

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01578

Assessment Roll Number: 3758778

Municipal Address: 6104 28 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

Peter Irwin, Presiding Officer
Lillian Lundgren, Board Member
Darryl Menzak, 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 they have no bias in the matter before them.

Background

[2] The subject property, known as Millwoods Mainstreet, is a neighborhood shopping centre located at 6104 28 Avenue. The property has a total area of 10,981 square feet (sf) and is comprised of commercial retail units (CRUs) and restaurants. It is assessed at \$3,193,000.

Issue

[3] Is the subject assessment correct?

(a) What is the appropriate rental rate for the Restaurant Fast Food (FF) category?

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] ***Matters Relating To Assessment And Taxation Regulation, AR 220/2004, reads:***

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 filed this complaint on the basis that the subject property assessment of \$3,193,000 is in excess of market value. In particular, the Complainant is challenging the \$26/sf rental rate used to assess the three "Restaurant FF" spaces in the shopping centre.

[7] The Complainant argued that all three restaurant spaces should be assessed using \$22/sf based on the actual lease rates for Koffe Café and Booster Juice in the subject property (Exhibit C-1 page 16). Koffe Café signed a lease for \$22/sf with a start date of April, 2012 and Booster Juice signed a lease for \$23/sf with a start date of July, 2011. The Complainant placed little weight on the lease for \$26/sf signed by Panago Pizza because it is an older lease with a start date of March 2006.

[8] The Complainant also argued that the lease rates of similar restaurants support a rental rate of \$22/sf. The Complainant provided three lease comparables for restaurants that are similar to the subject restaurants in age, size and location which have a median lease rate of \$23/sf (Exhibit C-1 page 18).

Rebuttal

[9] Originally, the Complainant requested the Board to reduce the assessment to \$2,985,500 based on a rental rate of \$22/sf for the restaurant spaces. Following the Respondent's presentation, the Complainant presented a revised request of \$23/sf which resulted in a value of \$3,056,500 (Exhibit C-2).

[10] In summary, the Complainant requested the Board to reduce the assessment to \$3,056,500.

Position of the Respondent

[11] The Respondent submitted that the subject property is assessed at market value. The Respondent stated that market rents for all space types are derived using mass appraisal and statistical testing was done to determine an appropriate market rental rate for the space types in the subject property.

[12] The Respondent stated that typical rental rates are more appropriately used than the actual rental rates for assessment purposes. Current economic rents or market rents are used to form the basis of the valuation as opposed to actual rents because in many cases the actual rents reflect historic revenues derived from leases negotiated before the valuation date.

[13] In support of the \$26/sf rental rate used to assess the restaurant spaces, the Respondent presented a chart of numerous comparable restaurant rents that have a median rental rate of \$26.50/sf (Exhibit R-1 page 20). The leases have start dates from July 1, 2007 to February 1, 2012. The Respondent did not provide any details respecting the lease comparables owing to the protection of privacy. The Respondent offered to provide additional details to the Board if the Board makes a written request. The Board considered the offer and determined that it did not require the additional information.

[14] Although equity is not an issue in this complaint, the Respondent provided twelve assessment equity rents for restaurants that are similar to the subject in age and are located on the south side of the city. All of the comparables are assessed using a rental rate of \$26/sf (Exhibit R-1 page 21).

[15] In summary, the Respondent requested the Board to confirm the assessment at \$3,193,000.

Decision

[16] The property assessment is confirmed at \$3,193,000.

Reasons for the Decision

[17] The main issue of this complaint is whether the rental rate for the three "Restaurant FF" spaces should be reduced to \$23/sf as requested by the Complainant.

[18] In determining this matter, the Board reviewed section 2 of the *Matters Relating To Assessment And Taxation Regulation 220/2004 (MRAT)*, which requires that an assessment of property must be prepared using mass appraisal and must reflect typical market conditions for properties similar to that property. The leases for Koffe Café at \$22/sf and Booster Juice at \$23/sf are supportive of the Complainant's request; however, they are actual leases and may not represent typical market leases.

[19] While the Complainant's three lease rate comparables are good comparables to the subject property, the Board finds that a sample of three comparables is not sufficient evidence of an incorrect assessed rent. The Board placed greater weight on the Respondent's fifty-one rental rates of similar property which had a median rental rate of \$26.50/sf.

[20] Although equity is not an issue, the equity rents presented by the Respondent show that the subject "Restaurant FF" spaces are equitably assessed with similar spaces.

[21] For these reasons, the assessment is confirmed.

Heard September 16, 2013.

Dated this 25th day of September, 2013, at the City of Edmonton, Alberta.



Peter Irwin, Presiding Officer

Appearances:

Adam Greenough
for the Complainant

Steve Lutes, Legal Counsel
Tim Dueck, 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.