

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-000614

Assessment Roll Number: 9985972

Municipal Address: 2133 99 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Patricia Mowbrey, Presiding Officer

Brian Hetherington, Board Member

James Wall, Board Member

Preliminary Matters

[1] Neither party expressed any opposition to the members of the Board and the Board members expressed no bias to the matter before them.

Background

[2] The subject property is a Tim Horton's restaurant, constructed in 2000 and measuring 3,050 square feet located on a 45,712 square foot lot, which is located at 2133 99 Street in the South Edmonton Common Power Centre. The property is assessed on a cost approach (land value with a token amount of \$500 for improvements, due to the low site coverage).

[3] The assessment for the subject property was based on the highest and best use for assessment purposes, which was vacant land.

[4] The City's assessment of the subject property for 2012 was \$1,731,000.

Issue(s)

- [5] Is the 2012 assessment of the subject property correct?
- (a) Is the subject land assessed at market value?
 - (b) Is the income approach to value appropriate?

Legislation

- [6] The *Municipal Government Act* reads:

Municipal Government Act, RSA 2000, c M-26

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

- [7] The Complainant provided the Board with a 42-page brief (Exhibit C-1).

[8] In support of a request for a reduced assessment, the Complainant provided the Board with nine sales comparables (Exhibit C-1, page 12). The land parcel sizes ranged from 43,537 square feet to 255,535 square feet and indicated a time-adjusted sales price average of \$28.01 per square foot and a median of \$29.21. The Complainant advised the Board that his sales comparable 4 – at 1212 Calgary Trail Southwest – had been provided in error and that he wished to withdraw it. The remaining eight sales comparables indicated a time-adjusted average of \$28.10 and a median of \$29.21. The subject land is assessed on the basis of \$37.86 per square foot.

[9] The Complainant provided the Board with Land Titles documentation related to the Complainant’s sales comparables 1, 2 and 9. In addition, a verification document (Owner Contact and Certification Form) were related to the same three sales comparables. Third party data sheets for the Complainant’s sales 3, 5, 6, 7 and 8 were provided.

[10] The Complainant confirmed that the time-adjustment factors applied to the sales data are the same as the time factors used by the Assessment Department in their sales analysis.

[11] The Complainant provided two equity comparables (C-1, page 13), each with exposure to Calgary Trail, and with 2012 assessments of \$34.73 per square foot and \$24.56 per square foot.

[12] Based on the land sales and equity comparables provided, the Complainant argued for a market land rate of \$30.00 per square foot.

[13] The Complainant provided an income approach pro forma (C-1, page 11) based on a projected rental rate of \$25.00 per square foot. In support of this rental rate, the Complainant provided ten lease comparables (C1- page 37) for CRU-Restaurant Pads. Using the projected rental rate of \$25.00 per square foot resulted in a net operating income (NOI) of \$71,843. Capitalization of this NOI at 7% suggested a value of \$1,026,325. Based upon hypothetical site coverage of 15%, surplus land was added to the income approach estimate on the basis of 50% of its market value, resulting in an income approach value of \$1,407,000.

[14] The Complainant also presented the Board with an equity chart of two excess land parcels (C-1, page 13), located at 2520 Calgary Trail and 2610 Calgary Trail to support his request for an assessment of \$30 per square foot.

[15] The Complainant requested the Board reduce the 2012 assessment of the subject property to \$1,407,000 based on the income approach.

Position of the Respondent

[16] The Respondent presented the Board with a 136-page brief (Document R-1), which included the City of Edmonton's Property Assessment Law & Legislation document and six decisions (4 assessment review board decisions and 2 Municipal Government Board decisions) on similar types of complaints.

[17] The Respondent also presented an analysis of the Complainant's Comparable Sales (R1- page 9), in which it was pointed out that three of the nine sales involved were part of a multiple property transaction and involved only a half-interest in the properties; five (including one eliminated by the Complainant at the hearing) involved inferior locations to the subject; and, while all comparables were larger than the subject, two were more than three and eight times larger respectively. The Respondent also pointed out that five of the nine sales had been completed five years ago, in 2007.

[18] The Respondent also presented a chart of five vacant land sales in South East Edmonton, which had been completed between February 2007 and June 2011 (R-1, page 19). These vacant land sales produced an average sale price per square foot of \$44.94 and a median price of \$41.49, which the Respondent suggested supported the assessment of the subject property at \$37.86 per square foot.

[19] The Respondent presented the Board with a chart of comparable 2012 assessments of four other properties in South Edmonton Common (R-1, pages 36-38). Three of these were immediately adjacent to the subject property, while the third was located four blocks south of the subject property. The three neighbouring properties, which involved free-standing restaurants, had assessments ranging from \$37.20 to \$43.93 per square foot, while the southerly property, which remains vacant, has an assessment of \$38.01. These produce an average assessment of \$40.49 per square foot and a median assessment of \$40.42 per square foot. The Respondent suggested these assessments supported the assessment of the subject property, which had major exposure and access from three different directions, at \$37.86 per square foot.

[20] The Respondent also submitted a copy of an Alberta Land Titles Office transfer document, regarding the sale of the property at 2904 Calgary Trail, which had been presented by the Complainant as his sales comparable 8. The document (R-1, pages 26-33) showed that, while the sale had been completed in September 2007 at a price of \$5,700,000, the property had an existing mortgage of \$6,750,000.

[21] The Respondent also included in the brief extracts of the International Association of Assessing Officers document “Standard on Verification and Adjustment of Sales”, which included references to Partial Interest Sales and Multiple Parcel Sales. The Respondent suggested to the Board that these references cast doubt on the reliability of these three of the Complainant’s sales comparables.

[22] The Respondent requested the Board confirm the assessment at **\$1,731,000**.

Complainant’s Rebuttal

[23] The Complainant provided the Board with a 48-page rebuttal document (C2). In this document the Complainant analyzed the Respondent’s disclosure evidence and specifically took issue with the sales comparables it contained:

- The Complainant noted that the Respondent’s sales comparables 1 and 2, with time-adjusted sales prices of \$28.39 per square foot and \$31.74 per square foot, had also been used by the Complainant as his sales comparables 5 and 7;
- The Complainant raised concerns that the Respondent’s sales comparable 3, at \$41.49 per square foot, might not be valid due to existing financial encumbrances and should be considered an outlier;
- The Respondent’s sales comparable 4 was noted to have been purchased by the City of Edmonton and the Complainant raised the possibility that there may have been contamination on the site from its previous use as a service station; and
- The Respondent’s sales comparable 5 is located in a residential area and is much smaller in size than the subject property (11,747 square feet vs. 45,712 square feet).

Decision

[24] The decision of the Board is to confirm the assessment of the subject property at **\$1,731,000**.

Reasons for the Decision

[25] The Board agrees with the Respondent’s submission that sales of partial interests and multi-property transactions should be given limited weight in indicating value. While the Board is not bound by previous board decisions, it found the decisions focusing on the impact of partial sales and multi-property transactions to be a cause of concern. This is especially so when a substantial element of the Complainant’s comparables were completed in one single transaction. The Board noted that the Complainant’s sales comparables 1, 2 and 9 (C-1, page 12) represent

the acquisition of a 50% ownership interest in a multi-property transaction made in December, 2009.

[26] Further doubts on the sale price validity were cast by the partial interest sales (C-1, pages 17-29) being listed as “word of mouth” with no evidence of a “market value” transaction.

[27] The Board also noted that in that transaction documentation provided by the Complainant, properties located adjacent to those used by the Complainant at the hearing, were not used as comparables. This selectivity of evidence, with no explanation of rationale for the exclusions of the neighbouring property sales, also created doubts of the validity of the requested assessment.

[28] Four of the remaining five comparable sales presented by the Complainant were concluded in 2007. The Board considered the five year time gap made them less reliable.

[29] The Board considered the chart of assessments of three immediate neighbouring commercial properties, and one property four blocks south of the subject, which were presented by the Respondent, showing 2012 assessments that support the assessment of the subject property. The Board noted that while the subject property’s assessment (at \$37.86 per square foot) is slightly higher than these comparables (at \$37.20 - \$43.93 per square foot), this premium is justified by the location benefits of the subject.

[30] The Board reviewed the chart of Vacant Land Values, presented by the Respondent, and discounted the contaminated land concern expressed by the Complainant relative to the land at 8535-83 Street, which had been purchased by the City of Edmonton from Imperial Oil. The Board was of the opinion that this land would not have been purchased for the potential right of way of the LRT if there were any doubts about its environmental status.

[31] The Board is of the opinion that the income approach is not appropriate to value the subject. The Board considered the highest and best use of the subject land and noted that the value of the vacant land is greater than the value by the income approach, therefore indicating the land has a higher and better use than the current use. For this reason, the Complainant’s request to reduce the assessment to \$1,407,000 cannot be considered by the Board.

[32] The Board finds the 2012 assessment of \$1,731,000 for the subject to be correct, fair and equitable.

Dissenting Opinion

[33] There was no dissenting opinion.

Heard on September 4, 2012.

Dated this 26th day of September, 2012, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

John Trelford, Altus Group

Kerry Reimer, Altus Group
for the Complainant

Frank Wong, City of Edmonton

Tanya Smith, 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.