



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
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NOTICE OF DECISION NO. 0098 309/11

CVG
1200-10665 JASPER AVENUE
EDMONTON, AB T5J 3S9

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 October 31, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
1216522	10026 167 Street NW	Plan: 8222328 Block: 37 Lot: 13A	\$3,518,500	Annual New	2011

Before:

Tom Robert, Presiding Officer
Brian Hetherington, Board Member
Howard Worrell, Board Member

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Peter Smith, CVG

Persons Appearing on behalf of Respondent:

Abdi Abubakar, Assessor, City of Edmonton
Ken Eliuk, Assessor, City of Edmonton

PROCEDURAL MATTERS

The Complainant and Respondent indicated that they had no objection to the constitution of the Board. The Board Members indicated that they had no bias with regard to the matter before them.

PRELIMINARY MATTERS

The Complainant requested that information regarding the rent rolls of comparable properties provided by the Respondent for Roll # 1216522 and Roll # 9966838 not be considered by the Board on the ground that it did not contain enough information for the Complainant to be able to verify the information presented. The Respondent indicated in a letter (R1) prepared by the City's legal representatives that they are prohibited by the *Freedom of Information and Protection of Privacy Act*, RSA 2000 c F-25 [FOIPPA] from revealing the information.

The Board decided to proceed on the basis of the information presented by the parties, and to make a decision as to the weight to be given to all of the evidence taking into account factors such as those complained of by the Complainant. The Board noted that if it found the information was necessary for a fair disposition of the case, they could require the Respondent to provide that evidence under section 465 of the *Municipal Government Act*, RSA 2000, c M-26, which reads:

Notice to attend or produce

465(1) When, in the opinion of an assessment review board,

- (a) the attendance of a person is required, or
- (b) the production of a document or thing is required,

the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing.

With regard to the objection of the Respondent that the information was protected by FOIPPA, the Board noted the exception in section 40(1)(v) of FOIPPA which provides an exception for information disclosed in the course of a quasi-judicial hearing.

Disclosure of personal information

40(1) A public body may disclose personal information only

...

- (v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,

BACKGROUND

The subject property is a neighbourhood plaza shopping centre located in the Glenwood neighbourhood of West Edmonton. The property includes a single building measuring 43,700 square feet on a lot of approximately 52,800 square feet, and constructed in 1980. The property was assessed for the 2011 taxation year on the income capitalization approach, and the assessment amount is \$3,518,500.

ISSUE(S)

1. What is the market rent for the subject property as of July 1, 2010?
2. What is the appropriate vacancy rate for the subject property?
3. What is the direct capitalization rate for the subject property?

LEGISLATION

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

The Complainant suggested that the City's assessment failed to take into account that the property had an 18% vacancy rate and added that he was requesting consideration for only a 15% vacancy.

Referring to the complaint letter filed as part of the application, he said that the property was on the part of Stony Plain Road that has one-way traffic, creating limited access. He disagreed with the lease rates, vacancy allocation and cap rate applied by the City, adding that the property has had a chronic high vacancy rate for the past 10 years.

In support of his position, he presented the rent rolls for the property for 2007, 2009 and 2010/11, (C2, pages 3-13) explaining that he was unable to locate the rent roll for 2008, but which had showed a similar rate of vacancy. The lease rates for the rented area of the property ranged from \$4.10 per sq. ft. for a daycare facility to \$11.07 per sq. ft for a main floor hair salon. He said that a 4,000 sq. ft. space on the main floor had been vacant for a significant number of years.

In support of his request, the Complainant presented figures to the Board, (C2, page 2) which showed main floor rental revenue of \$226,520, supplemented by second floor revenue of \$34,346 for a total rental income of \$260,866. In applying for a vacancy allocation of 15%, the Complainant showed a net operating income of \$191,702.

He acknowledged that capitalizing this income at the City's rate of 8.5% showed a value of \$2,255,000, but asked the Board to approve an increase in the capitalization rate to 9%, which would produce a market value of \$2,130,000.

POSITION OF THE RESPONDENT

The Respondent told the Board that the assessment was based on the property's size, location and age, with a focus being given for its age. He recognized that the space on the main floor had been vacant for a lengthy period, but told the Board that a recent visit showed that some of the space was being used for storage and that the building tenants had access to the property's heated underground parking lot. He also contended that the \$4.10 rent being charged for the day care was below the market rent in the area.

To support his contention of a fair assessment, the Respondent presented details of comparable equity sales of four neighbouring retail properties (C2 – pages 27-40), which were all older than the subject property. These three plazas and one strip mall, had assessments ranging from \$82.59 for a strip mall built in 1959 to \$138.21 for a small plaza built in 1966. He suggested that the neighbouring comparables showed rental rates in excess of the subject property.

The Respondent also presented the chart (C2 – page 41), which had been the subject of the Preliminary matter, because of the lack of specificity of the location of the properties. This chart showed rental rates for three tenants in three of the properties and five tenants in the fourth property. These rental rates ranged from \$10.81 to \$17.00 per square foot.

Questioned by the Complainant about the chart of Comparable Sales (C2- page 27) the Respondent acknowledged that there had been an error in the assessment used for the subject property, which had produced an incorrect assessment used in the calculations. The Respondent agreed with the Complainant that the basement space had been included in the calculations and with this removed the assessment per sq. ft. was \$113.76.

When asked by the Chair about the comparable properties, the Respondent acknowledged that none of them had second floors and were not combinations of retail and office space. The Complainant also told the Board that a vacancy rate of 10% had been applied to the main floor of the building in reaching the assessment.

DECISION

Roll Number	Original Assessment	New Assessment
1216522	\$3,518,500	\$3,320,400

REASONS FOR THE DECISION

The Board has determined from the evidence presented that the vacancy on the main floor space is a chronic issue with the subject property. The 4,000 square foot of vacant space represents roughly 18% of the main floor leasable space of the subject property and has been vacant for the past number of years,.

The Board is of the view that 15% as requested and adjusted to the main floor retail space on bests represents the chronic issue of vacancy with the subject.

In regard to the issue of rental rates, the Board was not persuaded that the subject's actual rent represented market lease rates in the subject's area. No other evidence was presented for support of this argument.

In regard to the issue of the capitalization rate used to determine the subject's market value, no evidence was presented to support a higher capitalization rate as requested by the Complainant.

Therefore the rate remains at 8.5%.

The board reduces the 2011 assessment from \$3,518,500 to \$3,320,400, based on the vacancy rate applied to only the main floor space from 10% to 15% and the resulting adjustment to the vacancy shortfall.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 1st day of November, 2011, at the City of Edmonton, in the Province of Alberta.

Tom Robert, Presiding Officer

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: ANEXCO PROPERTIES LTD