Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01839

Assessment Roll Number:	1243732
Municipal Address:	17103 94A AVENUE NW
Assessment Year:	2013
Assessment Type:	Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Dale Doan, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias on this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a 160,307 square foot four story walk-up apartment known as Tennyson Apartments, located at 17103 94th A Avenue in the Summerlea neighborhood. The walk-up apartment has 163 suites with an average suite size of 91 meters. The effective year built was 2002 and the subject property is assessed under the income approach and the 2013 assessment is for $27,261,000.

Issue(s)

[4] What is the appropriate gross income multiplier (GIM) for the subject property?

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 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.

Position of the Complainant

[6] The Complainant filed this complaint on the basis that the subject property's assessment of $27,261,000 exceeds the best estimate of market value. In support of this position, the Complainant presented a 45 page evidence package, including with maps, photographs and assessment details detailing the subject property, marked as Exhibit C-1. In addition, the Complainant presented an Altus spread sheet of six GIM analysis marked as Exhibit C-2.

[7] The Complainant offered the following explanation of the gross income multiplier methodology:

Potential Gross Income Multiplier =	Sales Price
	Effective Gross Income

"To derive a gross income multiplier from market data, sales of properties that were rented at the time of sale or were anticipated to be rented within a short time must be available. The ratio of the sale price to the annual gross income at time of sale or projected over the first year or several years of ownership is the GIM.

After the GIM is derived from comparable market data, it must be applied on the same basis it was derived. In other words, an income multiplier based on effective gross income can only be applied to the effective gross income of the subject property; an income multiplier based on potential gross income can only be applied to the potential gross income of the subject property. The timing of income also must be comparable. If sales are analyzed using next year's income expectation; the multiplier derived must be applied to next year's income expectation for the subject property.

Gross income multipliers may be used to compare the income-producing characteristics of properties in the direct comparison approach and to convert gross income streams into property value in direct capitalization. The ratio of the sale price of a property to its annual gross income at the time of sale or projected over the first year or several years of ownership is the gross income multiplier". (Exhibit C-1, pages 10)

[8] The Complainant advised the Board that the Altus Group surveyed all investment sales of multi-residential properties that occurred from July 2009- to July 2012 [Exhibit C-1 page 12].

[9] The Complainant commented on the Alberta Assessors' Association Valuation Guide and advised the Board specifically on determining base market rents as of the valuation date:

"To determine the current market rent for each tenant, the following guidelines are provided (in the order of importance);

1. For most tenants the best source of market rent information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):
   - Actual leases signed on or around the valuation date.
   - Actual leases within the first three years of their term as of the valuation date.
   - Current rents for similar types of stores in the same shopping centres.
   - Older leases with active overage rent or step-up clauses.
2. As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.
3. If comparable information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be". (Exhibit C-1 page 24)

[10] The Complainant presented six walk-up sales comparables to the Board. The year of construction ranged from 2001 to 2008, the total number of suites ranged from 32 to 305 and the time-adjusted selling price per suite ranged from $101,010 to $204,920. The Complainant analyzed the respective GIM's of the six sale comparables and determined that a median GIM of 10.66 was appropriate for the sales comparables. In addition, the median ASR for the six sales comparables was 100% (Exhibit C-2 page 1).

[11] The Complainant utilized the potential gross income (PGI) of the Complainant and applied the median GIM of 10.66 to arrive at a residential value of $24,110,189, which is lower than the $27,261,000 assessment. The City has assessed the subject property's PGI as $2,275,424. However, the Complainant has utilized the most recent leasing of the property's rent roll to determine the PGI (Exhibit C-1 pages 14, 15, 17 and 18).

[12] The Complainant advised the Board that the subject property was sold in June 2012, but was not considered a market transaction. There is indication the purchaser paid more than market and the subject property was not listed on the open market.

[13] During questioning of the Complainant by the Respondent, the Complainant advised the Board of the following:

a. The subject has an underground parkade and the Complainant stated that the Complainant would take the word of the Respondent that there were 221 underground parking stalls.

b. The PGI would increase if you add parking to the total revenue.

c. The Complainant stated a telephone survey was conducted to determine the rental rates paid on the Complainant's sale comparables to determine and verify the income and revenue.

d. Regarding the lower rents paid on sale #6 at 3147 151st Avenue due to the affordable housing complex, the Complainant stated there was no evidence as to that fact.

e. The assessment capitalization rate is not an issue.

f. The vacancy rate utilized was 4%, the same as the City's vacancy rate.

g. The potential gross income utilized by the Complainant was from the Complainant's rent roll.

[14] The Complainant brought the Board's attention to legal submissions re: Appellant's right to the lower of fairness and equity or market value. According to *Bramalea Ltd. v. British Columbia*, "it is my view that the principles mentioned give the taxpayer two distinct rights: (i) a right to an assessment which is not in excess of that which can be regarded as equitable; and (ii) a right not to be assessed in excess of actual value". (Exhibit C-1 page 29)

[15] The Complainant argued that there was no evidence to support the Respondent's assertion on duress that made one of the sale comparables owners sell at a lower value.

[16] In addition, a second property sold 13 months after the first property sold, thus questioning the Respondent's assertion that the owner desperately needs cash.

[17] The Complainant concluded the testimony by requesting the Board to assess the subject property with a gross income multiplier (GIM) of 10.42. Utilizing the market factors, this would produce a 2013 assessment value of $24,110,000.

Position of the Respondent

[18] The Respondent defended the 2013 assessment by providing the Board with a 65 page evidence package marked as Exhibit R-1, plus an 85 page law and assessment brief marked as Exhibit R-2. In addition, the Respondent provided the Board with a number of ECARB decisions marked as Exhibit R-3.

[19] The Respondent advised the Board about the three mass appraisal approaches and specifically the income approach for the multi-residential inventory, stating that:

> "The sales comparison approach was not employed to derive market estimates for any properties considered within the multi-residential inventory.
>
> Low-rise apartments were valued based on the income approach using typical gross income (RGI), typical vacancy, and typical gross income multiplier (GIM). The income approach is the approach of choice as it best reflects the typical actions of buyers and sellers when purchasing income-producing properties. The use of the GIM to value multi-residential housing is widely used in the assessment field.
>
> The multi-residential income model distinguishes different values for the various types of multi-residential properties by making adjustments for building type and significant variables attributable to that building type.
>
> Two models are created to work in tandem. One calculates the market typical potential gross income using the rental information, and the second calculates the market typical gross income multiplier using the sale information and the PGI model. These models follow legislated guidelines and appraisal theory
>
> MVA = (PGI less VAC) x GIM

Stabilized vacancy is the percentage allowance for vacant space in the subject property based on a study of unoccupied units of comparable properties in the area for a year. Stabilized or typical vacancy assumes current market conditions and typical management.

A gross income multiplier (GIM) is defined as the factor by which income is multiplied in order to obtain an estimate of value. Simply stated, the GIM expresses the relationship between property value and potential gross income. They are derived from market analysis of sales.

Theoretically, a GIM is a product of the factors that determine how much an investor will pay now for future income. An investor will consider the degree of risk involved; the estimated potential income stream, the expected time the investment will be profitable; and the percentage attributable to operating expenses. These factors are directly related to the type, location, condition, and other attributes of the property.

All sales within the City of Edmonton were reviewed and analyzed as of the sale date. Sales reflect the condition of a property as of the sale date and thus may not always be equivalent to their assessed value.

The property attributes considered in valuation that are common to low-rise properties include the following: average suite size, balcony, building type, commercial component, condition, effective year built, elevator, gross building area, laundry facility, market area, parking, river view suites, stories, suite mix and suite total". (Exhibit R-1, pages 6-9)

[20] The Respondent disclosure included the following note:

"One must be cautious when relying on outside sources. The Network has a disclaimer on their reports stating, "*All opinions, estimates, data and statistics furnished by other sources is believed to be reliable; however, we cannot guarantee its validity or accuracy*".

The manner in which the rates are derived is how they need to be applied to the subject property. One cannot simply pick and choose various components of rates from varying sources to derive reliable values. The City of Edmonton does due diligence in analyzing all components of value and applies the results in a consistent manner. "(Exhibit R-1, page 14)

[21] The Respondent advised the Board that the actual income achieved by the subject property is $2,483,920 as opposed to the typical City income assessment of $2,275,424 (Exhibit R-1 page 33).

[22] The Respondent presented four sale comparables to the Board. The sales comparables includes all valid sales in 1998 or newer. The number of suites ranged from six to 306 and the GIM range for the four sales comparables ranged from 14.33 to 14.70 with a 14.37 median. The time-adjusted selling price per suite ranged from $171,213 to $199,437 (Exhibit R-1 page 34).

[23] The Respondent presented five equity comparables to the Board, which includes the subject property. The number of suites ranged from 21 to 202 and the effective year of construction ranged from 2002 to 2009. The assessed GIM's of the five equity comparables ranged from 12.48 to 13.18. The assessment per suite ranged from $155,918 to $176,627 (Exhibit R-1 39).

[24] The Respondent presented the Board with a brief that outlined errors inherent in mixing and matching City GIM's/Incomes with third party GIM's/Incomes. The Respondent made a number of comments regarding the brief and some of the more salient points are as follows:

a. It is common in assessment complaints that a Complainant will argue that the gross income multiplier (GIM) of an assessed property is correct, but that the predicted rental value of the property is incorrect. Conversely, they may argue that the rental rate is correct, but the GIM is incorrect.

b. After the gross income multiplier is derived from comparable market data, it must be applied on the same basis it was derived…If sales are analyzed using next year's income expectation, the multiplier derived must be applied to next year's income expectation for the subject property.

c. Third party sources-Deriving GIM's from sales

i. There is no way to question a third party source about the income information that went into the document.

ii. There is no way to know whether the income listed is actual or estimated.

iii. If estimated, there is no way to know how the estimate was arrived.

iv. There is no way to know the source of the income information.

v. There is no way to know whether the vacancy rate is actual or typical.

d. Despite the Network saying that the rents are at market, there is a significant discrepancy between what the Network apparently considers market and the study that the City of Edmonton does to determine market. There is no way to question Anderson or the Network on the source of their data. The City of Edmonton clearly states that these are typical numbers, and not based on actual.

e. Included in the brief was a GIM law brief and a number of MGB and CARB decisions that supported the Respondent's position.

[25] The Respondent advised the Board on a number of observations concerning the Complainant's sale comparables:

a. The vendor for sale #1 at 12615 152nd Avenue could have sold the property lower than market in an attempt to avoid bankruptcy. The purchaser also indicated the vendor was under financial pressure and the purchaser believed he obtained the property for under market value. A third party source confirms the issue of a motivated vendor [Exhibit R-1 pages 43-44].

b. The Respondent advised the Board that sale#2 at 11511 27th Avenue was under a condominium title and therefore the City could not use the sale comparable in its mass appraisal model.

c. The vendor for sale #4 at 15628 100th Avenue was under duress and motivated to sell because of financial pressures. A third party source confirms the issue of a motivated vendor [Exhibit R-1 pages 45-46].

d. The Respondent provided the Board with an excerpt from the third edition: Basics of Real Estate Appraising covering Motivation. "The motivation of both buyers and sellers must be investigated to see if there was any pressure or reason for the sale of the property. Was the vendor motivated to sell quickly because cash was needed, or because of a divorce, or a non-arms length transaction, or any other unusual circumstance. Any adjustments for motivation must be well supported [Exhibit R-1 page 48].

e. The purchaser at sale #6 sale at 3147 151st Avenue admitted that a major consideration in the purchase of the property was that it is bound be affordable housing limits. The property received substantial grants that place rent limits in place till 2025. Based on restrictions in place, the sale price does not meet the definition of market. A third party source confirms the issue of an affordable housing program grants funding agreement [Exhibit R-1 pages 49-50].

[26] During argument and summation, the Respondent brought the Board's attention to a previous MGB decision which states: "it is agreed in fact that the Network income is the actual income reported on the sale date. The Network income also includes other income from parking and laundry and tends to be greater than the typical income used by the Respondent in the preparation of assessment.

The MGB agrees with the Respondent that the Appellant is using inconsistent methodology to value the subject property. The Appellant is applying the GIM's and cap rates derived from the Network's reported actual income to the Respondent's municipality's typical income. This inconsistency results in an unreliable estimate of market value. In contrast, the Respondent used consistent concepts of typical income both in the derivation and application of its multiplier. The Respondent's consistent methodology makes its proposed assessment the better estimate of market value [Exhibit R-1 page 64]."

[27] During argument and summation, the Respondent noted that the Complainant forgot about the parking and notes the rent roll did show the parking. In addition, the Respondent advised the Board that the parking revenue was not a drop in the bucket.

[28] In addition, the Respondent advised the Board that the Complainant uses inconsistent methodology and if you exclude parking, you lower income and therefore have a lower GIM. Further, the Respondent advised the Board that one must use typical revenue and not actual revenue.

[29] The Respondent requested the Board to confirm the 2013 assessment of $27,261,000.

Decision

[30] The decision of the Board is to confirm the 2013 assessment of $27,261,000.

Reasons for the Decision

[31] The Board was persuaded by the sale of the property itself close to the valuation date. Courts have held that the best estimate of market value is the sale of the subject property itself, close to the valuation date. Although the Complainant stated the purchaser paid too much for the property, there was no evidence produced to support this assertion.

[32] The Board was further persuaded by the test performed by the Respondent on the Complainant's potential gross income of $2,354,700. By utilizing the City's assessed GIM of 12.48 and the PGI of the Complainant, produces a value exceeding $29,000,000, substantially higher than the 2013 assessed value.

[33] The Board was persuaded by the two common sales comparables. The Complainants sale #3 and the Respondent's sale #1 at 11230 104th Avenue support the assessment. In addition, the Complainant's sale #5 and the Respondent's sale #3 at 3103 137th Avenue further support the assessment. Both common sale comparables are substantially higher than the subject property.

[34] The Board notes that the sales comparables of the Complainant are not time-adjusted, but the GIM's of the sales comparables are time-adjusted. The Board therefore questions the validity and accuracy of this assessment methodology by the Complainant. The data is derived from third party sources and the sources are not always identified. There is not always verification of the verification of the expenses.

[35] The Board notes that the sale comparables of the Complainant had a number of issues associated with them such as: condominium title, two motivated vendors and an affordable housing complex that does not lend itself to fee simple. The Board views that the sales comparables of the Complainant did not meet the standard of comparability.

[36] The Board sees no reason to reduce the GIM on this property. The Complainant did not give the Board sufficient nor compelling evidence for the Board to form an opinion as to the incorrectness of the 2013 assessment.

Dissenting Opinion

[37] There was no dissenting opinion.

Heard commencing October 31, 2013.
Dated this 21st day of November, 2013, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Chris Buchanan
for the Complainant

Tanya Smith, Legal Counsel
Devon Chew, Assessor
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.