Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01207

Assessment Roll Number: 6690994
Municipal Address: 1 Londonderry Mall NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Jerry Krysa, Presiding Officer
James Wall, Board Member
Randy Townsend, Board Member

Procedural Matters

[1] The parties to the complaint indicated that they have no objection to the composition of the Board, and the members of the Board declared no bias in the matter of this complaint.

Preliminary Matters

[2] At the commencement of the hearing the parties advised the Board that as a result of pre-hearing negotiations, the Respondent will abandon a request to increase the assessment and concede to the Complainant's issue in respect of the market rent rate applicable to storage space within the improvement. As a result of this change, the Respondent proposes a revised assessment in the amount of $141,500,500. In turn, the Complainant will abandon all other issues with the exception of the two issues set out in paragraph 5 below.

Background

[3] The subject property is a 38.483 acre parcel of land, improved with a regional shopping centre development known as Londonderry Mall. The improvement, originally constructed in 1972 and expanded in 1984, contains a total leasable area of 765,505 square feet, plus significant interior common areas.

[4] The subject has been assessed by means of the income approach to value at $141,878,500; of which 6.334% has been exempted from taxation as a result of occupancy by various tenants eligible for a tax exemption pursuant to current legislation.

Issues

[5] Issue 1. Is the assessment of the subject property equitable in relation to the assessments of other retail properties?

Issue 2. What proportion of the subject property is exempt from taxation under Part 10 of the *Municipal Government Act,* RSA 2000, C. M-26 (the "*Act*")?

Legislation

The *Municipal Government Act*, RSA 2000, c M-26, reads:

[6] **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;

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.

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.

[7] **363(1)** The following are exempt from taxation under this Division:

(c) property held by and used in connection with a branch or local unit of the Royal Canadian Legion, the Army, Navy and Air Force Veterans in Canada or other organization of former members of any allied forces;

[8] **365(1)** Property that is licensed under the *Gaming and Liquor Act* is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364 and any other Act.

[9] **368(3)** If the taxable status of a property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

Issue 1. Is the assessment of the subject property equitable in relation to the assessments of other retail properties?

Summary of Parties' Positions

[10] The Complainant argues that the assessment of the subject property is not fair and equitable with similar retail properties that are assessed at 95% of their actual value. The Complainant submits that the Respondent has stratified similar retail properties into two separate groups, and the assessments for the two groups of properties are prepared inconsistently by different valuation groups (assessors); with the result that one group of properties stratified as "Retail", is assessed preferentially in relation to the other group, "Shopping Centres", to which the subject belongs.

[11] The Complainant submits that the assessment of the subject property is founded on 100% of the net leasable area of the improvement as indicated on the subject's rent roll. The Complainant argues that in contrast, the assessments of similar properties stratified as Retail are based on 95% of the leasable size of the property, resulting in assessments that reflect 95% of the actual value of the properties. The Complainant maintains that to be equitable, the subject's net leasable areas should be adjusted by -5%, resulting in a total assessment of $134,425,000.

[12] In support of the argument, the Complainant provided a summary of 92 Retail properties to demonstrate that the leasable areas assessed by the Respondent reflect, on average, 94% of the total leasable area indicated on the properties' rent rolls; with a corresponding median ratio of 95%. The summary also demonstrates that the leasable areas assessed by the Respondent reflect, on average, 92% of the gross building size indicated on the Respondent's records, with a corresponding median ratio of 94% (C2, pp.1-2). Supporting documentation of each of the properties' rent rolls and assessed areas was provided (C2, pp.3-438).

[13] The Complainant further provided two of the Respondent's valuation reports for each of three properties that were inadvertently assessed by both valuation groups in 2012, to demonstrate the following variance in assessed areas and assessments (C1, pp.68-76):

Tax Roll #: Valuation Group	**3924230**		**9943060**		**9943061**	
"Retail"	4,575 Sq.Ft	$1,420,000	43,290 Sq.Ft.	$8,654,500	27,256 Sq.Ft.	$5,774,000
"Shopping Centre"	4,712 Sq.Ft.	$1,778,000	47,318 Sq.Ft.	$9,220,000	28,247 Sq.Ft.	$8,004,500
Variance	+137 Sq.Ft.	**+25.2%**	+4,028 Sq.Ft	**6.5%**	+ 991 Sq.Ft.	**38.5%**

[14] The Respondent argues that the subject property is correctly and equitably assessed in relation to similar shopping centre properties, as an identical methodology was applied to determine the net leasable area of all properties in the Shopping Centre inventory.

[15] The Respondent confirms the Complainant's assertion that the assessment of the subject property is founded on the total net leasable area of the property, as determined from rent roll information received in response to requests for information made pursuant to section 295 of the *Municipal Government Act*.

[16] The Respondent submits that the properties stratified in the shopping centre valuation group are typically professionally managed, and as a result, relevant rent roll and financial information is almost always provided in response to the legislated requests for information. In contrast, the typically smaller properties in the Retail stratum are most often not professionally managed, and are frequently owner occupied; consequently the compliance rate to the legislated requests for information is low and the information supplied is frequently incomplete or inaccurate. The Respondent submits that as a result of the lack of adequate information for the Retail stratum of properties, a formula that estimates the net leasable area of Retail properties from the gross building area on record is employed, as set out below:

Main Floor	95% of Gross Floor Area
Upper Floors	90% of Gross Floor Area
Basement	90% of Gross Floor Area

[17] The Respondent argues that notwithstanding the differing methodologies employed to determine net leasable areas, the subject property is equitably assessed in relation to the properties valued by the Retail valuation group. The Respondent maintains that the formula employed by the Retail valuation group estimates the typical net leasable area of each Retail property in a mass appraisal approach, and the resulting assessments are founded on the total net leasable area; as are the properties stratified in the shopping centre valuation group.

[18] In response to the three duplicate 2012 assessments provided by the Complainant at pages 68-76 of exhibit C1, the Respondent concedes that the properties were undervalued for the 2012 taxation year as a result of being inadvertently transferred from the Shopping Centre inventory to the Retail inventory without updating the size of the properties to reflect their gross building areas. The Respondent submits that the three properties have since been returned to the Shopping Centre inventory for 2013, and the assessments are again properly founded on the total net leasable area.

Findings and Reasons: Issue 1

[19] The Board finds that the subject property is equitably assessed in relation to similar properties in the Shopping Centre and Retail stratifications.

[20] The Board rejects the Complainant's argument that similar Retail properties are assessed at 95% of their actual value. Although the Complainant provided numerous examples of net leasable area variances, the Complainant failed to provide any market evidence to demonstrate that the resulting assessments of those (Retail) properties are below market value, and are therefore inequitable with the assessment of the subject property. Further, the Board is not persuaded that a discrepancy in one attribute of a property necessarily results in an assessment inequity.

[21] The Board further applies little weight to the Complainant's analysis, for the reason that twenty four of the Complainant's ninety two examples specify a gross building size that is exceeded by the indicated rent roll area; however, the Complainant conceded that he made no investigation, and offered no explanation of the anomaly.

Issue 2. What proportion of the subject property is exempt from taxation under Part 10 of the *Municipal Government Act,* RSA 2000, C. M-26 (the "*Act*")?

Summary of Parties' Positions

[22] The Complainant argues that 6.833% of the subject property is exempt from taxation, in contrast to the current 6.334% exempt proportion determined by the Respondent.

[23] The Complainant maintains that the total leasable area of the subject property is 762,838 square feet, and the following areas should be exempt from taxation (C1, p.33):

Tenant	Lease Area (Sq.Ft.)	Proportion of Total Area
Living Waters Christian Centre	25,000	3.277%
Edmonton Public Library	15,419	2.021%
Royal Canadian Legion	8,283	1.086%
The Learning Store	3,425	0.449%
Total		**6.833%**

[24] The Complainant submits that an exempted area of 1,189 square feet in respect of the premises held by the Edmonton Society of Model Railroad Engineers is currently vacant.

[25] The Respondent agrees that the current exemption of 6.334% is inaccurate. However, the Respondent argues that the current percentage is not too low as suggested by the Complainant; but excessive, as two (exempt) tenants have vacated their premises during the current taxation year. The Respondent submits that a proper exemption analysis includes both the area of the premises as well as the number of months the premises are occupied by exempt tenants.

[26] In response to the Complainant's analysis, the Respondent argues that the Complainant failed to exclude 4,565 square feet of taxable licensed premises from the total Royal Canadian Legion lease area; and further, that the Complainant's rent roll evidence indicates that the Royal Canadian Legion lease term ended on February 28, 2013. The Respondent maintains that as the premises were occupied by an exempt tenant for only two months out of the current taxation year, the Board should revise the exemption in respect of the non-licensed area of the premises to reflect 16.667% (*2 months of 12*) of the taxation year.

[27] The Respondent further submits that although there is no evidence of when the premises occupied by the Edmonton Society of Model Railroad Engineers were vacated, the Complainant's evidence indicates that the premises are currently vacant; therefore the Board should revise the exemption in respect of this area to reflect 75% (*9 months of 12*) of the taxation year.

[28] The Respondent requests that the Board revise the current 6.334% exempt proportion to reflect the following:

Portion of Year (2013)	**Months**	**Exempt Proportion**	**Exempt Tenants**	**Area (Sq.Ft.)**
2 months	Jan – Feb	Increase to 6.368%	*Living Waters Christian Centre* *Edmonton Public Library* *Edmonton Public School Board* *Edmonton Society of Model Railroad Engineers* *Royal Canadian Legion (*non-licensed area)*	25,000 15,419 3,425 1,189 3,718
7 months	March - Sept	Decrease to 5.882%	*Living Waters Christian Centre* *Edmonton Public Library* *Edmonton Public School Board* *Edmonton Society of Model Railroad Engineers*	25,000 15,419 3,425 1,189
3 months	Oct - Dec	Decrease to 5.727%	*Living Waters Christian Centre* *Edmonton Public Library* *Edmonton Public School Board*	25,000 15,419 3,425

Findings and Reasons: Issue 2

[29] The Board finds that 6.334% of the subject property is exempt from taxation under Part 10 of the *Municipal Government Act,* RSA 2000, C. M-26.

[30] The Board was not persuaded by the Complainant's evidence and argument; specifically as it relates to the area occupied by the Royal Canadian Legion, which essentially accounts for the Complainant's total requested exemption adjustment. The Board notes that there is no dispute amongst the parties that the Royal Canadian Legion premises are occupied by a tenant eligible for a tax exemption pursuant to s.363(1)(c) of the *Act.* The dispute centers around whether the area of the licensed premises within the Royal Canadian Legion lease is exempt, and the Board finds that the area of the licensed premises is not exempt, pursuant to s.365(1) of the *Act,* set out in paragraph 8, above. The Board further rejects the Complainant's exempt proportion analysis for the reason that the 6.833% conclusion is founded on a total leasable area of 762,838 square feet; however, the Complainant agreed to the Respondent's recommended income approach valuation founded on a total leasable area of 765,505 square feet.

[31] The Board accepts the Respondent's argument that an exemption calculation should reflect both the area in use, and the period of time that area is occupied by a tenant eligible for a tax exemption pursuant to current legislation. The methodology is supported by section 368(3) of the *Act*, set out in paragraph 9 of this decision, which sets out a requirement to "prorate" the annual tax imposed on a property if the taxable status of the property changes at some point in

the year. Notwithstanding the above, the Board notes that there is insufficient documentary evidence to confirm when the Edmonton Society of Model Railroad Engineers and the Royal Canadian Legion actually vacated the premises. Although the rent rolls in evidence suggest that the lease of the Royal Canadian Legion premises terminated on February 28, 2013, there was no evidence to confirm that the lease was not renewed and the premises vacated, as the Respondent's rent roll is undated and the Complainant's rent roll is dated prior to February 28, 2013.

Decision

[32] The assessment is **reduced** from $141,878,500 to **$141,500,500**.

The taxable proportion is **unchanged** at 93.666**%.**

Heard October 7, 2013.

Dated this 8th day of November, 2013, at the City of Edmonton, Alberta.

J. Krysa

J. Krysa, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Tim Dmytruk; Maureen Skarsen;
Steve Lutes (Counsel); **Amy Cheuk** (Student at Law)
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.