

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01126

Assessment Roll Number: 4259685

Municipal Address: 3110 CALGARY TRAIL

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

Brian Hetherington, Board Member

Dale Doan, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. The Board Members indicated there was no bias in the matter before them.

[2] At the request of the Respondent's lawyer, both parties were sworn in.

Background

[3] The subject property is a 35,927 sq ft two-storey building located in the Steinhauer neighbourhood at 3110 Calgary Trail, Edmonton. It was constructed circa 1994 on a 218,077 sq ft site, was previously occupied by A & B Sound, but is presently vacant. The subject was assessed by the Income Approach to Value, for the 2013 assessment of \$10,870,500.

Issue(s)

[4] Is the subject assessment equitable with assessments of similar properties?

1. Should the subject be given the 95% size adjustment?
2. Is the building size correct?
3. Is the vacancy allowance too low?
4. Is the excess land value too high?

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.

[6] *The Matters Relating To Assessment and Taxation Regulation, AR 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.

Position of the Complainant

[7] The Complainant presented written evidence, Exhibit C-1, Disclosure, 64 pages, C-2, 95% Rental Area Analysis, 438 pages, C-3, Rebuttal, 6 pages, and oral argument for the Board’s review and consideration.

Issue 1: Should the subject be given the 95% size adjustment?

[8] The position of the Complainant was that the assessment of the subject was not fair and equitable and the assessment was excessive. The Complainant argued that all retail properties should be assessed using the same method, and that the size of the property or the specific assessor should not affect the assessment method.

[9] 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.

[10] The Complainant stated that the Respondent categorized retail assessment in two groups, one used 100% of rent roll size for assessment purposes, and the other group used 95% of the leasable size, (C1, page 10). The Complainant argued that the subject property was assessed inequitably because it was assessed using 100% of the rent roll.

[11] The properties listed in C-2 specified the ratio of the City Assessment Proforma sizes to the City Gross sizes and indicated the ratios had a median of 94% and an average of 92% overall. The chart also provided 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 pointed out there was a close correlation between the two ratios to support a 95% adjustment.

[12] The Complainant provided the City's Assessment Record Valuation Summary and the Assessment Proforma for the subject, (C1. Pages 12 and 13), where the Complainant restated the actual and the assessment area of the subject which were respectively, 32,866 sq ft and 35,927 sq ft.. Thus, with a 95% adjustment, using the actual sq ft, the assessment for subject building area, would total 31,223 sq ft with a corresponding requested building assessment value of \$3,910,237.

Issue 2: Is the vacancy allowance too low?

[1] The Complainant stated that the assessment vacancy rate is too low and the subject vacancy rate should be equitable with other properties that have been vacant as long as the subject.

[2] The Complainant presented a chart of four market lease rate comparables (C 1, page 20) that indicate buildings vacant for over three years have a vacancy allowance of 30 percent. The Complainant argued the subject vacancy allowance of 10 percent is too low.

[3] The Complainant stated the previous owner occupier of the subject property, A & B Sound, went bankrupt in 2008, and provided published articles, (C 1 page 30), that indicated A & B Sound had declared bankruptcy on November 7, 2008. The Complainant presented a second article indicating the parent company of A & B Sound filed for bankruptcy on February 2009 (C1, pages 31 and 32).

[4] The Complainant submitted the subject property had been vacant since the A & B Sound bankruptcy in November 2008 and the assessment vacancy rate should be 30 percent.

Issue 3: Is the building size correct?

[5] The Complainant stated that the correct size of the subject is based on the 2012 Request for Information (RFI), (C-1 pages 17 to 19), wherein the rent roll dated 19th of April 19, 2012, indicated the main floor was 15,714 sq ft and the second floor was 15,000 sq ft which is 30,714 sq ft, compared to the City's 2013 assessment valuation summary and 2013 assessment proforma (C-1, pages 12 & 13) indicating a total gross area of 35,927 square feet.

[6] The Complainant argued the assessment area is incorrect.

Issue 4: Is the excess land value too high?

[7] The Complainant stated that the value of the excess land is too high and presented a chart of eight comparables (C 1, page 21). The Complainant submitted to the Board that only sale #3 should be considered with a TASP of \$26.43 per sq ft, and that other more appropriate sales will be presented in Rebuttal. The Complainant noted the excess land is 146,188 square feet and the assessed value of \$36.50 per square foot is too high and should be reduced.

[8] The Complainant submitted that if the land is defined and can be developed, it is considered excess and assessed at 100% of vacant land value but if the land is surplus to the requirements and cannot be developed it is assessed at 50% of vacant land value.

[9] The Complainant argued that the location of the property did not have direct exposure to Calgary Trail, a major highway, but was on a side road.

Rebuttal:

[19] The Complainant presented, in Rebuttal, (C 2), a combined sales comparable chart, (C 2, page 3) with sale #3 from C 1, p 21, and two sales from the Respondent's evidence, that the Complainant considered appropriate.

[10] Sale #1 located at 10430 61 Avenue, sale dated February 2008, lot size of 216,580 sq ft for a TASP of \$26.43 per sq ft.

[11] Sale # 2 located at 1704, 34 Avenue, sale dated January 2010, lot size of 135,422, sq ft for a TASP of \$25.01 per sq ft.

[12] Sale #3 located at 10004 Ellerslie Road, lot size of 255,543 sq ft, sale dated April 2009 with a TASP of \$37.57 per sq ft.

[13] The average TASP of the three comparable sales is \$29.67 per sq ft and the median is \$26.43 per sq ft.

[14] The Complainant brought to the Board's attention that the third sale, located at 10004 Ellerslie Road, SW was considered an outlier and should not be considered as it is located in a newly developed area in Ellerslie, which led to the higher value of \$37.50 per square foot.

[15] The Complainant indicated the best comparables were the remaining two sales with a median and average per sq ft of \$25.72. The Complainant requested a TASP of \$26.00 per sq ft, (C 3, page 3), for the subject property excess land of 146,188 sq ft for a corrected requested assessment for the excess land of \$3,800,880.

[16] The Complainant requested that the 2013 assessment be reduced, based on the actual building size of 32,866 sq ft; the 95% equity adjustment to attain the building assessment size of 31,223 sq ft; a 30% vacancy allowance and a 7% cap rate, for a building assessment of \$3,910,237; and adding the excess land at \$26.00 per sq ft for the excess land assessment of \$3,800,880. The Complainant requested a 2013 assessment for the subject of \$7,711,000.

Position of the Respondent

[17] The Respondent presented written evidence (Exhibit R-1, 167 pages) and oral argument for the Board's review and consideration.

Issue 1: Should the subject be given the 95% size adjustment?

[18] The Respondent submitted that there were two separate valuation groups for retail, R-1, pages 19-20, 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 is that 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 gross leasable area of the standard retail properties for assessment purposes.

[19] The Respondent indicated that the RFI return rate for the shopping centre group was quite high, and the actual gross leasable area of properties can be ascertained for assessment purposes from the rent roll. The subject property is categorized as a shopping centre and was assessed using 100% of gross leasable area.

[20] Evidence from two roll numbers, referenced in the subject evidence, 4261616 and 10003519, provided additional details in response to the Complainant's Rental Area Analysis of the 92 properties listed in Exhibit C-2. The Respondent reproduced the listed properties and added a column for the analysis of Exhibit C-2, which detailed the valuation grouping for the properties listed. The result was that all but 2 of the 92 properties were in the retail or retail plaza valuation group, which identified that they were assessed in the retail group using the 95% methodology. The Respondent stated that as such, the properties in the Complainant's Rental Area Analysis, Exhibit C-2, were not comparable with the subject which is a neighbourhood shopping centre.

Issue 2: Is the vacancy rate too low?

[21] The Respondent submitted that a chronic vacancy rate is applied when a property has shown three years of vacancy. In the response to an RFI request in 2010, the rent roll for the subject clearly indicates that there was occupancy and that rent and operating costs were paid, (R 1, p. 17).

[22] The Respondent provided the Board with the 2012 rent roll in response to the RFI, which indicated the subject property was vacant. The Respondent pointed out that the combination of these two RFIs, submitted by the Complainant, signify that there had only been two years of vacancy.

[23] The Respondent suggested that the occupant of the subject property, A&B Sound, may have declared bankruptcy in 2008, but like many bankruptcy filings, the company operation was continued for liquidation purposes.

[24] The Respondent stated that the vacancy allowance of 10% was correct, as the building had not met the three year vacancy requirement for the application of a 30% vacancy allowance.

Issue 3: Is the building size correct?

[25] The Respondent presented a 2003 rent roll, provided by the Complainant, dated January 2003, which indicated a building and CRU leasable area of 35,927 sq ft (R-1, p 18).

[26] The Respondent provided rent rolls in response to the RFI for 2010 and 2012, both of which indicated a building leasable area of 30,714 sq ft (R-1, p 16 & 17).

[27] The 2013 Assessment Valuation Summary presented by the Respondent indicated a total area of 35,927 sq ft (R-1, p 9).

Issue 4: Is the excess land value too high?

[28] The respondent presented the Board with a chart of three comparable sales properties located in close proximity to the subject (R-1, p 21, with sales and land transfer documents, (R 1, page 22-29).

[29] Sale # 1, located at 1704, 34 Avenue, sale dated January 2010, with a lot size of 135,422, sq ft for a TASP of \$25.01 per sq ft.

[30] Sales # 2 located at 2920 Calgary Trail, immediately south of the subject with a lot size of 145,496 sq ft, sale dated September 2007, with a TASP of \$44.67 per sq ft.

[31] Sale #3 located at 10004 Ellerslie Road, with a lot size of 255,543 sq ft, sale dated April 2009 with a TASP of \$37.57 per sq ft.

[32] The average of the three comparable sales properties is \$35.75 per sq ft.

[33] The Respondent stated that the sales comparables support the assessment of the subject property at \$36.50 per sq ft of excess land for an assessment of excess land of \$5,335,500.

[34] The Respondent informed the Board that from 2006 to 2008 there was an upward trending of land values and since 2009, the market has been flat.

[35] The Respondent requested the Board to confirm the subject 2013 assessment of \$10,870,500.

Decision

[36] The decision of the Board is to reduce the subject 2013 assessment from \$10,870,500 to \$10,268,000.

Reasons for the Decision

Issue 1: Should the subject be given the 95% size adjustment?

[37] The Board referred to s2 *MRAT*, that states, Mass Appraisal is the legislated methodology for assessment and that the Income Approach to value is the appropriate valuation method.

[38] The Board accepted the premise of property stratification for the 2013 assessment (R-1, pages 137-139), and that each property is further stratified showing similarities within the group. The subject is in the Neighborhood Shopping Centre group.

[39] The Board accepted the Respondent's explanation and reasons for the use of different approaches to determining the GLA of the two retail groups (i.e. retail and shopping centre). The Board is satisfied that there is ample information returned to the City in response to the annual RFI for the shopping centre group and that the gross leasable area can be determined for assessment purposes from the rent roll. The Board accepted that there are minimal responses to the annual RFI for the retail group and that the 95% of gross building area was developed in an attempt to ascertain correct and equitable gross leasable area for assessment purposes.

[40] The Board accepted the Respondent's grouping of retail and shopping centre for assessment purposes, and therefore finds the comparables, (C 2), inappropriate as they are retail and a dissimilar group to the subject, a neighborhood shopping centre

[41] 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). The Board was not persuaded by the Complainant's argument and submission that the shopping centre group of properties was treated unfairly and inequitably. The Board finds that the 95% method of calculating size is correctly applied in the retail group but is not appropriate for the shopping centre group.

Issue 2: Is the vacancy rate too low?

[42] The Board noted the Market Lease Rate Comparable chart provided by the Complainant, C-1, page 20, listing 4 properties that had been vacant for over 3 years with a vacancy factor of 30%

[43] The Board noted that the 2010 rent roll, submitted by the owner, A&B Sound, in response to the City RFI, R-1, page 17, indicated that the property was occupied, and also stated the annual lease details.

[44] The Board also noted that the 2012 rent roll submitted by the owner, A&B Sound, in response to the City RFI, R-1, page 16, indicated that the property was vacant with no stated annual lease details.

[45] The Board considered the Complainants argument, that the building was vacated immediately after the owner of the property declared bankruptcy in 2008, meeting the requirement of 3 years of vacancy, and for that reason should receive the 30% vacancy rate. The Complainant provided several articles that announced the bankruptcy date, November 2008, of A&B Sound, R-1, page 30 – 32, but no evidence to support the argument that the building was vacated at that time. The Board noted but placed little weight on the comment, that the third party article, R-1, page 32, stated the shareholders would receive 40% of the company aggregate net income from July 1, 2009 to June 30, 2011.

[46] The Board finds the Respondent's argument more reasonable, together with the 2010 and 2012 rent rolls, that the owner of the property, A&B Sound, after declaring bankruptcy, occupied the building for liquidation purposes.

[47] The Board finds that the vacancy rate of 10% is appropriate as the property was vacant 2 years, not the required 3 years for the 30% vacancy factor to be applied for assessment purposes.

Issue 3: Is the building size correct?

[48] The Board finds that the correct size of the building is 32,866 sq ft comprised of CRU space 10,000 to 20,000 sq ft of 15,714 sq ft, CRU space greater than 20,000 sq ft of 15,000 sq ft, and CRU other of 2,152 sq ft.

[49] The Board noted the Respondent had used the gross leaseable area from the previous year rent roll in response to the RFI, and that the Respondent based the vacancy factor for the subject assessment on the previous year RFI rent roll. However in this case, the Respondent provided in evidence the RFI rent rolls for years 2003, 2010 and 2012. The Board noted the rent roll sizes

for 2010 and 2012 were the same sq ft at 30,714, plus the CRU other space of 2,152, of which the Complainant and the Respondent are in agreement. The 2003 rent roll indicated 35,927 sq ft. The Board considered it an older RFI rent roll and that it differed from the more recent 2010 and 2012 RFI rent rolls. Therefore the Board placed greater weight on the recent 2010 and 2012 gross leaseable areas provided in the respective RFIs by the owner.

[50] Based on the building size of 32,866 sq ft, the Board finds the building assessment to be \$4,932,786.

Issue 4: Is the excess land value too high?

[51] The Board reviewed the land sales comparables provided by the Complainant and the Respondent and noted that the Respondents sales #1, and # 3, and the Complainants sales # 2 and #3, respectively, were the same. Although sales #1 and #2, located at 1704 – 34 Avenue is similar in size, the location is far removed from the subject in an outlying area and has no access or exposure to a main roadway as does the subject and is considered dissimilar.

[52] The Complainants sale #1, located at 10430 – 61 Avenue, is located on a main roadway with exposure and access, but is considerably larger than the subject, and based on the economies of scale it is reasonable that the TASP is lower than the value of the subject with a similar location.

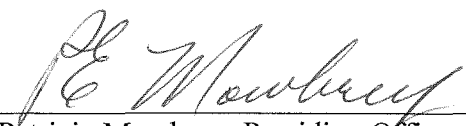
[53] Sales #3, located at 10004 Ellerslie Road, has exposure and access to a major road way, Gateway Boulevard, and according to the Complainant is in the newly developing Ellerslie area and is the reason the TASP is high and should be considered an outlier. The Board noted the site area is nearly twice the size of the subject and based on the economies of scale, it is reasonable to assume, the TASP is not too high nor an outlier at \$37.57 per sq ft, which supports the excess land assessment of \$36.50 per sq ft.

[54] The Board finds that the Respondent's sale #2, located at 2920 Calgary Trail, is similar in size, similar in location with exposure and access to Calgary Trail, is adjacent to the subject with a TASP of \$39.18 per sq ft which supports the excess land assessment of \$36.50 per sq ft or \$5,335,500.

[55] The Board finds the reduced 2013 subject assessment of \$10,268,000 is correct, fair and equitable.

Heard commencing September 3, 2013.

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


Patricia Mowbrey, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Cam Ashmore, Legal Counsel
Chris Rumsey, 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.