Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01118

Assessment Roll Number: 10064596
Municipal Address:
Assessment Year: 2013
Assessment Type: Annual New

Between:

Jim Pattison Developments Ltd, as Represented by Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
John Braim, Board Member
Pam Gill, Board Member

Procedural Matters

[1] The parties had no objections to the composition of the panel. No bias was declared by the parties or the panel.

[2] At the request of the City the parties were sworn.

[3] This complaint was one of a number (18) heard during the week of August 19 to August 22. All of these complaints had issues in common. The two issues common to all complaints were firstly, the use of 95% factor applied to the area to calculate the net operating income in the valuation (the 95% Issue) and secondly, what is the appropriate Capitalization Rate to use in valuing the subject (the Cap Rate Issue)?

[4] The 95% Issue and the Cap Rate Issue were fully argued in the complaint against Roll Number 9943060, the first hearing of the week (heard August 19th). Throughout the balance of the week, the parties and the panel carried forward all the evidence and argument and questions on these two issues in every subsequent hearing.

[5] In reviewing the file for the property under complaint, it was noted by the panel subsequent to the hearing, that some of the evidence in the complaint for Roll Number 9943060 noted in the previous paragraph, was not included in the package for the subject under complaint.

[6] The panel, having reviewed the issues surrounding this omission, determined that any evidence which was intended to be carried forward must be included in the disclosure for the

property under complaint. As support for this position, the Panel noted that ***Matters Relating to Assessment Complaints Regulation AR 310/2009*** (MRAC) s9 (2) prohibited hearing any evidence which was not properly disclosed.

[7] Accordingly, certain evidence which had been asked to be carried forward was not considered in this hearing. In point of fact, not considering this evidence did not change the decision, however it did impact the basis upon which the decision was made as is outlined in the reasons below.

Preliminary Matters

[8] There were no preliminary matters raised.

Background

[9] The property has a land use designation as a neighbourhood shopping centre. The property is a shopping center anchored by Save-On Foods in north Edmonton comprising 74,993 (presumably net leasable) square feet according to the City Valuation Summary. The age of the improvements and size of the site are not easily discernible from information provided by either party. The property is valued on the Income Approach to Value and the 2013 Assessment on the property is **$23,731,500**.

Issue(s)

[10] The Complainant initially listed nine issues in their disclosure. Upon questioning at the outset of the hearing they identified two issues remaining:

a. Does equitable treatment of the subject property require using 95% of the Gross Building Area (GBA) to calculate the net income for the Income Approach to Value?

b. Should the Capitalization Rate used in the valuation be increased from 6.5% to 7.0%?

Exhibits

[11] Complainant's Exhibits

Exhibit	Description	Number of Pages
C-1	Disclosure and Witness Report	85
C-2	Fairness & Equity 95% of Rental Area Analysis	438
C-3	Rebuttal	141

[12] Respondent's Exhibit(s)

Exhibit	Description	Number of Pages
R-1	Assessment Brief	183

Legislation

[13] 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 297 (1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw

(a) divide class 1 into sub-classes on any basis it considers appropriate, and

(b) divide class 2 into the following sub-classes:
(i) vacant non-residential;
(ii) improved non-residential,
and if the council does so, the assessor may assign one or more sub-classes to a property.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.

(4) In this section,
(a) "farm land" means land used for farming operations as defined in the regulations;
(a.1) "machinery and equipment" does not include
(i) any thing that falls within the definition of linear property as set out in section 284(1)(k), or
(ii) any component of a manufacturing or processing facility that is used for the cogeneration of power;
(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;
(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

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.

The *Matters Relating to Assessment and Taxation Regulation*, Alberta Regulation 220/2004

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.

s. 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

Issue 1: The Property should be Valued Based on 95% of the GBA

Position of the Complainant

[14] The Complainant argued that several of the properties contained in Ex. C2 had uses which were very similar to those present in the subject, and noted that the valuation of these similar properties was done by taking 95% of the Gross Building Area (GBA) and then applying an income approach to value the property.

[15] The subject property was also valued on the income approach to value, but the area used was 100% of the Net Leasable Area (NLA). This, argued the Complainant, created an inequity, and the taxpayer was entitled to equitable treatment and so the subject property should be valued using the same 95% attribute. Exhibit C2 contained 92 examples of properties which had their valuation incorporate the 95% factor.

[16] In addition, the Complainant highlighted three examples showing that in 2012, the properties were assessed using 95% of the City Assessed Area (See Ex. C3, pgs. 80 - 88). They initially raised this in a different context, noting that the three properties in 2012 were all assessed by two valuation groups at the City and these valuations produced differing values, demonstrating that for one property the 2012 Assessment (prepared by the General Retail Valuation Group using the 95% number) was 38.5% lower than the number produced by the Shopping Centre Valuation Group for the same year (see Ex. C1, Pgs. 73 - 81).

[17] They highlighted another three properties (Ex C2, pg. 22, pg 30, & pg 50) which they argued appeared to be classed as Neighbourhood Shopping Centres, yet were assessed on the 95% of the area. They suggested if these were classed as Neighbourhood Centres and assessed using the 95% number, then the subject property should obtain similar treatment.

[18] The Complainant argued that this fact highlighted the inequity inherent in the assessment by two groups. They noted that the existence of two similar groups (shopping center and retail) in the City Assessment department with two differing sets of variables is not equitable.

[19] In their rebuttal, the Complainants included further evidence of properties they said were similar to the subject but were assessed using the 95% factor. As well, they provided calculations (Ex. C3 pgs. 80 – 85) showing the "theoretical" difference in the assessments between the two assessment groups (Shopping Centres versus General Retail) when they valued the same property.

[20] The Complainant felt that all this evidence supported their request for equitable treatment using 95% of the area to calculate the assessed value for the subject.

Position of the Respondent

[21] The Respondent argued that the City has the authority to stratify properties in order to achieve the best result in establishing value. They indicated that, in this case, the City had established two groups, a general retail group, and a shopping center group. Each of these groups applied different attributes although some of these attributes were the same.

[22] For the Retail category, they indicated that, in general, the properties did not have an anchor tenant, and as well, often owners did not submit completed annual requests for information. As a result, the City (after completing a review), had adopted the practice of taking 95% of the gross building area (GBA) and then applying an income approach to value.

[23] For the Neighbourhood Shopping Centre category, the City provided a description (Ex. R1, pg. 173) which highlighted that there typically was an anchor tenant, and the Centre's were generally less than 250,000 square feet in size. The Neighbourhood Shopping Centre group typically used 100% of the net leasable area.

[24] This discrepancy in the areas used to calculate the value is the heart of the issue. However, the City argues that the discrepancy does not really exist. They pointed out in (Ex. R1, pg. 15) that many of the owners of Retail properties do not provide data to the City. The City completed a study and determined that 95% of the Gross Building Area (GBA) of these retail properties is about equal to the Net Leasable Area (NLA). Shopping Centres typically respond with the NLA numbers.

[25] Thus, based on their analysis, the City has determined that 95% of the GBA in Retail is roughly equal to 100% of GLA in Shopping Centres. From the City perspective, the methods yield an acceptable similar end result.

[26] In response to questions, the City indicated that the "integrity" of the City's classification process was validated annually by an audit, mandated in the legislation, and carried out by the Department of Municipal Affairs to ensure that the municipality met appropriate valuation standards.

[27] The Respondent acknowledged that the 2012 assessment for some of the properties had been calculated using the 95% figure, but they indicated that this was an error which had been corrected for the 2013 assessment. They provided argument (Ex. R1 pg. 14) and warranted that the three properties, noted by the Complainant, had only been classed as retail

for 2012, and had been classed as shopping center prior to 2012, and that the correction of the error had restored the shopping center classification in 2013.

[28] The Respondent asserted that the classification breakdown of the all of the properties was correct, and was done in accordance with their authority.

[29] In regard to the three properties from C2 with Neighbourhood Shopping Centre designation, they noted that the LUC (Land Use Classification) did not represent the valuation group used for assessment, and they affirmed that the three properties were in fact general retail for assessment purposes. They also pointed out that many of the properties in the Complainant's Exhibit C2 were dated and not from 2013, and thus, without further analysis, should not be relied upon.

[30] Finally, the Respondent noted that this issue had been heard previously by several CARBs this year and to their knowledge, all panels had rejected this argument. They provided copies of CARB decisions (Ex. R1 pg. 71 - 85) which rejected the argument.

[31] In summary, the Respondent requested confirmation of the assessment.

Decision on Issue 1: 95% Request

[32] The assessment for the subject is correctly calculated by using 100% of the (gross or net) leasable area.

Reasons for Issue 1:

[33] The CARB reviewed all of the evidence and argument.

[34] The CARB agrees that the City has the right to assign properties to different sub-classes, and that comes from the legislation. ***The Municipal Government Act*, RSA 2000, c M-26, Sec 297** (MGA). As well, Section 2 (c) of ***Matters Relating to Assessment and Taxation AR310/2009*** (MRAT)

[35] The CARB concluded it needed to consider two issues. The first was whether there was an equity issue comparing the subject with other properties. If there was found to be an equity issue, then further exploration would be warranted to establish how an equitable rate might be applied to the subject property given that the City had argued that 100% of NLA was equivalent to 95% of GBA, and therefore the rates were typically similar.

[36] Assessment equity has been defined and codified by many tribunals and courts to embody the concept of similar properties. The Respondent has indicated that the subject property is a Neighbourhood Shopping Centre while the comparables suggested by the Complainant are all classed by the City as General Retail. This, the Respondent argues, is a different classification which they are entitled to make and thus the subject and the comparables are not similar. The Complainant responds that regardless of the classification the properties are similar based on use and the type of tenancy.

[37] The Respondent attempted to explain the difference in the classification principally in terms of the size (the larger it is, the more likely it is to meet the classification as a shopping centre), the existence of an anchor tenant, and as well, arguably, the behavior of the class of owners in responding to requests for information. The Respondent says that the Shopping

Centre group represents a homogeneous category of properties which behave in a similar fashion. The CARB did not receive sufficient evidence to dispute this.

[38] The Respondent advised that generally smaller non-anchored developments typically fit into the General Retail category. The CARB did not receive sufficient evidence to dispute this.

[39] It was clear to the CARB that the City has two distinct groupings of properties. The Complainant was questioned as to whether they were arguing for a differing classification (i.e. from Shopping Centres to Retail or vice versa). They said they were not positioning their argument in that way, but rather simply that in their opinion the properties were similar and thus were entitled to similar treatment.

[40] The CARB noted that individual tenants can appear in different classifications, and in fact, it occurs all the time. It is possible that one tenant could appear in a Power Centre and in a Neighbourhood Shopping Centre in another location, and perhaps in a Regional Shopping Centre somewhere else. It is likely that in each of these properties, the tenant and the property will have different attributes. The typical rent may be different; the vacancy may be different; and the capitalization rate may differ for each type of property.

[41] The point here is to demonstrate that the type of tenant is not the determining factor in the assessment. Rather, it is the type of stratification which the City applies in their mass appraisal in order to group properties which exhibit the same factors/behaviour.

[42] The CARB did not receive sufficient evidence from the Complainant that the subject property was similar enough to warrant the same treatment as the property in another classification.

[43] The CARB concludes that because the properties are legitimately stratified in different classifications by the City, the subject property is not similar to the properties in Ex. C2 for purposes of requiring equitable treatment between them.

[44] In reaching this decision, the CARB considered the three properties classed as retail in 2012. The CARB accepts that this was an error on the part of the City. This conclusion is supported by the fact that the properties had been classed as Shopping Centres prior to 2012 and were returned to the shopping centre stratification for 2013. It should also be noted that the CARB attempted to replicate the treatment of the 3 properties in 2012 in order to understand the calculations. The CARB was unable to reach a common treatment in 2012 for the three properties.

[45] In addition, the CARB reviewed the three examples from C2 brought forward by the Complainant. The CARB acknowledges the wording on the Annual Realty Assessment Details form (on Ex. C2, pg. 22 for instance) specifies Neighbourhood Plaza Shopping Centre (or words to that effect) in several locations, but the CARB accepts the evidence of the City that those are Land Use or zoning classifications, not assessment groups.

[46] Finally, the CARB reviewed the explanation from the City that typically 95% of the GBA is equal to 100% of NLA. In order to assist in this review, subsequent to the hearing, the CARB asked the parties to submit a summary of the GBA, GLA, NLA and the Assessed area for the entire group of properties heard in the week of hearings.

[47] The response showed that the GLA, NLA and Assessed area were identical (within each property) from the City's perspective, across the whole 18 properties heard during the week.

[48] The CARB noted that the GBA was equal to, or in some cases, less than the GLA in 11 of the 18 properties. This was counter-intuitive.

[49] The CARB notes that this is far too few a number to make any determinative decisions, but if this tendency (the unreliability of the GBA numbers) is found in the General Retail Class of properties, it would appear that 95% of the GBA in General Retail, is much less than 100% of the GLA in the Shopping Centre Assessment group properties.

[50] This does not change the decision of the CARB, because the principal reason for the decision was the lack of similarity between the properties in the Shopping Centre class and the others in the General Retail class which is a prerequisite for a claim of equitable treatment. It does call into question the City's argument that 95% of the GBA in General Retail is equal to 100% of the GLA in Shopping Centres. As a result, the CARB put little weight on that argument.

Issue 2: What is the Best Evidence of the Capitalization Rate

Position of the Complainant

[51] The Complainant provided 24 sales of properties (with back up) to support their Capitalization Rate (cap rate) request (Ex. C1. Pg. 21). They acknowledged that six of the sales should be excluded for a variety of reasons.

[52] The Median and Average having excluded the six were 7.15% and 7.24% respectively. The assessment for the subject property was calculated based on a cap rate of 6.50%. They felt that their study provided good support for the use of a 7.00% cap rate for the subject.

[53] Upon questioning, the Complainant admitted that there was very little adjustment of the data. They suspected the Network (the data provider) had probably adjusted for large vacancies but probably not for date of sale, type of retail and/or size.

[54] The Complainant argued though that actual market sales should be used as they are the truest reflection of what was actually happening in the market.

[55] In their Rebuttal, the Complainant suggested that the nature of the adjustments made by the City in their cap rate adjustment model did not accurately reflect the market particularly where there were below market leases and other significant divergences from the norm.

[56] They asked that a cap rate of 7.00% be used for the valuation.

Position of the Respondent

[57] The Respondent provided a cap rate study utilizing 14 City-wide sales over the previous three years. This study produced a median of 6.18% and an average of 6.20% in support of the City cap rate of 6.50% used in the valuation (Ex. R1 pg 21).

[58] The Respondent was most critical of the Complainant's study because there were no adjustments used by the Complainant. The Respondent indicated that in order to get a truly valid cap rate analysis, the sales had to be adjusted to bring them to the valuation date. One

needed to use "typical" rental rates for the valuation year, and also to time adjust the sales price. One would then calculate the cap rate with this up to date data.

[59] The City provided an update to the Altus Cap Rate study where the cap rate was calculated using adjusted net operating income. They also noted that seven sales were common to both parties' analysis. This analysis was not time adjusted, (Ex. R1, pg 50)

[60] The Respondent provided summaries of cap rates from third party data suppliers (Ex. R1 pb 43 – 44). While acknowledging the weakness of 3rd party data, the City noted that they were using the 3rd party data to "support" not "establish" the cap rate calculation Thus they felt it was appropriate to cite the 3rd party evidence to show that their cap rate was well supported.

[61] They asked for confirmation of the 6.50% cap rate.

Decision

[62] The assessment for the subject is correctly calculated by using a capitalization rate of 6.5%.

Reasons for the Decision

[63] The CARB considered all of the evidence and argument on this issue.

[64] The CARB accepts the City's position that the correct method for calculating the cap rate for properties that have sold prior to the valuation date must use the "typical" rents for the subject for the valuation year. As well the "actual" sales price must be time adjusted to adequately reflect the value at the valuation date. This is accepted assessment methodology.

[65] The Complainant argued that this method of calculation was not appropriate in certain circumstances (for instance where there are very low rental rates). The Complainant did not offer a suitable alternative method of valuation other than using the actual data. The CARB concluded that the adjustments used by the City were necessary in order to "standardize" the values to a particular date (the valuation date), and allow an apples to apples comparison. Accordingly, the use of "straight sales data" was not given much weight.

[66] Finally, the CARB reviewed the City evidence (Ex. R1, pg. 21) which calculated "time adjusted" cap rates based on stabilized income. There were seven agreed sales in common between the parties. Using the "adjusted" cap rates (which the CARB found were methodologically correct) for the seven properties in common between the parties, the CARB calculated that the average and median of the common sales were 6.25% and 6.3% respectively. These calculations would support the City rate (6.50%).

[67] Accordingly, the CARB makes the decision as noted above.

Summary

[68] The CARB's conclusions on the two issues are:

a. The use of 100% of the assessed area for the valuation is correct for those properties valued by the Shopping Centre group.

b. The appropriate Cap Rate is 6.5% as used by the City because it contained appropriate adjustments.

[69] Accordingly, the assessment is confirmed at **$23,731,500**.

Dissenting Opinion

[70] There was no dissenting opinion.

Heard on August 21, 2013.

Dated this 17th day of September, 2013, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Cameron Ashmore
John Ball
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.