

## **Edmonton Composite Assessment Review Board**

**Citation: Altus Group v The City of Edmonton, 2013 ECARB 01622**

**Assessment Roll Number:** 3236155

**Municipal Address:** 10823 KINGSWAY 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**

**Shannon Boyer, Presiding Officer**

**Martha Miller, Board Member**

**Mary Sheldon, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer, the parties had no objection to the Board's composition. As well, the Board Members had no bias with regard to this file.

### **Preliminary Matters**

[2] There were no preliminary matters.

### **Background**

[3] The subject is a drive-in/sit-down restaurant, located at 10823 Kingsway Ave at the intersection of 109<sup>th</sup> Street across from Kingsway Garden Mall. It was built in 1993 and has a surface area of 34,749 SF and a gross building area of 2,573 SF.

[4] The parties agree that the highest and best use is as land only. The subject has a manual override to assess land value only with a nominal amount of \$500 assigned to the improvement. The land value is assessed using the sales comparable approach.

[5] The 2013 assessment is \$1,343,000. The Complainant is seeking a reduction of the assessment to \$1,164,500 based on sales comparables.

### **Issue(s)**

[6] Is the assessment of the land appropriate based on the sales comparable approach?

## **Legislation**

### **[7] 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.

## **Position of the Complainant**

[8] In support of the appeal, the Complainant presented written evidence and oral argument for the Board’s review and consideration (C-1).

[9] The Complainant argued that a review of recent market transactions of similar properties indicated a lower market value of \$1,164,000.

[10] Additionally, it was argued that influence adjustment factors applied in calculating the assessment are inequitably applied to the base rate, including but not limited to, lot shape and limited access.

[11] The Complainant explained that the subject has an irregular lot shape with a point at the northwest end of the subject, closest to the intersection (the point).

[12] It was argued that traffic in two directions cannot safely access the lot due to high traffic counts and location of driveways. The driveways are located on either side of the point; one accessing Kingsway and the other accessing 109 Street. The 2012 traffic count on 109 Street north of 111 Ave. was 28,000/day. To access the lot, northbound traffic on 109 Street enters from a left turn lane. To access the lot, southbound traffic has to cross the intersection and make an immediate left turn across multiple lanes of oncoming traffic. The 2012 traffic count on Kingsway west of 109 Street was 26,300/day. To access the lot, southeast bound traffic must pass through the intersection and make an immediate right turn onto the driveway. To access the lot, northwest bound traffic must cross left over multiple lanes of oncoming traffic just prior to the intersection, which the Complainant argued, is not possible to do safely.

[13] The Complainant argued that compared to other commercial corner sites, the subject does not enjoy all direction access, due to its restricted access.

[14] In support of its argument, the Complainant produced nine sales comparables which, in its opinion, are similar to the subject (C-1 page 8). Comparables 1 and 2 are located along 107 Ave, a less busy location than the subject. Four comparables are located along 111 Ave. Comparable 5 has a vehicle count of 49,300 vehicles per day.

[15] Lot size ranges from 7,500 to 46,311 SF, with the subject being 34,749 SF. The time adjusted sale price per square foot (TASP/SF), ranges from \$16.56 to \$57.67, with the median at \$33.32, the subject assessed at \$38.65 and the requested assessment at \$33.32 SF.

[16] On questioning by the Respondent, it was pointed out that of the Complainant's nine sales comparables; four sales are corner lots which average \$45.00 SF compared to the five interior lots which average \$26.22 SF. Further, the Respondent informed the Board that lots 4 and 5 are former service stations, although there was no evidence introduced to establish contamination.

[17] Complainant's sales comparable 6 is the 2008 sale of a property on 111 Ave. Complainant's sales comparable 7 and 8 are the 2011 and 2012 sales of portions of the same property. The Complainant has one comparable in common with the Respondent, Complainant's #6 and Respondent's #3.

[18] The Complainant introduced Board Decision 2012 ECARB 896, wherein the 2012 assessment of the subject was reduced from \$1,513,500 to \$1,216,000.

[19] The Complainant is requesting the reduction of the 2013 assessment from \$1,343,000 to \$1,164,500, inclusive of the \$500 land improvement, based on TASP/SF of \$33.50.

### **Position of the Respondent**

[20] In support of the assessment, the Respondent presented written evidence and oral argument for the Board's review and consideration (R-1).

[21] The Respondent drew the Board's attention to the Assessment Calculation Output where no adjustment is made downward for irregular lot as there is no shape influence or restricted access (R-1 page 8). Further, the Respondent argued that the subject enjoyed positive attributes such as good lot access and good exposure on a corner lot with a traffic count of 54,300/day.

[22] The Respondent produced three sales comparables which, in its opinion, are similar to the subject with respect to the seven factors found to affect value in the warehouse inventory (R-1 page 13). Comparables 1 and 3 are located near the subject. Comparable 2 is located on the corner of 137 Avenue and 66 Street. Comparables 1 and 2 are corner lots. Comparable 3 is larger than the subject and is an interior lot. The TASP/SF ranges from \$40.26 to \$56.37, with an average of \$46.76 SF, a median of \$43.66 SF, the subject assessed at \$38.64 SF and an asking assessment of \$33.50 SF.

[23] The Respondent produced six equity comparables which, in its opinion, are similar to the subject to support its position that the 2013 assessment is fair and equitable (R-1 page 17). Three sales comparables are along Kingsway Ave., similar to the subject and one is on Jasper Ave, a similarly busy street. Three are corner lots and three are interior lots. The TASP/SF ranges from

\$32.93 to \$47.01, with an average of \$40.61 SF, a median of \$41.41 SF, and the subject assessed at \$38.64 SF.

[24] The Respondent argued that the best comparables to the subject are the corner lot properties. In support of this, the Respondent used the Complainant's four corner comparables and the Respondent's two corner comparables, to calculate an average TASP/SF of all corner lots in the amount of \$45.00, with the subject assessed at \$38.64 SF.

[25] During questioning by the Complainant, the Respondent did not have the 2011 and 2012 sales data for the lots derived from the land that formed Comparable 3. The Complainant advised the Board that the newer sales data (Complainant's sales comparables 7 and 8), would bring the Respondent's calculation of TASP/SF for this set of properties, down to \$22.00 SF.

[26] During further questioning, the Complainant challenged the Respondent's sale comparable #1 suggesting that it was a non arms length sale based on the comments on the sales document that a neighbor, who had been leasing the sales comparable, purchased it for parking (R-1 page 14).

[27] The Complainant also challenged the Respondent's sale comparable 2 for being too distant from the subject to be comparable.

[28] The Respondent asked the Board to confirm the 2013 assessment of \$1,343,000, inclusive of the \$500 land improvement, based on \$38.64 per square foot.

### **Decision**

[29] The Board confirms the 2013 assessment of \$1,343,000.

### **Reasons for the Decision**

[30] The Board notes that it is the responsibility of the Complainant to provide sufficient compelling evidence to allow the Board to doubt the correctness of the assessment.

[31] As the parties acknowledged, this Board is not bound by the 2012 Board decision of the same property, in part, because the evidence presented in each appeal is unique.

[32] The Board agrees with the Complainant that access southbound on 109 Street and westbound on Kingsway Avenue are restricted due to the oddly angled intersection and the heavy traffic, however, the Board notes that there is unrestricted access from two directions from two arteries.

[33] In the Board's opinion, the subject enjoys good exposure at this major intersection of two arteries close to a regional shopping centre, with traffic counts in excess of 50,000 per day. Potential customers with restricted direct access are able to reroute easily to gain access from one of two driveways.

[34] The Board acknowledges that a corner lot is generally considered an attractive attribute; however, the Board points out that not every corner is going to be ideal, with equal access from all four directions. For example, the Complainant's comparable 5 is corner lot, but is accessed from a service road.

[35] In the Board's opinion, restricted access to the subject is due less to lot shape and location of driveways, as it is due to the odd angle of the intersection and heavy arterial traffic. It is the Board's view that the subject substantially enjoys the benefits of its corner lot location, and the Board is not persuaded to adjust the assessment based on lot shape or restricted access.

[36] Turning to the issue of whether the subject's 2013 assessment is in excess of market value, the Board considered the Complainant's sale comparables. The Board concludes that of the Complainant's nine sales comparables; four sales are corner lots which average \$45.00 SF, compared to five interior lots which average \$26.22 SF.

[37] There is a marked difference between the prices per square foot between these types of locations. The corner lot comparables suggest that the subject is under assessed. If an upward adjustment was made to the comparables on interior lots to account for this difference, the result might well be a time adjusted sale price per square foot similar to the assessment per square foot of the subject.

[38] The Complainant's sale comparable 5 shares the most common characteristics of the subject being a corner lot with similar site area and vehicle counts. Complaint's comparable 5 has a TASP/SF of \$32.93 and the subject is assessed at \$38.65 SF.

[39] The Board notes the concerns raised by the Complainant about the Respondent's sales comparables. Specifically, the sales notes on Respondent's comparable 1 state that it was purchased by a neighbor who had been leasing it for parking, therefore, it is not an arm's length sale. Respondent's sale comparison 2 is in a different neighborhood, at the intersection of 99 Street and 137 Avenue. Sale comparable 3 is not updated with the new sales data forming Complainant's comparables 7 and 8. Based on these concerns and the strength of the Complainant's comparables, notwithstanding the wide range between corner and interior lots, the Board prefers the Complainant's sales comparables as a more accurate determiner of market value.

[40] The Complainant's sales comparables showed that the subject is under assessed based on the average time adjusted sale price per square foot of the Complainant's corner lot sales comparables. Complainant's sales comparable 5 was the most similar in characteristics as the subject, however, with strong evidence that the subject is under assessed, the Board is not persuaded to change the assessment based on this sole comparable. The interior lots are valued at a lower rate than corner lots and would not reflect an accurate representation of market value. The negative attributes listed by the Complainant appear to have been considered in the low assessment. The Complainant did not discharge its responsibility of providing sufficient compelling evidence to allow the Board to change the assessment of the subject

[41] The Board reviewed the Respondent's equity comparables having TASP/SF ranges from \$32.93 to \$47.01, with the median at \$41.41 and the subject assessed at \$38.64 SF, which suggests that the subject is under assessed.

[42] The Board confirms the 2013 assessment of \$1,343,000.

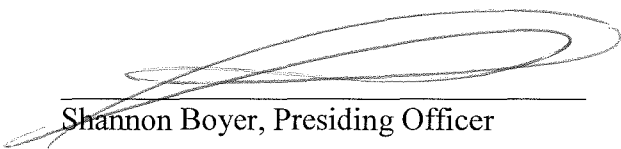
[43] In the alternative, if the evidence provided by the Complainant was sufficient to raise a doubt as to the correctness of the assessment and shift the burden of proof to the Respondent, it is the opinion of the Board that the Respondent successfully defended the 2013 assessment of the subject.

**Dissenting Opinion**

[44] There was no dissenting opinion.

Heard commencing October 15, 2013.

Dated this 30<sup>th</sup> day of October, 2013, at the City of Edmonton, Alberta.

  
Shannon Boyer, Presiding Officer

**Appearances:**

John Trelford

Brett Flesher

for the Complainant

Alana Hempel

Steve Radenic

Tanya Smith, Legal Counsel

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.*