Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01103

Assessment Roll Number: 3248507
Municipal Address: 10304 109 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
Patricia Mowbrey, Presiding Officer
Pam Gill, Board Member
John Braim, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties stated there was no objection to the Board's composition. The Board Members stated there was no bias with respect to this file.

[2] The witnesses; John Trelford, Jordan Nichol and Tracy Ryan, were sworn in.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property is a 1995/1998 neighbourhood shopping centre located in the Downtown subdivision. It comprises three buildings totaling 43,028 square feet (sq ft) of restaurant and commercial space. The property is in the Box Retail category and has been assessed using the income approach method and the 2013 assessment is $10,968,500.

Issue(s)

Eleven issues were enumerated on the complaint form however, two issues were presented to the Board as follows;

[5] Should the subject property be given a 95% size adjustment and be assessed the same as other retail groups?

[6] Is the Assessment Capitalization Rate too low?

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.

[8] The *Matters Relating to Assessment and Taxation Regulation*, Alberta Regulation 220/2004, reads:

Mass appraisal

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

[9] The Complainant presented written evidence Exhibit C-1, 50 pages; Exhibit C-2, 438 pages; Exhibit C-3, 121 pages (Rebuttal); Exhibit C-4, 12 pages (Sur-surrebuttal)) and oral argument for the Board's review and consideration.

Issue 1

[10] The position of the Complainant was that the assessment of the subject was not fair and equitable and the assessment was excessive. The Complainant stated that all retail properties should be assessed the same; properties of different sizes, or which assessor had assessed the property, should not be a consideration. If the Retail group of

properties was assessed at 95%, then that standard should apply to all the retail properties. The Complainant stated that the Respondent categorized retail assessments in two groups, Shopping Centre and Retail, and that the Shopping Centre group used 100% of rent roll size for assessment purposes, and the Retail group used 95% of the leasable size for assessment purposes (C-1, page 10). The Complainant argued that the grouping was not equitable.

[11] In support of the Complainant's position a Fairness and Equity Analysis of Rental Area was provided (C-2), which listed 92 properties and included, for each property, the City of Edmonton Request For Information rent rolls and Assessment Detail Reports. The properties listed in C-2, indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes which indicated a median of 94% and an average of 92%. The Complainant emphasized that the chart also indicated a ratio of the City Assessment Proforma sizes to Rent Roll sizes which resulted in a median of 95%, and an average of 94%, and highlighted there was a close correlation between the two ratios. The Complainant pointed out that there was no evidence presented by the Respondent that 95% was applied to the gross building sizes. According to C-2, the rent roll size was close to the gross building size and, in the Complainant's opinion, was a preferred size for the 95% application.

Issue 2

[12] The Complainant submitted that the 6.5% assessment capitalization rate was too low and stated that a capitalization rate of 7.5% was more appropriate.

[13] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales, (C-1, page 21), with the respective supporting network data sheets, that indicated an average capitalization rate of 7.15% and a median of 7.04%.

[14] The Complainant further submitted that of the 24 sales presented, 6 should be excluded, as they were invalid for various reasons; an 8 property portfolio sale, an old lease, leases with upside potential and an outlier. The sales included #5, #12, #13, #14, #21 and #22 (C-1, page 24). Excluding the 6 sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15%. The Complainant stated that this supported the requested 7.5% capitalization rate.

[15] The Complainant provided an Assessment Capitalization Rate comparable chart of 14 assessments (C-1, page 20). One assessment comparable had a capitalization rate of 7.00%, the remaining 13 had assessment capitalization rates of 7.50%. The median of the comparables was 7.50% which the Complainant stated further supported the 7.50% requested capitalization rate.

Position of the Respondent

[16] The Respondent presented written evidence, Exhibit R-1, 137 pages (assessment brief, law and legislation); Exhibit R-2, 11 pages (Sur-rebuttal) and oral argument for the Board's review and consideration.

Issue 1

[17] The Respondent submitted that there are two separate valuation groups for retail; one is for standard retail and the other is for shopping centres. 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 included owner occupied and small retail properties, historically returned minimal responses to the City's Request For Information and 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 net leasable area of the standard retail properties for assessment purposes.

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

[19] The Respondent provided additional details (R-1 pages 45-46), to the Complainant's Rental Area Analysis of 92 properties presented in C-2. A column was added to describe the valuation group to which each property belonged. All but 2 of the 92 properties were in the retail or retail plaza valuation group, which indicated that they were assessed in the retail group using the 95% methodology (R-1, page 47-48). The Respondent stated, the subject is a neighborhood shopping centre, valued in the shopping centre group at 100% of net leasable area, and therefore, the Complainant's Rental Area Analysis properties were not comparable.

Issue 2

[20] The Respondent presented a fairness and equity chart (R-1, page 19), of 11 neighbourhood shopping centres located in close vicinity to the subject and in reasonably close effective ages, each with a capitalization rate of 6.50%. The Respondent stated that the subject property assessment of 6.50% was equitable with other neighborhood shopping centres.

[21] In R-1, page 39, the Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties, C-1 page 24. 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 22). The remaining 3 shopping centre sales were considered invalid for the following reasons; multiple parcel sale, non-arms length and leasehold interest. The other 14 sales were in the general retail or retail plaza assessment group which the Respondent considered not comparable to the subject.

[22] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 22), of 14 properties (including the subject), with respective supporting City sales analysis sheets. The sale dates were within 3 years of the valuation date and reflected 2013 time adjusted sales prices, 2013 assessed NOI's which reflected typical lease rates of similar properties, to reach a fee simple capitalization rate. The Respondent explained that this is the source of a fee simple estate value (R-1, pages 12), which legislation identifies as the basis for assessment. The Capitalization Rate Analysis chart of comparables indicated a median capitalization rate of 6.18% and an average of 6.19%, which the Respondent concluded, provided support for the subject assessment capitalization rate of 6.50%.

[23] The Respondent presented third party capitalization reports and indicated that these are used only for comparison and trending, and noted the assessment capitalization rate was within the comparative ranges. As reported by CBRE, the Edmonton Neighbourhood Retail capitalization rate indicated is 6.00%-6.50% (R-1, page 40) and the Colliers report indicated the Edmonton Community Retail and Strip Mall capitalization rates ranged from 6.25%-7.00% (R-1, page 44).

Complainant's Rebuttal

[24] The Respondent objected to C-3, pages 72 and 73, of the Complainant's rebuttal on the basis of "what were the materials rebutting". The Board noted the objection and allowed the pages to remain in evidence.

[25] The Respondent objected to C-3 pages 86 – 94 on the basis that the rebuttal information referenced 2012 and not the current 2013 assessment year and is therefore new evidence. The Board adjourned to review the evidence in C-3, pages 86 to 94. The decision of the Board was to disallow and strike out pages 86 to 94. The reason for the decision is that the Board agreed that the information provided by the Complainant was based on the 2012 year Valuation Summaries, and 2012 Assessment Detail Reports and was therefore considered new evidence.

[26] The Complainant proceeded to present the remaining evidence in rebuttal, C-3, 112 pages, to question the validity of the Respondents submission and the strength of support for the subject assessment, particularly the Respondents Shopping Centre Capitalization Rate Analysis comparables and the use of an eight property portfolio sale. The Complainant provided Network Data sheets, Assessment Detail Reports, City of Edmonton valuation summaries and rent rolls to bring to the Board's attention the inconsistencies and errors in the Respondent's capitalization rate analysis evidence. The Complainant submitted that the analysis was flawed.

Respondent's Sur-Rebuttal

[27] The Respondent submitted sur-rebuttal evidence (Exhibit R-2, 13 pages). The Complainant objected to R-2, pages 2 and 3 on the basis of new evidence. The Respondent agreed to strike out the pages. The Respondent replied in sur-rebuttal to the Complainant's argument that a sale of an eight property portfolio sale was invalid (C-3 page 71), because only one of the eight properties was in Edmonton and was included in the Respondent's Shopping Centre Capitalization Rate analysis. The Respondent argued in the sur-rebuttal that the sale price was apportioned to the one Edmonton sale and was available to the Respondent (R-2 pages 4-6), which the Respondent argued supported the inclusion of the sale in the Shopping Centre Capitalization Rate analysis.

Complainant's Sur-surrebuttal

[28] The Complainant entered into evidence a response to the Respondent's surrebuttal, (Exhibit C-4, 12 pages). The Complainant further argued the sale of multiple property portfolios with an excerpt from the Standard on Verification and Adjustment of Sales – 2010, International Association of Assessing Officers (C-4, page 3), that purports that typically multiple parcel sales should not be used in valuation or ratio studies.

[29] The Complainant also submitted evidence in sur-surrebuttal (C-4, pages 2-12), to clarify that sale #6, (C-1, page 21), is an arms-length transaction and provided documentation to support the validity of the sale.

Decision

[30] It is the decision of the Board to confirm the 2013 assessment for the subject at $10,968,500.

Reasons for the Decision

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

Issue 1

[32] The Board understands that Mass Appraisal is the legislated methodology for assessment and that the Income Approach to value is the appropriate valuation method and refers to MRAT s. (2), Mass Appraisal, "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."

[33] The Board accepted the premise of stratification of properties for the 2013 assessment (R-1, page 107), that each property is further stratified showing similarities within their group and that the subject is stratified into the Neighborhood Shopping Centre group.

[34] The Board is persuaded by the Respondent's explanation and reasons for the use of different approaches to calculating the size of the two retail groups; retail and shopping centre. The Board is persuaded that there is ample information returned to the City in response to the annual RFI for the shopping centre group and that the actual net leasable area can be ascertained for assessment purposes. The Board is persuaded 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 net leasable area for assessment purposes.

[35] The Board reviewed the extensive list of 92 comparable properties presented by the Complainant in the Fairness and Equity Analysis of Rental Area (C-2). However, the Board was not persuaded by the Complainant's argument and submission; that retail properties were not treated fairly and equitably in that the 95% method of calculating size should be applied to both groups of retail properties, and should be applied to the size indicated on the rent roll.

[36] The Board noted that the comment column, added by the Respondent, to the Complainant's Fairness and Equity Analysis of Rental Area chart (C-2), grouped each listed property as retail or retail plaza, except 2 properties, which, according to the Respondent, were recently grouped as shopping centre. The Board accepted the Respondent's grouping of retail and shopping centre for assessment purposes, and finds for that reason the comparables are of a dissimilar grouping to the subject, a shopping centre, and therefore not suitable comparables.

Issue 2

[37] The Board reviewed the Complainant's Assessment Cap Rate Comparable chart (C-1, page 20) and noted of the 14 comparables, 9 were banks and 3 were restaurants at various locations, all with a capitalization rate of 7.5%. The Respondent presented the Complainant's 14 comparables (R-1, page 22), and added the group category which indicated each property was either retail plaza or general retail. The Board found the comparables to be dissimilar to the subject and therefore not appropriately comparable as the subject was categorized in the shopping centre group.

[38] The Board considered the Complainant's Capitalization Rate Sales chart of 24 comparables (C-1, page 21), and the Respondent's Shopping Centre Capitalization "Rate Analysis (R-1, page 22), of 14 comparables.

[39] The Board noted that of the Complainant's 24 sales, there were 14 categorized as Retail Plaza or General Retail. The Board found these comparables dissimilar to the subject as the subject is grouped as a Shopping Centre. The Board noted the remaining 10 comparable sales were grouped as Shopping Centre of which 3 were challenged as invalid for the following reasons: a multiple property sale, a non-arms length sale and a leasehold interest sale. The Board found that the opposing views held on the 3 sales rendered them suspect and placed less weight on them.

[40] The Board gave greater weight to the 7 sales common to the Complainant and the Respondent. Respectively the sales are: Complainant, sales #22, #21, #18, #15, #5, and #4, and the Respondent, sales #4, #6, #7, #8, #10, #13, and #14. The Complainant comparables averaged a capitalization rate of 6.70%, and the Respondent sales comparables, which applied a fee simple NOI to attain a fee simple capitalization rate (not time adjusted), averaged a capitalization rate of 6.69%. The Board noted that both of the capitalization rate averages supported the assessment capitalization rate of 6.50%

[41] The Board gave weight to the Respondent's Shopping Centre Capitalization Rate Analysis of 14 sales comparables that indicated an average of 6.19% and a median of 6.18%, which supported the assessment lease rate of 6.50%. The Respondent stated that all sales were validated, but the Board also took into consideration some size discrepancies that were noted.

[42] The Board placed greatest weight on the Respondent's equity comparable chart (R-1, page 29) containing 11 shopping centres that were located in close proximity to the downtown area with effectives ages of older than 2005, each with a capitalization rates of 6.5%, which indicated equity and support for the assessment capitalization rate of 6.5%.

[43] The Board finds that the subject 2013 assessment of $10,968,500 is correct, fair and equitable.

<u>Dissenting Opinion</u>

[44] There was no dissenting opinion.

Heard commencing July 3, 2013.

Dated this 2nd day of August 2013, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

John Trelford, Altus Group
for the Complainant

Steve Lutes, City of Edmonton
Tracy Ryan, City of Edmonton
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.