Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01105

Assessment Roll Number: 3747292
Municipal Address: 2011 111 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 neighbourhood shopping centre located at 2011-111 Street, NW, Edmonton, constructed in 1989, is 88,310 square feet (sq.ft.) and comprised of an anchor food store, a bank, 2 restaurants and a number of retail components. The 2013 assessment is $23,957,000.

Issue(s)

[5] Nine issues were enumerated on the complaint form, however, 3 issues were presented to the Board as follows:

(i) Should the subject property be given a 95% size adjustment and be assessed the same as all other retail groups?

(ii) Is the Assessment Capitalization Rate too low?

(iii) Is the bank assessment lease rate excessive?

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.

[7] **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.

[8]

Position of the Complainant

[9] The Complainant presented written evidence Exhibit C-1, 53 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 using the same method and the size of the property or the specific assessor

should not affect the assessment method. The Complainant stated that the Respondent categorized retail assessment in two groups, Shopping Centre/Shopping Plaza and General Retail. 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 9. The Complainant argued that the grouping was not equitable. If the Retail group of properties was assessed at 95%, then that standard should apply to all retail properties.

[11] 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 rent rolls and Assessment Detail Reports on each property.

[12] The properties listed in C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes. 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.

[13] The Complainant pointed out that there was no evidence presented by the Respondent that 95% was applied to the gross building sizes and that the rent roll size, according to C-2, was close to the gross building size and, in the Complainant's opinion, was a preferred size for the 95% application.

Issue 2

[14] 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.

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

[16] 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.

[17] The Complainant provided an Assessment Capitalization Rate comparable chart of 14 assessments (C-1, page 23). 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.

Issue 3

[18] The Complainant submitted that the assessed bank lease rate of $28.00/sq.ft. was excessive and that $26.00/sq.ft is more reflective of the space.

[19] The Complainant provided the December, 2012, rent roll for the subject property, C-1, pages 17-20, which indicated the bank lease rate was $26.00/sq.ft.

[20] In support of the $26.00/sq.ft. lease rate request, the Complainant provided a Market Lease Rate comparable chart of banks (C-1, page 21), which were located in various districts of the City, ages of buildings ranged from 1968 to 1999, with start dates ranging from February, 2005, to January, 2012, rates per sq ft ranged from $15.50 to $36.00 and indicated the median rate was $26.00/sq.ft., which the Complainant stated supported the requested $26.00/sq.ft. lease rate.

[21] The Complainant also provided two assessment lease rate comparables (C-1, page 22), that averaged $26.00/sq.ft. The Complainant stated that $26.00/sq ft is the requested lease rate for the subject bank space.

[22] The Complainant requested the Board to reduce the 2013 Assessment to $19,549,000.

Position of the Respondent

[23] The Respondent presented written evidence, Exhibit R-1, 151 pages (assessment brief, law and legislation); Exhibit R-2, 11 pages (Surrebuttal) and oral argument for the Board's review and consideration.

Issue 1

[24] The Respondent submitted that there are two separate valuation groups for retail; one is for standard retail/retail plazas 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.

[25] 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.

[26] The Respondent provided additional details (R-1 pages 59-60), to the Complainant's Rental Area Analysis of 92 properties presented in C-2. A column was added with the valuation group. 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 (R-1, page 61-62). The subject is a neighborhood shopping centre valued at 100% of net leasable area. Therefore the Respondent argued the Complainant's Rental Area Analysis properties were not comparable.

Issue 2

[27] The Respondent presented a fairness and equity chart (R-1, page 29), of 15 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.

[28] The Respondent presented a fairness and equity chart, (R-1, page 26), of 15 neighbourhood shopping centres in close vicinity to the subject and in reasonably close effective ages, all with a capitalization rate of 6.50%. The Respondent indicated that the subject property assessment of 6.50% was equitable with other neighborhood shopping centres. The Respondent stated that location was not a factor and that all the neighbourhood shopping centres are assessed with a capitalization rate of 6.50%.

[29] In R-1 page 32, a column of comments was added to the Complainant's Assessment Capitalization Rate Comparable Chart (C-1, page 23). The Respondent pointed out that all of the comparables were assessed in the general retail or retail plaza group with an assessed capitalization rate of 7.50%. The Respondent stated that the comparables are not equitable to the subject property, as the subject is assessed in the shopping centre group.

[30] In R-1, page 53, 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 36). 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.

[31] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 36) 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 16-17), which legislation identifies as the basis for assessment.

[32] The Respondent pointed out that the Capitalization Rate Analysis chart of comparables has a median capitalization rate of 6.18% and an average of 6.19%, which provided support for the subject assessment capitalization rate of 6.50%.

[33] The Respondent presented third party capitalization reports and said 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 54) and the Colliers report indicated the Edmonton Community Retail and Strip Mall capitalization rates ranged from 6.25%-7.00% (R-1, page 58).

Issue 3

[34] The Respondent stated that according to legislation, mass appraisal is the methodology for valuing individual properties (R-1 pages 117-124). Properties are then stratified into groups with other comparable properties. The Respondent stated that the Income Approach is the best approach when valuing income producing properties and is the method of choice to value the majority of properties within the Retail/Shopping Centre inventory. The use of typical market rents, typical vacancy rates, typical capitalization rates and typical structural rates were appropriate for all shopping centre categories.

[35] The Respondent stated that typical market rents is the same for bank rates and statistical testing was done to determine the typical market lease rate for the subject bank space. The bank lease rates were stratified by age into two categories; 2003 and newer and 2002 and older (R-1, page 129). The subject has an effective age of 1989 (R-1, page 33). The median bank rental rate for properties older than 2001 is $28.00/sq.ft (page 33 of R-1).

[36] Due to FOIP restrictions, the Respondent did not provide comparable lease rates but did provide a Fairness and Equity chart for assessed leased rates (R-1, page 31), for banks located city wide in neighbourhood shopping centres. The assessed lease rate was $28.00/sq.ft and the Respondent noted that location is not a factor in determining the lease rate, the only factor is age.

[37] The Respondent requested the Board to confirm the 2013 assessment of $23,957,000.

Complainant's Rebuttal

[38] 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.

[39] 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.

[40] 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.

[41] 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

[42] 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). The Respondent argued this justified the inclusion of the sale in the Shopping Centre Capitalization Rate analysis.

Complainant's Sur-surrebuttal

[43] The Complainant entered into evidence a response to the Respondent's surrebuttal, (Exhibit C-4, 12 pages). The Complainant further argued against using 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). The excerpt states that typically, multiple parcel sales should not be used in valuation or ratio studies.

[44] The Complainant also submitted evidence to clarify that sale #6, (C-1, page 24), is an arms-length transaction and provided documentation to support the validity of the sale (C-4, pages 2-12).

Decision

[45] It is the decision of the Board to confirm the 2013 assessment $23,957,000.

Reason for the Decision

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

Issue 1

[47] The Board, referring to s.2 *MRAT*, understands that Mass Appraisal is the legislated methodology for assessment and that the Income Approach to value is the appropriate valuation method.

[48] The Board accepted the premise of stratification of properties for the 2013 assessment (R-1, page 121), where each property is further stratified showing similarities within their group. The subject is in the Neighborhood Shopping Centre group.

[49] 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.

[50] 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. The Board also does not agree that the 95% method of calculating size should be applied to both groups of retail properties, or that it should be applied to the size indicated on the rent roll.

[51] 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. The Respondent explained these 2 properties were only recently grouped as shopping centre. The Board accepted the Respondent's grouping of retail and shopping centre for assessment purposes, and therefore finds the comparables unsuitable because they are of a dissimilar grouping to the subject, which is a shopping centre.

Issue 2

[52] The Board reviewed the Complainant's Assessment Cap Rate Comparable chart (C-1, page 23) 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 on R-1, page 32, and added the group category which indicated each property was 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 as a neighbourhood shopping centre.

[53] The Board considered the Complainant's Capitalization Rate Sales chart of 24 comparables (C-1, page 19), and the Respondent's Shopping Centre Capitalization "Rate Analysis (R-1, page 30), of 14 comparables.

[54] 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. Of the 10 remaining comparable sales that were grouped as Shopping Centres, 3 were challenged as invalid for reasons of; a multiple property sale, a non-arms length sale and a leasehold interest sale. The Board found that the challenges on the 3 sales rendered them suspect and placed less weight on them.

[55] 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%

[56] 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.

[57] The Board placed greatest weight on the Respondent's equity comparable chart (R-1, page 26) containing 15 shopping centres that were located in close proximity to the subject. All comparables had effective ages of older than 2002 and capitalization rates of 6.5%, which indicated equity and support for the assessment capitalization rate of 6.5%.

Issue 3

[58] The Board considered the lease rate for the bank and noted that the Respondent stated in R-1, page 16, that the bank rate for assessment purposes was determined using mass appraisal, statistical testing and was stratified based upon age. The Neighbourhood Centre age categories

for banks are: 1) 2003 and newer, and 2) 2002 and older. The subject had an effective age of 1989 and therefore was in the 2002 and older category.

[59] The Complainant presented a Market Lease Rate Comparable chart with buildings older than 2002 (C-1, page 21), to show an average lease rate of $26.83 per sq ft, a median of $26.00 per sq ft and the most recent lease dated January 2012, of $27.00/sq ft. There was no indication that the comparables were categorized as neighbourhood shopping centre and therefore the Board placed less weight on the comparables.

[60] The Board noted that the Complainant presented a rent roll dated December, 2012 (C-1, page 17) that indicated the bank had, a move-in date of 1-July-00, an end date of 31-May-15, and a start date of 1-June-10 for a lease rate of $26.00/sq ft. However the Board also noted the tenant rent roll from Centrecorp Management Services, as at December 31, 2012 (C-1, 18-20), showed a lease rate for the bank of $27.00/sq ft and a step up rate to $28.00/sq ft effective 1-June-2014.

[61] The Respondent also presented the Centrecorp Management Services tenant rent roll at December 31, 2012 (R-1, pages 20, 21 and 22), which indicated the same step up lease rates as C-1. The Board finds that these lease rates were a clear reflection of the step up lease rates negotiated at the start date of the lease, July 1, 2000, which are not necessarily the same as current market lease rates, although in this situation, they were fairly similar.

[62] The Board reviewed the Complainant's equity comparable chart (C-1, page 23), with 2 comparable lease rates, one at $27.00/sq ft and the second at $25.00/sq ft, indicating an average and a median of $26.00/sq ft. There was no distinction or grouping to show if they are free standing or shopping centre and furthermore the Board finds that two comparables are insufficient evidence for an equity argument.

[63] The Board considered the Respondent's Fairness and Equity chart (R-1, page 31), which listed 38 buildings older than 2002, in various locations with an assessed lease rate of $28.00/sq ft. The Board placed greatest weight on the Respondent's equity comparables.

[64] The Board finds the subject 2013 assessment of $23,957,000 is correct, fair and equitable.

Dissenting Opinion

[65] There was no dissenting opinion.

Heard commencing July 2, 2013.
Dated this 1st day of August, 2013, at the City of Edmonton, Alberta.

P. E. Mowbrey

Patricia Mowbrey, Presiding Officer

Appearances:

John Trelford, Altus Group
Jordan Nichol, Altus Group
for the Complainant

Cameron Ashmore, City of Edmonton
Tracy Ryan
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.