Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01137

Assessment Roll Number: 1160332
Municipal Address: 6410 28 AVENUE NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Anthem KRC Millwoods Mainstreet Ltd, as represented by Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
Brian Hetherington, Board Member
Jack Jones, Board Member

Procedural Matters

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

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

[3] This complaint was one of a number (7) heard on September 16th and 17th. All of these complaints had issues in common. The two issues common to most complaints were firstly, the use of a 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 9970356, the first hearing of the week (heard September 16th). The parties and the panel carried forward all the evidence and argument and questions on these two issues for the two days of hearings.

[5] In spite of the previous paragraphs, the complaint for the subject had one issue; that being the 95% Issue.

Preliminary Matters

[6] At the hearing, both parties agreed to a change in the allocation of space. This is best outlined in Ex. C1 page 13. As a result of this reallocation, the City recommended a reduced assessment from $34,744,000 to **$34,493,500**.

Background

[7] The subject property was built in 1992 and is classified as a Neighbourhood Shopping Centre known as Millwoods Mainstreet located in south east Edmonton. It consists of 131,418 square feet of leasable area on 565,926 square feet of land and has been assessed utilizing the income approach to valuation for 2013 at **$34,744,000.**

Issue(s)

[8] The Complainant initially listed ten issues in their disclosure. Upon questioning at the outset of the hearing they identified one issue 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?

Legislation

[9] 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.

s 289 (1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

s 293 (1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

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 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

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

Position of the Complainant

[10] 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.

[11] 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.

[12] In addition, the Complainant highlighted three examples showing that in 2012, properties were assessed using 95% of the City Assessed Area (See Ex. C1, pgs. 76 - 84). 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 the 2012 Assessment (prepared by the General Retail Valuation Group

using the 95% number) was 6.5% lower than the number produced by the Shopping Centre Valuation Group for the same year.

[13] They highlighted properties (Ex C2, pgs. 1 - 2) 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.

[14] 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 centre and retail) in the City Assessment department with two differing sets of variables is not equitable.

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

Position of the Respondent

[16] 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 centre group. Each of these groups applied different attributes although some of these attributes were the same.

[17] 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 had adopted the practice of taking 95% of the gross building area (GBA) and then applying an income approach to value.

[18] For the Neighbourhood Shopping Centre category, the City provided a description (Ex. R1, pg. 123) which highlighted that there typically was an anchor tenant, and the Centres were generally less than 250,000 square feet in size. The Neighbourhood Shopping Centre group typically used 100% of the net leasable area.

[19] 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. 10) 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.

[20] 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.

[21] The Respondent acknowledged that the 2012 assessment for three 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 evidence (Ex. R1 pgs. 15 - 21) which showed that the three properties, noted by the Complainant, had only been classed as retail for 2012, and had been classed as shopping centre prior to 2012, and that the correction of the error had restored the shopping centre classification in 2013.

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

[23] In regard to the properties in C2 the Respondent noted that the LUC (Land Use Classification) did not represent the valuation group used for assessment, and they affirmed that the properties were in fact general retail for assessment purposes.

[24] 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 three CARB decisions (Ex. R1 pg. 89 - 115) which rejected the argument.

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

Decision on Issue 1: 95% Request

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

Reasons for Issue 1:

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

[28] 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)

[29] 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.

[30] 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.

[31] 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.

[32] 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.

[33] It was clear to the CARB that the City has two distinct groupings of properties. The Complainant did not argue for a differing classification (i.e. from Shopping Centres to Retail or vice versa). 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.

[34] 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.

[35] 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.

[36] 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.

[37] 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.

[38] 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.

[39] In addition, the CARB reviewed 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 argument of the City that those are Land Use or zoning classifications, not assessment groups.

[40] 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.

Decision

[41] The Complaint is allowed in part, and the Assessment is reduced from $34,744,000 to **$34,493,500** representing the value, recommended by the City, based on the revised space allocation.

Dissenting Opinion

[42] There was no dissenting opinion.

Heard on September 16, 2013.

Dated this 26th day of September, 2013, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Jordan Nichol, Altus Group
for the Complainant

Amy Cheuk, Law Branch, City of Edmonton
Frank Wong, Assessor, 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.