Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01150

Assessment Roll Number:	10053388
Municipal Address:	2004 38 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
Harold Williams, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members stated they had no bias on this file.

Background

[2] The subject property is a shopping centre grouped by the City of Edmonton as a power centre, located at 2004 - 38 Avenue NW. The property contains seven buildings, has an assessed area of 162,223 square feet and is situated on a 659,934 square feet site. The property was constructed circa 2006 through 2009 and the 2013 assessment is $45,855,000.

Issue(s)

[3] Is 6.50% the appropriate capitalization rate for the subject property?

[4] Is applying 95% of the gross building area appropriate for determining the net operating income for the subject property?

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,* AR 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.

Position of the Complainant

[7] The Complainant presented written evidence containing 126 pages (Exhibit C-1), a 438 page 95% Rental Area Analysis (Exhibit C-2), a Rebuttal document containing 141 pages (Exhibit C-3) and oral argument for the Board's review and consideration.

Issue 1: Is 6.50% the appropriate capitalization rate for the subject property?

[8] The Complainant's position is that the 6.5% assessment capitalization rate is too low and that a capitalization rate of 7.0% is more appropriate.

[9] The Complainant provided a Capitalization Rate Sales chart containing 24 comparable sales (C-1, page 19), with their respective supporting data sheets from the "Network". The sales produced an average capitalization rate of 7.15% and a median of 7.04%.

[10] The Complainant 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 19). Excluding the 6 sales, the average of the capitalization rates for the remaining sales increased to 7.24% and the median was 7.15% which, the Complainant stated, supported the requested 7.0% capitalization rate.

[11] The Complainant explained that the sales provided in the capitalization rate chart were sales within the last 2 years which was a reflection of the market using actual net operating income and actual sales prices.

Issue 2: Is applying 95% of the gross building area appropriate for determining the net operating income for the subject property?

[12] The Complainant stated that the subject property is not treated fairly as similar properties are getting preferential treatment by being assessed at 95% of their actual value based on their proforma sizes as calculated by the City (C-1, page 8). The Complainant argued that all retail properties should be assessed using the same method, and that the amount of the

assessment or which assessor assesses the property should not affect the assessment method (C-1, page 13).

[13] The Complainant stated that the Respondent categorized retail properties in two groups; one assessed at 100% of rent roll size and the other group assessed at 95% of the leasable size (C-1, page 8). The Complainant argued that the subject property was treated inequitably because it was assessed using 100% of the rent roll area.

[14] The Complainant provided a Fairness and Equity 95% of Rental Area Analysis (C-2), which listed 92 properties and included the City of Edmonton Request For Information (RFI), rent rolls, and Assessment Detail Reports on each property.

[15] The properties listed in C-2 indicated that the ratio of the City Assessment Proforma sizes to the City Gross sizes resulted in 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 that the two ratios support a 95% adjustment.

[16] The Complainant requested that the assessment be reduced to $40,445,000.

[17] The Complainant also presented Rebuttal evidence containing 141 pages (Exhibit C-3) to demonstrate that the submission presented by the Respondent does not support the assessment for the subject property.

[18] The Complainant provided third party information (Exhibit C-3) relative to the Respondent's Shopping Centre Capitalization Rate Analysis and questioned the validity of the sales presented by the Respondent. Specifically, some sales included additional land, some had differences in size and rental income, some had a high office component and others were part of a portfolio purchase.

[19] The Complainant identified ten shopping centre sales from the chart of 24 capitalization rate sales presented in C-1, page 20. The Complainant excluded two sales as one was encumbered with a 40 year lease at $1 per year for a part of the property and the other had not been listed on the open market. Analysis of the remaining eight sales indicated a median capitalization rate of 7.14%, based on the "Network" document information. The corresponding median rate provided by the City, based on a fee-simple Net Operating Income (NOI) was 6.62% and with a time adjusted sales price of 6.47% (C-3, page 2).

<u>Position of the Respondent</u>

[20] The Respondent presented written evidence including an Assessment Brief and a Law and Legislation brief containing 195 pages (Exhibit R-1) and oral argument for the Board's review and consideration.

Issue 1: Is 6.50% the appropriate capitalization rate for the subject property?

[21] The Respondent commented on the Complainant's capitalization rate sales comparables and indicated their valuation groups. The Respondent showed that there were only 10 shopping centre sales among the comparables (Exhibit R-1, page 23). The Respondent used 8 of the sales in a capitalization rate analysis (R-1, page 24). The other two 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.

[22] The Respondent listed the median capitalization 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.

[23] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 27) 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.

[24] The Respondent advised the Board 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 6.00% - 6.50% (R-1, page 51), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25% - 6.75% (R-1, page 50).

Issue 2: Is applying 95% of the gross building area appropriate for determining the net operating income for the subject property?

[25] The Respondent submitted 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 use different approaches 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 insufficient numbers of responses to the City's RFI 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. The 95% methodology recognizes normally unleasable areas such as mechanical or entrance areas.

[26] The Respondent indicated that shopping centres are professionally managed and maintain complete records therefore the return rate is 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.

[27] The Respondent provided additional details (R-1, pages 14 and 15) 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.

[28] The Respondent requested that the Board confirm the 2013 assessment in the amount of $45,855,000.

Decision

[29] The decision of the Board is to confirm the subject property's 2013 assessment at $45,855,000.

Reasons for the Decision

Issue 1: Is 6.50% the appropriate capitalization rate for the subject property?

[30] The Board places greater weight on the Respondent's capitalization rate review of eight sales (R-1, page 24), which were included in the Complainant's shopping centre comparables and indicated a fee simple median capitalization rate of 6.47%. The Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 27) of 14 sales comparables indicated an average of 6.20% and a median of 6.18%, all of which support the assessment capitalization rate of 6.50%.

[31] The Board accepts the Respondent's method of calculating a capitalization rate noting that it met 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.

[32] The Board notes that of the Complainant's 24 sales comparables (C-1, page 19), 14 were categorized as Retail Plaza or General Retail (R-1, page 23) and for that reason were dissimilar to the subject. Ten were shopping centres and were considered unreliable as the capitalization rates were lease fee rates derived from the use of actual NOI rather than a stabilized NOI.

[33] The Board finds that the Respondent's 6.50% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 27) and is the appropriate rate to value the subject property.

Issue 2: Is applying 95% of the gross building area appropriate for determining the net operating income for the subject property?

[34] The Board accepts the Respondent's explanation and reasons for the use of different approaches to determining the gross leasable area of the two retail groups (i.e. retail versus 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 notes that there are fewer 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.

[35] 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 properties.

[36] The Board notes that the Complainant's comparables are stratified in the retail plaza group and the subject property is stratified within the shopping centre group of properties. Equity means that similar types of properties must be assessed in a similar manner. The evidence of the Respondent shows that shopping centres and properties in the retail valuation group are not being assessed in the same way because they are not similar properties, and the information that is provided to the City for these two groups of properties is different.

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

Dissenting Opinion

[38] There was no dissenting opinion.

Heard on November 4, 2013.

Dated this 3rd day of December, 2013, at the City of Edmonton, Alberta.

For Harold Williams, 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.