

NOTICE OF DECISION NO. 0098 13/12

Tom Hoppe, Hoppe Holdings (2000) Ltd
97-51313-Range Road 231
Sherwood Park, AB T8B 1K7

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on June 4, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
5399159	3303 118 AVENUE NW	Plan: 7722129 Block: 1 Lot: 7	\$5,327,000	Annual New	2012

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.

cc:

Edmonton Composite Assessment Review Board

Citation: Tom Hoppe, Hoppe Holdings (2000) Ltd v The City of Edmonton, ECARB 2012-000358

Assessment Roll Number: 5399159

Municipal Address: 3303 118 AVENUE NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Tom Hoppe, Hoppe Holdings (2000) Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

James Fleming, Presiding Officer

Darryl Menzak, Board Member

Judy Shewchuk, Board Member

Preliminary Matters

- [1] There were no issues of bias raised by Board members.
- [2] There was no objection to the composition of the panel by any of the parties.

Background

[3] The property is a strip shopping centre located on a major artery in north east Edmonton. The property has 9 tenants in 30,695 square feet (sq. ft.) and is situated on a 103,748 sq. ft. site. The property was constructed in 1978/1985; it is zoned CSC and is valued using the Income Approach to Value (IAV) method.

Issue(s)

[4] What is the best evidence of “typical” rental rates for the property? Is it the actual rates being achieved in the property or the rates developed from the comparables as contained in the Respondent’s Income Detail Report?

Legislation

[5] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

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

[6] The Complainant did not submit any evidence, noting that it was the first time they had appeared before the Composite Assessment Review Board (CARB).

[7] The Complainant argued that the assessed rents used by the City were too high, particularly in the case of the 2 restaurant tenants. They argued that they had recently renewed the Boston Pizza (BP) lease at \$14.00 per sq. ft., which was much lower than the \$27.00 assessed rate used by the City. He noted that the tenant had wanted to leave at the end of their last lease, and that \$14.00 was the most he could obtain on renewal. The Kentucky Fried Chicken (KFC) was currently paying \$19.00 per sq. ft. (on a 20 year lease that commenced in 1992), but the Complainant noted that the current operator was in receivership, which he said should provide support that the assessed rent (also \$27.00 per sq. ft.) was too high. He stated that the Beverly area was one of the poorest areas in the City, and thus, tenants' businesses could not afford to pay anywhere close to the assessed rents.

[8] He also indicated that the balance of the rents in the property were also less than the assessed rents used by the City. He pointed out that the Province of Alberta was paying around \$8.75 per sq. ft., and the Daycare was paying \$6.50 per sq. ft. (as opposed to assessed rates of \$12.00 & \$9.00 per sq. ft. respectively).

[9] In conclusion, the Complainant indicated that the actual income was about \$330,000 as opposed to the \$440,000 Effective Gross Income used by the Respondent and although the Complaint Form listed a requested assessed value of \$4,600,000, they testified at the hearing that the assessment should be reduced to around \$5,000,000.

Position Of The Respondent

[10] The Respondent provided an Income Detail Report for the subject (Exhibit R-1, pg. 26) which showed that the CRU's and Office space were assessed at \$12.00 per sq. ft. and the Daycare was assessed at \$9.00 per sq. ft. (they advised that the City policy was to assess Daycare space at a rate equal to 75% of the "normal" assessed rent for the space). The Restaurant spaces were both assessed at \$27.00 per sq. ft. although one was classified as a Restaurant Good (BP), and one was assessed as a Restaurant Fast Food (KFC). The fact that the assessed rates for the restaurants were the same was a coincidence, they advised.

[11] The Respondent provided Comparable Actual Lease Rates from similar (but unable to be identified for privacy reasons) neighbouring properties and also provided Comparable Equity Rents from similar properties. (Exhibit R-1, pgs. 28 & 29). All of this evidence supported the Office and Retail assessed rents for the subject.

[12] The Respondent concluded that the evidence supported the assessed rental rates, and asked that the assessment be confirmed.

Decision

[13] The Complaint is denied and the assessment is confirmed at **\$5,327,000**.

Reasons For The Decision

[14] The CARB considered all of the argument and evidence. In assessment complaints, it is the responsibility of the Complainant to offer proof that the assessment is incorrect. The fact that the Complainant did not provide any evidence makes it difficult for the CARB to consider whether the assessment is incorrect. The Complainant's argument to the CARB was based on "here is the actual rents I am able to obtain, and so use them to calculate the assessment". Assessment legislation however, requires the use of "typical" rates (see *Matters Relating to Assessment and Taxation (AR 220/2004), Part 1, Sec 2(c) ... must reflect typical market conditions for properties similar to that property.*).

[15] Taking a broader view of the Complainant's request, suggests they were saying that the actual rents were typical rents, but with no evidence, there is no way for the CARB to judge whether that is correct. Therefore, the CARB puts little weight on the argument of the Complainant because there is no support, and accordingly, confirms the assessment.

[16] The CARB also notes that having reviewed the information from the City, there is sufficient support for the assessed rates for the office and CRU space which offers additional support for the decision to confirm. There was not good support for the level of the assessed Restaurant rates at \$27.00 per sq. ft., but the Complainant did not provide sufficient evidence that the actual rents were typical.

[17] In addition, the Complainant acknowledges that their "management" decision to lease to a Daycare has limited their access to other tenants (such as liquor stores) and the CARB notes that this is but one example where a management decision may have resulted in rents that are less than typical. Nonetheless, accepted assessment practice requires the use of "typical" rents.

Dissenting Opinion

[18] There was no dissenting opinion.

Heard commencing June 4, 2012.

Dated this 13th day of June, 2012, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Tom Hoppe
for the Complainant

Chris Rumsey
for the Respondent