Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01359

Assessment Roll Number:	10023880
Municipal Address:	2304 24 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
George Zaharia, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matter before them.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a neighbourhood shopping centre located at 2304 24 Street NW in the Silver Berry neighbourhood of southeast Edmonton. There are seven buildings on site comprising a total of 93,346 square feet of leasable space. The buildings were constructed in 2008, and are situated on a 372,438 square foot lot (8.55 acres). A food store is the anchor business in the shopping centre.

[4] The subject property was valued on the income approach resulting in a 2013 assessment of $30,739,500.

Issue(s)

[5] Is the assessable space attributed to the subject property correct?

[6] Is the 6.5% capitalization rate (cap rate) used in determining the value of the subject too low?

Legislation

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

> 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
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> (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.

Position of the Complainant

[8] In support of his position that the 2013 assessment of the subject property is excessive, the Complainant presented two briefs; a 118-page brief (Exhibit C-1) and a 438-page brief (Exhibit C-2). The Complainant argued that 1) the assessed square footage of the subject should be reduced by 5% to be equitable with other retail properties in the city, and 2) based on an analysis of sales of other retail properties the cap rate should be increased from the assessed city value of 6.5% to 7.0%.

[9] The Complainant provided the rent roll for the subject identifying that the net leasable area (NLA) as reported by the owner was 90,386 square feet (Exhibit C-1, page 15).

[10] In support of his position that the appropriate space for assessment purposes should be 95% of net leasable space, the Complainant provided Exhibit C-2 that provided the City's detailed information for ninety-two properties. The first two pages of the 438-page Exhibit provided a summary of the ninety-two properties while the remaining pages provided supporting information including 1) the City of Edmonton Annual Realty Assessment Details, 2) the Income Approach summary that identifies the city pro forma space, and 3) the rent roll. The Complainant demonstrated that in most cases, the city pro forma space was 95% of the City's recorded "gross size" and that the City's pro forma space was in most cases 95% of the rent roll. This formed his justification for using 95% of the subject's square footage as identified on the City's pro forma to calculate the assessment.

[11] Referring to the information contained in Exhibit C-2, the Complainant discussed the first of the ninety-two properties to make his point. The City's square footage of 16,211 as identified of the pro forma is 94% of the gross square footage as identified on the City's "Annual Realty Assessment Details". This is in contrast to the subject which has 100% of its leasable area used for assessment purposes.

[12] Applying the 95% principle to the subject, the Complainant provided a "requested Market Value Pro forma", reducing the Respondent's square footage of 93,348 by 5% to 88,681 square feet (93,348 square feet x 95%) (Exhibit C-1, page 12).

[13] In support of his request to raise the cap rate applied to the subject from 6.5% to 7.0%, the Complainant provided a cap rate study of twenty-four sales of retail properties. The comparables sold between May 2, 2011 and September 4, 2012 with resulting cap rates ranging from 6.12% to 9.18%, resulting in a median cap rate of 7.04% and an average of 7.15%. However, the Complainant requested that six of his sales be excluded from his list of sales due to one property being part of a port folio sale, one property considered an outlier, and four properties with "upside potential". By removing the six sales, the median cap rate rose to 7.15%, while the average rose to 7.24%. Based on this study, the Complainant considered 7.0% as the best estimate of the proper cap rate to be applied to the subject. (Exhibit C-1, page 20)

[14] In response to questioning by the Respondent, the Complainant acknowledged that only ten of the twenty-four sales used in his cap rate study were neighbourhood shopping centres, and that the net operating incomes and sale prices were not time-adjusted to the July 1, 2012 valuation date.

[15] In argument, the Complainant stated that the Respondent's position that retail properties are divided into two valuation groups does not address the Complainant's concern of how the assessed space is determined for the two groups, maintaining his position that the assessed space of the subject should be reduced to 95% of what the City's pro forma shows. This reduction to 95% would ensure equitable treatment of the two valuation groups.

[16] In conclusion, the Complainant requested that the 2013 assessment of the subject property be reduced from $30,739,500 to $27,117,500, based on a 5% reduction of the assessed space as shown of the City' pro forma, and an increased cap rate of 7.0%.

Position of the Respondent

[17] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support his position, the Respondent presented a 198-page assessment brief (Exhibit R-1) that included law and legislation.

[18] The Respondent submitted sales of fourteen comparables that occurred between August 12, 2010 and April 12, 2012. All the sale prices were time-adjusted to the July 1, 2012 valuation date. The 2013 stabilized net operating incomes were consistently applied to the time-adjusted sale prices resulting in cap rates that ranged from 4.65% to 8.04%. The resulting median cap rate was 6.18% and the average cap rate was 6.20% (Exhibit R-1, page 28).

[19] The Respondent provided a review of the Complainant's cap study of twenty-four sales comparables. All retail and retail plaza sales plus two other sales with identified problems were removed from the Complainant's cap rate study, leaving eight sales that the Respondent considered appropriate for the cap rate study. Of the eight sales, the Respondent had used seven, commenting that the eighth sale, although a valid sale, was in a poor location. The cap rates determined by the Complainant, that were based on the third party reports, and not time-adjusted, resulted in a median cap rate of 6.75%, while when time-adjusted to the valuation date of July 1, 2012, the median cap rate was 6.47%, supporting the 6.5% applied by the Respondent to the subject property. (Exhibit R-1, page 45)

[20] The Respondent provided a detailed response to the equity issue raised by the Complainant (Exhibit R-1, pages 46 and 47).

a) The City of Edmonton stratifies properties within valuation groups resulting in separate valuation groups for general retail properties and for shopping centres.

b) The Province of Alberta and the Alberta Assessor's Association have published a Valuation Guide to assist assessors, providing separate guides for retail properties and for shopping centres.

c) In determining the gross leasable area for assessment purposes, the City sends out Requests for Information (RFI) to all owners of income producing properties. Nearly 100% of shopping centre owners respond to the RFI's, providing the City with the gross leasable areas derived from the rent rolls that is then used in determining the assessed value. However, for other types of retail properties, it has been found that for most cases the information provided to the City by the property owners is either incomplete, provides gross area, or are owner occupied. Consequently, based on a City study, it has been determined that the typical ratio of the gross footprint to the gross leasable space for the retail valuation group is that the gross leasable area is typically 95% of the gross building area.

d) In both the shopping centre valuation group and the retail valuation group, the final size is an attempt to accurately reflect the gross leasable area for each property. The Complainant believes that the City has under-predicted the size of the retail valuation group of properties, and must therefore, for equity purposes, reduce the size of all shopping centres.

e) Equity means that similar types of properties must be assessed in the same way. The Respondent stated that shopping centre properties and retail properties are assessed differently because they are not similar properties.

[21] Since the anchor store of the subject property is a food store, the Respondent submitted that the 2013 cap rate applied to twenty food store properties, including the subject, was 6.5% (Exhibit R-1, page 48).

[22] As support for the 6.5% cap rate used by the Respondent in determining the assessed value of the subject property, the Respondent provided second quarter reports prepared by Colliers International and CBRE. For the Edmonton market, Colliers International provided a cap rate range of 6.25% to 6.75% for community shopping centres, while CBRE provided a cap rate range of 6.00% to 6.50% for neighbourhood shopping centres. (Exhibit R-1, pages 49 to 53)

[23] The Respondent provided excerpts from "The Appraisal of Real Estate Second Canadian Edition" that provided definitions of "gross building area (GBA)" and "gross leasable area (GLA)". (Exhibit R-1, page 57)

a) Gross building area means "*Total floor area of a building, excluding unenclosed areas, measured from the exterior of the walls; includes both superstructure floor area and substructure or basement area.*"

b) Gross leasable area means *"Total floor area designed for the occupancy and exclusive use of tenants, including basements and mezzanines; measured from the centre of joint partitioning to the outside wall surfaces".*

[24] The Respondent utilizes the gross leasable area which is defined as *"total floor area designed for the occupancy and exclusive use of tenants"* in assessing shopping centres, and the gross building area for assessing retail properties, to which the 95% is applied.

[25] Additionally, the Respondent provided excerpts for the "Alberta Assessors' Association Valuation Guide for Shopping Centres." It is stated: *"The most common standard used in measuring tenant space in shopping centres is the gross leasable area or GLA of the store. However, some rent rolls will report gross floor areas and others will report net floor areas for some or all of the tenants at the centre. It is important when comparing and establishing market rents that a uniform method of describing and measuring the space for each tenant is maintained."* (Exhibit R-1, page 60)

[26] In questioning, the Respondent pointed out that only two of the ninety-two properties included by the Complainant in Exhibit C-2 were shopping centres, although many of them were identified as such on the Annual Realty Assessment Details. With regards to the two properties that were currently in the shopping centre inventory, the Respondent advised that the process had started to include both properties in the general retail inventory. Since these properties were of a different valuation group with a different method of calculating assessable building area, the ninety-two properties were not comparable.

[27] In summation, the Respondent argued that the cap rate and the building size attributed to the subject were both correct. The Respondent maintained that the sales used by the City in establishing the cap rate were of properties from the same valuation group and were time-adjusted to reflect values on the valuation date of July 1, 2012. This resulting 6.18% median cap rate and 6.20% average cap rate from the sales supported the 6.5% cap rate utilized in calculating the assessed value of the subject. The Respondent also maintained that the assessed building size came from the rent rolls provided by the property owners that reflected the floor area designed for the occupancy and exclusive use of the tenant, and therefore are correct.

[28] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at $30,739,500.

Decision

[29] The decision of the Board is to confirm the 2013 assessment of the subject property at $30,739,500.

Reasons for the Decision

[30] The Board placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

a) In terms of the appropriate building size to be used in assessing the subject property, the Complainant simply argued that since properties included in the general retail valuation group were assessed using 95% of the gross building area, then the assessment size indicated on the pro-forma of the subject property should be reduced to 95%. The Board did not accept this position, accepting instead the Respondent's explanation why there are two approaches in determining the assessable area based on either complete RFI information, or incomplete or non-existent RFI information.

b) If the Board was to accept the Complainant's argument, then owners of shopping centres would receive an additional reduction in assessable space. In the Board's opinion, this would create an inequity. The gross leasable space used to determine the assessable space of shopping centres is already a reduction from the gross building area. To account for this reduction realized by owners of shopping centres, the gross building space is reduced to 95% for general retail properties. In the Board's opinion, this is equitable.

c) In discussing the first of the ninety-two properties included in Exhibit C-2, the Complainant had stated that the City's square footage of 16,211 as identified of the pro forma is 94% of the gross square footage as identified on the City's "Annual Realty Assessment Details". This, he argued, was in contrast to the subject which has 100% of its leasable area used for assessment purposes. The key point here is that the subject is assessed at 100% of its "gross leasable area", not 100% of its gross building area.

d) The Board placed no weight on the ninety-two comparables provided by the Complainant in Exhibit C-2 since all the properties were retail properties, not shopping centres as is the subject, and therefore the assessable building area was determined differently.

e) In his cap rate study, the Complainant included general retail properties, which by definition, can include a variety of street-front businesses, but do not include an anchor business as does the subject, which is classified as a neighbourhood shopping centre. Once the general retail properties were excluded from the list of the Complainant's sales, the remaining properties that were neighbourhood shopping centres, seven of which were used by the Respondent in his cap rate study, the resulting median cap rate of 6.47% (time-adjusted to the July 1, 2012 valuation date) supported the 6.5% cap rate applied by the Respondent to the subject property.

[31] The Board placed greater weight on the evidence provided by the Respondent for the following reasons:

a) It was important for the Board to understand the various definitions of "building size" as provided by the Respondent in his evidentiary package. Gross building area is the *total floor area of a building measured from the exterior of the walls, while the* gross leasable area is the *total floor area designed for the occupancy and exclusive use of tenants.* In using the gross leasable area as the building size to determine the assessment of properties within the shopping centre valuation group, the Respondent is excluding some of the gross building area that cannot be *for the occupancy and exclusive use of the tenant*. In reducing the gross building area by 5% in determining the assessable area of properties in the general retail valuation group, the Respondent is recognizing that some consideration should be given for area of the building that is not for the occupancy and exclusive use of the tenants.

b) The Respondent was able to persuade the Board that the building size used in assessing properties in the general retail valuation group and the shopping centre valuation group, differed as a result of the information made available by the owners. Since the owners of the two valuation groups either provide nearly 100% requested information, or provide incomplete or virtually no information, the Respondent was forced to develop an approach to establishing assessable building size for general retail properties to be fair to the owners in both valuation groups.

c) The cap rate study provided by the Respondent was based on sale of properties from the same valuation group as the subject (neighbourhood shopping centres). The resulting median cap rate of 6.18% and average cap rate of 6.20% were both lower than the 6.5% cap rate applied to the subject, and therefore supported the cap rate used by the Respondent in calculating the assessed value of the subject.

d) Although the Respondent emphasized that the City does its own studies to determine the parameters used in calculating the value of properties, the Respondent provided information from studies completed by two third party sources that supported the 6.5% cap rate used in establishing the assessed value of the subject.

[32] The Board was persuaded that the 2013 assessment of the subject property at $30,739,500 was fair and equitable.

Dissenting Opinion

[33] There was no dissenting opinion.

Heard October 10, 2013.

Dated this 24th day of October 2013, at the City of Edmonton, Alberta.

George Zaharia, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Chris Rumsey
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.