

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01338

Assessment Roll Number: 5404447

Municipal Address: 11702 34 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 equity issue at the hearing of the complaint filed in respect of tax roll number 9955641, in this matter without further mention.

Preliminary Matters

[3] At the commencement of the hearing, the Respondent withdrew pages 37 to 68 of exhibit R1, relating to an exemption from taxation that was no longer at issue. The Complainant raised no objection to the Respondent's request.

Background

[4] The subject property is a 42,286 square foot parcel of land, improved with a 24,256 square foot, multi-bay retail structure that was constructed in 1960. The property is part of a multi-parcel neighbourhood shopping centre development known as Beverly Shopping Centre. The property has been assessed by means of the income approach to value at \$3,636,000.

Issues

- Issue 1. Is the assessment of the subject property equitable in relation to the assessments of other retail properties?
- Issue 2. What is the market rent rate of the restaurant area within the subject property?
- Issue 3. What is the appropriate stratification of the commercial retail unit occupied by Pizza Hut delivery?

Legislation

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

Summary of Parties’ Positions

[6] 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.

[7] 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.

[8] 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).

[9] 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.31-39):

Tax Roll #:	3924230	9943060	9943061
Valuation Group			
"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%

[10] 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.

[11] 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*.

[12] 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

[13] 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.

[14] In response to the three duplicate 2012 assessments provided by the Complainant at pages 31-39 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

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

[16] 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.

[17] 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 2. What is the market rent rate of the restaurant area within the subject property?

Summary of Parties' Positions

[18] The Complainant argues that the market rent rate of the commercial retail unit occupied by the Golden Court Restaurant is \$14.00 per square foot.

[19] In support of the argument the Complainant provided a summary of the subject's rent roll and the owner's response to the Respondent's request for information made pursuant to section 295 of the *Municipal Government Act*. The documents demonstrate that the contract rent for the area at issue equates to \$14.00 per square foot effective June 1, 2001, with a rent escalation effective July 2012 equating to \$15.00 per square foot (C1, pp.15-20).

[20] The Complainant further provided a summary of four restaurant leases exhibiting a range of contract rent rates from \$10.00 to \$14.00 per square foot, with a median rate of \$13.00 per square foot (C1, p.21).

[21] The Complainant also provided a summary of the assessed market rent rates of three restaurants in north Edmonton exhibiting a range of market rent rates from \$12.50 to \$15.50 per square foot, and a median market rent rate of \$13.50 per square foot (C1, p.21).

[22] In cross examination, the Complainant conceded that the assessment comparables on page 21 of exhibit C1 were not located within neighbourhood shopping centres; however, the Complainant maintains that they are valid leases of restaurant commercial retail units comparable to the subject property.

[23] The Respondent argues that the assessed \$17.00 per square foot rent rate reflects the typical market rent rate of similar properties in the “Restaurant” stratum of neighbourhood shopping centres. The Respondent submits that restaurants are stratified based on age, and then upon condition, by means of the following criteria (R1, p.172):

“Restaurant” – Those eating establishments which are typically older properties or local tenants. They have a lesser desirability based on age and location. They have a higher level of finish than most commercial retail unit and are stratified by year of construction as either “1990 and newer” or “1989 and older”.

“Restaurant – Good” – refers to those eating establishments with higher overall utility. The properties are generally newer and / or are tenanted with national tenants and often have an optimum location. This stratum consolidates fast food restaurants and good quality restaurants, and are stratified by year of construction as either “2003 and newer” or “2002 and older”.

Other distinguishing criteria of properties in the “Restaurant Good” stratum may include:

- above average maintenance;
- well maintained with high desirability;
- may have slight evidence of deterioration in minor components;
- often components are new or as good as new;
- attractive, high utility, and superior condition.

[24] In support of the assessed \$17.00 per square foot market rent rate, the Respondent provided a summary of five 2011 and 2012 restaurant leases, exhibiting a range of lease rates from \$12.53 to \$26.00 per square foot; and median and average lease rates of \$17.00 and \$19.00 per square foot, respectively. To demonstrate that the \$17.00 per square foot market rent rate has been equitably applied, the Respondent provided a summary of fourteen restaurants located in properties in the shopping centre inventory, each assessed with a \$17.00 per square foot rent rate (R1, p.21).

[25] In response to the Complainant’s lease comparables, the Respondent argues that there is no evidence to demonstrate what kinds of restaurants are represented.

[26] In rebuttal, the Complainant argued that the assessed \$17.00 per square foot market rent rate does not meet the legislated quality standards, as the 23.49 coefficient of dispersion evident between the assessed rent rate and the Respondent’s sample of leases exceeds the 0 – 20.0 range set out in s.10(3) of *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004.

Findings and Reasons: Issue 2

[27] The Board finds that the market rent rate of the restaurant area within the subject property is \$14.00 per square foot.

[28] The Board was persuaded by the Complainant’s evidence of restaurant leases, which appear to generally meet the Respondent’s stratification criteria; all of the comparables are located in the northeast quadrant of the municipality and share the same “Average” class, and the same “240” land use code as the subject. The Board applied little weight to the Complainant’s rent rate coefficient of dispersion evidence and argument, and finds that the legislation appears to be largely misconstrued by the Complainant.

[29] The Board applied little weight to the Respondent's evidence of shopping centre restaurant leases. Although the Respondent argued that restaurants are stratified primarily on age and then upon condition, the Respondent's evidence failed to specify those characteristics, or the location of the lease comparables (other than the quadrant of the municipality), to enable the Board to determine if the properties are similar to the subject property. Without sufficient market evidence to demonstrate that restaurant commercial retail units located within shopping centres attain higher market rent rates than those in typical retail locations, the Board accepts the lease evidence of the Complainant. Moreover, the Board notes that the Respondent conceded that the subject's east quadrant location is probably not typical of the other quadrants in the municipality, where four of the Respondent's lease comparables are located.

Issue 3. What is the appropriate stratification of the commercial retail unit occupied by Pizza Hut Delivery?

Summary of Parties' Positions

[30] The Complainant argues that the assessed "Restaurant – Good" stratification and the corresponding \$26.00 per square foot market rent rate of the "Pizza Hut Delivery" unit is inappropriate. The Complainant submits that the area is operated as a "take-out" facility that does not include a typical finished dining area, and any tenant improvements located within are trade fixtures or personal property and not assessable real estate. As such, it is a standard commercial retail unit, and should be assessed at a typical market rent rate of \$15.00 per square foot.

[31] The Respondent submits that the area at issue has been stratified as "Restaurant – Good" due to its' national chain tenancy. The Respondent argues that national chain tenants typically pay rent rates from \$25.00 to \$50.00 per square foot.

[32] The Respondent provided a summary of the subject's commercial tenant roll, indicating that the current contract rent for the area at issue equates to \$17.50 per square foot, from a lease commencing in 2001 (R1. pp.17-20).

Findings and Reasons: Issue 3

[33] The Board finds that the appropriate stratification of the commercial retail unit occupied by Pizza Hut Delivery is that of "Restaurant", with a corresponding market rent rate of \$14.00 per square foot.

[34] Although the Respondent argued that national tenants pay rent rates of \$25.00 to \$50.00 per square foot, there was no documentary evidence provided to support that testimony.

[35] Notwithstanding the above, the Board is not persuaded that the Respondent's stratification as "Restaurant – Good" is appropriate due to the subject's 1960 year of construction and its' east quadrant location, which the Respondent conceded is atypical. With the exception of the subject's occupancy by a national tenant, the Board notes that there was little evidence that any of the Respondent's distinguishing criteria for "Restaurant – Good" is met. The Board further notes that the Respondent conceded that his personal opinion was that the subject's take out restaurant doesn't qualify as a "Restaurant - Good".

[36] The Board applied little weight to the subject's contract rent rate of \$17.50 per square foot found in the evidence of both parties, as the lease commenced more than 10 years prior to the valuation date. Accordingly, the Board accepts the Complainant's lease rate evidence on page 21 of exhibit C1, supporting a market rent rate of \$14.00 per square foot for the reasons set out above, in Issue 1.

[37] The Board however, does not accept the Complainant's argument that the area at issue is a standard commercial retail unit, as there was no evidence that the space would not require similar kitchen utility services and similar food preparation area finishes to those found in a "dine in" restaurant.

Decision

[38] The assessment is revised from \$3,636,000 to \$3,338,000.

Heard August 15, 2013.

Dated this 16th day of September, 2013, at the City of Edmonton, Alberta.



J. Krysa, Presiding Officer

Appearances:

Adam Greenough
for the Complainant

Chris Rumsey; Steve Lutes (Counsel)
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.