

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01625

Assessment Roll Number: 3055993

Municipal Address: 8427 112 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

Shannon Boyer, Presiding Officer

Martha Miller, Board Member

Mary Sheldon, Board Member

Procedural Matters

[1] The parties to the hearing did not state any objection to the composition of the Board. The members of the Board did not report any bias or conflict of interest with respect to this file.

Preliminary Matters

[2] There were two preliminary matters before the Board.

[3] **First**, at the outset of the hearing, the Respondent stated that there was an agreement between the parties that the appropriate rental rate to apply to the subject is \$26 per square foot rather than \$30 per square foot as had been applied in the original assessment. The Respondent advised that this would reduce the assessment of the subject to a recommended \$1,518,000.

[4] The Complainant agreed that \$26 per square foot is the correct rental rate to apply but stated that there were other issues to be decided in the merit hearing. Therefore, the Complainant did not agree to the recommended amended assessment of \$1,518,000. The Complainant requested that the merit hearing on the remaining issues continue.

[5] **Second**, subsequent to the Respondent's presentation of evidence, the Complainant wished to introduce a rebuttal document into evidence. The Respondent objected to the rebuttal document on the grounds that some of the information did not respond to matters in the Respondent's evidence, but was additional evidence concerning matters in the Complainant's

disclosure. In addition, the Respondent submitted that the remaining information in the rebuttal concerned the capitalization rate for Whyte Avenue properties which, in the opinion of the Respondent, did not form part of the Respondent's presentation. The Respondent also noted that the rebuttal document did not contain a testimonial statement as required by legislation.

[6] The Complainant argued that the question of Whyte Avenue capitalization rates had been referred to in oral submission and that those portions of the rebuttal should be considered by the Board.

[7] After a recess, the Board decided that the rebuttal document would not be admitted into evidence. Portions of the document contained information which ought to have been contained in the Complainant's original disclosure. With respect to the remaining portions, the Board concluded that the evidence concerning Whyte Avenue capitalization rates was not contained in the Respondent's evidence and had only been referred to in a remark that the Whyte Avenue location could be considered similar to the subject. The Board concluded that the material contained in the rebuttal document was not proper rebuttal evidence.

Background

[8] The subject is a drive- in/sit-down restaurant named Wendy's and Tim Horton's. It was constructed in 1996 and is located in the Garneau subdivision of Edmonton. The area of the subject is 5,722 square feet. The subject is assessed using the income approach to value. The 2013 assessment of the subject is \$1,846,000.

Issue(s)

[9] The Complainant attached a schedule of numerous issues to the complaint form. However, at the time of the merit hearing, many issues had been abandoned and only one issue remained to be decided:

- Is the 2013 assessment capitalization rate of 6.5% too low?

Legislation

[10] 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.

Position of the Complainant

[11] The Complainant presented an assessment brief, Exhibit C-1, 44 pages, in support of the position that the 2013 assessment of the subject was excessive.

[12] The Complainant submitted that the capitalization rate of 6.5% applied to the subject by the Respondent was too low and argued that a 7.5% capitalization rate is appropriate. The Complainant provided a revised market value *pro forma* for the subject using the agreed upon \$26 per square foot lease rate, a 5% vacancy rate and 2% structural rate along with a 7.5% cap rate (Exhibit C-1, page 12). The resulting value for the subject is \$1,237,500.

[13] In support of the request that a 7.5% cap rate be applied, the Complainant submitted a chart of capitalization rate sales comparables (Exhibit C-1, page 19). Twelve sales of comparable properties in the retail group were provided. The Complainant advised that the net income for these comparables had been derived from documents from the Network (pages 27-40). The Complainant advised further that adjustments for 5% vacancy and 2% structural had been applied to that Network net income to arrive at an adjusted net income.

[14] The median adjusted capitalization rates for these comparables is 7.46 % and the average adjusted capitalization rate is 7.45%. The Complainant advised that all sales took place within a one year window prior to the valuation date and that only retail properties were considered.

[15] The Complainant provided a further chart (Exhibit C-1, page 20) which showed adjusted capitalization rates for the same comparables using the adjusted net income of the comparables divided by the 2013 assessments. The median is 8.25% and the average is 8.19%. The Complainant noted that the capitalization rates used in the assessments of these comparables, except one, is 7.5%.

[16] The Complainant argued that this evidence demonstrated that a 6.5% capitalization rate was too low for the subject and that 7.5% is appropriate.

[17] The Complainant also argued that the assessment of the subject was excessive when compared with the assessments of similar properties.

[18] The Complainant provided a chart of the assessments of retail properties which, in the opinion of the Complainant, are similar to the subject (Exhibit C-1, page 18).

[19] The capitalization rates applied in the assessments of these properties are either 7% or 7.5% . The Complainant noted that the assessments of properties along Whyte Avenue have a 7% capitalization rate. The Complainant submitted that, in his opinion, the location along Whyte Avenue is superior to the location of the subject and that a capitalization rate for the subject should be higher than 7%.

[20] The Complainant indicated that the capitalization rates for two properties in the Windsor Park area, close to the location of the subject, are 7.5%. The Complainant argued that this evidence demonstrated that the capitalization rate of 6.5% applied to the subject is too low and results in an inequitable assessment.

[21] The Complainant requested that a 7.5% capitalization rate be applied to the subject and the assessment be reduced from the recommended \$1,518,000 to \$1,237,000.

Position of the Respondent

[22] The Respondent argued that the capitalization rate of 6.5% applied to the subject was correct and that the assessment of the subject was fair and equitable.

[23] The Respondent submitted information respecting factors influencing the capitalization rate that the municipality applies to a property (Exhibit R-1, page 87). The factors which result in a lower capitalization rate include a track record of high occupancy levels, lease rates close to accepted market levels, the ability to attract and retain tenants and the maintenance of the overall area.

[24] The Respondent provided photographs of the location of the subject (Exhibit R-1, pages 4-7) which, the Respondent stated, showed the desirable location and overall attractiveness and location of the subject.

[25] The Respondent advised the Board that little weight should be placed on the capitalization rate sales comparables provided by the Complainant. The Respondent submitted that third party providers, such as the Network, typically use actual income or income including parking or laundry in a calculation of a capitalization rate rather than the stabilized components used by the municipality in preparing assessments. The Respondent noted that the Complainant had stabilized some components such as vacancy rate and structural in the capitalization sales comparable chart. However, it was still uncertain now the net operating income was derived.

[26] The Respondent advised the Board that a chart of sales comparables had not been included in the Respondent's evidence and that this was the result of an error. However, the Respondent did present some information sheets from the Network concerning the sales of five retail properties which, in the opinion of the Respondent, are similar to the subject (Exhibit R-1, pages 15-20).

[27] Four of the comparables are located on or near Whyte Avenue while the fifth is located in an area along 104th Avenue which, the Respondent stated, is similar to the Whyte Avenue location. The Respondent stated that these locations are similar to the location of the subject. The Respondent stated that all the comparables had been assigned a 6.5% capitalization rate as a result of their location. However, the capitalization rates were not recorded on the Respondent's supporting documents.

[28] The Respondent also presented information from third party information provider, CBRE, to demonstrate that the capitalization rates for neighborhood retail properties in Edmonton in 2012 ranged between 6.00 and 6.50% and for strip malls, the capitalization rate was from 5.75 to 6.25% (Exhibit R-1, page 23). The Respondent argued that this information

demonstrated that the 6.5 capitalization rate applied to the subject was correct and supported by market data.

[29] The Respondent did not provide a chart of the assessments of properties comparable to the subject. Instead, the Respondent provided a capitalization map (Exhibit R-1, page 21). This map showed a number of properties along and in proximity to 109 Street which received a 6.5% capitalization rate.

[30] The Respondent argued that these properties are very similar to the subject in terms of location: the location along 109 Street is very busy, similar to the location of the subject along 112th Street, across from the University of Alberta hospital and close to the University itself. The Respondent stated that this desirable location along a busy street warranted a 6.5% capitalization rate.

[31] The Respondent contrasted the properties with two properties outlined in blue on the capitalization map. These properties are along 110th St. and 111th St. respectively which, the Respondent indicated, are not considered major thoroughfares. The Respondent advised that these properties received a 7.5% capitalization rate.

[32] The Respondent argued that the municipality has used stabilized capitalization rates for the area and location. All properties with similar locations in the area have been treated in the same manner with a typical market capitalization rate applied.

[33] The Respondent requested that the Board accept the recommended amended assessment of \$1,518,000.

Decision

[34] The decision of the Board is to reduce the recommended amended assessment from \$1,518,000 to \$1,237,500.

Reasons for the Decision

[35] The Board notes the agreement of both parties that the lease rate used in the calculation of the subject assessment should be reduced from \$30 to \$26. The Board also notes that the parties are agreed on other components in the calculation such as a 5% vacancy rate and a 2% structural. The only issue before the Board was the appropriate capitalization rate.

[36] The municipality has used a capitalization rate of 6.5% for the subject and the Complainant requests the Board increase this rate to 7.5%

[37] The Respondent advised that the municipality uses a standard mass appraisal methodology that relies on the use of typical income factors.

[38] With respect to the capitalization rate sales comparables presented by the Complainant, the Board notes that these comparables are located all over Edmonton. Only one, sales comparable #7 along 109 Street, is located in approximately the same location as the subject.

[39] The Board notes that the Complainant has relied on third-party (Network) sales documents to support its argument that the sales comparables support an increase in the capitalization rate for the subject. The Board accepts the submission of the Respondent that the income information reported in these third-party documents can vary widely as to what is included or reported.

[40] Therefore, even though the Complainant has adjusted the net income of his comparables obtained from the Network to account for a stabilized vacancy rate and structural, the income information was not stabilized and its accuracy is in doubt. This makes the sales comparables of the Complainant of limited assistance in establishing value for the subject.

[41] In the opinion of the Board, the sales evidence presented by the Complainant is not sufficiently compelling to warrant a change in the assessment.

[42] The Board reviewed the equity comparables presented by the Complainant and noted comparable #3 and #4 are situated in Windsor Park, near the location of the subject. These properties were assessed with a capitalization rate of 7.5%.

[43] The remainder of the Complainant's comparables are situated on Whyte Avenue and attract a capitalization rate of 7%. The Board accepts the Complainant's submission that Whyte Avenue is a more attractive location than the subject and that Whyte Avenue property should therefore have a lower element of risk and a lower capitalization rate than the subject. In the opinion of the Board, the equity evidence presented by the Complainant is sufficiently compelling to allow the Board to doubt the correctness of the assessment.

[44] The Board then turned to the equity evidence presented by the Respondent. All that was presented was a map showing the location of some properties along 109 Street and one adjacent thereto. Those properties are assessed with a capitalization rate of 6.5% . The Board does not accept the Respondent's argument that those properties are similar to the subject. They are located some blocks away from the subject and the subject's location on 112 St. does not have the busy traffic of 109 St.

[45] In the opinion of the Board, the subject location is more akin to the Windsor Park comparables presented by the Complainant, which are assessed with a capitalization rate of 7.5%

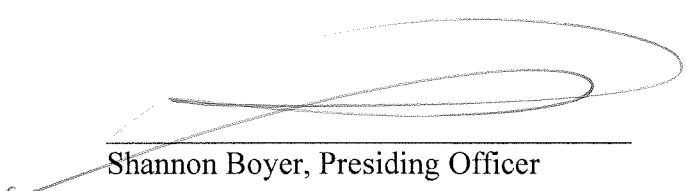
[46] In conclusion, the Board accepts the submission of the Complainant that a 7.5% capitalization rate is fair and equitable for the subject. The Board reduces the assessment of the subject to \$1,237,500.

Dissenting Opinion

[48] There was no dissenting opinion

Heard commencing October 15, 2013.

Dated this 22 day of OCT., 2013, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

John Trelford

Brett Flesher

for the Complainant

Alana Hempel

Steve Radenic

Tanya Smith, 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.