Edmonton Composite Assessment Review Board (CARB)

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01429

Assessment Roll Number: 9984574
Municipal Address: 2004 99 STREET NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Riokim Holdings (Alberta) Inc. represented by Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
Brian Carbol, Board Member
Dale Doan, Board Member

Procedural Matters

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

Preliminary Matters

[2] At the hearing, the Respondent advised they are recommending that the assessment be reduced from $10,440,500 to $9,657,000. The basis for the recommendation is the reallocation of space and reclassification of one tenant from a CRU to a Junior Anchor. The impact of this reallocation is illustrated in the Respondent's Evidence (Exhibit R1, page 3).

Background

[3] The property is a Power Centre located in South Edmonton Common (SEC). It is a multi-tenant building containing 29,610 square feet and situated on 2.91 acres of land. The property was built in 2000 its district is DC-2. It is valued on the Income Approach to Value (IAV) and has a 2013 assessed value of **$10,440,500**.

Issue(s)

[4] The Complainant initially listed eight issues in their disclosure. Upon questioning at the outset of the hearing two outstanding issues were identified as:

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

b. Should the Capitalization Rate used in the valuation be increased from 6.0% to 6.5%?

Legislation

[5] 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.

[6] 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.

Issue 1: Should the Property be Valued Based on 95% of the NLA?

Position of the Complainant

[7] The Complainant presented Exhibit C2 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 value the property whereas the subject property was valued using 100% of the Net Leasable Area (NLA).

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

[9] In addition, the Complainant's disclosure noted 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. This information was not mentioned in the hearing.

[10] 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 obtain similar treatment.

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

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

Position of the Respondent

[13] The Respondent's disclosure noted 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.

[14] 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.

[15] For the Neighbourhood Shopping Centre group, the City provided a description (Ex. R1, pg. 147) 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.

[16] 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. 46 -47) that many of the owners of Retail properties did not provide data to the City. The City carried out 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.

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

[18] Finally, the Respondent presented several CARB & MGB Board orders in support of their position (Ex. R1 pg. 48 - 126).

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

Decision on Issue 1: 95% Request

[20] The assessment for the subject is correctly calculated using 100% of the NLA.

Reasons for Issue 1

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

[22] 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). While this legislation sets out the basic guidelines, the Respondent uses the mandated Mass Appraisal model to further stratify properties according to their similar characteristics.

[23] 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.

[24] 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 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 category 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.

[25] 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 owners propensity to respond 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.

[26] 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.

[27] 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.

[28] 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.

[29] 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.

[30] 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 grouping.

[31] 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.

[32] 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.

Issue 2: What is the Best Evidence of the Capitalization Rate

Position of the Complainant

[33] It was an agreed fact between the parties that Capitalization Rates (cap rates) in the South Edmonton Common (SEC) area were one-half percentage point lower than cap rates in other areas of the City. This was due to the "strong" retail appeal of SEC.

[34] As a result, the cap rates used (and requested) by each party were one half percentage point lower than those rates developed in the cap rate evidence of the parties. For greater certainty, while the City-wide cap rates were 6.5% according to the Respondent, the cap rates in SEC were 6.0%. Correspondingly, where the Complainant's City-wide cap rate evidence reflected rates of 7.0%, the rate requested for the subject in SEC was 6.5%

[35] The Complainant provided 24 sales of properties (with back up) to support their cap rate request (Ex. C1. Pg. 22). They acknowledged that six of the sales should be excluded for a variety of reasons.

[36] The Median and Average Cap Rates, having excluded the six, were 7.15% and 7.24% respectively. The assessment for the subject property was calculated based on a cap rate of 6.50%. The Complainant felt that their study provided good support for the use of a 7.00% cap rate City-wide, and a corresponding 6.5% cap rate for the subject based on its location in SEC.

[37] Upon questioning, the Complainant admitted that there was very little adjustment of the data. They suspected the Network (the data provider) had probably adjusted for large vacancies but probably not for such things as date of sale, type of retail and/or size etc. Despite this the Complainant argued that actual market sales should be used as they are the truest reflection of what was actually happening in the market.

[38] The Complainant suggested that the nature of the adjustments made by the City in their cap rate adjustment model did not accurately reflect the market, particularly where there were below market leases and other significant divergences from the norm.

[39] The Complainant's Rebuttal identified several of the properties contained in the City cap rate study which were classed as Shopping Centres, and the analysis of these sales showed support for the Complainant's request (Ex.C3, pg 2)

[40] Then Complainant asked that a cap rate of 6.5% be used for the valuation.

Position of the Respondent

[41] The Respondent provided a cap rate study utilizing 14 City-wide sales over the previous three years. This study produced a median of 6.18% and an average of 6.20% and when the SEC location was considered, it supported the City cap rate of 6.00% used in the valuation (Ex. R1, pg. 17).

[42] The Respondent was most critical of the Complainant's study because there were no adjustments made by the Complainant. The Respondent indicated that in order to get a truly valid cap rate analysis, the sales had to be adjusted to bring them to the valuation date. Cap rates should be calculated using "typical" rental rates for the valuation year and time adjusted sale prices.

[43] The reason for the use of typical data was to ensure that the assessment captured all of the elements of value including the leased fee so that the valuation reflected both the landlord's and the tenants' interest (the fee simple) in the property.

[44] As well, the Respondent included summaries of the same sales provided by two data sources, and highlighted the differences in the information (Ex. R1, pg 41 - 42). The Respondent submitted that this showed the unreliability of "raw" data.

[45] The Respondent provided summaries of cap rates from third party data suppliers (Ex. R1, pgs 39 -40). While acknowledging the weakness of third party data, the Respondent noted that they were using the third party data to "support" not "establish" the cap rate calculation. Thus they felt it was appropriate to cite the third party evidence to show that their cap rate was well supported.

[46] The Respondent asked for confirmation of the 6.00% cap rate.

Decision

[47] The assessment for the subject is correctly calculated using a capitalization rate of 6.00%.

Reasons for the Decision

[48] The CARB considered all of the evidence and argument on this issue.

[49] The CARB accepts the Respondent's position that the correct method for calculating the cap rate for properties that have sold prior to the valuation date must use the "typical" rents for the subject for the valuation year. As well the "actual" sales price must be time adjusted to adequately reflect the value at the valuation date. This is accepted assessment methodology.

[50] The Complainant argued that this method of calculation was not appropriate in certain circumstances (for instance where there are very low rental rates). The Complainant did not offer a suitable alternative method of valuation other than using the actual data. The CARB concluded that the adjustments used by the Respondent were necessary in order to "standardize" the values to a particular date (the valuation date), and allow an apples to apples comparison. Accordingly, the use of "straight sales data" was not given much weight. As well, this was standard assessment methodology.

[51] In addition, the CARB noted that the third Party data generally supported the City cap rate.

[52] The CARB acknowledged the issue of the potential unreliability of data from third parties (such as the Network and Anderson) raised by the City, but noted that little weight was put on this evidence, because it was not demonstrated to be a pervasive problem.

[53] Accordingly, the CARB makes the decision as noted above.

Summary

[54] The CARB considered two issues and made decisions as follows

a. 100% of the GLA should be used to calculate the net income.

b. The Capitalization Rate is confirmed at 6.0%

[55] The assessment is reduced in accordance with the recommendation from the City from $10,440,500 to **$9,657,000**.

Dissenting Opinion

[56] There was no dissenting opinion.

Heard on October 15, 2013.

Dated this 31st day of October, 2013, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

John Ball
Steve Lutes
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.