Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01326

Assessment Roll Number:	9956961
Municipal Address:	16504 95 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
Jerry Krysa, Presiding Officer
James Wall, Board Member
Randy Townsend, Board Member

Procedural Matters

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

[2] In accordance with the parties' request, the Board will consider the evidence and argument presented in respect of the capitalization rate and equity issues at the hearing of the complaint filed in respect of tax roll number 9955641, in this matter without further mention.

Preliminary Matters

[3] A preliminary matter was raised by the Respondent respecting the Complainant's rebuttal evidence (exhibit C3). The Respondent objected to pages 7, 9, 44, 146 to 149 and pages 152 to 156 of the Complainant's rebuttal evidence on the grounds that the evidence is either new evidence, or evidence that is not in rebuttal to any of the evidence disclosed by the Respondent.

[4] The Complainant voluntarily withdrew pages 152, 153, 155 and 156. The Complainant maintains that the remaining rebuttal evidence is proper rebuttal, and should be heard by the Board.

[5] In respect of the Complainant's exhibit C3, the Board finds that the evidence on pages 7, 9, 44 and 154 is proper rebuttal evidence, and will be heard by the Board. The Board finds that the remaining evidence, not voluntarily withdrawn by the Complainant, is not in direct response to exhibit R1 and therefore will not be heard by the Board.

Background

[6] The subject property is a 21,193 square foot single storey retail structure that was constructed in 1999. The property forms part of a multi-parcel power centre development known as Namao Centre, and has been assessed by means of the income approach to value at $7,416,500.

Issues

[7] Issue 1. What is the appropriate capitalization rate applicable to the subject property?

Issue 2. Is the assessment of the subject property equitable in relation to the assessments of other retail properties?

Issue 3. What are the appropriate stratifications of the 10,861 square foot Shoppers Drug Mart premises, and the 1,561 square foot restaurant premises?

Legislation

[8] **The *Municipal Government Act*, RSA 2000, c M-26**

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.

Issue 1. What is the appropriate capitalization rate applicable to the subject property?

Summary of Parties' Positions

[9] The Complainant argues that the subject's assessed capitalization rate of 6.50% is not reflective of current market capitalization rates evident from recent sales of similar properties. The Complainant submits that the appropriate capitalization rate for the subject property is 7.00%.

[10] In support of the argument, the Complainant provided a list of twenty four properties that transferred ownership between May 2011 and September 2012, exhibiting a range of

capitalization rates from 6.12% to 9.18%, with average and median of the capitalization rates of 7.15% and 7.04%, respectively. The Complainant further submits that six of the transactions should be excluded from the analysis, (sale 5, 12, 13, 14, 21, and 22), resulting in average and median capitalization rates of 7.24% and 7.15%, respectively (C1, p.17). The Complainant also provided "Commercial Investment Building Sale" documents prepared by "The Network", outlining the physical and financial characteristics of each property and the particulars of each transaction including the indicated overall capitalization rates.

[11] The Respondent argues that the assessed capitalization rate of 6.50% is appropriate for the subject property.

[12] In support of the assessed capitalization rate, the Respondent provided a document titled, "Shopping Centre Capitalization Rate Analysis", setting out the particulars of 14 sale transactions that occurred between August 2010 and April 2012; including seven sales common to the Complainant's evidence, (sales 4, 5, 7, 15, 18, 21and 22). The time adjusted sales exhibit a range of capitalization rates from 4.65% to 8.04%, with median and average capitalization rates of 6.18% and 6.20%, respectively (R1, p.27). Also included in the analysis is the June 2011 combined sale of the subject and an adjacent property, exhibiting a capitalization rate of 5.97% in the Respondent's analysis and 6.54% in the Complainant's "The Network" sale transaction summary.

[13] In further support for the assessed capitalization rate the Respondent provided three market reports published by Colliers International Canada, CB Richard Ellis, and The Network, exhibiting reported retail capitalization rates ranging from 5.00% to 7.25% for various types of retail properties. The Respondent brought the Board's attention to the comments in "The Network" report suggesting that capitalization rates at the upper end of the range would reflect older, small to mid scale properties (R1, pp.44-62).

[14] In response to the Complainant's analysis, the Respondent argues that three of the Complainant's sales are inappropriate to include in an analysis, as the properties located at 10503 51 Avenue and 11803 48 Street were part of multi-parcel transactions, and the property located at 13010 137 Avenue is atypical due to a significant leasehold interest. The Respondent further argues that the analysis improperly includes many retail and retail plaza properties that are physically and financially dissimilar to the subject property, and that the Complainant failed to make any time adjustments to the sale prices or to the net operating incomes to reflect the legislated valuation date. The Respondent also submits that the Complainant's capitalization rates are not derived in a consistent manner, and the net operating incomes upon which the capitalization rates are determined reflect the leased fee estate of the properties and not the fee simple estate as required by the legislation.

[15] In support of the arguments, the Respondent submitted a review of only the Complainant's shopping centre sales, relating the net operating income (as estimated with current market rents and typical allowances for vacancy and other expenses) to the time adjusted sale prices, to illustrate a range of capitalization rates from 5.81% to 7.42%, and a median capitalization rate of 6.47%.

[16] To demonstrate that the net operating incomes (and resulting capitalization rates) are not consistently reported by third party agencies, the Respondent provided a sale transaction data report published by "Anderson Data Online" for the property located at 6410 28 Avenue, to demonstrate that the reported net operating income and capitalization rate varies from that indicated in the Complainant's "The Network" data summary.

Findings and Reasons: Issue 1

[17] The Board finds that the appropriate capitalization rate for the subject property is 6.5%.

[18] The Respondent's analysis of shopping centre sales is compelling evidence of current market capitalization rates for the subject property. The properties in the analysis are investment grade properties with operating characteristics similar to those of the subject property, and the Respondent has derived each of the indicated capitalization rates in a manner consistent with the application of the capitalization rate in the preparation of the assessment.

[19] The Board was specifically persuaded by the Respondent's 2012 sales (excluding 6104 90 Ave), that exhibit a range of capitalization rates from 4.65% to 6.61% The Board applied little weight to the sale of 6104 90 Avenue and considers it an atypical transaction, as the evidence suggests that a portion of the centre is to be rebuilt following a fire. The Board notes that with the exception of this property and the Kingsway Avenue property, which undisputedly incurred significant renovations subsequent to the sale, none of the indicated capitalization rates exceed 6.63%.

[20] The Board applied significant weight to the 2011 combined sale of the subject and an adjacent property, exhibiting an overall capitalization rate of 5.97% in the Respondent's analysis and 6.54% in the Complainant's own evidence; both being supportive of the subject's assessed 6.50% capitalization rate. The Board rejects the Complainant's argument that this sale should be excluded from an analysis as a result of "upside income potential" as other properties in the Complainant's summary share a similar characteristic, however, were not excluded by the Complainant.

[21] The Board applied little weight to the Complainant's summary of indicated capitalization rates from third party data reports, which was deemed to be rudimentary, and without sufficient examination or investigation. The Board notes that in several instances, the sale data reports are unclear as to whether the stated income was gross income or net income, and the Respondent's conflicting third party net operating income evidence further puts the reliability of the Complainant's evidence into question. Further, there was no evidence that the net operating incomes and capitalization rates were derived in a consistent manner; on the contrary for example, the Complainant's sample of properties exhibit a range of vacancy rates from 0.0% to 5.0%.

[22] Moreover, the Board finds that many of the properties in the Complainant's summary are not sufficiently similar to the subject property to be relevant indicators of a market capitalization rate; several of the properties are significantly older than the subject, and several are located in significantly inferior locations.

Issue 2. Is the assessment of the subject property equitable in relation to the assessments of other retail properties?

Summary of Parties' Positions

[23] 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.

[24] 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.

[25] 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).

[26] 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.67-74):

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%**

[27] 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.

[28] 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.*

[29] 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

[30] 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.

[31] 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 2

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

[33] 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. The Board is not persuaded that a discrepancy in one attribute of a property necessarily results in an assessment inequity.

[34] 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 made no apparent investigation, and offered no explanation of the anomaly.

Issue 3. What are the appropriate stratifications of the subject's 10,861 square foot Shoppers Drug Mart premises, and the 1,561 square foot restaurant premises?

Summary of Parties' Positions

[35] During the course of the hearing, the Complainant withdrew the stratification issue in respect of the 1,561 square foot restaurant premises. The Complainant maintains that 10,861 square foot Shoppers Drug Mart premises are vacant, therefore should be assessed as a standard commercial retail unit with the identical $18.00 per square foot market rent rate applied to other standard commercial retail units, rather than the assessed $24.50 per square foot market rent rate.

[36] In support of the argument and the requested $18.00 per square foot market rent rate, the Complainant provided a document, "Actual Rent Roll" indicating that the subject's 10,861 square foot area is vacant as at February 28, 2013 (C1, p.15). The Complainant further provided four leases of junior anchor commercial retail units exhibiting rents ranging from $11.00 to $13.50 per square foot (C1, p.49).

[37] The Respondent argues that a recent site inspection confirms that the Shoppers Drug Mart premises are not currently vacant, and submits that the premises have been continuously occupied by the current tenant since the improvement was constructed. The Respondent further argues that the assessed $24.50 per square foot market rent rate applied to the drug store area is appropriate, and that the area is properly stratified as a distinct property type. The Respondent submits that drug stores are differentiated from standard commercial retail unit areas, in that they are an attractant to other commercial retail unit spaces, and typically have a higher standard of finish and securities involved with the space to protect the controlled substances stored within the premises.

[38] In support of the $24.50 per square foot market rent rate, the Respondent provided an overview of six drug store leases, exhibiting a range of rent rates from $20.00 to $32.00 per square foot, and average and median rent rates of $25.00 and $24.25 per square foot (R1, p.10).

[39] In further support of the assessed market rent rate and to confirm that the subject has been continuously occupied by the current tenant, the Respondent provided a photocopy of the subject property's rent roll to demonstrate that the Shoppers Drug Mart lease commenced in October 2009, and ends September 2024, and the current contract rent rate is $22.00 per square foot, inclusive of "step-up" clauses (R1, pp.64-68).

[40] To demonstrate that the subject property is equitably assessed in relation to similar properties, the Respondent provided a list of six drug store properties, each assessed with a $24.50 per square foot market rent rate.

[41] In rebuttal the Complainant argues that the subject's current contract rent rate is not $22.00 per square foot, but rather, $21.00 per square foot as set out on a corrected version of the "Actual Rent Roll" at page 2 of exhibit C3. In closing the Complainant revised his requested assessment to $5,656,000, to reflect the abandonment of the restaurant stratification issue (C3, p.3).

Findings and Reasons: Issue 3

[42] The Board finds that the subject's 10,861 square foot premises at issue are not vacant, and are appropriately stratified as drug store space with a market rent rate of $24.50 per square foot.

[43] The Board was persuaded by the Respondent's documentary evidence of a photocopy of the subject's rent roll, attached to the owner's signed response to a request for information. The Board was also persuaded by the Respondent's testimony, subsequent to a personal inspection of the subject property that the drug store premises are not vacant as submitted by the Complainant.

[44] The Board notes that during the course of the hearing, the Complainant conceded that the Shoppers Drug Mart premises are not vacant, and that the rent roll summary at page 15 of exhibit C1 is erroneous in several respects.

[45] The Complainant's "Actual Rent Roll" evidence in exhibits C1 and C3 was afforded little weight as the Complainant conceded that the information appeared to be erroneous in the document at page 15 of exhibit C1. Further, the Board notes that the documents were not photocopies of original rent roll documents, but rather, appear to be spreadsheets produced by the Complainant.

[46] In addition, the Board finds that was no market evidence to demonstrate that drug store premises rent at equivalent rates to junior anchor commercial retail unit spaces.

Decision

[47] The assessment is confirmed at $7,416,500.

Heard August 13, 2013.

Dated this 13th day of September, 2013, at the City of Edmonton, Alberta.

J. Krysa, Presiding Officer

Appearances:

Adam Greenough
for the Complainant

Frank Wong; 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.