

Edmonton Composite Assessment Review Board

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of
Edmonton, 2013 ECARB 00640**

Assessment Roll Number: 10035737
Municipal Address: 12803 140 Avenue NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Lynn Patrick, Presiding Officer

John Braim, Board Member

Judy Shewchuk, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members each indicated they had no bias in this matter.

Preliminary Matters

[2] There were no preliminary matters for the Board to deal with.

Background

[3] The subject property is a retail complex consisting of 5 buildings with a total of 54,514 square feet. One of the 5 buildings has 3 parts which results in the occasional reference to the development as having 7 buildings. There is no major anchor tenant, however, there is a bank located on a pad. The parcel consists of 2 major parts connected at the south east corner of the portion facing 140 Avenue and the northwest corner of the portion facing 127 Street, in all containing 5.14 acres. The surrounding parcels are fully developed retail including a Safeway. The subject property has been assessed at \$18,502,500 for the 2013 taxation year.

Issue(s)

- [4] Is the rental rate applied for the restaurant tenants in the assessment correct?
- [5] Is the capitalization rate used in the assessment correct?

Legislation

- [6] **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

[7] The Complainant presented a written submission (Exhibit C-1, 40 pages), oral argument and a rebuttal submission (Exhibit C-2, 21 pages) for the Board's review and consideration. The rebuttal submission will be dealt with below. In respect to the first issue, the Complainant contends that the income approach to valuation is the correct approach, however, the rental rate of \$26.00 per square foot for the restaurant portions is too high. From a review of the market rents, the Complainant submits the proper rental rate ought to be \$22.00 per square foot for the 13,604 square feet of restaurant space allocated to the four restaurants in the Restaurant-Good category of the subject. This would reduce the Potential Gross Income from \$1,268,668 to \$1,214,252. In support of this contention, the Complainant put forward 2 comparables of restaurant leases that averaged \$21.50 per square foot located in a multi-tenant retail property. The Complainant's brief contained the tenants' names, location, size, date and term as well as the rental rate, and although the leases were not in the evidence, the rent roll for that property is contained in exhibit C-1.

[8] In respect to the second issue, being the capitalization rate, the Complainant contended that the categorization of the subject as a Power Center as defined by the Respondent in its 2013 Shopping Center Valuation Guide is in error. He further submitted that it not a Shopping Center, but a Retail Plaza and that therefore the capitalization rate of 6.5% assigned to the shopping center inventory in the City of Edmonton for the purposes of this assessment year is thus in error. It is contended by the Complainant that the 4 retail properties contained in the evidence in Exhibit C-1 are made up of 2 retail properties that are shopping centers within the Valuation Guide definitions and each has been assessed with capitalization rate of 6.5% and 2 properties that do not meet any definition in the Valuation Guide and thus are not shopping centers and thus

have capitalization rates of 7.5%. The requested rate by the Complainant is 7% which it is contended is in line with the current assessments of similarly aged properties and reflects an appropriate rate for properties closer to retail plazas or strip malls as distinct from shopping centers. The most significant factor missing from a non-shopping center property is the anchor tenant such as a supermarket, and a bank is not an anchor tenant.

[9] The Complainant also presented 5 sales comparables ranging in size from 10,853 square feet to 59,539 square feet with an average of 32,577 square feet. The year of construction ranges from 1970 to 1990 with an average of 1982 and the sale dates range from June 2011 to September 2012. The capitalization rates range from 7.03% to 7.34%. The information respecting those sales is derived from The Network reports appearing in Exhibit C-1 and supports the capitalization rate. The Complainant's requests that the assessment be lowered to \$16,438,000.

Position of the Respondent

[10] The Respondent presented a written submission (Exhibit R-1, 151 pages) and oral argument for the Board's review and consideration. The Respondent provided 3 tables to support the rental rate of \$26.00 per square foot applied for the 4 restaurant properties located in the subject. These tables contain a compilation of the returns of the Request For Information process employed by the Respondent in establishing a typical rental rate for restaurants in the category assigned to the subject. The results were further illustrated in a scatter graph to illustrate a differential between rental rates for properties newer than 2003 and older than 2002 that appeared from the analysis. The results for the total category ranged between \$13 per square foot and \$42 per square foot with a median rate of \$26.58 per square foot.

[11] The Respondent also submitted a Shopping Center Capitalization Rate Analysis containing 14 time adjusted sales showing a median rate of 6.32% and an average rate of 6.34%. The Respondent contends that the 14 comparables are all Shopping Centers as defined by the 2013 Shopping Center Valuation Guide. It is contended by the Respondent that the property is a Power Center within the definition of the Guide and that the bank tenant is the anchor tenant. The capitalization rate of 6.5% is applied globally by the Respondent to all Shopping Centers, so defined, in the City of Edmonton and is applicable to the subject on the basis of fairness and equity. Furthermore, through income analysis of the comparables offered by the Respondent, the rate is correct.

[12] In further support of the 6.5% capitalization rate, the Respondent submitted a Fairness and Equity Chart containing 25 equity comparables that the Respondent contends fall within the range of Shopping Centers described in the Guide and are assessed using the 6.5% rate (C-1, Page 27).

[13] In further support of the capitalization rate of 6.5%, the Respondent submitted details of a sale of the subject property as reported by The Network and by Anderson Data Online at a price of \$18,900,000, with income analyses that produced capitalization rates of 6.43% and 6.6% respectively. The sale date is reported to be September 21, 2012 which indicates the sale may be considered post facto of the valuation date of July 1, 2012. However, the Respondent submits it is close enough to the valuation date that it may be considered as a strong indication of the trend at the valuation date and thus supports the assessed value of \$18,502,500. The Network report also indicates that although there is no anchor tenant other than the bank, the adjacent supermarket constitutes a shadow anchor and lends credence to the subject property being a Shopping Center within the Guide. Other industry reports from real estate agencies CBRE and

Colliers International Canada show support for this category of retail property at 6.5% capitalization rate.

[14] The Respondent requests that the assessment of \$18,502,500 be confirmed on the basis that the Complainant failed to satisfy the onus with respect to the correctness of the assessment and that the evidence of the Respondent be considered conclusive of the correctness of the assessment should the Board not accept the question of onus.

Rebuttal

[15] The Complainant submitted a written Rebuttal (C-2, 21 pages) containing comments respecting the validity of the 14 sales comparables submitted by the Respondent in support of the capitalization rate. It also contained 2 charts dividing the 14 properties into 2 categories being pre 2000 and 2000 and later. It was contended that the pre 2000 sales showed an average capitalization rate of 6.66% and the more recent group an average rate of 5.71%. When the invalid sales are deleted from the chart, the remaining valid sales show an average capitalization rate of 6.98% which, the Complainant submits, supports the request for a change from 6.5% to 7.0%.

Decision

[16] The assessment is confirmed at \$18,502,500

Reasons for the Decision

[17] In respect to the first issue, being the rental rate for the restaurant component, the evidence of the Complainant consisting of 2 comparables is found to be insufficient evidence upon which to base a change to the rate used in the assessment. The insufficiency of this evidence results in a failure to discharge the onus faced by the Complainant of raising a question as to the validity of the assessment. That would switch the onus to the Respondent to support the usage of the rental rate of \$26 per square foot. Although the tables presented by the Respondent to display the collected information on restaurant rental rates support the rate used, there is a lack of back-up information that would verify that information. In any event, the evidence of the Complainant did not satisfy the onus and results in the Board not having to consider the weight of the Respondent's evidence.

[18] In respect to the second issue, being the capitalization rate, there was considerably more evidence from both parties. The Board finds that the Respondent applies a blanket capitalization rate of 6.5% to Shopping Centers as defined in the 2013 Shopping Center Valuation Guide. The comparables presented by the Respondent to show the application of the rate to various shopping centers in the range of types contained in the Guide provides persuasive support for the contention that such rate is applied equitably and satisfies the requirement for fairness.

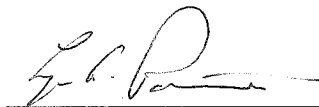
[19] The question of whether the subject property is a Power Center or a Neighborhood Shopping Center, both of which are in the Guide, seems to turn on a question of whether there is an anchor tenant. The Respondent's contention of it being a Power Center depends upon accepting that the bank tenant located at the subject is considered an anchor tenant. The Respondent also argued that the supermarket on the adjacent property could be considered a shadow anchor tenant and an influence on subject property to the extent that it achieves the status of a Power Center. The Board finds that the bank is an anchor tenant sufficient to do so and thus does not need to find that the question of whether shadow anchors are a valid assessment factor.

In any event the Respondent applies the same capitalization rate to both of these categories of shopping centers and thus the need is to only find that the subject is within the definitions.

[20] The Board further finds that the comparables presented by the Respondent are more persuasive than those of the Complainant and that the September 2012 sale of the subject, although post facto, tends to support the assessed value and the capitalization rate of 6.5%.

Heard on June 18, 2013.

Dated this 16th day of July, 2013, at the City of Edmonton, Alberta.



Lynn Patrick, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Tracy Ryan
Tanya Smith
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.