Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01144

Assessment Roll Number:	10003088
Municipal Address:	11104 Ellerslie Road SW
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
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. The Board Members indicated there was no bias in the matter before them.

Preliminary Matters

[2] There were no preliminary issues before the Board.

Background

[3] The subject property is located at 11104 - Ellerslie Road and is known as 'Save on Food Ellerslie'. It is classified as a neighbourhood shopping centre, was constructed circa 2006. The City assessed area is 89,588 sq ft with a land size of 387,393 sq ft. The subject was assessed by the Income Approach to Value, for the 2013 assessment of $29,074,500.

Issue(s)

[4] 1. Is the subject assessment equitable with assessments of similar properties?

(a) Should the subject be given the 95% size adjustment?

2. Is the assessment capitalization rate of 6.5% too low?

3. Is the restaurant space lease rate of $34.00 /sq ft too high?

Legislation

[5] 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.

[6] The *Matters Relating To Assessment and Taxation Regulation* (MRAT), AR 220/2004 reads:

> **Mass appraisal**
>
> 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

[7] The Complainant presented written documentary evidence (Exhibit C-1, 103 pages), 95% Rental Area Analysis (C-2, 438 pages), Rebuttal document (C-3, 136 pages) and oral argument for the Board's review and consideration.

Issue 1(a). Should the subject be given the 95% size adjustment?

[8] The position of the Complainant is that the assessment of the subject is not fair and equitable and the assessment is excessive. The Complainant argued that all retail properties should be assessed using the same method, and that how large the assessment is or which assessor assesses the property should not affect the assessment method.

[9] 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.

[10] The Complainant stated that the Respondent categorized retail assessment in two groups, one used 100% of rent roll size for assessment purposes, and the other group used 95% of the leasable size (C-1, page 9). The Complainant argued that the subject property was treated inequitably because it was assessed using 100% of the rent roll area.

[11] The properties listed in C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes which indicated 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 to support a 95% adjustment.

[12] The Complainant provided the City's Assessment Record Valuation Summary and the Assessment Proforma for the subject which indicated the assessment area of the subject was 89,588 sq ft. The Complainant applied the 95% adjustment to the assessment area to reach 85,258 sq ft that was used in the requested assessment value of $25,271,500.

Issue 2. Is the assessment capitalization rate too low?

[13] The Complainant submitted that the 6.5% assessment capitalization rate was too low and stated that a capitalization rate of 7.0% was more appropriate.

[14] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales, (C-1, page 27), with the respective supporting network data sheets. The sales produced an average capitalization rate of 7.15% and a median of 7.04%.

[15] 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, (C-1, page 27). Excluding the 6 sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15% which the Complainant stated supported the requested 7.0% capitalization rate.

[16] The Complainant explained that the sales provided in the capitalization rate chart were sales within the last 2 years and was a true reflection of the market using actual net operating income and unadjusted sales prices which resulted in a leased fee capitalization rate of 7%.

Issue 3. Is the restaurant lease rate too high?

[17] The Complainant submitted that the assessed restaurant space lease rate of $34.00/sq ft was excessive and that $30.00/sq ft was more reflective of the market.

[18] The Complainant argued that the City's disclosure for property roll #3907771 indicated that only two restaurant rates were used, $26/ sq ft and $30/ sq ft hence, the current assessment of $34/ sq ft was inequitable. (C-1, page 13).

[19] The Complainant provided an assessment comparables table with ten CRU-Restaurant spaces that had all been assessed at $30/ sq ft. (C-1, page 21).

[20] The Complainant requested the Board to reduce the Restaurant space assessment to $30/ sq ft.

[21] The Complainant requested a 2013 assessment of $25,271,500, arrived at using 95% of the leasable area (85,258 sq ft), $30/ sq ft rental rate for the restaurant space ft and a capitalization rate to 7%. (C-1, page 14).

Complainant's Rebuttal

[22] The Complainant presented Rebuttal evidence (C-3, 136 pages).

[23] The Complainant separated the ten shopping centre sales from the chart of 24 capitalization rate sales, and excluded the retail properties (C-1, page 27) and further excluded two more sales as one was encumbered with a 40 year lease at $1 per year for a part of the property; the second sale had not been listed on the open market. Analysis of the remaining eight shopping centre sales showed a median capitalization rate of 7.14% and this was based on the Network document information. The corresponding median rate based on a Fee-Simple NOI as provided by the City was 6.62% and with a time adjusted sales price was 6.47%. (C-3, page 4).

[24] The Complainant submitted that the Respondent's capitalization rate analysis was flawed and provided Network Data sheets, Assessment Detail Reports, City of Edmonton Valuation Summaries and rent rolls to support the position.

Position of the Respondent

[25] The Respondent presented written evidence including an Assessment Brief and a Law and Legislation brief (Exhibit R-1, 191 pages and R-2, 5 pages) and oral argument for the Board's review and consideration.

Issue 1(a). Should the subject be given the 95% size adjustment?

[26] The Respondent submitted (R-1, pages 10-11), that there were 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 gross leasable area of the standard retail properties for assessment purposes.

[27] The Respondent indicated that the RFI return rate for shopping centres was quite high, and the actual gross leasable area of properties can be ascertained for assessment purposes from the rent roll. The subject property is categorized as a shopping centre and was assessed using 100% of gross leasable area.

[28] The Respondent provided additional details (R-1 pages 13-14), to the Complainant's Rental Area Analysis of 92 properties presented in C-2. The Respondent added a column and noted the valuation group for each of the properties listed; 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. The subject is a neighborhood shopping centre and was valued at 100% of the gross leasable area. Therefore the Respondent pointed out that the Complainant's Rental Area Analysis properties were not comparable.

Issue 2. Is the assessment capitalization rate too low?

[29] In Exhibit R-1, page 22, the Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties (C-1 page 27). The comments indicated that there were only 10 shopping centre sales listed. The Respondent included eight in the capitalization rate analysis (R-1, page 23). The other two shopping centre sales were considered invalid as: one consisted of a multiple parcel sale and the other was burdened with a 40 year lease at $1 per year.

[30] The Respondent's City of Edmonton cap rate review (R-1, page 23), utilized eight shopping centre sales from the Complainant's chart of 24 sales comparables. For comparison, the Respondent listed the median cap rate of the eight sales comparables as follows:

a. Actual NOI - not time adjusted sale price 6.75%

b. Fee Simple NOI - not time adjusted sale price 6.72%

c. Fee Simple NOI - time adjusted sale price 6.47%

The Respondent stated that the assessment capitalization rate of 6.5% was supported as it was based on a fee simple NOI and time adjusted sale price.

[31] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 26) of 14 properties, with supporting City sales analysis sheets. The sale dates were within 3 years of the valuation date and reflected 2013 time adjusted sales prices and 2013 assessed NOIs (which used typical lease rates of similar properties). The comparables reflected a fee simple capitalization rate that indicated a median of 6.18% and an average of 6.20%. The Respondent explained that legislation identifies fee simple estate value (MRAT s2), as the basis for assessment.

[32] The Respondent asserted that third party capitalization reports were included only for comparison and trending, and that the assessment capitalization rate was within the comparative ranges. The CBRE report indicated an Edmonton Neighborhood Retail capitalization rate of 6-6.50% (R-1, page 47), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25% - 6.75% (R-1, page 46).

Issue 3. Is the restaurant lease rate too high?

[33] The Respondent advised the Board that there was a recommendation that the current assessment of the subject be reduced to $28,597,500 to correct an error in the assessment lease rate for the restaurant space of $34/ sq ft. The Respondent acknowledged this error and corrected the lease rate to $30/ sq ft. (R-1, page 3).

[34] The Respondent requested the Board to accept the recommended new 2013 assessment of $28,597,500.

Decision

[35] The decision of the Board is to confirm the subject property's 2013 recommended assessment of $28,597,500.

Reasons for the Decision

Issue 1(a). Should the subject be given the 95% size adjustment?

[36] The Board referred to s2 *MRAT*, that states, Mass Appraisal is the legislated methodology for assessment. The Board is of the opinion that the Income Approach to value is the appropriate valuation method.

[37] The Board accepted the premise of property stratification for the 2013 assessment (R-1, pages 162-169), and that each property is further stratified showing similarities within the group. The subject is in the Neighborhood Shopping Centre group.

[38] The Board accepted the Respondent's explanation and reasons for the use of different approaches to determining the GLA of the two retail groups (i.e. retail and shopping centre). The Board is satisfied that there is ample information returned to the City in response to the annual RFI for the shopping centre group and that the gross leasable area can be ascertained for assessment purposes from the rent roll. The Board accepted 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 gross leasable area for assessment purposes.

[39] 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 the shopping centre group of properties was not treated fairly and equitably. The Board did not accept that the 95% method of calculating size should be applied to both groups of retail properties.

[40] The Board accepted the Respondent's retail and shopping centre grouping for assessment purposes, and therefore finds the comparables inappropriate as they are a dissimilar grouping to the subject.

Issue 2. Is the assessment capitalization rate too low?

[41] The Board finds that the Complainant has not provided sufficient evidence to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect or inequitable.

[42] The Board noted that of the Complainant's 24 sales comparables (C-1, page 27),14 were categorized as Retail Plaza or General Retail and were dissimilar to the subject; and 10 were shopping centres which were considered unreliable as the capitalization rates were lease fee rates derived using actual NOI rather than a stabilized NOI.

[43] The Board gave greater weight to the Respondent's capitalization rate review of the eight sales (R-1, page 23), which were included in the Complainant's shopping centre comparables and this indicated a fee simple capitalization rate of 6.47%. The Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 26) of 14 sales comparables indicated an average of 6.20% and a median of 6.18%, which also supported the assessment capitalization rate of 6.50%.

[44] The Board accepts the Respondent's method of calculating a capitalization rate and that it meets the legislative requirement of determining a fee simple capitalization rate. The Respondent derived the capitalization rate using typical market conditions and applied this

fee simple capitalization rate to a typical NOI in the assessment of a property. The capitalization rate was applied in the same manner as it was derived.

[45] The Board finds that the Respondent's 6.5% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 26) and is an appropriate rate to value the subject property.

Issue 3. Is the Restaurant lease rate excessive?

[46] The Board accepts the Respondent's acknowledgement of an error in the original assessment and the necessary correction in the recommended new assessment of $28,597,500 based on a corrected lease rate of $30/ sq ft for the Restaurant space.

[47] The Board finds the subject's recommended 2013 assessment of $28,597,500 is correct, fair and equitable.

Dissenting Opinion

[48] There was no dissenting opinion.

Heard on August 27, 2013.

Dated this 20th day of September, 2013, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Amy Cheuk
Frank Wong
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.