Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01328

Assessment Roll Number:	9985960
Municipal Address:	16039 97 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 4, 6, 41, 143 to 146 and pages 149 to 153 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 149 to 153, 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 4, 6, 41 and 151 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 The Board finds that the remaining evidence, not voluntarily withdrawn by the Complainant, is not in direct response to exhibit R1 and therefore will not be heard by the Board.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 43,260 square foot parcel of land, improved with two free-standing structures containing a total leasable area of 8,518 square feet. The improvements were constructed in 2002 and form part of a multi-parcel power centre development known as Namao Centre. The property has been assessed by means of the income approach to value at $4,585,000.

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 correct total size of the subject improvements?

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.19). 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 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.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 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 69-76 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 is the correct size of the subject improvements?

Summary of Parties' Positions

[35] The Complainant argues that the subject improvements contain 8,518 square feet of total leasable area; however, the assessment is founded on a total leasable area of 12,839 square feet.

[36] In support of the argument, the Complainant provided a copy of the subject's rent roll, setting out the subject's current tenants and the corresponding leasehold areas.

[37] The Respondent concedes that the assessed improvement area is in error and recommends that the Board revise the assessment to $3,184,000, reflecting a total leasable area of 8,518 square feet, as submitted by the Complainant.

[38] The Complainant is in agreement with the Respondent's recommended change to the assessment with respect to this issue.

Findings and Reasons: Issue 3

[39] The Board finds that the correct size of the subject improvements is 8,518 square feet as indicated on the Complainant's rent roll evidence. Accordingly, the Board accepts the Respondent's recommendation to revise the assessment to $3,184,000.

Decision

[40] The assessment is revised from $4,585,000 to $3,184,000.

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.