Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 00674

Assessment Roll Number:	7817935
Municipal Address:	10503 51 Avenue NW
Assessment Year:	2013
Assessment Type:	Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Peter Irwin, Presiding Officer
Lillian Lundgren, Board Member
Darryl Menzak, Board Member

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 is the same as in the complaints related to Roll Numbers 3907771, 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, known as London Center, is a neighborhood shopping center located in the Empire Park neighborhood in south Edmonton consisting of a London Drugs and nine smaller CRUs (Commercial Retail Units). The property land size is 257,875 square feet (sf) and the improvement assessed area is 37,910 square feet with an effective year built of 1982. The subject was assessed at $10,934,000, based on the income approach using a capitalization rate of 6.50%. It is part of the assessment department's shopping center inventory.

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 drug store 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 drug store correct?

b. Is the capitalization rate used to prepare the assessment correct?

[10] Does 95% of the subject property sale price represent market value?

Legislation

[11] **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.

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

> **Disclosure of Evidence**
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> 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:
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> 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
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> (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
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> (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

[13] 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.

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

[15] The Complainant challenged the lease rate used by the City when compared to rates of similar properties and argued that the rate used for the subject property was too high. In support of this position the Complainant presented eight comparables of leases (Exhibit C-1 page 17). The years of construction ranged from 1976 to 2002. The NLA ranged from 19,485 square feet to 29,610 square feet. The lease rates ranged from $14.50 to $18.00 per square foot with a median of $15.13 and the requested lease rate was $15.50 per square foot versus the $22.50 rate used by the City.

[16] The Complainant also argued that the lease rates were too high based on market lease rates. However, the Complainant withdrew the comparables (Exhibit C-1 page 16) as they related to a different tax account.

[17] The Complainant argued that the capitalization rate (cap rate) utilized by the City was too low at 6.50% and that it should by 7.00%. In support of the equity argument, the Complainant provided seven comparable properties where the City of Edmonton 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 17).

[18] The Complainant provided a cap rate study using actual Net Operating Income (NOI) and actual sales 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.

[19] 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 means of the actual net income and individual sale price of each property. The sales of the properties occurred from May 2011 to September 2012.

[20] 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%.

[21] 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 of Edmonton was mixing and matching assessment models.

[22] 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.

[23] The Complainant provided rebuttal evidence (Exhibit C-5) in response to the Respondents 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.

[24] 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 be considered for analysis.

[25] The Complainant submitted that the subject property sold on May 23, 2012 for $10,000,000. It was acquired jointly with Clearwater Plaza for $19,000,000. In answer to a question from the Respondent, the Complainant stated that he is relying on the allocated value of $10,000, 000 published in the The Network document.

[26] 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 assessment of the subject property should be calculated by applying 95% to the time adjusted sale price. The Complainant is requesting the Board to reduce the assessment to $9,576,000.

Position of the Respondent

[27] The Respondent presented the Board with an assessment brief containing 150 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

[28] 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, standard retail properties and shopping centers. 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.

[29] 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.

[30] 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

[31] In support of the City's assessment of the subject property, the Respondent provided a table of rental rate equity comparables (Exhibit R-1, pages 45) showing 5 comparable drug store properties, all assessed at $22.50/ sf. The effective year built of the comparables ranged from 1987 to 1997, compared to the subject's effective year built of 1982. The size of the comparables ranged from 7,634 sf to 32,868 sf, compared to the subject's 20,852 sf.

[32] The Respondent provided comments on the Complainant's equity comparables on page 17 (Exhibit C-1) noting that none of them were from the same space type group and all were located in inferior locations.

[33] The drug store at London Center was constructed in 1982 and is assessed at $22.50 per square foot. In support of this rate the Respondent provided a CRU study with the most recent four years of lease information for drug stores (Exhibit R-1 page 44). The lease rates are separated into two categories, drug stores pre 1997 and those built 1997 and after. The median lease rate for the former group is $22.50. The median lease rate for drug stores built 1997 and after was $26.12.

capitalization rates

[34] 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 and sale of the property.

[35] In support of the City's Cap Rate, the Respondent provided a table of Cap Rate equity comparables (Exhibit R-1, page 45) showing 5 drug store properties all assessed with a 6.5% cap rate. The effective year built of the comparables ranged from 1987 to 1997, compared to the subject's effective year built of 1982. The size of the comparables ranged from 7,634 sf to 32,868 sf, compared to the subject's area of 20,852 sf.

[36] The Respondent argued that the Complainant's equity cap rate comparables (Exhibit R-1 page 49) were not similar to the subject property. The Complainant s comparables were in a poorer location compared to the subject property.

the correctness issues

[37] The Respondent also provided a table showing the City's Shopping Centre Capitalization Rate Analysis (Exhibit R-1, page 27) 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%.

[38] 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).

[39] The Respondent also provided comments on the Complainant's sales comparables (Ex. R-1, p. 50) , 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.

[40] 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.

Address	Actual Sale Price	Altus Network NOI	Altus Network Cap	City T/A Sale Price	City Assessed NOI	City Adjusted 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%**

[41] In response to the Complainant's rebuttal, the Respondent presented exhibit R-3 which 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. 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.

[42] With respect to the sale of the subject property, the Respondent presented a copy of the Land Titles Act Transfer document that shows the subject property together with Clearwater Plaza sold for a total of $19,000,000. The Complainant failed to provide any supporting documents to show that the subject property allocation should be $10,000,000.

[43] With respect to the Complainant's concern that the subject is not a shopping center because it has an LUC 240 code, the Respondent stated that the subject property is located in a shopping centre and is not assessed based on the LUC code.

[44] In support of the City's 6.50% cap rate, the Respondent referred to the Shopping Centre Analysis (Exhibit R-1, page 27) and noted that, of the seven comparables that were also in the Complainant's package, the average was 6.46%.

[45] 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 (Exhibit R-1, pages 71-74). 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.

[46] In summary, the Respondent requested the Board to confirm the assessment at $10,934,000.

Decision

[47] The property assessment is confirmed at $10,934,000.

Reasons for the Decision

[48] 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.

[49] 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.

[50] 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.

[51] 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.

[52] The Complainant argued that the subject property is not equitably assessed with similar properties because the $22.50 rental rate applied to the subject drug store space is a different rate than that applied to similar retail properties. In support of this argument the Complainant provided eight assessment lease rate comparables that are assessed using a median rental rate of $15.13 per square foot. However, the Board finds that the assessment comparables are not similar to the subject property because they are not drug stores. Owing to the fact that the City of Edmonton applies a different rental rate to drug stores, the assessment comparables are not similar. The Board noted that the actual rental rate for the subject property is much higher than the Complainant's assessment comparables which is another indication that the comparables are not similar properties.

[53] The Board finds that the Respondent's rental rate comparables show that the subject property and all similar drug stores are assessed equitably using a rental rate of $22.50 per square foot.

[54] 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.

[55] 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.

[56] 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.

[57] 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%.

[58] The subject property and Clearwater Plaza sold at the same time for a total value of $19,000,000.The Board reviewed the Complainant's copy of the Land Titles Act Affidavit Re: Value of Land which states the present value of the lands as $19,000,000. The affidavit does not allocate a specific amount to the subject property; therefore, the allocated value of $10,000,000 may not represent market value.

[59] Based on the above reasons, the assessment is confirmed.

Heard commencing June 17, 2013.

Dated this 16th day of July, 2013, at the City of Edmonton, Alberta.

Peter Irwin

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.