

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01148

Assessment Roll Number: 3719747

Municipal Address: 500 Riverbend Square 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

Jasbeer Singh, Board Member

Taras Luciw, 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.

Preliminary Matters

- [2] There were no preliminary issues before the Board.

Background

- [3] The subject property is located in the Falconer Heights subdivision, Edmonton, at 500 Riverbend Square NW, and is known as the Riverbend Shopping Centre. It is classified as a neighbourhood shopping centre, was constructed circa 1991, 1994, 1999; the City assessed area is 133,669 sq ft with a land size of 478,891 sq ft. The subject was assessed by the Income Approach to Value, for the 2013 assessment of \$42,949,500.

Issue(s)

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

- (a) Should the subject be given the 95% size adjustment?
- 2. Is the assessment capitalization rate of 6.5% too low?
- 3. Is the food store lease rate of \$15.50 /sq ft too high?
- 4. Is the lease rate of \$28.00 /sq ft too high for the CRU space, 3,001 – 5000 sq ft?

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* (MRAT), AR 220/2004 reads:

Mass appraisal

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 documentary evidence (Exhibit C-1, 104 pages), 95% Rental Area Analysis (C-2, 438 pages), Rebuttal document (C-3, 132 pages) and oral argument for the Board’s review and consideration.

Issue 1(a). Should the subject be given the 95% size adjustment?

[8] The position of the Complainant is that the assessment of the subject is not fair and equitable and is excessive. The Complainant argued that all retail properties should be assessed using

the same method, and that how large the assessment is or which assessor assesses the property 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 (C-1, page 9). The Complainant argued that the subject property was treated inequitably because it was assessed using 100% of the rent roll area.
- [11] The properties listed in C-2 indicated the ratio of the City Assessment Proforma sizes to the City Gross sizes which indicated 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 to support a 95% adjustment.
- [12] The Complainant provided the City's Assessment Record Valuation Summary and the Assessment Proforma for the subject which indicated the assessment area of the subject was 133,669 sq ft. The Complainant applied the 95% adjustment to the assessment area to reach 126,986 sq ft that was used in the requested assessment value of \$34,999,000.

Issue 2. Is the assessment capitalization rate too low?

- [13] 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.
- [14] The Complainant provided a Capitalization Rate Sales comparable chart of 24 sales, (C-1, page 28), with the respective supporting network data sheets. The sales produced 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, (C-1, page 28). Excluding the 6 sales, the average of the capitalization rates for the remaining sales was 7.24% and the median was 7.15% which the Complainant stated supported the requested 7.0% capitalization rate.
- [16] The Complainant explained that the sales provided in the capitalization rate chart were sales within the last 2 years and was a true reflection of the market using actual net operating income and unadjusted sales prices which resulted in a leased fee capitalization rate of 7%.

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

- [17] 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.
- [18] The Complainant provided the March 2013 rent roll for the subject property (C-1, pages 19-21), indicating the food store lease rate was \$12.24/sq ft, with a renewal date of October 2010 (R-1, page 8).

[19] 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.

[20] The Complainant presented a Food Store Assessment Rate Comparables chart that was provided by the City. 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. (C-1, page 23).

[21] The Complainant stated that as CRU spaces age, the lease rates decrease; but in this case, 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 in older properties, the requested \$13.00/sq ft rate equates to a similar percentage relationship in newer properties. (C-1, pages 23-24).

Issue 4. Is the lease rate too high for the CRU space, 3,001 – 5000 sq ft?

[22] The Complainant submitted that the City is not recognizing the effect of economies of scale for the CRU 3,001 – 5,000 sq ft of space. The current assessed rental rate of \$28/ sq ft is the same as the small CRU space and is higher than market. Based on the average assessment difference between space sizes, a rate of \$25.00/ sq ft would be more appropriate. (C-1, page 15).

[23] The Complainant provided a recent lease comparable for similar space at a rate of \$21.00/ sq ft. (C-1, page 25).

[24] The Complainant also provided a list of seven assessment comparables from various shopping centre properties that indicated the assessed lease rates ranged from \$19.00 to \$25.00/ sq ft and a median assessed lease rate of \$23.00/ sq ft. (C-1, page 25).

[25] The Complainant further submitted that the current leases in the subject property are at \$18.50 and \$19.00/ sq ft and asserts this supports a reduction in the assessment lease rate, (C-1, page 25).

[26] The Complainant provided an analysis of various CRU spaces in the City, in support of the argument for reflecting the 'economies of scale' in the lease rates for CRU spaces, 3,001 – 5,000 sq ft (C-1, pages 26-27). For this analysis, the Complainant:

- a. Listed CRU spaces of different size brackets in 15 shopping centre properties in Edmonton.
- b. Provided ratios, for assessment rental rates, to show how the economies of scale were reflected in each of the listed properties.
- c. Calculated an average and median of these ratios for CRU <1,000 sq ft, CRU 1,001 – 3,000 sq ft and CRU 3,001 – 5,000 sq ft spaces.
- d. Demonstrated that if the median and average ratios were applied to the assessment rates in the subject property, the results would support the requested rate of \$25/ sq ft for the CRU 3,001 – 5,000 sq ft space.

[27] The Complainant requested a 2013 assessment of \$34,999,000.

Complainant's Rebuttal

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

[29] The Complainant identified the ten shopping centre sales from the chart of 24 capitalization rate sales, and excluded the retail sales (C-1, page 28). The Complainant further excluded two sales as one was encumbered with a 40 year lease at \$1 per year for a part of the property; and the second sale had not been listed on the open market. Analysis of the remaining eight shopping centre sales indicated a median capitalization rate of 7.14%, based on the Network document 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%. (C-3, page 2).

[30] 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

[31] The Respondent presented written evidence including an Assessment Brief and a Law and Legislation brief (Exhibit R-1, 216 pages) and oral argument for the Board's review and consideration.

Issue 1(a). Should the subject be given the 95% size adjustment?

[32] The Respondent submitted (R-1, pages 11-12), that there were 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 gross leasable area of the standard retail properties for assessment purposes.

[33] The Respondent indicated that the RFI return rate for shopping centres 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.

[34] The Respondent provided additional details (R-1 pages 14-16), to the Complainant's Rental Area Analysis of 92 properties presented in C-2. The Respondent added a column and noted the valuation group for each of the properties listed; 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. The subject is a neighborhood shopping centre and was valued at 100% of the gross leasable area. Therefore the Respondent pointed out that the Complainant's Rental Area Analysis properties were not comparable.

Issue 2. Is the assessment capitalization rate too low?

[35] 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.

[36] The Respondent's City of Edmonton cap rate review (R-1, page 24), 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.

[37] The Respondent presented a Shopping Centre Capitalization Rate Analysis chart (R-1, page 27) of 14 properties, with supporting City sales analysis sheets. The sale dates were within 3 years of the valuation date and reflected 2013 time adjusted sales prices and 2013 assessed NOIs (which used typical lease rates of similar properties). The comparables reflected 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.

[38] The Respondent asserted that third party capitalization reports were included 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 48), while the Colliers report indicated the Edmonton Community Retail capitalization rates ranged from 6.25%-6.75% (R-1, page 47).

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

[39] The Respondent stated that according to legislation, mass appraisal is the methodology for valuing individual properties (R-1, pages 182-189), 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.

[40] The Respondent stated that statistical testing was conducted to determine the typical market lease rate for the subject food store space. The food store lease rates were then stratified by age into four categories (R-1, page 192), noting the subject has an effective age of 1991 (R-1, page 10). The median food store lease rate for properties in the 1991-2007 age group is \$15.50/sq ft (R-1, page 9).

[41] An Assessment Equity Chart for Rent (R-1, page 10), indicated assessed lease rates for food stores in neighbourhood shopping centres city wide. The assessed lease rate was \$15.50/sq ft and the Respondent stated that location was not a factor in determining the lease rate; only age was a factor.

[42] The Respondent presented a chart of 2013 Actual Food Store Rents for the 1991-2007 Effective Age group: included are 14 neighbourhood shopping centres and 4 power centres with a net rent per sq ft for each property. The lease rates ranged from \$12.00/sq ft to \$18.00/sq ft with a median of \$15.63/per sq ft and an average of \$15.56/sq ft, which the Respondent stated supported the assessment lease rate of \$15.50/sq ft.

[43] The Respondent requested the Board to confirm the subject assessment of \$42,949,500.

Issue 4. Is the lease rate too high for the CRU space, 3,001 – 5000 sq ft?

[44] The Respondent defended the CRU rental rates (3,001 – 5,000 sq ft) as equitable and provided a table of three CRU spaces indicating an equitable assessment rent of \$28/ sq ft, the same as the subject, and applied to similar properties in the City. (R-1, page 10).

[45] The Respondent also provided a list of seven market rental comparables that showed actual rental rates ranging between \$24.60 and \$33.00/ sq ft and a median of \$30/ sq ft and an average of \$30.01/ sq ft. The Respondent argued that this showed clear support for the assessment rental rate of \$28.00/ sq ft. (R-1, page 10).

[46] The Respondent requested the Board to confirm the 2013 assessment of \$42,949,500.

Decision

[47] The decision of the Board is to confirm the subject property's 2013 assessment at \$42,949,500.

Reasons for the Decision

Issue 1(a). Should the subject be given the 95% size adjustment?

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

[49] The Board accepted the premise of property stratification for the 2013 assessment (R-1, pages 186-187), and that each property is further stratified showing similarities within the group. The subject is in the Neighborhood Shopping Centre group.

[50] 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.

[51] 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 the shopping centre group of properties was not treated fairly and equitably. The Board did not accept that the 95% method of calculating size should be applied to both groups of retail properties.

[52] 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.

Issue 2. Is the assessment capitalization rate too low?

[53] 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.

[54] The Board noted that of the Complainant's 24 sales comparables (C-1, page 28), 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 lease fee rates derived using actual NOI rather than a stabilized NOI.

[55] The Board gave greater weight to the Respondent's capitalization rate review of the eight sales (R-1, page 24), which were included in the Complainant's shopping centre comparables and this indicated a fee simple capitalization rate of 6.47%. The Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 27) of 14 sales comparables indicated an average of 6.20% and a median of 6.18%, which also supported the assessment capitalization rate of 6.50%.

[56] The Board accepted the Respondent's method of calculating a capitalization rate and that it met the legislative requirement of determining a fee simple capitalization rate. The Respondent derived the capitalization rate using typical market conditions and applied this fee simple capitalization rate to a typical NOI in the assessment of a property. The capitalization rate was applied in the same manner as it was derived.

[57] The Board finds that the Respondent's 6.5% capitalization rate is supported by the Respondent's Shopping Centre Capitalization Rate Analysis (R-1, page 27) and is an appropriate rate to value the subject property.

Issue 3. Is the food store lease rate excessive?

[58] Using the Food Store Assessment Rate Comparables chart (C-1, pages 23-24), the Complainant submitted that as CRU space ages, the lease rates decrease, whereas food store lease rates appear not to decrease with age. The Complainant's requested lease rate of \$13.00/sq ft is supported by a percentage relationship of food stores and CRU space lease rates within the respective age groups. The Board finds that the requested \$13.00/sq ft lease rate is not supported by market evidence.

[59] The Board placed greatest weight on the Respondent's chart of 2013 Actual Food Store Rents for 1991 to 2007 effective age (R-1, page 9), which supported the Respondent's requested lease rate of \$15.50/sq ft. The median for all leases was \$15.63/sq ft and the average was \$15.56/sq ft; the median for 5 renewal and new leases was \$15.75/sq ft and the average was

\$14.76/sq ft. The Board finds that the assessment lease rate of \$15.50/sq ft is supported by market evidence.

[60] The Board finds that the Assessment and Equity Chart (R-1, page 9), with 16 of 18 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 lease rate too high for the CRU space, 3,001 – 5000 sq ft?

[61] The Complainant stated that the same per square foot rental rate applied to the CRU space categories 1,001 - 3,000 sq ft and 3,001 – 5,000 sq ft, did not reflect the economies of scale. The Complainant presented a comparative analysis of CRU spaces within LUC 240 without providing a lease rate basis for the comparison. In the absence of any actual or assessment rental rates, grouping or location of the properties, the Board was unable to consider the results derived from the Complainant's CRU comparables analysis.

[62] The Board noted that the Complainant's CRU comparables chart with different assessment rates applied to similar sized CRU spaces in different properties, demonstrated that the City's assessment model acknowledged various attributes, in addition to the size of the space, to arrive at the applicable assessment rates. The Board was not persuaded by the Complainant's argument that similarly sized CRU spaces ought to be assessed with similar rental rates, irrespective of significant other factors.

[63] The Board finds that the one lease rate comparable is insufficient on which to base the market lease rate for the CRU space 3,001 – 5000 sq ft.

[64] The Board finds the Respondent's seven market rental comparables and the equity argument supports the subject's assessment rate of \$28/ sq ft for CRU space 3,001 – 5000 sq ft.

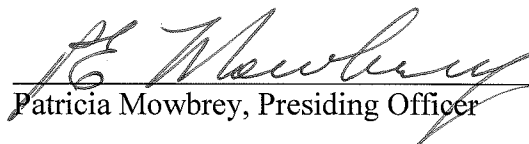
[65] The Board finds the subject's 2013 assessment of \$42,949,500 is correct, fair and equitable.

Dissenting Opinion

[66] There was no dissenting opinion.

Heard on August 27, 2013.

Dated this 20th day of September, 2013, at the City of Edmonton, Alberta.


Patricia Mowbrey, Presiding Officer

Appearances:

Jordan Nichol
for the Complainant

Amy Cheuk
Frank Wong
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.