

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01133

Assessment Roll Number: 3747151

Municipal Address: 11403 KINGSWAY 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.

Background

[2] The subject property, is a Superstore located in the Prince Rupert subdivision of Edmonton, at 11403 Kingsway NW. It is classified as a neighbourhood shopping centre, was constructed circa 1989, and the City assessed area is 123,478 sq ft. The subject was assessed by the Income Approach to Value, for the 2013 of \$28,144,000.

Issue(s)

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

1. Should the subject be given the 95% size adjustment?
2. Is the assessment capitalization rate too low?
3. Is the food store lease rate too high?
4. Is the subject size correct?

Legislation

[4] *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.

[5] *The Matters Relating to Assessment and Taxation Regulation, Alta Reg 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

[6] The Complainant presented written evidence, Exhibit C-1, 108 pages, C-2, 438 pages, C-3, 132 pages, and oral argument for the Board’s review and consideration.

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

[7] 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.

[8] 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.

[9] The Complainant stated that the Respondent categorized retail assessment in two groups, one which used 100% of rent roll size for assessment purposes, and the other group used

95% of the leasable size. The Complainant argued that the subject property was treated inequitably because it was assessed using 100%.

[10] The properties listed in C-2 provided the ratio of the City Assessment Proforma sizes to the City Gross sizes which indicated a median ratio of 94% and an average ratio of 92% overall. The chart also showed 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 to support a 95% adjustment.

[11] The Complainant provided the City's Assessment Record Valuation Summary and the Assessment Proforma (C-1, p 12 and 13) for the subject which both recorded an assessment area 123,478 sq ft. The Complainant also presented a Requested Market Value Proforma (C-1, p 14), stating the actual and the assessment area of the food store was incorrect and should be 95,353 sq ft. Thus, with a 95% adjustment, the subject area would total 90,585 sq ft with a corresponding requested assessment value of \$18,897,000.

Issue 2: Is the assessment capitalization rate too low?

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

[13] A chart of 24 sales presented to the Board in evidence for roll # 9943337, was referred to by the Complainant, which occurred between May 2011 and September 2012, showing the capitalization rate for each of the sales, supporting data sheets were submitted for each sale, C-1 p 39-81).

[14] The Complainant stated that of the 24 sales presented, six should be excluded, as they were invalid for various reasons including an eight property portfolio sale, an old lease, leases with upside potential and an outlier. Excluding the six sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15% and supported the requested 7.0% capitalization rate.

[15] The Complainant explained that because the comparables consisted of sales within the last two years and was a true reflection of the market using actual net operating income and unadjusted sales prices and resulted in a leased fee capitalization rate of 7%.

Issue 3: Is the food store lease rate too high?

[16] The Complainant submitted that the assessed food store lease rate of \$15.50/sq ft was excessive and that \$12.00/sq ft is more reflective of the space.

[17] The Complainant provided the May 2010 rent roll for the subject property (C-1, p 18), which had no indication of a lease rate for the Superstore property, and a 2012 RFI (C-1, pp 19-24), which also contained no information on the lease rate for the Superstore facility, but did have rates for the sub-leased smaller retail operations.

[18] The Complainant argued that the food store buildings are often owned by the operators, thus, there are a small number of true lease rate comparables available. As well, food stores tend to have long term leases from 20 to 40 years.

- [19] The Complainant presented an Assessment Lease Rate Comparable chart (C-1, page 27), comprised of five Superstore comparables and two other anchor comparables, which indicated a range of ages from 1987 to 2009, and a range of lease rates of \$11.00/sq ft - \$12.00/sq ft, with a median lease rate of \$11.00/sq ft. The Complainant requested a lease rate of \$12.00/sq ft.

Issue 4: Is the subject size correct?

- [20] The Complainant stated that the assessment area of the subject food store of 103,421 sq ft was inaccurate (C-1, page 12 & 13) and the correct area was 95,353 sq ft. The Complainant referred to the 2010 Rent Roll (C-1, p 18) which indicated the food store area is 95,353 sq ft. The Complainant explained that the owner had incorrectly stated the size on the 2012 RFI rent roll that was submitted to the City (C-1, p 19 – 24).

Rebuttal

- [21] The Complainant presented Rebuttal evidence, C-3, and identified the ten shopping centre sales, (C-3, p 38) from the chart of 24 capitalization rate sales. The Complainant further excluded two shopping centre sales as one was encumbered with a 40-year lease at \$1 per year for part of the property; and the second sale had not been listed on the open market and was considered non arms-length. The two excluded sales differ from the excluded sales of the Respondent, (R-1, p 33). Analysis of the Complainant's eight shopping centre sales indicated a median capitalization rate of 7.14%, based on the Network documentation information. The corresponding median rate provided by the City, based on a fee-simple NOI was 6.62% and, with a time-adjusted sales price was 6.47% .
- [22] The Complainant submitted that the Respondent's capitalization rate analysis was flawed and provided Network Data sheets, Assessment Detail Reports, City of Edmonton Valuation Summaries and rent rolls to support the position.

Position of the Respondent

- [23] The Respondent presented written evidence, Exhibit R-1, 204 pages, and oral argument for the Board's review and consideration

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

- [24] The Respondent submitted that there were two separate valuation groups for retail (R-1, pages 43-44), 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.
- [25] 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.

[26] The Respondent presented the Board with additional details in response to the Complainant's Rental Area Analysis of the 92 properties listed in Exhibit C-2. The Respondent reproduced and added a column in the analysis of Exhibit C-2, detailing the valuation grouping for the properties listed (R-1, pp 55 and 56). The result was that all but two of the 92 properties were in the retail or retail plaza valuation group, which identified 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 assessment capitalization rate too low?

[27] The Respondent presented an Assessment Equity Chart for Rent and Cap Rates (R-1, page 45), of 20 shopping centres within the age group 1990-2007, with the capitalization rate of 6.5%. The Respondent stated that the subject property assessment of 6.50% was equitable with other neighborhood shopping centres, that location was not a factor, and that all neighbourhood shopping centres are assessed with a capitalization rate of 6.50%.

[28] The Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties, (R-1 page 55). The comments indicated that there were only 10 shopping centre sales included in the list, which the Respondent used in the Respondent's capitalization rate analysis (R-1, page 41). The other 14 sales were in the general retail or retail plaza assessment group which the Respondent considered incomparable to the subject.

[29] The Respondent's City of Edmonton Cap Rate Review (R-1, page 41), utilized the eight shopping centre sales for comparison. the Respondent listed the Network's NOI and an adjusted 2013 Fee Simple NOI, the Network Cap Rate, a Fee Simple (non time-adjusted) Cap Rate; and a Fee Simple (time adjusted) Cap Rate which indicated, respectively, a median of 6.75%, 6.72%, and 6.47%. The Respondent stated that the cap rates demonstrated the difference as the cap rates moved toward the fee simple cap rate, supporting the assessment capitalization rate of 6.5%, which is based on a fee simple market value.

[30] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 24) of 14 properties, with supporting City sales analysis sheets. The sale dates were within three years of the valuation date and reflected 2013 time adjusted sales prices and 2013 assessed NOIs (which used typical lease rates of similar properties). These comparables were used to reach a fee simple capitalization rate that indicated a median of 6.18% and an average of 6.20%. The Respondent explained that legislation identifies fee simple estate value (*MRAT s2*), as the basis for assessment.

[31] The Respondent asserted that third party capitalization reports were used only for comparison and trending, and that the assessment capitalization rate was within the comparative ranges. The CBRE report indicated an Edmonton Neighborhood Retail capitalization rate of 6-6.50% (R-1, page 54), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25%-6.75% (R-1, page 53).

Issue 3: Is the food store lease rate too high?

[32] The Respondent stated that according to legislation, mass appraisal is the methodology for valuing individual properties (R-1, pages 180-183), including shopping centres, which are then stratified into groups with other comparable properties. The Income Approach is the best approach when valuing income producing properties and is the method of choice to value the Retail/Shopping Centre inventory. The use of typical market rents, typical vacancy rates, typical capitalization rates and typical structural rates is appropriate for all shopping centre categories.

[33] An Assessment Equity Chart for Rent and Cap Rate, (R-1, page 45), listed assessed lease rates for food stores in neighbourhood shopping centres city wide. The assessed lease rate was \$15.50/sq ft and the Respondent indicated that location was not a factor in determining the lease rate.

[34] The Respondent presented a chart of 2013 Actual Food store lease rates for the 1991-2007 effective age group with a listed net rent per sq ft for each property. The lease rates ranged from \$12.00/sq ft to \$18.00/sq ft which included valid, step up and non arms-length leases, and supported the assessment lease rate of \$15.50/sq ft.

Issue 4: Is the subject size correct?

[35] The Respondent submitted to the Board that, with the exception of the re-calculation for the mezzanine space, all other size measurements were correct. The Respondent pointed out that the 2012 rent roll, (R-1, p 19), specified the food store leased area of 103,421 sq ft.

[35] The Respondent requested the Board to reduce the assessment, (R-1, p 12), from \$28,144,000 to \$27,140,500.

[36] The Respondent explained to the Board that 4,458 sq ft of mezzanine area had been double assessed. While all the other calculations remained unaltered in the assessment, the food store area was corrected to 98,963 sq ft and would be assessed at the rate of \$15.50 per sq ft.

[37] The Respondent requested the Board to accept the recommended 2013 assessment of \$27,140,000.

Rebuttal

[38] The Complainant presented Rebuttal evidence (C-3, 132 pages).

[39] The Complainant reproduced the Respondent's City of Edmonton Cap Rate Review of 10 sales, (C-3 p 3), and deleted two sales that the Complainant explained were not appropriate to be included in the analysis for a capitalization rate as the comments by The Network indicated that one sale had a 40 year lease at \$1 per year, and one sale was a non arms-length.

[40] The Complainant stated that with the elimination of the two sales, the cap rates changed, and the remaining sales reflected an average median for the actual Network cap rate of 7.14%; the City (fee simple NOI) cap rate of 6.62%; and the City (time adjusted, fee simple NOI) cap rate of 6.47%, and therefore supported the requested capitalization rate of 7.0%.

[41] The Complainant submitted that the Respondent's capitalization rate analysis was flawed and provided Network Data sheets, Assessment Detail Reports, City of Edmonton Valuation Summaries and rent rolls to demonstrate the inconsistencies and errors.

Decision

[42] The Decision of the Board is to accept the subject 2013 revised assessment of \$27,140,000.

Reasons for the Decision

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

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

[44] The Board referred to section 2 *MRAT*, that Mass Appraisal is the legislated methodology for assessment and agreed with the parties that the Income Approach to value is the appropriate valuation method.

[45] The Board noted the premise of property stratification for the 2013 assessment (R-1, page 175-177), where each property is further stratified showing similarities within their group. The subject is in the Neighborhood Shopping Centre group.

[46] 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 ascertained 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.

[47] The Board reviewed the extensive list of 92 comparable properties presented by the Complainant in the Fairness and Equity Analysis of Rental Area (C-3). 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, nor that it should be applied to the size indicated on the rent roll.

[48] The Board accepted the Respondent's retail and shopping centre grouping for assessment purposes, and therefore finds the comparables inappropriate as they are a dissimilar grouping to the subject, a neighbourhood shopping centre.

Issue 2: Is the assessment capitalization rate too low?

[49] The Board finds that the Complainant has not provided sufficient evidence to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect or inequitable.

[50] The Board noted of the Complainant's 24 sales comparables, that 14 were categorized as Retail Plaza or General Retail and were dissimilar to the subject; and 10 were shopping centres which were considered unreliable as the capitalization rates were leased fee rates derived using actual NOI rather than a stabilized NOI.

[51] The Board gave greater weight to the Respondent's sales comparables (R-1, page 41), of which six were the same shopping centre comparables as the Complainant's, indicating fee simple capitalization rate of 6.47%; and the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 24) of 14 sales comparables that indicated an average of 6.20% and a median of 6.18%, which supported the assessment capitalization rate of 6.50%.

[52] The Respondent's method of calculating a capitalization rate meets the legislative requirement of determining a fee simple capitalization rate; the Respondent derives the capitalization rate using typical market conditions and applies this fee simple capitalization rate to a typical NOI in the assessment of a property. The capitalization rate is applied in the same manner it was derived.

[53] The Board finds that the assessment 6.5% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis, and is an appropriate rate to value the subject property.

[54] The Board finds the Respondent's equity comparable chart (R-1, page 45), that lists 20 shopping centres located in various areas of the city with effective ages from 1991 to 2010 and with capitalization rates of 6.5%, indicates equity and support for the subject assessment capitalization rate of 6.5%.

Issue 3: Is the food store lease rate high?

[55] Based on the Food Store Assessment Comparables chart (C-1, pages 27), the Complainant requested a lease rate of \$12.00/sq ft. The Board finds that the requested \$12.00/sq ft lease rate is not supported by market evidence.

[56] The Board placed weight on the Respondent's chart of 2013 Actual Food Store Rents for 1991 to 2007 effective age (R-1, page 42), with lease rates that ranged from \$12/sq ft to \$18/sq ft and supported the Respondent's requested lease rate of \$15.50/sq ft. The median for all leases The Board finds that the assessment lease rate of \$15.50/sq ft is supported by market evidence.



[57] The Board finds that the Assessment and Equity Chart (R-1, page 45), of 20 food stores within the city assessed at \$15.50/ sq ft, supports the assessment lease rate of \$15.50/ sq ft for the subject.

Issue 4: Is the subject size correct?

[58] The Board accepts the corrected size of the food store from 103,421 sq ft to 98,963 sq ft at the assessment lease rate of \$15.50/sq ft.

Heard commencing September 5, 2013.

Dated this 3rd day of October, 2013, at the City of Edmonton, Alberta.


 Patricia Mowbrey, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Chris Rumsey, Assessor
Steve Lutes, Legal Counsel
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.