Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01327

Assessment Roll Number:	9985958
Municipal Address:	9510 160 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
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 2, 3, 4, 10, 12, 47, pages 149 to 152 and pages 155 to 159 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, or evidence that is duplicated from exhibit C1.

[4] The Complainant voluntarily withdrew pages 149 to 152, pages 155, 156, 158, and 159. 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 pages 2 and 3 are duplicated evidence that is already contained in exhibit C1; therefore the Complainant may make reference to the materials in exhibit C1. The Board will not hear the evidence on page 4, as the document contains new market evidence of leases that are not in direct response to exhibit R1, and should have been disclosed with the Complainant's original submission. The Board finds

that the remaining evidence in dispute, being pages 10, 12, 47, 153, 154 and 157, is proper rebuttal evidence, and will be heard by the Board.

Background

[6] The subject property is a 180,936 square foot parcel of land, improved with a 47,346 square foot, free-standing grocery store comprised of 44,346 square feet of main floor area plus 3,000 square feet of mezzanine area. The improvement was constructed in 2001 and forms part of a multi-parcel power centre development known as Namao Centre. The subject property is assessed by means of the income approach to value at $10,020,500.

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 is the appropriate market rent rate applicable to the subject property?

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.26). Also included in the analysis is the June 2011 combined sale of two retail properties within the subject power centre development, 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.43-61).

[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 two properties within the subject power centre development which would require no adjustment for location or age, and exhibit an overall capitalization rate of 5.97% in the Respondent's analysis and 6.54% in the Complainant's own evidence; both 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 67-74 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 is the appropriate market rent rate applicable to the subject property?

Summary of Parties' Positions

[35] The Complainant argues that the $15.50 per square foot market rent rate applied to the subject's leasable area fails to reflect the age of the subject, and is excessive in relation to the assessed market rent rate applied to newer properties. The Complainant further argues that the market rent rate is excessive in relation to recent leasing activity of similar properties.

[36] In support of the arguments, the Complainant provided a comparative analysis of the relationship between the assessed market rent rates of food stores, and the assessed market rent rates of three size ranges of CRU's (commercial retail units) within the same developments (C1, p.15). The developments were stratified into two distinct age ranges: those described as "newer" properties constructed between 2004 and 2010, and "older" properties constructed between 1989 and 2002. The results of the analysis are set out below:

AGE		CRU < 1000SF	*FS %	CRU 1–3,000 SF	FS %	CRU 3–5,000 SF	FS %
2004-2010	**Average**	$30.20	53.2%	$28.13	56.5%	$25.50	62.8%
	Median	$29.00	53.4%	$28.00	55.4%	$27.00	58.9%
1989-2002	**Average**	$25.33	60.8%	$23.79	65.0%	$21.83	71.3%
	Median	$26.00	59.6%	$23.50	65.2%	$21.00	73.8%

*FS% - *Ratio of Assessed Food Store Market Rent Rate to Assessed CRU Market Rent Rate*

[37] The Complainant maintains that the analysis demonstrates that the assessed market rent rate applied to food stores in the age range of the subject property is excessive in relation to that applied to the newer food stores. To demonstrate that a $13.00 per square foot market rent rate is more equitable for the older properties, similar in age to the subject, the Complainant further provided a recalculation of the above ratios founded upon a $13.00 per square foot market rent rate applied to each of the food stores in the 1989 to 2002 age range, with the following results: (C1, p.16)

AGE		CRU < 1000SF	*FS %	CRU 1–3,000 SF	FS %	CRU 3–5,000 SF	FS %
2004-2010	**Average**	$30.20	53.2%	$28.13	56.5%	$25.50	62.8%
	Median	$29.00	53.4%	$28.00	55.4%	$27.00	58.9%
1989-2002	**Average**	$24.88	52.6%	$23.46	56.0%	$21.27	61.8%
	Median	$25.00	52.1%	$23.00	56.5%	$21.00	61.9%

*FS% - *Ratio of Assessed Food Store Market Rent Rate to Assessed CRU Market Rent Rate*

[38] In support of a $13.50 per square foot market rent rate, the Complainant also provided a summary of four retail property leases ranging in size from 12,694 to 19,136 square feet, exhibiting rent rates ranging from $11.00 to $13.50 per square foot, with average and median rent rates of $12.38 and $12.50 per square foot, respectively. (C1, p.48)

[39] In cross-examination the Complainant conceded that the comparative analysis is the Complainant's own methodology, and is not found in any appraisal textbook; and further, that no adjustments were made to reflect variances in location or quality. The Complainant also conceded that the summary at C1, p.48 contains only leases of "junior anchor" retail stores, and not leases of "food store" premises.

[40] The Respondent argues that the assessed market rent rate of $15.50 per square foot is appropriate for the subject property, and equitable in relation to similar properties.

[41] In support of the argument the Respondent provided the owner's response to a request for information made pursuant to s. 295 of the MGA (R1, pp.10-21). The document dated April 17, 2012, sets out the subject property's contract net rent rate of $16.24 per square foot for the period of January 1, 2008 to June 30, 2012, and thereafter, $17.76 per square foot.

[42] In further support for the assessed market rent rate, the Respondent provided a lease analysis of sixteen food stores, constructed between 1991 and 2007 (R1, p.7). The leases exhibit rent rates ranging from $12.00 to $19.00 per square foot, with average and median rent rates of $15.56 and $15.63 per square foot, respectively. The Respondent conceded that eight of the leases were not "arms-length" lease agreements, and three of the leases reflect "step-up" rent rate adjustments. However, the Respondent maintains that many of the non arms-length leases are valid indicators of market rent rates because, despite the fact that the parties to the lease are affiliated in some way, the lease agreements are among distinct corporate entities. Further, although the analysis includes non arms-length and step-up leases, the average and median rent rates evident from those leases are not significantly different than the average and median rent rates from the valid leases, which themselves support the subject's assessed market rent rate.

[43] The Respondent further submits that all of the properties in the analysis (which includes the subject), are equitably assessed with the identical $15.50 per square foot market rent rate.

[44] In response to the Complainant's evidence, the Respondent argues that the Complainant's lease comparables on C1, p.48 are dissimilar to the subject property as they are "junior anchor" retail properties and do not have the physical characteristics of food store properties.

[45] In rebuttal, the Complainant argued that the Respondent's market rent rate analysis is flawed, as only five of the leases in the Respondent's analysis are "arms length" transactions. The Complainant further argued that he could not verify the two February 2012 leases with rent rates of $15.83 and $18.00 per square foot; and the median rent rate of the three remaining valid leases in the Respondent's analysis is $12.24 per square foot, including the lease of an atypically small, 22,221 square foot area at $15.75 per square foot.

Findings and Reasons: Issue 3

[46] The Board finds that the subject's assessed market rent rate of $15.50 per square foot is correct. The Board further finds that the subject is equitably assessed in relation to similar and newer properties.

[47] The Board was persuaded by the Respondent's rent rate analysis of sixteen food store leases, specifically the $15.75 per square foot median rent rate of the two new and three renewal leases, and the $18.00 per square foot rent rate exhibited by the only 2012 food store lease in evidence before the Board. The Board was further persuaded, to some extent, by the Respondent's evidence of the subject's contract rent rate of $16.24, commencing in 2008. Notwithstanding the non arms-length status of the subject's lease, the Board notes that the contract rent rate is consistent with other food store market rent indicators in evidence.

[48] The Board notes that the Complainant failed to provide any relevant market evidence to refute the Respondent's analysis or conclusion. The fact that the Complainant was unable to verify two of the Respondent's leases does not invalidate the leases.

[49] The Board put little weight on the Complainant's market rent evidence for the reason that none of the examples were leases of food store premises, and there was no market evidence to demonstrate that junior anchor retail properties lease at rent rates equivalent to those of food store properties. Further, the Board notes that although the Complainant argued that the Respondent's lease of a 22,221 square foot food store was atypically small, the Complainant's own lease examples range from 12,694 sq ft to 19,136 square feet.

[50] The Board also put little weight on the Complainant's assessed market rent rate comparative analysis, as there was no market evidence provided to demonstrate a correlation between the typical market rent rate of food store properties and the typical market rent rate of CRU spaces, new or old. Further, the comparative analysis was found to be unreliable for the reason that the average and median CRU assessed rent rates (the divisors in the analysis), are inconsistent between the two analyses on page 15 and page 16 of exhibit C1.

[51] The Board further rejects the Complainant's argument that the subject's assessed market rent rate fails to reflect the age of the subject. The Board notes that the two groups of properties in the Complainant's analysis include a total of 31 properties with construction dates ranging from 1989 to 2010, and assessed market rent rates ranging from $14.50 to $16.50 per square foot. The Board further notes that the subject property, constructed in 2001 (approximately midway within the range of age), is assessed at a market rent rate of $15.50 per square foot, (midway within the range of assessed rent rates).

Decision

[52] The assessment is confirmed at $10,020,500.

Heard August 13, 2013.

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

J. Krysa

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.