

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01135

Assessment Roll Number: 10015383

Municipal Address: 8118 118 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

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 known as the Parkdale Square Safeway and is located at 8118 118 Avenue in the Eastwood subdivision. It occupies 46,012 square feet on a site of 148,004 square feet and was constructed circa 1990. The subject 2013 assessment is \$9,894,000.

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 assessment capitalization rate too low?
 3. Is the food store lease rate 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, 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

[7] The Complainant presented written evidence, Exhibit C-1, 94 pages, C-2, 438 pages, C-3, 146 pages, and oral argument for the Board’s review and consideration.

Issue 1: Should the subject property be given a 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 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%.

[11] The C-2 properties, listed and seen in R-2, p 43, 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.

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] The Complainant presented the Board with a chart of 24 sales, (C-1, p 18), which occurred between May 2011 and September 2012, reflecting the capitalization rate for each of the sales, with a median cap rate of 7.04% and an average of 7.15%.

[14] Six of the sales were highlighted for exclusion, due to such factors such as being a multiple sale and part of a portfolio sale, and being an outlier or having upside potential. With the exclusions, the median was 7.15% and the average cap rate was 7.24%, which the Complainant stated supported the requested capitalization rate of 7.00%.

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

[15] The Complainant submitted that the assessed food store lease rate of \$15.50/sq ft was excessive and that \$13.00/sq ft is more reflective of the space.

[16] The Complainant provided the December 2012 rent roll for the subject property (C-3, pages 5-7), indicating the food store base lease rate was \$10.42/sq ft, with an end date of October 2013, (R-1, page 5).

[17] 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.

[18] The Complainant presented a Food Store Assessment Rate Comparables chart, (C-1, 16-17). The chart organizes food stores into the following age groups: 2004 and newer; 1989-2003; and 1988 and older. Assessed lease rates were listed both for the food stores within the age group, as well as CRU spaces within the size and age group.

[19] The Complainant stated that as CRU spaces age, the lease rates decrease; however, it appears that age is not being fully recognized for the food store lease rates. The Complainant provided a percentage relationship of food stores and CRU space lease rates within the age groups, and concluded that for older food stores, the requested \$13.00/sq ft rate equates to a similar percentage relationship in newer CRU properties. (C-1, pages 16 and 17).

[20] The Complainant presented the Board with two charts based on the City's Lease Analysis For Food Store; the second chart having removed Rental Rates, (C-3, p 15), with those stores classified as being non-arms length and old leases. The food stores in the first chart had effective ages ranging from 1991-2007, with a median lease rate of \$15.63/sq ft, and the effective ages of the second chart ranged from 1991-2009 with a median lease rate of 12.24/sq ft.

[21] The Complainant requested the Board to reduce the food store assessment lease rate from \$15.50/sq ft to \$13.00/ sq ft.

[22] The Complainant requested the Board to reduce the 2013 assessment to \$7,307,000.

Rebuttal

[23] 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% .

[24] 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

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

[25] The Respondent submitted that there were two separate valuation groups for retail, R-1, pages 34-35, 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 was 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 determine a correct and equitable gross leasable area of the standard retail properties for assessment purposes.

[26] 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.

[27] The Respondent provided additional details, (R-1, p 43), in response to the Complainant's Rental Area Analysis of the 92 properties listed in Exhibit C-2. The Respondent added a column in the analysis, detailing the valuation grouping for the properties listed. 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, a neighbourhood shopping centre.

Issue 2: Is the assessment capitalization rate too low?

- [28] 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 6.50%. 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%.
- [29] The Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties, (R-1 page 43). 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 33). The other 14 sales were in the general retail or retail plaza assessment group which the Respondent considered incomparable to the subject.
- [30] In Exhibit R-1, page 23, the Respondent added a column for comments on the Complainant's capitalization rate sales comparables of 24 properties (C-1 page 28). The comments indicated that there were only 10 shopping centre sales listed. The Respondent included eight in the capitalization rate analysis (R-1, page 24). The other two shopping centre sales were considered invalid as one consisted of a multiple parcel sale and the other was burdened with a 40 year lease at \$1 per year.
- [31] The Respondent's City of Edmonton cap rate review (R-1, page 33), utilized eight shopping centre sales from the Complainant's chart of 24 sales comparables. For comparison, the Respondent listed the median cap rate of the eight sales comparables as follows:
- | | |
|--|-------|
| a. Actual NOI - not time adjusted sale price | 6.75% |
| b. Fee Simple NOI - not time adjusted sale price | 6.72% |
| c. Fee Simple NOI - time adjusted sale price | 6.47% |
- The Respondent stated that the assessment capitalization rate of 6.5% was supported as it was based on a fee simple NOI and time adjusted sale price.
- [32] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, p 16), 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 (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.
- [33] 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 42), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25%-6.75% (R-1, page 41).

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

- [34] 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.
- [35] An Assessment Equity Chart for Rent and Cap Rate, (R-1, page 36), listed assessed lease rates for 20 food stores in neighbourhood shopping centres, city wide. The assessed lease rate for all the food stores was \$15.50/sq ft. The Respondent stated that location was not a factor in determining the lease rate.
- [36] 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 and included valid, step up and non arms-length leases. The Respondent stated the average was \$15.56/sq ft, which supported the assessment lease rate of \$15.50/sq ft.
- [37] The Respondent presented the Board with a renovation permit for the subject property, which was issued in March 2006 (R-1, p 45) indicating a renovation cost of \$1.2 million.
- [38] The Respondent requested the Board to confirm the 2013 assessment of the subject property at \$9,894,000.

Decision

- [39] The Decision of the Board is to confirm the subject property 2013 assessment of \$9,894,000.

Reasons for the Decision

- [40] 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?

- [41] 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.
- [42] 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.
- [43] 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.

[44] 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.

[45] 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?

[46] The Board finds that the Complainant has not provided sufficient evidence to demonstrate that the 6.5% capitalization applied in the subject assessment is incorrect or inequitable.

[47] 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.

[48] The Board gave greater weight to the Respondent's sales comparables (R-1, page 33), indicating a fee simple capitalization rate of 6.47%; and the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 16) 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%.

[49] 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.

[50] The Board finds the Respondent's equity comparable chart (R-1, page 36), that lists 20 shopping centres located in various areas of the city with effective ages from 1991 to 2010, all with capitalization rates of 6.5%, supports equity and the subject assessment capitalization rate of 6.5%.

Issue 3: Is the food store lease rate high?

[51] Based on the Food Store Assessment Comparables chart (C-1, pages 27), the Complainant requested a lease rate of \$13.00/sq ft. The Board finds that the requested \$13.00/sq ft lease rate is not supported by market evidence.

[52] The Board placed weight on the Respondent's chart of 2013 Actual Food Store Rents for 1991 to 2007 effective age, (R-1, page 37), with lease rates that ranged from \$12/sq ft to \$18/sq ft with an average of \$15.56/sq ft, and supported the assessment lease rate of \$15.50/sq ft. The Board finds that the assessment lease rate of \$15.50/sq ft is supported by market evidence.

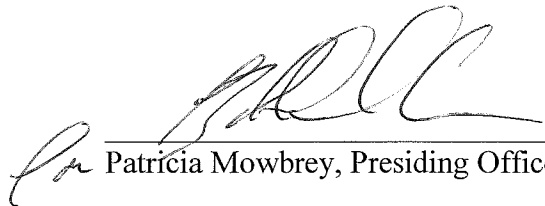
[53] The Board finds the subject 2013 assessment of \$9,894,000, is correct, fair and equitable.

Dissenting Opinion

[54] There was no dissenting opinion.

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.