

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01595

Assessment Roll Number: 3304805

Municipal Address: 11231 Jasper 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
Steven Kashuba, Presiding Officer
Jack Jones, Board Member
Robert Kallir, Board Member

Procedural Matters

[1] The parties to the hearing did not indicate any objection to the composition of the Board. Further, no bias or conflict of interest with respect to this matter was expressed by the members of the Board.

[2] The parties giving evidence at the hearing were sworn in.

Preliminary Matters

[3] During the course of the hearing the Complainant submitted Exhibit C-2 as rebuttal evidence. However, the Respondent objected to pages 7 – 11 on the basis that those specific pages contained new evidence. As for the Complainant, they requested that the Board not consider the information as set out in pages 12 – 26. The Board recessed and ruled that pages 7 – 11 did contain new evidence and, as a result, were not admissible. As for the Complainant's request, the Board took into consideration its earlier decision on Roll Number 2721413 having to do with the question of capitalization rates. Since it was the request of the Complainant to carry forward the Board's decision on Roll Number 2721413 to this complaint and since the Complainant had not met their onus or burden of proof as required by the legislation on the question of capitalization rates on Roll Number 2721413, made the submission of pages 12 – 26 in Exhibit C-2 redundant and unnecessary. As a result, the Board granted the Complainant's request to disregard pages 12 – 26 in Exhibit C-2.

Background

[4] The subject property is located in the Oliver Neighborhood and is classified as a two storey retail/wholesale complex. The subject building was constructed on a land area of 3,898 square feet. The assessed lease area is 5,599 square feet. Using the income approach to value, the current assessment is \$809,000.

Issue(s)

[5] Is the capitalization rate (cap rate) of 6.5% utilized to derive the 2013 assessment of the subject property correct?

[6] Is the City's assessed leasable area of 5,599 square feet correct?

[7] Is the 2013 assessment of the subject property at \$809,000 fair and equitable?

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 289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

s 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

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 and Taxation Regulation, Alta Reg 220/2004* (MRAT) 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.

s 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Position of the Complainant

[10] In support of their request for a reduction in the assessment amount, the Complainant submitted Exhibit C-1, 47 pages. The Complainant indicated to the Board that the only issues with respect to the assessed value of the subject property were the cap rate and the assessed leasable area. The Complainant was in agreement with the other components of the assessment valuation proforma (Exhibit C-1, page 13).

[11] It is the submission of the Complainant that the cap rate of 6.5%, as applied by the City in their proforma (Exhibit C-1, page 12), is too high. The twelve sales comparables presented in Exhibit C-1, pages 26 - 27), support this position.

[12] The Complainant presented the cap rates for twelve sales comparables before any adjustments were made to the income stream (Exhibit C-1, page 26, column 9). As well, the Complainant presented cap rates for the same twelve sales comparables after adjustments were made to the income stream (Exhibit C-1, page 26, column 11).

[13] By applying a vacancy rate of 5% and a 2% structural rate to the net income, the adjusted median cap rate was calculated to be 7.46%, and the average cap rate was 7.45% (Exhibit C-1, page 26).

[14] The Complainant further examined each of the twelve sales comparables (Exhibit C-1, page 27) and demonstrated that the assessment-to-sales ratios (ASRs) ranged from 72% to 135%, (0.72 to 1.35), well outside the acceptable deviation range of plus or minus 5% from the ideal of 1.00 (0.95 to 1.05).

[15] Additional adjustments to the sales comparables were made by using The Network's net income (Exhibit C-1, pages 34- 47) and the 2013 assessed value to derive a cap rate (Exhibit C-1, page 27). To the net income of each sales property was applied a typical vacancy (5%) and structural allowance (2%). The Complainant utilized the adjusted net income along with the 2013 assessment for the sales comparables to derive an adjusted cap rate for each property. The resultant median cap rate was calculated to be 8.17%, and the average cap rate was 8.22%. These cap rates support the conclusion that a cap rate of 6.5% as applied by the City is too high.

[16] In response to a question of the Board, the Complainant submitted that in arriving at a requested reduction in the assessment amount, the most weight should be placed upon the cap rates as derived from comparable sales. The median cap rate derived from these sales was 7.46%

(Exhibit C-1, page 26). This cap rate was decreased from 7.46% to 7.0% because of the superior location of the subject near the downtown core.

[17] Applying a cap rate of 7.0% to the net operating income of \$43,630 results in a requested assessment amount of \$623,000 (Exhibit C-1, page 13).

[18] The Complainant presented a summary of each of the sales comparables as derived from The Network sales data (Exhibit C-1, pages 34 - 47).

[19] In support in the request for a reduction in the assessment amount as it related to the assessed leasable area of the subject property, the Complainant referred to Exhibit C-1, pages 16-23, the 2012 and 2013 rent roll for the subject property provided by the Complainant in response to the Request For Information (RFI) request from the City and Exhibit C-2, pages 1-6.

[20] The assessed leasable area of the subject property should be reduced from the assessment by the City from 5,599 square feet to 4,000 square feet as set out in the rent roll (Exhibit C-1, pages 13 and 16-23). The subject property was an atypical building with two stairwells both of which, along with the mechanical room, should not be included in the assessable area.

[21] As set out in the City statement on size calculation (Exhibit C-1, pages 24-25) the Complainant was entitled to appeal in order to correct the assessable size of the subject property if they can show that the net leasable area that the City has actually used to assess the subject property is incorrect.

[22] The Complainant concluded their presentation by stating that the subject property should be assessed utilizing a cap rate of 7.0% and an actual useable area of 4,000 square feet, which results in the requested assessment of \$623,000 (Exhibit C-1, page 13).

Position of the Respondent

[23] The Respondent noted, through questioning of the Complainant, that the only two issues before the Board with respect to the assessed value of the subject property entailed the cap rate and the area of the assessed leasable area.

[24] The Respondent stated that they required clarification from the Complainant regarding the Retail Sales Cap Rates presented in Exhibit C-1, page 26 and the rental information set out in Exhibit C-1 pages 16-23.

[25] The Respondent requested clarification as to the methodology utilized by the Complainant to derive the adjusted net income and adjusted cap rates. The Complainant explained that the adjusted net income had been determined by adjusting the net income set out in Exhibit C-1, page 26, column 8 by reducing this amount by 5% for vacancy and a further 2% for structural and then increasing the amount obtained from The Network vacancy allowance as reflected in Exhibit C-1, page 26, column 7. The Respondent noted that the vacancy and structural allowances should have been calculated utilizing the gross income. As a result, the Complainant's methodology is wrong.

[26] The Respondent also questioned the relevance of the sales as being comparable to the subject property due to their property type. Further to this, only Sale #9 and Sale #12 were located in the proximity of the subject property (Exhibit C-1, pages 34 - 47). This, in the submission of the Respondent, brings into question the element of comparability.

[27] The Respondent questioned the details of the individual sales comparables presented by the Complainant with respect to lease rates, lease terms, an expropriation of one property, lease motivation, a multi-parcel sale, building types, and a vacant lot component. The Complainant responded that the only data available was as presented on The Network data sheets (Exhibit C-1, pages 34 - 47). No additional information was available.

[28] The Respondent stated that they required clarification from the Complainant regarding the cap rate analysis presented in Exhibit C-1, page 27.

[29] Specifically, the Respondent requested that the Complainant clarify the derivation of the time-adjusted sales prices (TASPs) and the associated assessment to sales ratio (ASRs). The Complainant responded that the TASPs were incorrect for all of the sales comparables other than Sale #1 and that the ASRs presented were also incorrect other than for Sale #1. Upon reflection, the Complainant agreed with the Respondent that the information presented in the ASR column was meaningless (Exhibit C-1, page 27, column 5).

[30] The Respondent outlined the governing legislation which places the onus or burden of proof on the Complainant, who must prove that the assessment is incorrect. In light of the numerous errors evident in the Complainant's evidence and in the absence of satisfactory explanations, the Respondent took the position that the Complainant had not met their required onus and requests the Board dismiss the complaint with respect to the cap rate.

[31] The Respondent asked for an explanation as to why the gross area and actual useable area set out in Exhibit C-1 pages 17 and 21 were the same. The Complainant was unable to provide an answer to the question and stated that the gross area set out in Exhibit C-1 pages 17 and 21 was probably incorrect as the stairwells and mechanical area should be included in the gross area. The Complainant said that the owner of the subject property had provided the information set out in Exhibit C-1 pages 17 and 21 and the Complainant did not have any additional evidence as to how the actual sizes had been derived.

[32] The Board was referred to Exhibit R-1 pages 6 (the City calculation), 13 (a sketch of the subject property) and 20 (data from Commercial Edge concerning the subject property) as evidence of the size of the leasable area of the subject property.

[33] In support of the leasable area the Respondent referred to Exhibit R-1, pages 90-91 which sets out the manner in which the City typically calculates leasable area for a retail plaza and the assessment calculation for the subject property set out in Exhibit R-1, page 6.

[34] In dealing with the assessment calculation for the subject property, the Respondent noted an error (Exhibit R-1 page 6) in that an area of 45.102 square feet had been incorrectly included in the calculation. The Respondent requested that in view of this fact the area of 45.102 square feet be excluded from the calculation providing a total leasable area of 5,556 square feet and that the assessment be reduced to \$797,500.

Decision

[35] It is the decision of the Board to confirm the Respondent's application of a cap rate of 6.5% in determining the 2013 assessment of the subject property as being fair and correct.

[36] It is the decision of the Board to confirm that the City's revised assessed leasable area is 5,556 square feet.

[37] It is the decision of the Board to reduce the assessment of the subject property for 2013 from \$809,000 to \$797,500.

Reasons for the Decision

[38] The data presented by the Complainant in support of a requested reduction to the 2013 assessment of the subject property contained numerous errors and unsupported or unexplained data that could not be relied upon by the Board for a meaningful analysis.

[39] The Complainant was not able to satisfactorily explain the vacancy and structural adjustments made to the net operating incomes of the sales comparables to determine the adjusted cap rates (Exhibit C-1, page 26). In addition, the TASP's and ASRs illustrated in Exhibit C-1, page 27, were incorrect. As a result, this diminished the value of these tables. The relevance of the sales comparables presented by the Complainant was problematic when taking into consideration the varied property types and the lack of proximity to the subject property.

[40] The Complainant provided no evidence as to the correctness of either the gross area or the actual leasable area of the subject property, other than the rent roll provided to the City by the owner of the subject property. While the position of the Complainant was that the subject property was an atypical property, no corroborating evidence as to actual useable area of the subject property was provided.

[41] At an assessment appeal, as determined in *Calgary (City) v Alberta (Municipal Government Board) 2010 ABQB 719*, the ultimate burden of proof or onus rests with the Appellant to convince the Board that their argument, facts, and evidence are more credible than those of the Respondent.

[42] The Board determined that the Complainant had not met the onus or burden of proof required by the legislation to determine that the assessment is incorrect.

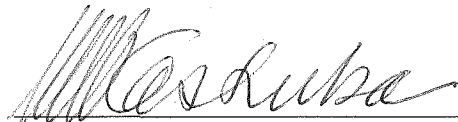
[43] After review and consideration of the evidence and argument presented by both parties, the Board has concluded that the 2013 recommended assessment by the Respondent of \$797,500 is fair and correct.

Dissenting Opinion

[44] There was no dissenting opinion.

Heard commencing October 22, 2013.

Dated this 5th day of November, 2013, at the City of Edmonton, Alberta.

A handwritten signature in dark ink, appearing to read 'Kashuba', is written over a horizontal line.

Steven Kashuba, Presiding Officer

Appearances:

Jordan Nichol, Altus Group
for the Complainant

Alana Hemple, Assessor, City of Edmonton
Cam Ashmore, Law Branch, 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.