

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 00668

Assessment Roll Number: 10016000

Municipal Address: 7911 104 STREET NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Robert Mowbrey, Presiding Officer

Jasbeer Singh, Board Member

Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias on this file.

Preliminary Matters

[2] During the hearing, the Respondent objected to Exhibit C-3 pages 80-88 inclusive as they were essentially new evidence that had not been disclosed to the Respondent. The Board recessed, deliberated and rendered a decision to the parties. The decision of the Board was not to allow pages 80-88 inclusive under Exhibit C-3.

Background

[3] The subject property is a neighborhood shopping centre located at 7911 – 104 Street NW. The City assessed area is 5,421 square feet and the land size is 48,229 square feet. The shopping centre was constructed circa 2001 and is located in the Strathcona Junction subdivision of Edmonton. The 2013 assessment is \$2,763,000.

Issue(s)

[4] Is the use of 95% of the gross building area appropriate for determining the net operating income for the subject property?

[5] What is the appropriate capitalization rate for the subject property?

Legislation

[6] **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

[7] The Complainant noted that the property is assessed by the Respondent as a Neighborhood Shopping Centre (C-1, page 17), but it does not contain a food store which the Respondent describes as a characteristic of a Neighborhood Shopping Centre.

[8] The Complainant stated that the issues being addressed are as follows:

a) the subject property is not treated fairly as similar properties are getting preferential treatment as they are assessed at 95% of their actual value due to proforma sizes;

b) the capitalization rate used by the assessor is too low for the subject property. The capitalization rate should reflect the risk and be corrected to 7.5 percent.

[9] The Complainant described the subject property's assessment as not fair and equitable with other properties as the City has two retail departments. One retail department assesses at 100% of rent roll size and the other retail department assesses at 95% of the leasable size (Exhibit C-1, page 8). The Complainant argued that if the retail group assessments have a 95% size adjustment in the assessment proforma then so should the other assessments of retail properties.

[10] To support the position of the assessment as not being fair and equitable, the Complainant provided a 438 page “95% Rental Area Analysis”, entered as Exhibit C-2. This analysis detailed 92 properties of differing sizes and space type that were assessed at between 81% and 98% of the space defined by the rent roll. The average percentage was 94% and the median was 95%. This information was supported with a copy of the Assessment Detail Report and a rent roll for each property.

[11] The Complainant described the application of a 6.5% capitalization rate as too low and that a rate of 7.5% should be applied. To support this, a chart with assessment capitalization rate comparables of 14 properties was provided (Exhibit C-1, page 15). One property had a capitalization rate of 7% while 13 had a capitalization rate of 7.5% for a median capitalization rate of 7.5%.

[12] The Complainant also provided a chart containing sales of 24 similar properties whose median and average capitalization rates were 7.04% and 7.15% respectively (C-1, page 16). Six properties were deleted as they had various characteristics (outlier, upside potential, invalid sale) that made them dissimilar and the remaining capitalization rates were restated to a median of 7.15% and an average of 7.24%. The Complainant’s chart indicated a best estimate of a capitalization rate for the subject was 7%.

[13] The Complainant submitted evidence in rebuttal to the Respondent’s submission (Exhibit C-3, 133 pages) to demonstrate that the submission presented by the Respondent does not support a decision to confirm the current assessment.

[14] The Complainant provided third party information (Exhibit C-3) relative to the Respondent’s Shopping Centre Capitalization Rate Analysis and questioned the validity of the sales presented by the Respondent. Specifically, some sales included additional land; some had errors in size; some had errors in rental income; some had a high office component and some were part of a portfolio purchase. During questioning by the Respondent about the capitalization rate analysis, the Complainant stated that if incorrect information is used, the results are skewed.

[15] The Complainant referred to Exhibit C-3, page 123, “Onus of Proof and the *Prima Facie* Case” and stated that Onus was shifted from the Complainant to the Respondent. The Complainant notes that once the Complainant has established a *prima facie* case, the tactical or evidentiary onus shifts to the Respondent’s municipality.

[16] The Complainant also submitted a sur-surrebuttal (Exhibit C-4, 6 pages) to the Respondent’s rebuttal. Included was information from *Standard on Verification and Adjustment of Sales* from International Association of Assessing Officers with specific reference to two headings. Paragraph 5.5, Acquisitions or Divestments by Large Property Owners, reads “Acquisitions or divestments by large corporations, pension funds’ or real estate investment trust (REITs) that involve multiple parcels typically should not be considered for analysis”. Paragraph 5.6, Multiple-Parcel Sales, reads, in part, “Regardless of whether the parcels are contiguous, any multiple-parcel sale that involves multiple economic units generally should not be used in valuation or ratio studies”. Additionally, the Complainant stated that the Respondent’s surrebuttal included properties located in different municipalities.

[17] In conclusion, the Complainant requested the Board to reduce the 2013 assessment to \$2,462,500.

Position of the Respondent

[18] In response to the Complainant's contention that the City's two retail assessment groups were using different approaches to assessment valuation that had resulted in the subject being treated inequitably; the Respondent stated that the mass-appraisal methodology used by the City required grouping of similar properties with common attributes and using a uniform valuation model for each group that was based on market information that also reflected the property attributes. There were separate valuation groups for standard retail properties and shopping centers. Even within a larger group, say shopping centers, different assessment groups focused on community shopping centers, neighbourhood shopping and power shopping centre's (Exhibit R-1, pages 13 and 39).

[19] The Respondent advised the Board that due to particular reasons, some shopping centre properties were assessed at about 95% of the rent roll size, but those reasons were not applicable to the subject property (Exhibit R-1, page 40). The Respondent pointed out that practically all 92 of the properties included in the Complainant's analysis (Exhibit C-2) belonged to a different category of properties (retail group) that were treated differently from the subject property that belonged to the 'shopping centre' category and therefore not comparable to the subject property.

[20] During argument and summation, the Respondent stated that in respect of the retail properties, a very small percentage (only 20%) of the owners responded to the City's request for information (RFI) and in many cases, the information provided was incomplete or inaccurate. As such, the City did a study and found that the net leasable space for the retail valuation group was, typically, 95% of the gross leasable area. (Exhibit R-1, page 40). However, this was not applicable to the subject property as it belonged to a different assessment category.

[21] Responding to the Complainant's contention that the capitalization rate used by the City was too low for the subject property (Exhibit C-1, page 3), the Respondent stated that the capitalization rates were based on an analysis of three years' of sales, time adjustment of sale prices and stabilized net operating incomes. An analysis of 14 shopping centre sales showed a median value of 6.32% and an average of 6.34% for the 2013 capitalization rates (Exhibit R-1, page 22).

[22] The Respondent further advised the Board that in view of the industry trends and the ranges of capitalization rates published by the independent business entities (Exhibit R-1, pages 44 to 48); the City had adopted an equitable capitalization rate of 6.5% for the shopping centre inventory for the 2013 assessment year.

[23] The Respondent informed the Board that all 14 of the assessment capitalization rate comparables cited by the Complainant (Exhibit C-1, page 15) in support of a request for a 7.5% capitalization rate were in the City's retail inventory and not relevant to the subject property, that was classified as a shopping centre.

[24] In Response to the Complainant's contention that the subject property with a land use code (LUC) of 240, should be assessed equitably with a 7.5% capitalization rate, as other properties with such LUC were (Exhibit C-1, page 15); the Respondent stated that the LUCs were used by the City as 'descriptors' and these were not used for valuation purposes. LUCs did not determine if a property was classified as 'retail' or a 'shopping centre'.

[25] The Respondent noted that while the Complainant is requesting a capitalization rate of 7.50%, their own Capitalization Rate Sales chart on page 16 of Exhibit C-1 concludes a “best estimate of capitalization rate for subject 7.00%”.

[26] The Respondent countered the Complainant’s assertions that the City’s capitalization rate study was too low, riddled with errors in terms of space measurements, use of old lease rates and inclusion of buildings with large office spaces (Exhibit C-1, page 13, C-3, page 74); by stating that the City relied on validated sales and ascertained the facts for determination of the typical rates applicable at the valuation date. In the Respondent’s opinion, the Complainant’s use of unverified and inconsistent third-party information was more troublesome.

[27] In a rebuttal of the Complainant’s assertion that a property that formed one part of an eight property portfolio, had been inappropriately included in the City’s ‘Shopping Centre Capitalization Rate Analysis’ (Exhibit C-1, page 16); the Respondent presented a five page surrebuttal document (Exhibit R-3), in support of the City’s inclusion of such properties, as the price apportionment was available (Exhibit R-2, page 4).

[28] In conclusion the Respondent requested the Board to confirm the 2013 assessment of \$2,763,000.

Decision

[29] The decision of the Board is to confirm the 2013 assessment in the amount of \$2,763,000.

Reasons for the Decision

[30] The Board was not persuaded by the in depth analysis performed by the Complainant to determine if the subject property is assessed equitably with other similar properties. The Complainant stated the City of Edmonton has two retail assessment departments. One retail assessment department has a policy of assessing one group of retail properties based on 95% of the net leasable area [NLA], and another retail assessment department has a policy of assessing a group of properties based on 100% of the NLA. The Complainant stated this was neither fair nor equitable.

[31] However, the Board notes that all properties within the shopping centre inventory are valued using the same assessment methodology and assessed using 100% of the NLA. The subject property falls within the shopping centre inventory.

[32] The Complainant utilized properties from the retail valuation group, which utilizes 95% of the gross footprint area. The properties that the Complainant referenced are not within the shopping centre inventory. The properties referenced are not similar and therefore are not considered comparable to the subject property.

[33] The Board notes that the Complainant’s comparables are stratified in the retail plaza group and the subject property is stratified within the shopping centre group of properties. Equity means that similar types of properties must be assessed in the same way. The evidence of the City shows that shopping centre’s and properties in the retail valuation group are not being

assessed in the same way, because they are not similar properties, and the information that is provided to the City for these two separate groups of properties is different.

[34] By having properties that are not comparable to the subject property, the Board finds that the Complainant's evidence and argument does not establish that the subject property is inequitably assessed with other similar properties.

[35] The Board was persuaded by the Respondent's capitalization rate analysis that included the 14 shopping centre property sales over the preceding three years and showed a median capitalization rate of 6.32% and an average capitalization rate of 6.34 %. The Respondent then utilized the analysis to establish a 6.5% capitalization rate for the shopping centre inventory.

[36] The Board was not persuaded by the Complainant's capitalization rate analysis. The Complainant's comparables were generally not shopping centre's and belonged to a different assessment group.

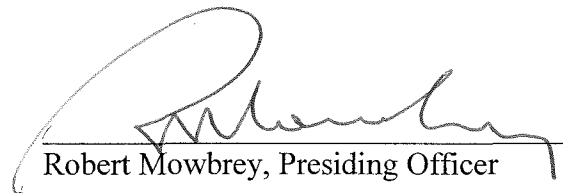
[37] While the Complainant is correct in stating that third party documentation should not be used to establish a capitalization rate, the Respondent advised the Board that the third party documentation was used to verify the Respondent's own evidence and or, establish a trend. Independent third-party documentation stated that the capitalization rate for Edmonton's neighborhood shopping centre was 6 to 6.5%. Additional published third-party documentation stated the capitalization rate for Edmonton's community shopping centre was 6.25 to 6.75%. Independent industry sources support the Respondent's assessed capitalization rate of 6.5%.

Dissenting Opinion

[38] There was no dissenting opinion.

Heard commencing June 24, 2013.

Dated this 15th day of July, 2013, at the City of Edmonton, Alberta.



Robert Mowbrey, Presiding Officer

Appearances:

John Trelford
for the Complainant

Chris Rumsey, Assessor
Steve Lutes, 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.