request For Information. Consequently, reliable size and other information was not available. Therefore the 95% of gross building area methodology was developed in an attempt to ascertain a correct and equitable gross leasable area of the standard retail properties for assessment purposes.

[29] The Respondent indicated that the RFI return rate for shopping centres was quite high, and the actual gross leasable area of properties can be ascertained for assessment purposes from the rent roll. The subject property is categorized as a shopping centre and was assessed using 100% of gross leasable area.

[30] On the other hand, the Respondent provided additional details (R-1 pages 66-67), to the Complainant's Rental Area Analysis of 92 properties presented in Exhibit C-3. The Respondent added a column and noted the valuation group for the properties listed. All but 2 of the 92 properties were in the retail or retail plaza valuation group, which means they were assessed in the retail group using the 95% methodology. As such, the Complainant's Rental Area Analysis properties were not comparable.

### **Issue 1 (b) Is the assessment capitalization rate too low?**

[31] The Respondent presented an Assessment Equity Chart for Rent and Cap Rates (R-1, page 63), of 20 shopping centres within the age group 1990-2007, a capitalization rate of 6.5%. The Respondent stated that the subject property assessment of 6.50% was equitable with other neighborhood shopping centres, that location was not a factor, and that all neighbourhood shopping centres are assessed with a capitalization rate of 6.50%.

[32] In Exhibit R-1, page 35, the Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties (C-2 page 34). The comments indicated that there were only 10 shopping centre sales listed, of which the Respondent used 7 in the Respondent's capitalization rate analysis (R-1, page 36). The remaining 3 shopping centre sales were considered invalid for the following reasons: they consisted of a multiple parcel sale, a non-arms length transaction, and a leasehold interest. The other 14 sales were in the general retail or retail plaza assessment group which the Respondent considered incomparable to the subject.

[33] The Respondent provided a City of Edmonton Cap Rate Review (R-1, page 36), utilizing 8 shopping centre sales, 7 of which were the same as the Complainant's sales comparables. For comparison, the Respondent listed the Network's NOI and an adjusted 2013 Fee Simple NOI, the Network Cap Rate, a Fee Simple (non time-adjusted) Cap Rate; and a Fee Simple (time adjusted)

Cap Rate which indicated, respectively, a median of 6.75%, 6.72%, and 6.47%. The Respondent stated that the cap rates demonstrated the difference as the cap rates moved toward the fee simple cap rate, supporting the assessment capitalization rate of 6.5%, which is based on a fee simple market value.

[34] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 37) of 14 properties, with supporting City sales analysis sheets. The sale dates were within 3 years of the valuation date and reflected 2013 time adjusted sales prices and 2013 assessed NOIs (which used typical lease rates of similar properties). These comparables were used to reach a fee simple capitalization rate that indicated a median of 6.18% and an average of 6.20%. The Respondent explained that legislation identifies fee simple estate value ((MRAT s2), as the basis for assessment.

[35] The Respondent asserted that third party capitalization reports were used only for comparison and trending, and that the assessment capitalization rate was within the comparative ranges. The CBRE report indicated an Edmonton Neighborhood Retail capitalization rate of 6-6.50% (R-1, page 56), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25%-6.75% (R-1, page 60).

## **Issue 2 (a) Is the food store lease rate excessive?**

[36] The Respondent stated that according to legislation, mass appraisal is the methodology for valuing individual properties (R-1, pages 171-177), including shopping centres, which are then stratified into groups with other comparable properties. The Income Approach is the best approach when valuing income producing properties and is the method of choice to value the Retail/Shopping Centre inventory. The use of typical market rents, typical vacancy rates, typical capitalization rates and typical structural rates is appropriate for all shopping centre categories.

[37] The Respondent stated that statistical testing was conducted to determine the typical market lease rate for the subject food store space. The food store lease rates were then stratified by age into four categories (R-1, page 181), noting the subject has an effective age of 1993 (R-1, page 33). The median food store lease rate for properties in the 1991-2007 age group is \$15.50/sq ft (R-1, page 63).

[38] An Assessment Equity Chart for Rent and Cap Rate, R-1, page 63, listed assessed lease rates for food stores in neighbourhood shopping centres city wide. The assessed lease rate was \$15.50/sq ft and the Respondent indicated that location was not a factor in determining the lease rate; only the age was a factor.

[39] The Respondent explained to the Board that the initial assessment grouped the food store lease rates into an older age group that applied an assessment lease rate of \$14.50/sq ft. The older grouping was based on the food store's actual age of 1983 and not its effective age of 1993. With the age group correction from 1983 to 1997, the lease rate would also change from \$14.50/sq ft to \$15.50/sq ft.

[40] The Respondent requested that the Board to change the lease rate to \$15.50/sq ft to bring fairness and equity to the subject food store and the other comparable food stores.

[41] The Respondent presented a chart of 2013 Actual Foodstore Rents for the 1991-2007 Effective Age group: included are 13 neighbourhood shopping centres and 3 power centres with a listed net rent per sq ft for each property. The lease rates ranged from \$12.00/sq ft to \$18.00/sq

ft with a median of \$15.63/per sq ft and an average of \$15.69/sq ft, which the Respondent stated supported the assessment lease rate of \$15.50/sq ft.

[42] The Respondent requested the Board to confirm the subject assessment of \$57,571,000.

### **Rebuttal**

[43] The Complainant presented Rebuttal evidence (C-4, 142 pages).

[44] The Respondent objected to pages 125-137, stating that the content was new evidence. The Board adjourned to consider the objection. The decision of the Board was to disallow pages 125-137 on the basis that they were new evidence and ordered the pages to struck from evidence.

[45] The Complainant reproduced the Respondent's, City of Edmonton Cap Rate Review of 8 sales, and deleted 2 sales that the Complainant explained were not appropriate to be included in the analysis for a capitalization rate as the comments by The Network indicated that the lease rates were below market and had the effect of reducing the capitalization rate.

[46] The Complainant stated that with the elimination of the 2 sales, the cap rates changed, and the remaining sales reflected an average and a median for the actual Network cap rate of 7.14% and 6.99%; the City (fee simple NOI) cap rate of 7.04% and 6.94%; and the City (time adjusted, fee simple NOI) cap rate of, 6.83% and 7.01%; and therefore supported the requested capitalization rate of 7.0%.

[47] The Complainant submitted that the Respondent's capitalization rate analysis was flawed and provided Network Data sheets, Assessment Detail Reports, City of Edmonton Valuation Summaries and rent rolls demonstrate the inconsistencies and errors.

### **Decision**

[48] The Decision of the Board is to confirm the subject 2013 assessment of \$57,571,000.

### **Reasons for the Decision**

[49] The Board reviewed and considered the evidence presented by the Complainant and the Respondent.

#### **Issue 1 (a) Should the subject be given the 95% size adjustment?**

[50] The Board referred to section 2 *MRAT*, that Mass Appraisal is the legislated methodology for assessment and agreed with the parties that the Income Approach to value is the appropriate valuation method.

[51] The Board noted the premise of property stratification for the 2013 assessment (R-1, page 175-177), where each property is further stratified showing similarities within their group. The subject is in the Neighborhood Shopping Centre group.

[52] The Board accepted the Respondent's explanation and reasons for the use of different approaches to determining the GLA of the two retail groups (i.e. retail and shopping centre). The Board is satisfied that there is ample information returned to the City in response to the annual RFI for the shopping centre group and that the gross leasable area can be ascertained for assessment purposes from the rent roll. The Board accepted that there are minimal responses to

the annual RFI for the retail group and that the 95% of gross building area was developed in an attempt to ascertain correct and equitable gross leasable area for assessment purposes.

[53] The Board reviewed the extensive list of 92 comparable properties presented by the Complainant in the Fairness and Equity Analysis of Rental Area (C-3). However, the Board was not persuaded by the Complainant's argument and submission that retail properties were not treated fairly and equitably. The Board also does not agree that the 95% method of calculating size should be applied to both groups of retail properties, nor that it should be applied to the size indicated on the rent roll.

[54] The Board accepted the Respondent's retail and shopping centre grouping for assessment purposes, and therefore finds the comparables inappropriate as they are a dissimilar grouping to the subject.

### **Issue 1 (b) Is the assessment capitalization rate too low?**

[55] The Board finds that the Complainant has not provided sufficient evidence to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect or inequitable.

[56] The Board noted that of the Complainant's 24 sales comparables (C-1, page 34), that 14 were categorized as Retail Plaza or General Retail and were dissimilar to the subject; and 10 were shopping centres which were considered unreliable as the capitalization rates were leased fee rates derived using actual NOI rather than a stabilized NOI.

[57] The Board gave greater weight to the Respondent's sales comparables (R-1, page 36), of which 6 were the same shopping centre comparables as the Complainant's, indicating fee simple capitalization rate of 6.47%; and the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 37) of 14 sales comparables that indicated an average of 6.20% and a median of 6.18%, which supported the assessment capitalization rate of 6.50%.

[58] The Respondent's method of calculating a capitalization rate meets the legislative requirement of determining a fee simple capitalization rate; the Respondent derives the capitalization rate using typical market conditions and applies this fee simple capitalization rate to a typical NOI in the assessment of a property. The capitalization rate is applied in the same manner it was derived.

[59] The Board finds that the Respondent's 6.5% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis, (R-1, page 37) and is an appropriate rate to value the subject property.

[60] The Board finds the Respondent's equity comparable chart (R-1, page 63), listing 20 shopping centres located in various areas of the city with effective ages from 1991 to 2010 and with capitalization rates of 6.5%, which indicates equity and support for the subject assessment capitalization rate of 6.5%.

### **Issue 2 (a) Is the food store lease rate excessive?**

[61] The Respondent explained that the subject had been assessed erroneously in previous years because the actual age of the subject, 1983, was used. The error placed the subject in an older age group with a corresponding assessment lease rate of \$14.50/sq ft. The Respondent

requested that the Board correct the error and place the subject, with an effective age of 1993, in the correct age category of 1991 to 2007, with the corresponding assessment lease rate of \$15.50/sq ft.

[62] Using the Food Store Assessment Rate Comparables chart (C-1, pages 33-34), the Complainant submitted that as CRU space ages, the lease rates decrease, whereas food store lease rates appear not to decrease with age. The Complainant's requested lease rate of \$13.00/sq ft is supported by a percentage relationship of food stores and CRU space lease rates within the respective age groups. The Board finds that the requested \$13.00/sq ft lease rate is not supported by market evidence.

[63] The Board placed greatest weight on the Respondent's chart of 2013 Actual Food Store Rents for 1991 to 2007 Effective Age (R-1, page 62), which support the Respondent's requested lease rate of \$15.50/sq ft. The median for all leases was \$15.63/sq ft and the average was \$15.69/sq ft; the median for 3 step-up leases was \$15.30/sq ft and the average was \$15.50/sq ft; and the median for 5 renewal and new leases was \$15.75/sq ft and the average was \$14.77/sq ft. The Board finds that the requested assessment lease rate of \$15.50/sq ft is supported by market evidence.

[64] The Board also finds that the Respondent demonstrated equity for the food store assessment lease rate of \$15.50/sq ft in the Assessment and Equity Chart (R-1, page 63), with 20 food stores within the city assessed at \$15.50/sq ft.

[65] The decision of the Board is to accept the effective age of 1993 for the subject food store, which place it in the age category of 1991 to 2007, with the corresponding assessment lease rate of \$15.50/sq ft. The Board finds that mass appraisal, which is the basis for assessment, refers to effective year built (R-1, page 192), which also establishes the utility and condition of a property and is generally more informative than the chronological age.

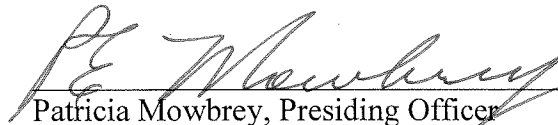
**Issue 2 (b) Are the space sizes correctly allocated?**

[66] The issue was withdrawn by the Complainant.

[67] The Board finds the subject 2013 assessment of \$57,571,000 is correct, fair and equitable.

Heard commencing August 6<sup>th</sup>, 2013.

Dated this 29<sup>th</sup> day of August, 2013, at the City of Edmonton, Alberta.

  
Patricia Mowbrey, Presiding Officer

**Appearances:**

John Trelford

Jordan Nichol

for the Complainant

Ryan Heit

Steve Lutes

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.*