

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 00672

Assessment Roll Number: 9435546

Municipal Address: 5011 23 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

**Peter Irwin, Presiding Officer
Lillian Lundgren, Board Member
Darryl Menzak, 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.

[2] At the outset of the hearing, the parties advised the Board that some of the evidence and argument in this complaint is the same as in the complaints related to Roll Numbers 3907771, 7817935, 9940113, and 9947119.

Preliminary Matters

[3] The Respondent objected to a new issue being raised by the Complainant, as it appeared that the Complainant was requesting that the reported size of the property be reduced by five percent. The objection was based on section 9(1) of the *Matters Relating to Assessment Complaints Regulation* (MRAC), as the description of the property was not an issue identified on the Complaint Form. The Board did not accept the objection because the size issue pertains to net leasable area in certain classes of property, which is relevant to the question of whether the subject property is assessed equitably. Equity is an issue that is properly within the Board's jurisdiction to determine.

[4] The Respondent objected to pages 79 through 86 of the Complainant's Rebuttal document (Ex. C-3), stating that it is new evidence that was not disclosed in accordance with section 8 of MRAC. Those pages included Assessment Detail Reports and *pro forma* with additional information. The Board found that those particular pages do not respond to anything raised in the Respondent's disclosure. Therefore, the impugned pages could not be considered proper rebuttal evidence and, accordingly, were removed and returned to the Complainant.

[5] The Complainant objected to the admission of three pages of surrebuttal evidence from the Respondent. The first page of the impugned document is an excerpt from the *2012 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual*, which is a regulation pursuant to the *Municipal Government Act* (MGA). The remaining two pages of the document is an excerpt from a Sales Validation Questionnaire (RFI) in respect to the sale of 100 Manning Crossing, which is one of the Respondent's comparable properties. The Complainant argued that this material is not proper surrebuttal because it does not address any new information that was raised in rebuttal. The Complainant said that this information should have been in the Respondent's original submissions because it addresses a matter that was clearly raised in the original disclosure. The Respondent argued that the surrebuttal evidence directly addresses the contention made in rebuttal that a portfolio sale in general, and the sale of 100 Manning Crossing in particular, should never be used as a comparable. The Respondent said that the impugned documents are proper surrebuttal because they show that multiple parcel sales (or portfolio sales) can be used as comparables if they are appropriately allocated. The excerpt from the regulation shows this principle and the Sales Validation Questionnaire shows that the sale was allocated. The Board found that the impugned pages respond directly to new argument raised in rebuttal. Accordingly, the Board allowed the admission of the surrebuttal documents and entered them in evidence as exhibit R-3.

[6] The Respondent objected to two pages of the Complainant's sur-surrebuttal. A Board ruling on their admissibility was not necessary as the Complainant agreed to remove them.

Background

[7] The subject property, known as Meyokumin Shopping Center (23rd Ave. Sobeys), is a neighborhood shopping center located in the Millwood's Town Center neighborhood in South Edmonton. The property consists of a grocery store and four Commercial Retail Units (CRUs). The land size is 287,827 square feet and the assessed net leasable area is 58,176 square feet while the leasable area presented by the Respondent was at 62,776 square feet. The subject was assessed based on the income approach using a capitalization rate of 6.50%. Included in the total assessment of \$14,540,000 is a value for excess land in the amount of \$1,156,500.

Issues

[8] Is the subject property equitably assessed with similar properties?

- a. Is the subject property assessed in the same manner as similar properties?
- b. Is the rental rate for the food store equitable?
- c. Is the capitalization rate used to prepare the subject assessment equitable?

[9] Is the subject property assessment correct?

- a. Is the rental rate for the food store correct?
- b. Is the capitalization rate used to prepare the assessment correct?
- c. Should the subject assessment be adjusted for excess land?

Legislation

[10] 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.

[11] The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/209, reads:

Disclosure of Evidence

8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- a) the complainant must, at least 42 days before the hearing date,
 - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;
- b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent’s evidence;
- c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a

summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Failure to disclose

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

Position of the Complainant

[12] The Complainant's position is that the assessment of the subject property is not equitable and is in excess of market value compared to other retail properties.

[13] The Complainant took the position that the subject property was not assessed in the same manner as similar properties. In support of the equity issue, the Complainant presented Exhibit C-2 which contains a data set of 92 comparables properties. The Complainant contends that this group of properties is assessed at 95% of the Net Leasable Area (NLA).

[14] The Complainant challenged the lease rate used by the City and argued that it was too high. In support of this position the Complainant presented 12 comparables of food stores and the lease rates applied by the assessor (Exhibit C-1 page 15). The Complainant calculated a ratio indicating that the rates lease rates decreased as retail unit areas increased and rented for less as they got older. The year built of the comparables ranged from 2004 to 2010.

[15] The Complainant also provided a similar comparison with 18 comparables constructed between 1989 and 2002. The lease rates indicate that the food store CRU lease rate relationship increases and that as they rent for less as they get older. The lease rate relationship also increases when compared to larger CRUs. The Complainant then applied a lease rate of \$13.00 to the 18 comparables indicating a similar relationship that exists between the first group of 12 food stores and CRUs. This illustrates that the older food stores should receive a lower lease rate to calculate the assessment (Exhibit C-1 page 16).

[16] The Complainant argued that the 6.50% capitalization rate (cap rate) utilized by the City was too low and that it should be 7.00%. In support of the equity argument, the Complainant provided seven comparable properties where the City used a cap rate of 7.00%. The

comparables are on the Southside and are either a 'Junior Anchor or a 'Food Store'. The NLAs range from 22,189 to 112,402 square feet (Exhibit C-1 page 17).

[17] The Complainant provided a cap rate study using actual Net Operating Income (NOI) and actual sales prices of comparable properties. The sales information was derived from 'The Network' which is a third party source for information on sales of all types of property.

[18] The Complainant argued the correctness of the cap rate used and provided further support for a cap rate of 7.00%. The Complainant provided 24 comparables with a median cap rate of 7.04% and an average cap rate of 7.15%. The comparables were located throughout the city and range in year built from 1952 to 2008. The cap rates were derived by means of the actual net income and individual sale price of each property. The sales of the properties occurred from May 2011 to September 2012.

[19] The Complainant also argued that some of the lower cap rates could be excluded because one of the sales was a portfolio sale, four indicators had an upside potential and one sale was an outlier. Excluding these sales resulted in a median cap rate of 7.15% and an average cap rate of 7.24%.

[20] With respect to the land requirements for the subject property, the Complainant submitted that the requirements should be based on types of space. Typical restaurants are adjusted when the site coverage is below 5% and other retail coverage is less than 25%. By the Complainant's calculations, the subject requires 324,322 sf before there is excess land, and since the subject has 287,827 sf, there is no excess land. The Complainant referred the Board to Requested Market Value *pro forma* that included the new restaurants with 4,370 sf and rental rates at \$30.00/sf, but with the excess land calculation excluded.

[21] The Complainant provided rebuttal evidence (Exhibit C-3) in response to the City evidence (Exhibit R-1). The Complainant took issue with various aspects of the evidence including, the use of market lease rates that were higher than the actual lease rates, leases that were old when compared to the valuation date, areas of the comparables were incorrect, portfolio sales which are invalid and that the City was mixing and matching assessment models.

[22] The Complainant also provided additional rebuttal evidence (Exhibit C-4) in response to the Respondent's evidence (Exhibit R-1) which included information from third party reports. The exhibit in addition included several MGB Board Orders which addressed third party reports evidence and the reasons why they should not be considered or be given minimal weight in a Board's decision.

[23] The Complainant provided rebuttal evidence (Exhibit C-5) in response to the Respondents inclusion of a comparable which the Complainant considered to be an invalid sale because it was part of a portfolio sale. The Complainant considered the conditions of the sales transaction and the subsequent leases not to be typical and that the sale should not be included in the Respondent's analysis.

[24] The Complainant provided as rebuttal evidence (Exhibit C-6) a document titled "*Standard on Verification and Adjustment of Sales*" from the International Association of Assessing Officers (IAAO) which stated that multiple parcels sales should not be considered for analysis.

[25] In summation, the Complainant argued that the City of Edmonton for valuation purposes has stratified properties into different valuation groups. Properties are further stratified into shopping centers, retail groups, condominiums etc. In summation the Complainant argued that the subject property is not assessed at a typical market value. The Complainant is requesting the Board to reduce the assessment to \$11,611,000.

Position of the Respondent

[26] The Respondent presented the Board with an assessment brief containing 150 pages (Exhibit R-1) plus a Law & Legislation brief with 51 pages (Exhibit R-2). The Board was also presented with a three page surrebuttal that included a Multiple Parcel Sales excerpt from the Assessment Manual and portions of a Sales Validation Questionnaire.

the equity issues

[27] The Respondent submitted that the subject property was assessed in a fair and equitable manner. In support of this position, the Respondent referred the Board to an Equity Response (Exhibit R-1, pages 49 and 50). It states that the City of Edmonton stratifies properties within valuation groups and values these groups within the mass appraisal model for that group of properties. There are two separate valuation groups, standard retail properties and shopping centers. Each valuation group is further stratified into groups of similar properties. The subject property is valued within the Shopping Centre grouping of properties. All of the properties in the Shopping Centre group are valued in the same manner.

[28] The Respondent reviewed the City's methodology, outlined in the Equity Response. For the shopping valuation centre group, the City uses 100% of a property's NLA in its calculations of that property's market value. This methodology is supported by a study that the City developed.

[29] Based on the study that the City developed, the Respondent's Equity Response further noted that the retail valuation group, by contrast to the shopping centre group, typically uses 95% of the Gross Leasable Area (GLA) to arrive at the correct Net Leasable Area (NLA), based on a study that the City developed. The study showed that the typical ratio of the gross footprint to the NLA for the retail valuation group is that the NLA is typically 95% of the GLA. The Respondent stated that the City does not have a policy of assessing a group of properties at 95% of the NLA.

rental rates

[30] In support of the City's assessment of the subject property, the Respondent provided a table of rental rate equity comparables (Exhibit R-1, pages 47 & 48) showing 17 comparable food store properties, all assessed at \$15.50/ sf. The effective year built of the comparables ranged from 1991 to 2006, compared to the subject's effective year built of 2002. The size of the comparables ranged from 30,273 sf to 50,763 sf, compared to the subject's 48,274 sf.

[31] The Respondent provided comments on the Complainant's equity comparables on page 17 (Exhibit C-1) noting that none of them were from the same space type group and all were located in inferior locations.

capitalization rates

[32] The Respondent submitted that assessments are prepared using cap rates that are derived in the following way. The stabilized net operating income is divided by the time adjusted sale price to produce a cap rate. On the other hand, the Complainant is using cap rates published by The Network that are based on the actual net operating income and sale of the property.

[33] In support of the City's Cap Rate, the Respondent provided a table of Cap Rate equity comparables (Exhibit R-1, page 45) showing 17 food store properties all assessed with a 6.5% cap rate. The effective year built of the comparables ranged from 1991 to 2006, compared to the subject's effective year built of 2002. The size of the comparables ranged from 30,273 sf to 50,763 sf, compared to the subject's area of 48,274 sf.

[34] The Respondent argued that the Complainant's equity cap rate comparables (Exhibit R-1 page 49) were not similar to the subject property. The Complainant's comparables were in a poorer location compared to the subject property.

the correctness issues

[35] The Respondent also provided a table showing the City's Shopping Centre Capitalization Rate Analysis (Exhibit R-1, page 30) featuring 14 comparables. Three years of sales were analyzed, and the sale price of each was time-adjusted to the valuation date of July 1, 2012 by applying a time adjustment factor. The 2013 stabilized net operating income was divided by the time-adjusted sale price (T.A.S.P.) to derive the appropriate "fee simple" Cap rate. The range of the adjusted cap rates was 4.65% to 7.92%, with a median of 6.32% and an average of 6.34%.

[36] Upon questioning, the Respondent clarified that 7 of its 14 comparables were in common with the 24 comparables that were provided by the Complainant (Ex. C-1, p. 18).

[37] The Respondent also provided comments on the Complainant's sales comparables (Ex. R-1, p. 18), noting, for example, that the Network NOI could vary significantly from typical incomes, and therefore the Network cap rate could also vary significantly from the fee simple cap rate. The Respondent also noted that only 10 out of 24 of the Complainant's sales comparables were from the shopping centre group.

[38] The Respondent submitted that different methods of calculation produce different cap rates. The following table shows the Complainant's method of using an actual sale price and an un-adjusted NOI and the Respondent's method of using a time-adjusted sale price and the assessed NOI with typical incomes. The Complainant's method results in a higher cap rate.

	Actual	Altus	Altus	City	City	City
Address	Sale	Network	Network	T/A Sale	Assessed	Adjusted
	Price	NOI	Cap	Price	NOI	Cap
14103 23 Av	\$34,500,000	\$2,373,600	6.88%	\$35,904,150	\$2,428,277	6.76%
6655 178 St	\$3,800,000	\$267,448	7.03%	\$4,002,540	\$253,090	6.32%
2303 111 St	\$36,870,348	\$2,256,465	6.12%	\$38,385,538	\$2,256,249	5.81%

[39] In response to the Complainant's rebuttal, the Respondent presented exhibit R-3 which included excerpts from the 2012 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual regarding Multiple Parcel Sales, and also portions of a Sales

Validation Questionnaire related to the sale of the property at 100 Manning Crossing. The Assessment Manual document stated that if a multiple parcel sale is included, the sale price must be apportioned to each parcel and that apportionment adjustments should only be made where information about the sale price apportionment is available or can be derived. Respondent submitted that the sale of the 100 Manning Crossing property was part of a portfolio sale. A Request for Information indicated that a value was attached to that property and that it was a valid sale. The RFI confirmed a total sale price of \$20,872,000, but also noted that there was an appraisal made on the property, with an appraised value of \$21,400,000.

[40] With respect to the sale of the subject property, the Respondent presented a copy of the Land Titles Act Transfer document that shows the subject property together with Clearwater Plaza sold for a total of \$19,000,000. The Complainant failed to provide any supporting documents to show that the subject property allocation should be \$10,000,000.

[41] With respect to the Complainant's concern that the subject is not a shopping center because it has an LUC 207 code, the Respondent stated that the subject property is located in a shopping centre and is not assessed based on the LUC code.

[42] In support of the City's 6.50% cap rate, the Respondent referred to the Shopping Centre Analysis (Exhibit R-1, page 27) and noted that, of the seven comparables that were also in the Complainant's package, the average was 6.46%.

[43] For independent support of the City's cap rate, the Respondent provided third party reports from Colliers International and CB Richard Ellis for Q2 2012 (Exhibit R-1, pages 54 - 58). For Community Retail, the former report showed cap rate Low: 6.25% and cap rate High: 6.75%; the latter report showed, for Retail Regional, a cap range of 5.75% to 6.25% and for Retail Neighbourhood, a cap rate range of 6.0% to 6.5%. It was submitted that these numbers support the City's analysis.

on the excess land

[44] With respect to the calculation for excess land, the Respondent referred the Board to exhibit R-1, page 20. It was noted that the actual site coverage was:

$$58,176 \text{ sf building footprint} / 287,795 \text{ sf land size} \times 100\% = 20\% \text{ site coverage.}$$

The Respondent stated that the threshold coverage is typically 25% and therefore the subject property would only require:

$$58,156 \text{ sf} / 25\% = 232,704 \text{ sf land size}$$

The difference between the actual land size and the threshold land size is the amount of excess land:

$$287,795 \text{ sf} - 232,704 \text{ sf} = 55,091 \text{ sf excess land.}$$

The City then applies a land value of \$21.00/ sf to the amount of excess land to arrive at an excess land value:

$$55,091 \text{ sf} \times \$21.00 / \text{sf} = \$1,156,500 \text{ excess land value.}$$

[45] The Respondent noted that the City's *pro forma* (exhibit R-1, page 19) included the restaurants under construction as being assessed at cost, as there were not complete as of the December 31, 2012 condition date.

[46] In summary, the Respondent requested the Board to confirm the assessment at \$14,540,000.

Decision

[47] The property assessment is confirmed at \$14,540,000.

Reasons for the Decision

[48] The primary issue in this complaint is whether the subject property is assessed equitably with similar properties. Having weighed the evidence, the Board finds that the Complainant's evidence and argument does not establish that the subject property is inequitably assessed with similar properties.

[49] The Complainant stated that the City of Edmonton has a policy of assessing one group of retail properties based on 95% of the net leasable area (NLA), and assessing another group of retail properties based on 100% of the NLA. According to the Complainant, the ninety-two properties listed on pages 1 and 2 in Exhibit C-2 are assessed based on 95% of the NLA. This, the Complainant argued is unfair because the subject property is assessed at 100% of the NLA.

[50] The Respondent stated that the City of Edmonton does not have a policy of assessing a group of retail properties at 95% of the NLA. The Respondent stated that the Complainant's ninety-two comparables are classified as Retail Plaza properties and these comparables are assessed as follows. The NLA is derived by taking 95% of the gross footprint area, as it has been determined that 95% of the GLA will, in the majority of cases, provide the correct NLA for a retail property. Therefore, 95% of the GLA results in 100% of the NLA.

[51] The Board finds that the Complainant's equity comparables are not similar to the subject property because the comparables are stratified in the Retail Plaza group of properties and the subject property is in the Shopping Center group of properties. Furthermore, both groups of properties are assessed based on 100% of the NLA.

[52] In addition to the issues on equity, the Complainant raised the issue that the subject property is incorrectly assessed. The Complainant challenged the \$15.50 per square foot rental rate applied to the CRU food store portion of the subject property on the basis that it is not correct. The Complainant contended that food stores are similar to other retail properties in that they rent for less per square foot as they get older. The Respondent countered this argument by stating that the Complainant has not presented any documentary evidence to support this contention. The Board finds insufficient evidence to support the Complainant's position on this issue.

[53] The Complainant also challenged the 6.5% capitalization rate used to assess the subject property. The Complainant relied on twenty-four sales with a median rate of 7.15% to support

the requested capitalization rate of 7%. The capitalization rates for each of these sales are the rates published by The Network and are based on the actual net operating income (NOI) at the time of sale. The sale prices are not time adjusted to the valuation date of July 1, 2012. In order to be useful indicators of the market value for the subject property, the sale prices must be adjusted for the changes in market conditions between the sale date and the valuation date.

[54] The Board finds that the Complainant's capitalization rates are "leased fee" capitalization rates, and should not be used for assessment purposes. When the actual lease rents differ from the typical market rents and are used to derive the capitalization rate, the result is a "leased fee" capitalization rate. The capitalization rates must be derived and applied in a consistent manner.

[55] The Board finds that the Respondent's capitalization rates are more reliable because the Respondent consistently used the 2013 stabilized net operating income and the time adjusted sale price to derive the capitalization rate. The 6.5% capitalization rate used to assess the subject property is supported by the capitalization rates of the seven sales used by both parties. The average capitalization rate of these sales is 6.46%.

[56] Finally, the Board considered the issue of excess land. The Board finds that the Respondent prepared the subject assessment with the correct excess land value calculation in accordance with the legislation. As at December 31, 2012, the buildings were not complete and were, therefore, assessed on the cost approach to value.

[57] For the above reasons, the assessment is confirmed.

Heard commencing June 17, 2013.

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



Peter Irwin, Presiding Officer

Appearances:

John Trelford, Altus Group
Jordan Nichol, Altus Group
for the Complainant

Cameron Ashmore, City of Edmonton, Law Branch
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.