

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01424

Assessment Roll Number: 9991380

Municipal Address: 2004 101 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
Lynn Patrick, Presiding Officer
Randy Townsend, Board Member
James Wall, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members each indicated they had no bias in this matter.

Preliminary Matters

[2] The Respondent raised a preliminary matter respecting certain content of the Complainant's Rebuttal (Exhibit C-3) on the basis that it was information that would constitute new evidence that had not been disclosed in accordance with *Matters Relating To Assessment Complaints Regulation (MRAC)*. The Respondent's position was that the capitalization rate study it was submitting was the relevant evidence to this matter and that any previous versions that the Complainant wished to enter in evidence were new evidence and thus subject to the provisions of s.8(2) of MRAC respecting disclosure. Since they had not been properly disclosed, pursuant to s.9(2) they could not be heard by the Board. The Board found that the previous version found at page 3 of Exhibit C-3 was new evidence and not proper rebuttal material. The information had not been disclosed in accordance with s.8 of MRAC and thus could not be heard by the Board.

[3] The Respondent raised a further matter with respect to the content of the Rebuttal (Exhibit C-2) referring to pages 112, 113, 114, 118, 119, 121 and 122 on the basis they contain time adjustment data taken from the records of the Respondent and unrelated to assessment of the subject Power Center. The Complainant agreed with the position of the Respondent and withdrew those pages from Exhibit C-2, the Complainant's Rebuttal.

Background

[4] The subject parcel consists of a 2.008 acre site located in South Edmonton Common with a 27,311 square foot net leasable area development occupied by LA-Z-BOY Furniture Gallery which is classified by the Respondent as a power center. The municipal address is 2004 101 Street NW. South Edmonton Common is a large unique collection of retail stores and restaurants, including a movie theatre complex, that exhibit a considerable range of sizes. The building is recently renovated and upgraded resulting in an age change to 2007. The subject is assessed at \$6,456,000, using the income approach.

Issue(s)

[5] Is the capitalization rate used in the assessment correct?

[6] Do similar commercial retail properties receive preferential treatment when assessed at 95% of their size which allows for differential in reported sizes from information returns such as rent rolls?

[7] Is the market rental rate applied to the larger junior anchor space at \$15.00 per square foot too high.

Legislation

[8] ***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.

[9] ***The Matters Relating To Assessment Complaints Regulation, AR 310/2009, reads:***

s 8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

s 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

Position of the Complainant

[10] The Complainant notes that the shopping center where the subject is located, known as South Edmonton Common, is superior to other shopping centers in Edmonton. As a result, South Edmonton Common properties are assessed using a 6% capitalization rate while the global Edmonton rate for shopping centers is 6.5%. The Complainant objects to the 6% rate contending that the global Edmonton rate of 6.5% is incorrect and that it ought to be 7%. The Complainant supported this argument with sales comparables illustrated in the Capitalization Rate Study chart at page 14 of Exhibit C-1. The adjustment of the capitalization rate of 0.5% for South Edmonton Common is acknowledged as acceptable based upon the decision of the Municipal Government Board in No. DL 132/09 which noted that the unique size of the center and the variety of premier commercial retail established it as a superior commercial investment.

[11] The Complainant notes that the subject is classified as a power center and contends that of the twenty-four comparables contained in its study are similar to the subject, although none were listed as power centers. There are six properties that are used by the Respondent in its

submission as shopping centers as opposed to commercial retail property which supports the similarity contention. The Complainant also notes that there are six highlighted comparables in the study. The Complainant indicated that these could be seen to be inferior to the subject for various reasons, such as exhibiting upside potential from expiring leases or part of a portfolio sale. If these highlighted sales were removed from the comparables, the remaining sales would produce a median rate of 7.15% as opposed to a median rate of 7.04% for the twenty-four comparables.

[12] In support of their sales comparables, the Complainant submitted a sales data sheet for each sale derived from "The Network" which is a real estate industry reporting service. "The Network" obtains data about the sale price and income from the parties and does a calculation of net operating income to obtain a capitalization rate, being the rate that appears in the chart. The sale price data is not time adjusted; however, the sale dates are within a range of May 02, 2011 and September 04, 2012, which the Complainant contends supports the unadjusted sales prices.

[13] The Complainant submits that not all retail properties are treated the same for assessment purposes. The shopping center group, as defined in the 2013 Shopping Center Valuation Guide, is generally assessed on 100% of the rent roll size while the commercial retail property group, as defined in the Commercial Retail Property Brief, is generally assessed on 95% of a gross building size. In support of this contention the Complainant presented a Fairness & Equity 95% Rental Area Analysis (Fairness Study) consisting of 438 pages (Exhibit C-2) which lists ninety-two properties. The position of the Complainant is that commercial retail properties receive an unfair and inequitable advantage over properties in the retail group that are classified as shopping centers which are assessed on 100% of the net leasable area.

[14] The Complainant contends that the market rental rate of \$15.00 used by the Respondent in the assessment of the subject is too high and submits that it is unfair when compared to the rental rate of \$14.00 used in the assessment of the adjacent Staples store. The position of the Complainant is that they are similar Junior Anchor properties and that recent leasing indicates support for the lower rate. In support of this request the Complainant submitted a chart of seven lease comparables (Exhibit C-1, p.18) with start dates ranging from September 16, 2010 to July 1, 2012. The rental rate range is from \$10 to \$14.75 per square foot with the median at \$13.57. The size range is from 22,714 to 35,557 square feet. Four of the comparables are in the south side, two in the north and one in the north east.

[15] The Complainant also presented a Rebuttal document which, following a preliminary decision as set forth above, presented some further analysis of the sales comparables offered by the Complainant in Exhibit C-1. The additional analysis added fee simple net operating income and capitalization rates which, it is contended, are typical.

Position of the Respondent

[16] The Respondent contends that mass appraisal methodology as employed by the Respondent requires grouping of similar properties with similar attributes, then using uniform valuation models for each grouping. Following this methodology leads to the establishment of separate valuation groups for commercial retail properties, such as retail plazas and strip malls in one group and shopping centers, which include community shopping centers, neighborhood shopping centers and power shopping centers among others in another group. A common characteristic of the commercial retail properties is that request-for-information returns,

including rent rolls, frequently indicate variances in net rentable area calculations with the typical being 95% of the gross building area. The assessment valuation for this group of properties regularly uses 95% of the gross building area to correct for these variances.

[17] The same adjustment is not made for shopping centre group because the request-for-information return is more accurate. Therefore, the net leasable area is assessed at 100%. If a shopping center property shows up in the retail inventory, it would be because of some unusual characteristics that differentiated it from the bulk of the inventory. The submission by the Respondent included the 2013 Shopping Center Valuation Guide and the Commercial Retail Property Brief to explain the difference between the two groupings properties.

[18] The Respondent noted that there were no recent sales in South Edmonton Common and that the sales submitted by the Complainant in support of its request for a higher capitalization rate were inferior in age and were a mix of commercial retail and shopping centers lacking in similarity to the subject.

[19] The Respondent provided an analysis chart of Shopping Center Capitalization Rates at page 20 of Exhibit R-1 containing fourteen time adjusted shopping center sales including capitalization rates, which provide a median capitalization rate for sales over a 3 year period of 6.18%. The Respondent also included a 2013 sales analysis sheet for each sale to display the information obtained by the Respondent on each sale and its calculations of capitalization rates to establish the validity of the sale. In addition, the Respondent provided five sales reports from "The Network" that covered a range of capitalization rates of 5.85% to 6.63% from sales of shopping center properties that had anchor or shadow anchor tenants. The Respondent notes that regardless of the content of the various categories in the Guide, all the inventory falling into those categories is assessed using the capitalization rate of 6.5%. The subject is classified as a power center and would normally receive the application of the 6.5% rate except it is located in South Edmonton Common, which receives an adjustment of 0.50% to a rate of 6%. The Respondent notes that the Complainant does not take issue with 0.50% adjustment but does take issue with the 6.5% inventory rate.

[20] The Respondent included at page 39 of Exhibit R-1, a third party Capitalization Rate Study prepared by industry member CB Richard Ellis. The study covered a 3 year period from 2010 to 2012 and shows a trend in power center capitalization rates on a city wide basis. The second quarter 2010 rate range is 7%-7.5%, the same period in 2011 shows a range of 6.25%-6.75% and in the same period in 2012 the range is 5.75%-6.25%. The Respondent contends that although 3rd party reports have no back up documentation, they support the reduction in the cap rate to 6.5% for the shopping center inventory that the assessors determined from information returns and applied to the subject in the 2013 tax year.

[21] The Respondent further submits that the use of the actual lease rate information in establishing the capitalization rate as done by "The Network" creates a leased estate based capitalization rate rather than using typical rates which creates a fee simple estate. Fee simple estate is the correct basis for assessment purposes, although not for investment purposes as contended by the Complainant.

[22] The Respondent submitted a Sur Rebuttal document (R-2) which contained information relating to the content of the annual Request For Information forms.

Decision

[23] The assessment is confirmed at \$ 6,456,000.

Reasons for the Decision

[24] The Board finds that the capitalization rate study done by the Respondent is persuasive and the Board accepts the position of the Respondent that a global cap rate of 6.5% is fair and equitable for the shopping center inventory for the City of Edmonton. The Shopping Center inventory, as defined in the 2013 Shopping Center Valuation Guide, is assessed using a 6.5% rate with one or perhaps two exceptions, one being South Edmonton Common, which is in evidence. The adjustment of the South Edmonton Common properties by 0.50% is not in issue. Accordingly, the Board finds the resulting capitalization rate on the subject of 6% to be fair and equitable.

[25] The Board finds that the source of the capitalization rates used by the Complainant, being "The Network" report sheets on sales, use actual Net Operating Incomes at the time of the sale. This leads to cap rates being lease fee based as opposed to fee simple based cap rates as required for assessment purposes. The sales comparables used by the Complainant are further questionable because they are not time adjusted and include properties that are not Shopping Centers, as defined, but are more comparable to Commercial Retail Properties. As a result, the Board placed little weight on this evidence.

[26] The Board accepts the position of the Respondent that mass appraisal methodology establishes groups of similar properties. Then, uniform valuation models are applied to the groupings. The use of typical characteristics in the grouping process is the correct approach and thus the application of the 95% area characteristic to one group of properties but not another is not unfair or inequitable. The subject falls into the category of power center which is one of the groupings in the Shopping Center inventory. The subject is assessed on 100% of its net leasable area, as are all power centers. This is fair and equitable. After a complete review of the Study submitted by the Complainant (Exhibit C-2) the Board finds the properties presented by the Complainant do not qualify as Shopping Center inventory and are therefore not comparable to the subject nor assessed in the same way.

[27] The Board finds that the market rental rate used by the Respondent of \$15.00 per square foot is supported by the evidence presented by the Respondent. The Board further finds that the comparison of the rental rate of the subject and the adjoining Staples property is not supported by the Complainant's argument of fairness inasmuch as the properties are not similar in fit and finish. The renovations to the subject, being of higher quality, support the higher market rent for the subject.

Dissenting Opinion

[28] No dissenting opinion

Heard commencing July 31, 2013.

Dated this 27th day of August, 2013, at the City of Edmonton, Alberta.



Lynn Patrick, Presiding Officer

Appearances:

Jordan Nichol, Altus Group
for the Complainant

Amy Cheuk, City of Edmonton

John Ball, Assessor, City of Edmonton
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.