Edmonton Composite Assessment Review Board (CARB)

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01410

Assessment Roll Number: 7375991
Municipal Address: 5120 122 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Three M Investments (Alberta) Inc. represented by Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] The parties had no objection to the composition of the panel. No bias was declared by the panel.

[2] At the request of the City, the parties were sworn.

Preliminary Matters

[3] At the hearing, both parties agreed to a change in the allocation of space. This is best outlined in Ex. R1 page 9. As a result of this reallocation, the City recommended reducing the assessment from $4,191,000 to $3,000.000.

Background

[4] The property is located in south west Edmonton on 103,913 square feet of land. The building is 23,532 square feet, and the property is occupied by a single user. The property is part of, and attached to an additional component of the Shopping Centre. It has a land use designation as a Neighbourhood Centre, is valued according to the Income Approach to Value (IAV), and is assessed for 2013 at $4,191,000.

Issue(s)

[5] The Complainant initially listed 11 issues in the disclosure. Upon questioning at the outset of the hearing (and after the recommendation of the City to reduce the assessment based on space reallocation) one outstanding issue was identified as:

a. Does equitable treatment of the subject property require using 95% of the Gross Building Area (GBA) to calculate the net income when utilizing the IAV?

Legislation

[6] 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 297 (1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw

(a) divide class 1 into sub-classes on any basis it considers appropriate, and

(b) divide class 2 into the following sub-classes:

(i) vacant non-residential;
(ii) improved non-residential,

and if the council does so, the assessor may assign one or more sub-classes to a property.

s 289 (1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

s 293 (1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

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.

[7] The ***Matters Relating to Assessment and Taxation Regulation*, Alberta Regulation 220/2004** reads:

s 2 An assessment of property based on market value

(a) must be prepared using mass appraisal,
(b) must be an estimate of the value of the fee simple estate in the property, and
(c) must reflect typical market conditions for properties similar to that property.

s 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Should the Property be Valued Based on 95% of the GBA?

Position of the Complainant

[8] The Complainant presented Exhibit C-2 which contained a list of 92 properties. The Complainant submitted that this evidence would demonstrate that properties with similar uses were being valued inequitably. The Complainant argued that several of the properties listed in Exhibit C2 had uses which were very similar to those of the subject. However, the valuation of these similar properties was done by taking 95% of the Gross Building Area (GBA) and then applying an IAV to the property whereas the subject property was valued using 100% of the Net Leasable Area.

[9] The Complainant argues this created an inequity and the subject property should be valued using the same 95% attribute as other similar properties.

[10] In addition, the Complainant highlighted three properties that were assessed under both the General Retail and Shopping Centre groups in 2012. These valuations produced differing values, demonstrating that the 2012 Assessment (prepared by the General Retail Valuation Group using the 95% number) was lower than the number produced by the Shopping Centre Valuation Group for the same year.

[11] The Complainant highlighted the "theoretical" difference in the assessments between the two assessment groups (Shopping Centres versus General Retail) when they valued the same property, and said this justified similar treatment.

[12] Other properties were highlighted (Ex C2, pg. 1 & 2) which the Complainant argued appeared to be Neighbourhood Shopping Centres, yet were assessed using 95% of the building area. They suggested that if these properties were grouped as Neighbourhood Centres and assessed using the 95% factor, then the subject property should receive similar treatment.

[13] The Complainant submitted that these facts highlighted the inequity inherent in the assessments of properties in these two groups. Using two differing sets of variables to value similar groups is not equitable.

[14] Finally, the Complainant noted that the City time adjustment tables for the assessment year, had grouped Retail with Shopping Centres (Ex. C1, pg. 24) and that other non-residential strata's had separate time adjustment factors. This, demonstrated that the City treated Retail and Shopping Centres similarly, and so they should be valued in a similar fashion.

[15] The Complainant submitted that this comprehensive evidence supported their request for the equitable treatment of the subject using 95% of the building area to calculate the assessment value.

Position of the Respondent

[16] The Respondent argued that the City has the authority to stratify properties in order to achieve the best result in establishing value. In this case, the City had established two groups, a General Retail group, and a Shopping Centre group. Each of these groups has a unique set of attributes although some of the attributes were the same.

[17] In general, the properties in the Retail Group did not have an anchor tenant and owners often did not submit completed annual requests for information.

[18] For the Neighbourhood Shopping Centre group, the City provided a description (Ex. R1, pg. 151) which highlighted that there typically was an anchor tenant, and the Centres were generally less than 250,000 square feet in size. The Neighbourhood Shopping Centre group typically used 100% of the NLA.

[19] This apparent discrepancy in the area used to calculate the value is the heart of the issue. However, the City argues that the discrepancy does not really exist. They pointed out (Ex. R1, pg. 38 - 39) that many of the owners of Retail properties did not provide data to the City. The City completed a study and determined that 95% of the GBA of these Retail properties is about equal to the (NLA). Shopping Centres typically respond with the NLA numbers, based on the Rent Rolls of the properties.

[20] Thus, based on their analysis, the City has determined that 95% of the GBA in is roughly equal to 100% of GLA in Shopping Centres. From the City perspective, the methods yield an acceptable similar end result.

[21] The Respondent acknowledged that the three properties highlighted by the Complainant as being assessed under both valuation groups were originally assessed in 2012 using the 95% figure. However, this was an error which has been corrected for the 2013 assessment (Ex. R1 pgs. 50 - 53). The correction of this error restored the Shopping Centre grouping for these properties.

[22] The Respondent asserted that the grouping of all of the properties into either Retail or Shopping Centre was correct, and was done in accordance with their authority.

[23] In regard to the properties in Ex. C2 the Respondent noted that the Land Use Code (LUC) did not represent the valuation group used for assessment. They affirmed that the properties in Ex. C2 were in fact General Retail for assessment purposes.

[24] Finally, the Respondent presented several Board orders in support of their position (Ex. R1 pg. 54 - 144).

[25] In summary, the Respondent requested confirmation of the assessment.

Decision on the 95% Request

[26] The assessment for the subject is correctly calculated using 100% of the leasable area.

Reasons for the Decision:

[27] The CARB reviewed all of the evidence and argument.

[28] The CARB agrees that the City has the right to assign properties to different sub-classes, and that comes from the legislation, *The Municipal Government Act*, RSA 2000, c M-26, Sec 297 (MGA) and Section 2(c) of *Matters Relating to Assessment and Taxation* AR310/2009 (MRAT).

[29] The CARB concluded that it needed to consider two issues. The first was whether there was an equity issue comparing the subject with other properties. If there was found to be an equity issue, then further exploration would be warranted to establish how an equitable rate might be applied to the subject property given that the City had argued that 100% of NLA was equivalent to 95% of GBA, and therefore the rates were typically similar.

[30] Assessment equity has been defined and codified by many tribunals and courts to embody the concept of similar properties. The Respondent has indicated that the subject property is a Neighbourhood Shopping Centre while the comparables suggested by the Complainant are all grouped by the City as General Retail. This, the Respondent argues, is a different catogoey which they are entitled to make and thus the subject and the comparables are not similar. The Complainant responds that regardless of the grouping, the properties are similar based on use and the type of tenancy.

[31] The Respondent explained the difference in the grouping principally in terms of the size (the larger it is, the more likely it will be placed in the Shopping Centre group) The existence of an anchor tenant, and as well, arguably, the owner's propensity to responding to requests for information. The Respondent submitted that the Shopping Centre group represents a homogeneous category of properties which behave in a similar fashion. The CARB did not receive sufficient evidence to dispute this.

[32] The Respondent advised that generally, smaller non-anchored developments typically fit into the General Retail category. The CARB did not receive sufficient evidence to dispute this.

[33] It was clear to the CARB that the City has two distinct groupings of properties. The Complainant did not argue that the subject should be placed in the Retail group as opposed to the Shopping Centre group. In their opinion the properties were similar and thus were entitled to similar treatment.

[34] The CARB noted that individual tenants can appear in different groups, and in fact, it occurs all the time. It is possible that one tenant could appear in the Power Centre group and in a Neighbourhood Shopping Centre group in another location, and perhaps in a Regional Shopping Centre somewhere else. It is likely that in each of these properties, the tenant and the property

will have different attributes. The typical rent may be different; the vacancy may be different; and the capitalization rate may differ for each type of property.

[35] The point here is to demonstrate that the type of tenant is not the determining factor in the assessment. Rather, it is the type of stratification which the City applies in their mass appraisal in order to group properties with similar characteristics.

[36] The CARB did not receive sufficient evidence from the Complainant that the subject property was similar enough to warrant the same treatment as the property in another classification.

[37] The CARB considered the Complainant's evidence and argument concerning the time adjustment similarity between Retail and Shopping Centres. The CARB concluded that it was reasonable for the Retail and Shopping Centres to exhibit similar market trends; this did not mean that they were similar for assessment purposes.

[38] The CARB noted that the Time Adjustment Factor (Ex. C1, pg. 115) embraced all properties from the smallest retail to the largest Power Centre or Regional Mall, and just because they behaved the same way in one aspect, did not mean they were all similar for assessment purposes. Thus, the CARB concluded that there was insufficient evidence of the similarity and put little weight on the evidence.

[39] The CARB concludes that because the properties are legitimately stratified into different groupings by the City, the subject property is not similar to the properties in Ex. C2 for purposes of requiring equitable treatment between them.

[40] In reaching this decision, the CARB considered the three properties grouped as Retail in 2012. The CARB accepts that this was an error on the part of the City. This conclusion is supported by the fact that the properties had been grouped as Shopping Centres prior to 2012 and were returned to the Shopping Centre stratification for 2013.

[41] Finally, the CARB has noticed on some similar complaints for other properties, that the GBA in the City documents (which were provided by the Complainant), was smaller than the Gross Leasable Area (GLA) for the properties. This is clearly impossible and highlighted for the CARB, the potential unreliability of the GBA figures. While this calls into question the nature of the relationship between GBA and GLA. There was not enough evidence to make a determinative decision on this matter, nor was it a particularly live issue in this complaint because of the different groupings/stratifications of the properties.

[42] The principal reason for the decision was the lack of similarity between the properties in the Shopping Centre group and the others in the General Retail group which is a prerequisite for a claim of equitable treatment.

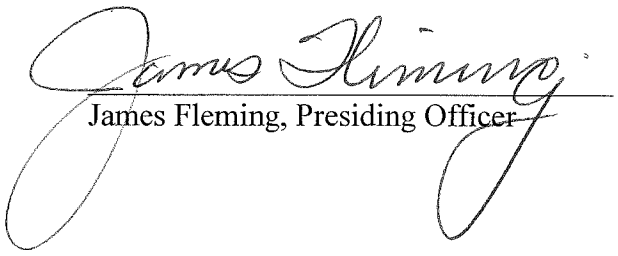
Decision

[43] The Complaint is allowed in part, and the assessment is reduced from $4,191,000 to $3,000,000 in accordance with the recommendation from the City (noted above).

Dissenting Opinion

[44] There was no dissenting opinion.

Heard commencing September 30, 2013.
Dated this 15th day of October, 2013, at the City of Edmonton, Alberta.



James Fleming, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Amy Cheuk
Ryan Heit
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.