

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01002

Assessment Roll Number: 4156998

Municipal Address: 100 Mayfield Common NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Harold Williams, Presiding Officer
Martha Miller, Board Member
Mary Sheldon, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

[2] The parties agreed that the evidence, argument and submissions will be carried forward where applicable from this roll number, 4156998, to roll number 6759401.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property is located in the Britannia Youngstown subdivision. It is a Power Centre (shopping centre) with a year built listed as 1990/2006 and is commonly known as Mayfield Common.

Issue(s)

Issue # 1

[5] Is the assessment of the subject property fair and equitable when considering the application of a 95% lease area adjustment for retail property?

Issue #2

[6] Is the assessment of the subject property correct when considering the lease rate for warehouse space adjoining a food store?

Issue #3

[7] Is the assessment of the subject property correct when considering the current lease rate for a pad site restaurant?

Issue #4

[8] Is the assessment of the subject property correct when considering the market capitalization rate (cap rate) used in the preparation of the assessment?

Legislation

[9] **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

Issue #1

[10] The Complainant argued that the assessment of the subject is not equitable and is in excess of market value in comparison with similar properties. The Complainant stated that the municipality values one group of retail properties at 95% of the Net Leasable Area (NLA) as defined by the rent roll while another group of retail properties including shopping centers/power centers is assessed at 100% of the NLA.

[11] The Complainant presented Exhibit C-2 containing information concerning ninety-two properties which, in the opinion of the Complainant, are similar to the subject. For each of the comparable properties, an assessment record and rent roll was provided. The median assessment of these properties is 95% of leasable space defined by the rent roll. The Complainant stated further that the subject power centre is assessed at 100% of the NLA and that this is unfair and inequitable. The Complainant argued further that if the municipality is using 95% of rent roll lease area for assessment purposes for some retail properties then, for overall assessment equity,

the municipality should use 95% of reported lease area for the assessments of the retail group which includes shopping centers and power centers.

Issue # 2

[12] With respect to the issue of the appropriate lease rate for the storage area which forms part of the Save-On-Foods store, the Complainant advised that as of the condition date of December 31, 2012, the Save-On-Foods store had been split into six units. One unit of approximately 18,883 square feet is designated as storage. The Complainant submitted that a lease rate of \$3.75 per square foot is appropriate for this space and in support of this request submitted details of a storage lease for a southside grocery store commencing May, 2012 at a lease rate of \$3.75 per square foot. The Complainant noted that the access and exposure to the storage unit is poor and the quality of improvements is below typical retail finish.

Issue # 3

[13] With respect to the issue of the rental rate to be applied to the restaurant units, the Complainant argued that CRU restaurants should be valued at \$26.00 per square foot (Exhibit C-1, page 28) while the pad units should be valued at \$30 per square foot (Exhibit C-1, page 29) and supported this argument with restaurant lease comparables. The Complainant presented both market lease comparables as well as information concerning leases within the subject to establish that \$26 per square foot is an appropriate lease rate for CRU restaurants. The Complainant argued that the \$17 per square foot lease rate shown for Joeys Grill Lounge on the subject rent roll (Exhibit C-1, page 22) should be included as an indicator for the 2013 assessment.

[14] For the pad restaurants, the Complainant presented a chart of the pads to demonstrate that \$30 per square foot is an appropriate lease rates.

[15] To further support the argument that \$26 per square foot is an appropriate lease rate for CRU restaurants, the Complainant presented a chart of restaurant assessment lease comparables.

Issue # 4

[16] With respect to the appropriate cap rate to be applied, the Complainant submitted that 7% was appropriate rather than the 6.5% applied by the Respondent.

[17] The Complainant provided a chart of sales of similar properties which showed a range of cap rates from 6.12% to 9.18%. The cap rates had been derived by using the actual net operating income (NOI) and actual sale prices as stated in Network documents.

[18] The Complainant stated further that if some properties in the cap rate chart were excluded as being outliers or part of a portfolio sale, the average capitalization rate would be 7.24%.

[19] In addition, the Complainant provided an assessment cap rate chart (Exhibit C-1, page 31). This document provided cap rates used in the assessments of retail and shopping centres. One was assessed with a 7% cap rate and the others were assessed with a cap rate of 7.50%.

Rebuttal

[20] The Complainant provided rebuttal evidence (Exhibit C-3) which took issue with some information provided by the Respondent. For example, with respect to the Market at Magrath

comparable used by the Respondent in support of a cap rate, the Complainant noted that there is a significant amount of office space which is valued differently and it is wrong to use a time adjustment for retail only. As well, the Complainant stated that other comparables used by the Respondent had a high office component and that others had errors in size or rental income and stated that the Board should not rely on these comparables in establishing value for the subject property.

Complainant's Conclusion

[21] The Complainant provided a revised pro forma which incorporated the Complainant's allocation of the food store square footage to six different units. The Complainant also applied a percentage of 95% of the area of each tenant space for valuation purposes. The Complainant also applied a rent of \$3.75 per square foot to the storage area and rents of \$26 per square foot to the CRU restaurants and \$30 per square foot to the pad restaurant areas. The Complainant also applied a 7% cap rate. The resulting value for the subject property is \$91,345,500 and the Complainant requested that the Board reduce the assessment to that amount.

Position of the Respondent

Issue # 1

[22] The Respondent provided information on the valuation category of shopping centers (Exhibit R-1, page 152) which includes power shopping centers. The subject property is valued within this category and properties within this category are valued at 100% of gross leasable area (Exhibit R-1, page 17).

[23] The Respondent explained that the City sends out requests for information each year asking commercial property owners to report the leasable areas and lease rates for their properties. The Respondent further explained that the information received about properties in the standard retail category is often incomplete and therefore it is reasonable to use 95% of gross building area as an adjustment to approximate 100% net leasable area. The Respondent also explained that such adjustment was not used in the case of the power shopping center category because the information the City receives from these property owners is reliably reported as the net leasable area.

Issue # 2

[24] The Respondent did not refute that the 2012 assessment year condition date information for the space in question may be in error, but stated that the current owner reported information had been used for the 2013 assessment and the information did not show subdivision of the space in question. However the Respondent did provide information (Exhibit R-1, page 14) that showed several scenarios of what a revised assessment amount might be, taking into account the subdivision of the original Save-on-Food space and applying a lease rate to the storage area. The Respondent argued that the revised assessment scenarios were not substantially different from the current 2013 assessment for the space.

Issue # 3

[25] The Respondent provided a 2013 shopping Centre Mass Appraisal Brief (Exhibit R-1 page 158). This document showed, under the heading Tenant Space Types, that restaurants are

divided into categories for assessment purposes. (Exhibit R-1 pages 15 & 16) showed tables with actual data and comparables in the area of the subject property.

[26] The Board reviewed Exhibit R-1, page 15 where the Respondent demonstrated that the \$27.79 per square foot assessment value was derived from the actual lease rates of the subject property. The Respondent also provided information on market lease rates for restaurants in the area of the subject property that showed a range from \$24.56 per square foot to \$38.50 per square foot. The Respondent explained that lease rates tended to differ because of age of properties rather than because of differing type or quality of restaurant. The Respondent further argued that the information provided supported the assessment of restaurant lease rates for the subject property. In terms of the Joeys Grill Lounge with a lease rate of \$17.00 per square foot, the Respondent argued that this rate did not appear to be a normal market rate when placed against all other indicators of market lease rates but regardless would not alter overall lease rates substantially as demonstrated by example lease rate calculations (Exhibit R-1, page 15).

Issue # 4

[27] The Respondent (Exhibit R-1 page 38 & 39) first reproduced the Complainant's Table of Sales which had been presented to support the Complainant's capitalization rate submission. The Respondent evaluated these comparables according to location in standard retail properties or in the shopping centre category and also provided comments on the sales. The City of Edmonton's cap rate review utilized the shopping centre valuation category and provided the 2013 Assessment Capitalization Rate.

[28] The Respondent provided an evaluation of the Complainant's Equity Comparables (Exhibit R-1, page 78) and noted that the comparables were not in the shopping center category. The Equity Comparables provided by the Respondent (R-1, page 79) were all in the shopping center valuation category, similar to subject property. In addition, the Respondent provided case evidence (R-1, pages 80-145) consisting of Municipal Government Board orders MGB 045/09 and MGB 145/07 to support the Respondent's position.

[29] The Respondent reviewed each of the four issues in summation and requested that the Board confirm the 2013 assessment of subject property at \$105,589,500.

Decision

[30] The decision of the Board is to confirm the 2013 assessment of the subject property at \$105,589,500.

Reasons for the Decision

Issue # 1

[31] After deliberation the Board was not persuaded that there is a need to apply a 95% adjustment to reported net leasable area for power shopping centres in order to provide overall assessment equity. The information in (Exhibit C-2) showed a somewhat varied range in its percentage comparisons of rent roll areas and gross building area. Furthermore the Board was not convinced that standard retail properties and power/ shopping center properties are comparable when considering attributes such as tenant type, location, size, and value. The Board considers that the City's approach using 95% of gross building area to approximate 100% of the net leasable area for standard retail properties is reasonable when considering the incomplete

owner reported information on these properties. Since 100% of the net leasable area is known through the owner reports on power centers there does not appear to be an overall assessment equity issue.

Issue # 2

[32] The Board gave consideration to the Complainant's comparable in terms of market lease rates for the warehouse space. Since the lease rate for this space appeared to be the only issue, the Board was disappointed that the Complainant did not provide a *pro forma* addressing only this issue and as well the Respondent did not provide a revised *pro forma*. The Board was concerned that only one market lease rate comparable was provided. The Board was therefore not convinced that enough clear information was provided to indicate a change in the assessment for the space in question.

Issue # 3

[33] After reviewing the information provided, the Board was satisfied that the \$27.79 per square foot lease rate used by the City for restaurant assessments within the subject property appeared reasonable when taking into account market lease rate information and assessment comparison information from both parties. The Board noted that assessment comparables provided by the Complainant (Exhibit C-1 page 28, 29) although listed as restaurant comparables appeared to contain a number of property types other than restaurants making these comparables somewhat less reliable.

Issue # 4

[34] The Board reviewed information provided by the Complainant (Exhibit C-1 page 30) and the Respondent (Exhibit R-1 page 39) regarding property sales comparisons to indicate a market cap rate for the subject property. The Board noted that the parties agreed upon several of the sales that they used in their individual analysis. When these sales (seven in total) were time adjusted, the market cap rate appeared as 6.47% which supported the City's use of a 6.5% cap rate for the 2013 assessment of the subject property.

[35] The Board reviewed information provided by the Complainant (Exhibit C-1, page 31) and the Respondent (Exhibit R-1, pages 78, 79) regarding assessment equity comparisons to indicate a cap rate for the subject property. The Board noted that the fourteen equity comparables provided by the Complainant were all listed as standard retail properties and did not appear directly comparable to the subject property. The nine assessment equity comparables provided by the Respondent were all listed as power centre properties like the subject property and showed the use of a 6.5% cap rate for all but one comparable at 6.0%. The Board considered that the above information supported the use of a 6.5% cap rate for the 2013 assessment for the subject property.

[36] Information regarding property sales and cap rates from a real estate survey was provided by the Respondent (Exhibit R-1, pages 59 to 77). The Respondent stated that the City did not rely on such information to set assessment values but used the information as general guidance. The Board reviewed the information but gave it no weight since it is clearly third party information.

[37] The Board was also provided with three previous Edmonton Composite Assessment Review Board decisions that the Respondent stated were related to the matters of this complaint.

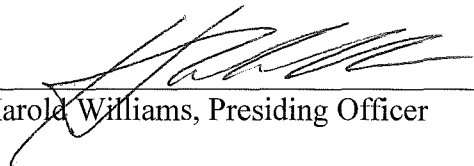
Although the Board did review these decisions, the Board notes that previous decisions are not binding on matters before this Board and that each complaint must be dealt with on its own merit.

Dissenting Opinion

[38] There was no dissenting opinion.

Heard on July 22, 2013.

Dated this 15th day of August, 2013, at the City of Edmonton, Alberta.


Harold Williams, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Frank Wong
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.