Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01107

Assessment Roll Number: 4032124
Municipal Address: 2118 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 comprises a neighbourhood shopping centre known as Heritage Plaza that was constructed in 1988, containing 15,425 square feet (sq.ft.) and includes a Liquor Store and Dental Centre as principal tenants, a pet store and 4 other retail components. The 2013 assessment is $4,669,000.

[5] The subject property has been assessed on the income approach to value method and the assessment of $4,699,000 was calculated using a 6.5% capitalization rate.

Issue(s)

[6] Seven issues were enumerated on the complaint form, however, 2 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 other retail groups?

(ii) Is the Assessment Capitalization Rate applied 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, 48 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. The rent roll size, according to C-2, was close to the gross building size and the Complainant argued the rent roll size was a preferred size for the 95% application.

Issue 2

[14] The Complainant submitted that the 6.5% assessment capitalization rate (cap rate) was too low and 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 19), with the respective supporting network data sheets, that indicated an average capitalization rate of 7.15% and a median of 7.04%.

[16] The Complainant further submitted that of the 24 sales comparables, 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 excluded were # 5, 12, 13, 14, 21 and 22. 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 was support for the requested 7.5% capitalization rate.

[17] The Complainant provided an Assessment Capitalization Rate comparable chart of 14 assessments, (C-1, page 18). 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.

[18] The Complainant requested the Board to reduce the 2013 assessment to $3,844,000.

Position of the Respondent

[19] The Respondent presented written evidence, Exhibit R-1, 151 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

[20] 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.

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

[22] The Respondent provided additional details (R-1 pages 53-54), 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 55-56). 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

[23] 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%.

[24] In R-1, page 29, the Respondent added a column of comments on the Complainant's Assessment Capitalization Rate Comparable Chart, C-1, page 23. The Respondent noted that all 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 neighbourhood shopping centre group.

[25] In response to the Complainant's Capitalization Rate Sales Analysis, C-1, page 19, the Respondent provided additional information on the Complainant's 24 comparable sales, R-1, page 47. The chart indicated there were 10 shopping centre sales listed, of which the Respondent used 7 for the Respondent's capitalization rate analysis (R-1, page 30). The remaining 3 shopping centre sales were considered invalid for the reasons of multiple parcel sale, non-arms length and leasehold interest. The other 14 sales were in the general retail or retail plaza assessment group and the Respondent considered not comparable to the subject.

[26] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart, R-1, page 30, of 14 properties, 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 13, which legislation identifies as the basis for assessment.

[27] 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%.

[28] The Respondent presented third party capitalization reports and said that these are used only for comparison and trending, and noted the subject assessment capitalization rate was within the comparative ranges provided in the reports. The CBRE report , the Edmonton Neighbourhood Retail capitalization rate indicated 6.00%-6.50% , R-1, page 48 and the Colliers report indicated the Edmonton Community Retail and Strip Mall capitalization rates ranged from 6.25%-7.00%, R-1, page 52.

[29] The Respondent requested the Board to confirm the 2013 assessment of $4,669,000.

Complainant's Rebuttal

[30] 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.

[31] 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.

[32] 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.

[33] The Complainant proceeded to present the remaining evidence in rebuttal, C-3, 121 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

[34] The Respondent submitted sur-rebuttal evidence, (R-2, 11 pages). The Complainant objected to pages 2 and 3 of R-1 on the basis of new evidence. The Respondent agreed to strike out the pages and remove them from evidence. The Respondent in sur-rebuttal replied 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 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

[35] The Complainant entered into evidence the "Appellant's Response to City Sur-Rebuttal", C-4, 12 pages. The Complainant argued that the sale of any one property, in a multiple property portfolio sale, should not be considered for analysis or in valuation or ratio studies. An excerpt from the Standard on Verification and Adjustment of Sales – 2010, International Association of Assessing Officers, (C-4, page 3) was provided in support of this argument.

[36] The Complainant also submitted evidence in "response to sur-rebuttal", C-4, pages 2-12, to clarify that sale #6, C-1, page 19, is an arms-length sale transaction and provided documentation to support the validity of the sale.

Decision

[37] The decision of the Board is to confirm the subject property 2013 assessment of $4,669,000.

Reasons for the Decision

[38] The Board is aware that Mass Appraisal is the legislated methodology for assessment and that the Income Approach to value is the appropriate valuation method for the subject property and refers to *MRAT s. (2).*

Issue 1

[39] The Board accepted the premise of stratification of properties for the 2013 assessment (R-1, page 117), where each property is further stratified showing similarities within their group. The subject is in the Neighborhood Shopping Centre group.

[40] 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; general 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 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 general retail group and that the 95% of gross building area was developed in an attempt to ascertain a correct and equitable net leasable area for assessment purposes.

[41] 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.

[42] 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

[43] The Board reviewed the Complainant's Assessment Capitalization Rate Comparable chart, C-1, page 18, 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 29, and added a group category which identified each property as retail plaza or general retail. The Board found the comparables dissimilar to the subject, and therefore not appropriately comparable, as the subject was categorized as a shopping centre.

[44] 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 sales comparables.

[45] 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 Centre, 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.

[46] 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%

[47] 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 capitalization rate of 6.50%. The Respondent stated that all sales had been validated, but the Board took into consideration some size discrepancies that were noted.

[48] 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, with

effectives ages of older than 2002, each with a capitalization rates of 6.5%, which indicated equity and support for the assessment capitalization rate of 6.5%.

[49] The Board finds the subject 2013 assessment of $4, 669,000 is correct, fair and equitable.

Dissenting Opinion

[50] There was no dissenting opinion.

Heard commencing July 2, 2013.

Dated this 1st day of August, 2013, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

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

Cam 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.