Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01151

Assessment Roll Number:	10053392
Municipal Address:	4016 17 STREET 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] 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.

Background

[2] The subject property is located at 4016 – 17 Street NW in the Larkspur subdivision of Edmonton and is known as 'The Meadows'. Constructed circa 2007, it comprises seven buildings and is grouped as a Neighborhood Shopping Centre. The City assessed area is 48,413 sq ft with a land size of 343,701 sq ft. The subject was assessed using the Income Approach to Value, for the 2013 assessment of $25,152,500.

Issue(s)

[3] 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 excess land portion assessed excessively at $3,451,000?

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**

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

[6] The Complainant presented written documentary evidence (Exhibit C-1, 139 pages), 95% Rental Area Analysis (C-2, 438 pages), Rebuttal document (C-3, 141 pages) and oral argument for the Board's review and consideration.

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

[7] The position of the Complainant is that the assessment of the subject is not fair and equitable and is excessive. 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.

[8] 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.

[9] 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.

[10] The properties listed in C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes, which 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 there was a close correlation between the two ratios to support a 95% adjustment.

[11] 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 to be 48,413 sq ft. The Complainant argued that the subject property should be assessed at 95% of its size.

Issue 2: Is the assessment capitalization rate too low?

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

[13] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales (C-1, page 20), with the respective supporting Network data sheets. The sales produced an average capitalization rate of 7.15% and a median of 7.04%.

[14] The Complainant further submitted that of the 24 sales presented, 6 should be excluded as they were invalid for various reasons; an eight property portfolio sale, an old lease, leases with upside potential and an outlier (C-1, page 20). 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.

[15] The Complainant explained that the sales provided in the capitalization rate chart were sales within the last 2 years and provided 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%.

Complainant's Rebuttal

[16] In rebuttal (C-3), the Complainant separated the ten shopping centre sales from the chart of 24 capitalization rate sales, excluded the retail properties (C-1, page 20) 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 and 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 time adjusted sales price, was 6.47%. (C-3, page 2).

[17] 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.

Issue 3: Is the excess land portion assessed excessively at $3,451,000?

[18] The Complainant submitted that the assessed excess land rate of $23.00/sq ft is excessive and that $17.00/sq ft is more reflective of the market.

[19] The Complainant provided a table of 12 land sales in support of the request for a lower excess land assessment. All of these 12 sales were said to be from the south side of the city; same as the subject and occurred between January 2006 and November 2011.

[20] The time adjusted sales price in respect of these comparable sales ranged from $14.66/ sq ft to $23.22/ sq ft. The subject is assessed at $23/ sq ft (C-1, page 19).

[21] The Complainant stated that the land sales comparables #1, #2 and #3 were closest in proximity to the subject and supported a request for lower assessment of the subject at $17/ sq ft (C-1, page 19).

[22] The Complainant requested the Board to reduce the excess land assessment to $17/ sq ft for a total of $2,550,833 (C-1, pages 13, 14 and 19).

Position of the Respondent

[23] The Respondent presented written evidence including an Assessment Brief and a Law and Legislation brief (Exhibit R-1, 200 pages) and oral argument for the Board's review and consideration.

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

[24] The Respondent submitted (R-1, pages 11-12), that there are two separate valuation groups for retail; one is for standard retail/retail plazas and the other is for shopping centres.

[25] 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 Request for Information (RFI) and consequently, the partial or incomplete information could not be relied upon. 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 non-leasable areas such as mechanical or entrance areas.

[26] The Respondent indicated that the shopping centres are professionally managed and maintain complete records, therefore, the RFI 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 the gross leasable area.

[27] The Respondent provided additional details (R-1, pages 14-15), to the Complainant's Rental Area Analysis of 92 properties presented in Exhibit 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 properties included in the Complainant's Rental Area Analysis were not comparable with the subject property.

Issue 2: Is the assessment capitalization rate too low?

[28] In Exhibit R-1, page 23, the Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties (C-1 page 20). The comments indicated that there were only 10 shopping centre sales listed. The Respondent included eight in the capitalization rate analysis (R-1, page 24). 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.

[29] The Respondent's cap rate review (R-1, page 24), 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.

[30] 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.

[31] 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 51), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25% - 6.75% (R-1, page 50).

Issue 3: Is the excess land portion assessed excessively at $3,451,000?

[32] The Respondent provided working details of how the 150,049 sq ft area of the excess land was calculated (R-1, page 10). The Complainant was in agreement with the city's calculations of the excess land size.

[33] The Respondent provided a table of four land sales comparables, including the January 2006 sale of the entire subject parcel, in support of the subject assessment at $23/ sq ft (R-1, page 66). The land lot size ranged between 36,624 sq ft and 744,440 sq ft while the time adjusted sale price ranged between $16.90/ sq ft and $29.87/ sq ft. Excluding the Jan 2006 sale of the subject, the other sales occurred between July 2009 and February 2010.

[34] The Respondent stated that the comparable sale #3 was in respect of a lot size that was similar to the subject lot size and this Jan 2010 sale at $25.01/ sq ft, supported the subject assessment of $23/ sq ft (R-1, page 66).

[35] The Respondent argued that the sale of the subject parcel of land quoted by the Complainant (#3 on the table at page 19 of C-1), occurred in 2006 when this was still raw agricultural land; that bore no resemblance to the state of development surrounding the subject excess land parcel.

[36] The Respondent stressed that the three comparable land sales were in close vicinity of the subject, were recent sales, were in respect of smaller comparable sized parcels, and should be relied upon to establish the assessment value of the subject land lot (R-1, page 66).

[37] The Respondent requested the Board to confirm the assessment at $25,152,500.

Decision

[38] The decision of the Board is to confirm the subject property's 2013 assessment of $25,152,500.

Reasons for the Decision

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

[39] The Board referred to s2 *MRAT* that provides for the use of Mass Appraisal as a methodology for assessment. The Board is of the opinion that the Income Approach to value is the appropriate valuation method.

[40] The Board accepted the premise of property stratification for the 2013 assessment (R-1, pages 170-179), and that each property is further stratified showing similarities within the group. The subject is in the Neighborhood Shopping Centre group.

[41] The Board accepted 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 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 is insufficient number of 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.

[42] 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.

[43] The Board accepted 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.

[44] The Board noted that the 95% size adjustment requested by the Complainant was not reflected in the Complainant's revised assessment proforma included in the evidentiary package (C-1, page 13). The Respondent's assessment of $25,152,500 was based on a building size of 48,413 sq ft and the Complainant's 'Requested Market Value Proforma' had

also used the same building size of 48,413 sq ft and not a corresponding 95% figure of this size.

Issue 2: Is the assessment capitalization rate too low?

[45] 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.

[46] The Board noted that of the Complainant's 24 sales comparables (C-1, page 20),14 are categorized as Retail Plaza or General Retail and are dissimilar to the subject. Ten are shopping centres which are considered unreliable as the capitalization rates were lease fee rates derived using actual NOI rather than a stabilized NOI.

[47] The Board gave greater weight to the Respondent's capitalization rate review of the eight sales (R-1, page 24), 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 27) 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%.

[48] 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.

[49] 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 27) and is an appropriate rate to value the subject property.

Issue 3: Is the excess land portion assessed excessively at $3,451,000?

[50] The Board accepts the Respondent's argument that the time adjusted sale price of $16.90/ sq ft, based on the 2006 sale of the subject property, reflected the sale price of undeveloped parcel of land, and not the market value of the parcel in the midst of extensive development that has taken place since the original sale date of Jan 2006.

[51] The Board finds the Respondent's land sales comparables more indicative of the market conditions on the valuation day, as these were in respect of more recent sales of comparable sized lots in the immediate vicinity of the subject property.

[52] The Board finds the subject's 2013 assessment of $25,152,500 is correct, fair and equitable.

Dissenting Opinion

[53] 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.