

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01106

Assessment Roll Number: 9983285

Municipal Address: 2310 109 STREET NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Patricia Mowbrey, Presiding Officer
Pam Gill, Board Member
John Braim, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties stated there was no objection to the Board's composition. The Board Members stated there was no bias with respect to this file.

[2] The witnesses; John Trelford, Jordan Nichol and Tracy Ryan, were sworn in.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property is a neighbourhood shopping centre located at 2310-109 Street, NW, Edmonton, with an effective age of 2000. It contains 47,846 square feet (sq ft) of net leaseable area. The 2013 assessment is \$10,772,500.

Issue(s)

[5] Eleven issues were enumerated on the complaint form, however, 3 issues were presented to the Board as follows:

- (i) Should the subject property be given a 95% size adjustment and be assessed the same as other retail groups?
- (ii) Is the Assessment Capitalization Rate too low?

- (iii) Is the assessment lease rate excessive?

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 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:

Mass appraisal

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.

Position of the Complainant

[8] The Complainant presented written evidence Exhibit C-1, 24 pages; Exhibit C-2, 438 pages; Exhibit C-3, 142 pages (Rebuttal); Exhibit C-4, 12 pages (Sur-surrebuttal)) and oral argument for the Board’s review and consideration.

Issue 1

[9] The position of the Complainant was that the assessment of the subject was not fair and equitable and the assessment was excessive. The Complainant stated that all retail properties should be assessed using the same method and the size of the property or the specific assessor should not affect the assessment method. The Complainant stated that the Respondent categorized retail assessment in two groups, Shopping Centre/Shopping Plaza and General

Retail. The Shopping Centre group used 100% of rent roll size for assessment purposes, and the Retail group used 95% of the leasable size for assessment purposes, (C-1, page 9). The Complainant argued that the grouping was not equitable. If the Retail group of properties was assessed at 95%, then that standard should apply to all retail properties.

[10] The complainant provided a Fairness and Equity Analysis of Rental Area (C-2), which listed 92 properties and included the City of Edmonton Request For Information rent rolls and Assessment Detail Reports on each property.

[11] The properties listed in C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes. The ratios had a median of 94% and an average of 92% overall. The chart also had a ratio of the City Assessment Proforma sizes to Rent Roll sizes which resulted in a median of 95%, and an average of 94%. The Complainant noted there was a close correlation between the two ratios.

[12] The Complainant pointed out that there was no evidence presented by the Respondent that 95% was applied to the gross building sizes. The rent roll size, according to C-2, was close to the gross building size and the Complainant argued the rent roll size was a preferred size for the 95% application.

Issue 2

[13] The Complainant submitted that the 6.5% assessment capitalization rate was too low and that a capitalization rate of 7.0% was more appropriate.

[14] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales, (C-1, page 19), that indicated an average capitalization rate of 7.15% and a median of 7.04%.

[15] The Complainant further submitted that of the 24 sales presented, 6 should be excluded, as they were invalid for various reasons; an 8 property portfolio sale, an old lease, leases with upside potential and an outlier. The sales included # 5, 12, 13, 14, 21 and 22, C-1, page 24. Excluding the 6 sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15%. The Complainant stated that this supported the requested 7.0% capitalization rate.

Issue 3

[16] The Complainant submitted that the assessed lease rate of \$15.50/ sq ft was excessive and stated that \$13.00/ sq ft is more reflective of the market rate.

[17] In support of the \$13.00/ sq ft lease rate request, the Complainant provided three Assessment Lease Rate comparable charts of food stores, based on age, (C-1, page 17), which were located in various districts of the City.

[18] In the first chart the ages of the food stores ranged from 2004 to 2010, with net leasable areas ranging from 32,402 sq ft to 48,867 sq ft. The lease rates ranged from \$14.50/ sq ft to \$16.50/ sq ft. In the second chart the ages ranged from 1989 to 2002, the sizes from 22,189 sq ft to 68,856 sq ft and the lease rates from \$14.50/ sq ft to \$16.50/ sq ft. The third chart ranged in

age from 1958 to 1988, the sizes from 13,750 sq ft to 38,506 sq ft and the lease rates from \$11.00/ sq ft to \$15.50/ sq ft.

[19] Additional columns on each chart indicated the rates that were being achieved for Commercial Retail Units (CRUs) in the same centre as the food store, and the food store rates were expressed as a percentage of the CRU rates. Each chart detailed 3 size groups of CRU stores. The charts showed the relationship between the food store rates and the CRU rates and that the percentage of the food store rate increases with the age of the properties, which Complainant argued was inequitable.

[20] The Complainant requested the Board to consider a lease rate of \$13.00/ sq ft, a cap rate of 7.00% based on a net leasable area of 44,702 sq ft for a revised assessment to \$7,932,000.

Position of the Respondent

[21] The Respondent presented written evidence, Exhibit R-1, 146 pages (assessment brief, law and legislation); Exhibit R-2, 13 pages (Sur-rebuttal) and oral argument for the Board's review and consideration.

Issue 1

[22] The Respondent submitted that there are two separate valuation groups for retail; one is for standard retail/retail plazas and the other is for shopping centres. The two groups are different as they each use a different approach to calculate size. The Respondent explained the reason for the different approaches; the standard retail group, which included owner occupied and small retail properties, historically returned minimal responses to the City's Request For Information and consequently reliable size and other information was not available. Therefore the 95% of gross building area methodology was developed in an attempt to ascertain a correct and equitable net leasable area of the standard retail properties for assessment purposes.

[23] The Respondent indicated that the RFI return rate for shopping centres was quite high, and the actual net leasable area of properties can be ascertained for assessment purposes. The subject property is a neighbourhood shopping centre and was assessed using 100% of net leasable area.

[24] The Respondent provided additional details (R-1 pages 54-55), to the Complainant's Rental Area Analysis of 92 properties presented in C-2. A column was added which denoted the valuation group each property was categorized in. All but 2 of the 92 properties were in the retail or retail plaza valuation group, which means they were assessed in the retail group using the 95% methodology (R-1, page 56-57). Therefore, the Respondent argued the Complainant's Rental Area Analysis properties were not comparable. Although it is a free-standing store, the subject is classified as a neighborhood shopping centre and as such is valued at 100% of net leasable area (R-1, pages 116 – 118 & page 122).

Issue 2

[25] The Respondent presented a fairness and equity chart, (R-1, page 29) of 23 neighbourhood shopping centres located throughout the city ranging in effective ages from 1991 to 2007 all assessed with a capitalization rate of 6.50%. The Respondent contended that the subject property assessment of 6.50% was equitable with comparable food stores in other neighborhood shopping centres.

[26] As additional support for the 6.5% assessed cap rate the Respondent provided a Shopping Centre Capitalization Rate Analysis (R-1, page 31).

[27] The Respondent added a column for comments, (R-1, page 53), on the Complainant's capitalization rate sales comparables of 24 properties, C-1 page 24. The comments indicated that there were only 10 shopping centre sales listed, of which the Respondent used 7 in the Respondent's capitalization rate analysis (R-1, page 36). The remaining 3 shopping centre sales were considered invalid for the reasons of multiple parcel sale, non-arms length and leasehold interest, the other 14 sales were in the general retail or retail plaza assessment group which the Respondent considered not comparable to the subject.

[28] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart, (R-1, page 31), of 14 properties, with respective supporting City Sales Analysis Sheets. The sale dates were within 3 years of the valuation date and reflected 2013 time adjusted sales prices, 2013 assessed NOI's which reflected typical lease rates of similar properties, to reach a fee simple capitalization rate. The Respondent explained that this is the source of a fee simple estate value (R-1, pages 14), which legislation identifies as the basis for assessment.

[29] Respondent pointed out that the Capitalization Rate Analysis chart of comparables has a median capitalization rate of 6.18% and an average of 6.19%, which provided support for the subject assessment capitalization rate of 6.50%.

[30] The Respondent presented third party capitalization reports and said that these are used only for comparison and trending, and noted the assessment capitalization rate was within the comparative ranges. Reported by CBRE, the Edmonton Neighbourhood Retail capitalization rate indicated 6.00%-6.50% , (R-1, page 49) and the Colliers report indicated the Edmonton Community Retail and Strip Mall capitalization rates ranged from 6.25%-7.00%, (R-1, page 53).

Issue 3

[31] The Respondent stated that by legislation, mass appraisal is the methodology for valuing individual properties, (R-1 page 112, properties are then stratified into groups of comparable properties. The Respondent indicated that the Income Approach is the best approach when valuing income producing properties and is the method of choice to value the majority of properties within the Retail and Shopping Centre inventory. The use of typical market rents, typical vacancy rates, typical capitalization rates and typical structural rates were appropriate for all shopping centre categories.

[32] The Respondent stated that typical market rents is the same for food stores and provided a chart of 18 food store rents with effective dates ranging from October 1999 to July 2012 (R-1, page 30). The net rents were not time adjusted but produced a range in value from \$12.00/ sq ft to \$19.00/ sq ft with an average of \$15.56/ sq ft and a median of \$15.63/ sq ft. Due to FOIP restrictions, the Respondent did not provide addresses but did state that location is not a factor in determining the lease rate for a shopping centre.

Complainant's Rebuttal

[33] The Respondent objected to C-3, pages 93 and 94, of the Complainant's rebuttal on the basis of "what were the materials rebutting". The Board noted the objection and allowed the pages to remain in evidence.

[34] The Respondent objected to C-3 pages 107 – 115 on the basis that the rebuttal information referenced 2012 and not the current 2013 assessment year and is therefore new evidence.

[35] The Board adjourned to review the evidence, (C-3, pages 107 – 115). The decision of the Board was to disallow and strike out pages 107 - 115. The reasons for the decision are: 1) The Board agreed that the information provided by the Complainant was based on the 2012 year Valuation Summaries, and 2012 Assessment Detail Reports and was therefore considered new evidence, and 2) The Board noted that the sizes differed in each of the 2012 reports and recognized that different methodologies may be the reason for the varying results.

[36] The Complainant proceeded to present the remaining evidence in rebuttal, (C-3, 142 pages), to question the validity of the Respondents submission and the strength of support for the subject assessment, particularly the Respondents Shopping Centre Capitalization Rate Analysis comparables and the use of an eight property portfolio sale. The Complainant provided Network Data sheets, Assessment Detail Reports, City of Edmonton valuation summaries and rent rolls to bring to the Board's attention the inconsistencies and errors in the Respondent's capitalization rate analysis evidence. The Complainant submitted that the analysis was flawed; therefore, the onus had been shifted to the Respondent.

Respondent's Sur-Rebuttal

[37] The Respondent submitted sur-rebuttal evidence, (R-2, 13 pages). The Complainant objected to R-1, pages 2 and 3 on the basis of new evidence. The Respondent agreed to strike out the pages. The Respondent replied to the Complainant's argument that a sale of an eight property portfolio sale was invalid, (C-3 page 45), as only one of the eight properties was in Edmonton and was included in the Respondent's Shopping Centre Capitalization Rate analysis. The Respondent argued that the sale price was apportioned to the one Edmonton sale and the information was available to the Respondent, R-2 pages 4-6, which the Respondent stated, supported the inclusion of the sale in the Shopping Centre Capitalization Rate analysis.

[38] The Respondent submitted further evidence, (R-2, part 2, 2 pages). The Complainant objected on the basis that it was new evidence. The decision of the Board was to disallow R-2, part 2, as it was new evidence and not a rebuttal of evidence that had been submitted.

Complainant's Sur-surrebuttal

[39] The Complainant entered into evidence sur-surrebuttal, C-4, 12 pages. The Complainant further argued the sale of multiple property portfolios with an excerpt from the Standard on Verification and Adjustment of Sales – 2010, International Association of Assessing Officers, C-4, page 3, that purports that typically multiple parcel sales should not be used in valuation or ratio studies.

[40] The Complainant also submitted evidence in sur-surrebuttal, C-4, pages 2-12, to clarify that sale #5 C-1, page 19, is an arms-length transaction and provided documentation to support the validity of the sale.

Decision

[41] It is the decision of the Board to confirm the 2013 assessment of \$10,772,500.

Reasons for the Decision

[42] The Board reviewed and considered carefully the evidence presented by the Complainant and the Respondent.

[43] The Board, referring to s.2 *MRAT*, understands that Mass Appraisal is the legislated methodology for assessment and that the Income Approach to value is the appropriate valuation method and is the method of choice for the subject property.

Issue 1

[44] The Board accepted the premise of stratification of properties for the 2013 assessment (R-1, page 118), where each property is further stratified showing similarities within their group. The subject is in the Neighborhood Shopping Centre group.

[45] The Board is persuaded by the Respondent's explanation and reasons for the use of different approaches to calculating the size of the two retail groups; standard retail and shopping centres. The Board is persuaded that there is ample information returned to the City in response to the annual RFI for the shopping centre group and that the actual net leasable area can be ascertained for assessment purposes. The Board is persuaded that there are minimal responses to the annual RFI for the standard retail group and that the 95% of gross building area was developed in an attempt to ascertain correct net leasable area for assessment purposes.

[46] The Board reviewed the extensive list of 92 comparable properties presented by the Complainant in the Fairness and Equity Analysis of Rental Area (C-2). However, the Board was not persuaded by the Complainant's argument and submission that retail properties were not treated fairly and equitably. The Board also does not agree that the 95% method of calculating size should be applied to both groups of retail properties, or that it should be applied to the size indicated on the rent roll.

[47] The Board noted that the comment column, added by the Respondent to the Complainant's Fairness and Equity Analysis of Rental Area chart (C-2), grouped each listed property as retail or retail plaza except 2 properties. The Respondent explained these 2 properties were only recently grouped as shopping centre. The Board accepted the Respondent's grouping of retail and shopping centre for assessment purposes, and therefore finds the comparables unsuitable because they are of a dissimilar grouping to the subject, which is a shopping centre.

Issue 2

[48] The Board considered the lease rate for the food store and noted that the Respondent stated in R-1, page 13, that the food store rate for assessment purposes was determined using mass appraisal, which applies typical market rents and typical capitalization rates for all neighbourhood, power, and box retail properties.

[49] The Board finds in favour of the Respondent with respect to the rental rate of \$15.50/ sq ft for the lease rate. The Respondent had provided a fairness and equity chart (R-1, page 29) to demonstrate that the \$15.50/ sq ft rate had been applied in the assessment of 23 food stores in various locations in the city and the stores ranged in age from 1991 to 2007 and included the subject property.

[50] Additional support to the \$15.50/ sq ft was provided through a chart of market rents (R-1, page 30) that, although not time adjusted, reflected market conditions where lease rates became effective between October 1999 and July 2012 at an average/median of \$15.56/\$15.63/ sq ft. In particular the Board noted that all the leases effective in 2012 were at \$15.83/ sq ft; \$18.00/ sq ft; \$15.30/ sq ft and \$17.77/ sq ft which provided support to the assessed rate.

[51] The Board noted the Complainant did not supply any direct comparable evidence in support of the \$13.00/ sq ft. With respect to the Complainant's Assessment Comparables Chart the Board was not persuaded by the argument that there were some assessment inequities between the respective food stores and the affiliated CRU units within the three age groups that had been provided. The Board considers this to be a philosophical approach by the Complainant, and in response to questioning, the Respondent stated that the food store rates are not derived by using a percentage of the associated CRU rates.

Issue #3

[52] The Board considered the Complainant's Capitalization Rate Sales chart of 24 comparables, C-1, page 19, and the Respondent's Shopping Centre Capitalization "Rate Analysis, R-1, page 30, of 14 comparables.

[53] The Board noted that of the Complainant's 24 sales, there were 14 categorized as Retail Plaza or General Retail (R-1, page 48). The Board found these comparables dissimilar to the subject as the subject is grouped as a Shopping Centre. Of the 10 remaining comparable sales that were grouped as Shopping Centres, 3 were challenged as invalid for reasons of; a multiple property sale, a non-arms length sale and a leasehold interest sale. The Board found that the challenges on the 3 sales rendered them suspect and placed less weight on them.

[54] The Board gave greater weight to the 7 sales common to the Complainant and the Respondent. Respectively the sales are; Complainant, sales #22, 21, 18, 15, 5, and 4 and the Respondent; sales #4, 6, 7, 8, 10, 13, and 14. The Complainant's comparables averaged a capitalization rate of 6.70%, and the Respondent sales comparables, which applied a fee simple NOI to attain a fee simple capitalization rate (not time adjusted), averaged a capitalization rate of 6.69%. The Board noted that both of the capitalization rate averages supported the assessment capitalization rate of 6.50%

[55] The Board gave weight to the Respondent's Shopping Centre Capitalization Rate Analysis of 14 sales comparables that indicated an average of 6.19% and a median of 6.18%, which supported the assessment lease rate of 6.50%. The Respondent stated that all sales were validated, but the Board took into consideration some size discrepancies that were noted.

[56] The Board placed greatest weight on the Respondent's equity comparable chart, R-1, page 27, containing 15 shopping centres that were located in close proximity to the subject, with effective ages of older than 2002, each with a capitalization rates of 6.5%, which indicated equity and support for the assessment capitalization rate of 6.5%.

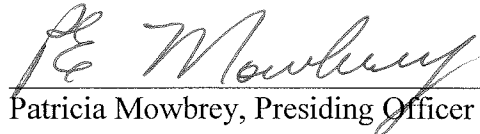
[57] The Board finds that the subject 2013 assessment of \$10,772,500 is correct, fair and equitable

Dissenting Opinion

[58] There was no dissenting opinion.

Heard commencing July 2, 2013.

Dated this 1st day of August, 2013, at the City of Edmonton, Alberta.


Patricia Mowbrey, Presiding Officer

Appearances:

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

Cam Ashmore, City of Edmonton
Tracy Ryan
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.

