Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01113

Assessment Roll Number: 9990079
Municipal Address: 12804 137 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
Patricia Mowbrey, 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.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a food store known as the Palisades Square Safeway. It is located at 12804 - 137 Avenue NW and is classified as a power centre. It was constructed in 1999 and has a total area of 54,495 square feet (sf). The property assessment is $13,581,500.

Issue(s)

1. Is the subject property assessed equitably with similar properties?

2. Is the subject property assessed correctly?

   (a) Is the capitalization rate used to prepare the assessment correct?

   (b) Is the rental rate applied to the food store correct?

Legislation

[4] **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.

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

> 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.

Position of the Complainant

[6] The basis of this complaint is that the subject property assessment is inequitable and incorrect.

[7] The Complainant argued that the subject property is not assessed equitably with similar retail properties: similar properties are assessed at 95% of the leased area based on the rent roll, but the subject property is assessed at 100% of its leasable area. In support of this position, the Complainant presented a Rental Area Analysis of 92 retail properties (Exhibit C-2). According to the Complainant, the properties listed on pages 1 and 2 of Exhibit C-2 are assessed based on 95% of the leased area stated on the Commercial Tenant Roll. As a result of the analysis, the requested value of $10,373,500 reflects a 5% downward adjustment to the subject property's area.

[8] The Complainant also argued that the 6.5% capitalization rate used to prepare the assessment is too low and should be increased to 7%. Sales of recent retail properties indicate that the market capitalization rate is approximately 7%. The Complainant presented a Capitalization Rate Sales chart of twenty-four sales comparables that have a median capitalization rate of 7.04% (Exhibit C-1, page 17). When the Complainant removed six of the sales comparables which are less comparable, the remaining eighteen comparables have a median capitalization rate of 7.15%.

[9] The capitalization rates in the Capitalization Rate Sales Chart are published by The Network. These rates are based on the actual net operating income and the actual sale price on the sale date. The Complainant did not time adjust any of the sale prices because they are recent sales that transacted in the last two years. During questioning, the Complainant agreed that the capitalization rates published by The Network are "leased fee" capitalization rates.

[10] The Complainant also challenged the $15.50/sf rental rate applied in the valuation of the subject property. The Complainant contended that food stores are similar to other retail properties in that their rental rates decrease as they get older. The Complainant analyzed the downward trend in rental rates for aging CRU spaces and determined that if this same rate of decline is applied to the food store, the rental rate should be $13.00.

Rebuttal

[11] The Complainant disagreed with the time adjustment factors applied by the Respondent to the sale prices of those properties with a substantial office component because the Respondent did not apply a separate time adjustment factor to the office portion.

[12] The Complainant presented a chart of eight sale comparables, seven of which were used by both parties (Exhibit C-3, page 2). The capitalization rates were taken from The Network, and have a median rate of 7.14%, which supports the requested 7% capitalization rate.

[13] In summary, the Complainant requested that the Board reduce the assessment to $10,373,500.

<u>Position of the Respondent</u>

[14] The Respondent submitted that the subject property assessment of $32,162,500 is equitable and correct.

[15] The Respondent explained that the subject property is valued within the Shopping Centre group of properties and all properties within the shopping centre inventory are valued using the same methodology which obtains a gross leasable area directly from the rent roll.

[16] For other types of retail properties within the standard retail inventory, the information that is provided to the City from property owners is usually either incomplete, provides a gross area, or the properties are owner occupied. Due to not having a gross leasable area for most properties, the City developed a study which showed that the gross leasable area is typically 95% of the gross building area.

[17] In response to the Complainant's concern that the properties in Exhibit C-2 are assessed using 95% of the leased area on rent rolls, the Respondent stated that this is not the case. Regardless of whether the property is a shopping centre or a retail plaza, the property is assessed based on its gross leasable area. In both the shopping centre valuation group and the retail valuation group, the final size is an attempt to accurately reflect the gross leasable area for the property.

[18] For any individual property, if the property owner can show that the gross leasable area that the City has actually used to assess the property is inaccurate (either too high or too low) the owner may file an appeal to correct the size.

[19] The Respondent pointed out that, except for two properties, the Complainant's equity comparables are not similar to the subject property because they are from the retail group of properties. Although the retail group of properties is valued on the gross leasable area, different capitalization rates are used.

[20] Using a Shopping Centre Capitalization Rate Analysis (Exhibit R-1, page 16), the Respondent defended the 6.5% capitalization rate applied to the subject. The analysis is based on fourteen sales of shopping centres that transacted from August 2010 to April 2012. The Respondent used the stabilized net operating income and time adjusted sale prices when deriving the capitalization rates. The results of the capitalization rate study are a median capitalization rate of 6.18% and an average capitalization rate of 6.34%.

[21] The Respondent explained that the subject has an effective year built of 1999, and falls in the group of food stores with an effective age of 1991 to 2007. The subject property and all other food stores in this age group are assessed using a $15.50/sf rental rate. The rental rate is supported by actual food store rents of similar age properties. A chart on page 46 of Exhibit R-1 shows eight valid arm's length new and renewal leases with a median of $15.75/sf.

[22] In summary, the Respondent requested the Board to confirm the assessment at $13,581,500.

Decision

[23] The property assessment is confirmed at $13,581,500.

Reasons for the Decision

[24] The Complainant did not provide sufficient evidence to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect or inequitable.

[25] The Complainant's requested 7.0% capitalization rate, derived from the Complainant's Capitalization Rate Sales analysis, is unreliable because the sale comparables have not been time adjusted. Further, the capitalization rates are leased fee rates based on the actual net operating income rather than the stabilized net operating income. There can be significant differences which will result in inconsistent capitalization rates.

[26] For assessment purposes, the Board accepts the Respondent's method of calculating a capitalization rate because it meets the legislative requirement for determining a fee simple capitalization rate. The Respondent derives the rate using typical market conditions, and applies this fee simple capitalization rate to a typical net operating income. In other words, the capitalization rate is applied in the same manner as it was derived.

[27] The Board finds that the Respondent's 6.5% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis, and is appropriate for valuing the subject property for assessment purposes.

[28] With respect to the equity matter, the Board finds no evidence of an inequity. The subject property is assessed in the same manner as all other properties in this group, using 100% of the gross leasable area. Furthermore, properties in the retail group are also assessed using 100% of the gross leasable area.

[29] The Board finds that the Complainant's argument respecting the rental rate for the food store is not supported by market evidence. The Complainant argued that other CRU spaces rent for less as they get older, and the same rate of decline in rental rates should be applied to the subject food store rental rate. In the absence of any evidence to support the request for a $13.00/sf rental rate, the request is denied.

[30] For the above reasons, the assessment is confirmed.

Heard August 7th, 2013.

Dated this 22nd day of August, 2013, at the City of Edmonton, Alberta.

P.E. Mowbrey

Patricia Mowbrey, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Ryan Heit
Steve Lutes
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.