

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00827

Assessment Roll Number: 4132072
Municipal Address: 10147 109 STREET 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
Larry Loven, Presiding Officer
Howard Worrell, Board Member
Jasbeer Singh, Board Member

Procedural Matters

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

[2] Evidence, argument and submissions were carried forward from this file to roll #4132049, #4132056, #4132064 and #10024824, where applicable.

Preliminary Matters

[3] During the course of the hearing, the Respondent raised the issue of a recommendation for reduction of the assessment for the subject property from \$791,500 to \$714,500 to recognize that part of the subject was in an unfinished state. This reduction was not accepted by the Complainant and the hearing continued.

[4] Upon reviewing the evidence disclosure of the Respondent, the Board noted that a property tax exemption recommendation (R-1, pp.52-69) was included from the City of Edmonton in regards the Exemption Percentage for this tax roll. This matter did not come forward at the hearing and was not raised by either party. The amount recommended for the 2013 property tax exemption was to remain unchanged at 53.89% for the 1,633 square feet of area leased by Norquest College.

Background

[5] The subject property is a retail condominium unit #517, on the main floor of a mixed use high-rise building known as *Capital Centre*, located in the downtown neighbourhood of the City of Edmonton. Built in 1981, the building was converted to a condominium development in 1990. The subject property is comprised of two adjoining bays measuring 3,029 square feet in total. One of the bays, measuring 1,396 square feet, is an unfinished space. The 2013 assessment for the subject property is \$791,500.

Issue(s)

[6] While the primary issue concerning the subject property is its 2013 assessment value of \$791,500, for sake of clarity, this may be stated as;

- a. Is the 2013 assessment of \$791,500 correct?
- b. Is the Direct Comparison approach utilized by the City for the 2013 assessment correct?

Legislation

[7] **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

[8] The Complainant filed this complaint on the basis that the subject property assessment of \$791,500 was inequitable and in excess of market value. In support of this position, the Complainant presented a 68 page assessment brief (C-1) that questioned the Respondent’s valuation the subject property.

[9] The Complainant advised the CARB that although the subject property had been stratified as a retail condominium, the subject property is a part of a larger commercial investment and should be treated in the same manner that most investment properties are assessed; that is, on its income earning potential. Also, since the subject property is not owner occupied, the Complainant argued that for all practical purposes, the subject property was an investment property and ought to be assessed using the income approach (C-1, p. 4).

[10] The Complainant stated that a significant part of the subject property (1,396 square feet) was vacant and unfinished and should therefore be assessed at a rate that is \$55.00 per square foot lower than the rate applicable to the finished retail spaces (C-1, p.13).

[11] The Complainant provided a list of six retail spaces on the main floor of the subject building; and, showed that the rental income averaged \$15.53 per square foot, reduced to \$13.21 per square foot, when the two spaces leased to *Norquest College* for a non-retail use, were excluded (C-1, p.14).

[12] The Complainant argued that the subject property is a class 'C' retail property and provided three retail and three office sales in respect of other class 'B' and class 'C' properties, located in different parts of the City showing an average capitalization rates of 8.25% and 8.5% respectively. The Complainant provided further argument that the poor leaseability, low rental rates and condominium nature of the development supported a higher market capitalization of 8.5% for the subject property (C-1, pp. 15-16). The Complainant stressed that the capitalization rate of 6.5% used by the Respondent was low.

[13] Using the Income Approach, based on the average rental rate of \$13.21 per square foot, rounded to \$13.20 (C-1, p.14), and a capitalization rate of 8.5%, the Complainant derived a value of \$412,000 or \$136.02 per square foot for the subject property (C-1, p. 17).

[14] Using the same per square foot rental rate of \$13.21 and the 2013 average assessment of the three retail condominiums in *Capital Centre* of \$261.19 per square foot, the Complainant determined the resulting capitalization rate to be 5.06%; and, stated this was significantly lower than for any of the sales comparables provided, and does not support the actual market value of the subject property (C-1, p. 18).

[15] The Complainant provided a table containing four retail condominium sales in downtown Edmonton that showed an average selling price of \$200.47 per square foot and \$186.20 for the two *Cambridge Lofts* properties only. The Complainant argued that the subject property had been assessed excessively and unfairly at \$261.31 per square foot. The Complainant provided additional argument that due to inferior location, larger size and long narrow shape of the subject property, especially when compared to the *Cambridge Lofts* properties, value of the subject property should be around \$170 per square foot or \$514,500 (C-1, pp.19-20).

[16] The Complainant stated that two of the retail condominium sales included parking spaces, whereas the subject property had none. Based on a market value of \$30,000 per parking stall, the adjusted average selling price was shown to be \$187.45 per square foot and was stated to more strongly support a property value of \$170 per square foot, or \$514,500 (C-1, p. 21).

[17] The Complainant further argued that the 2013 assessment value of the subject property should be reduced to \$388,000 by subtracting \$55.00 per square foot for the unimproved portion of the subject property, for a blended unit rate of \$128.10 per square foot (C-1, page 21).

[18] Based on the Income Approach, the Complainant put forward an argument that the relative tax-to-rent ratios must be similar for comparable properties. In support of this argument, the Complainant provided a chart showing the tax as a percentage of the net rent for the five of the six occupied main floor condominium units in the same building.

[19] The average of the tax-to-rent ratio was given to be 33.1% and if the two non-retail use premises occupied by *Norquest College* were excluded, this ratio increased to 38.1%. In

comparison, the condominium unit occupied a restaurant/pub, *The Pint*, on the main floor of the development gave a tax -to-rent ratio of 18.9%. This, according to the Complainant, based on an assessment at fair market value for the unit occupied by *The Pint*, shows that the remaining retail units are over assessed.

[20] The Complainant provided four comparable retail lease properties, showing an average rent-to-tax ratio of 14.7%. The Complainant argued that this further supported inequities in the 2013 assessment of the subject property (C-1, pp. 22-24) and calculated an assessment for the subject property to be \$234,500 or \$77.42 per square foot.

[21] The Complainant concluded the presentation with a summary (C-1, p.26) that showed:

- a. Assessment value of \$335,000 based on Income Approach using a net rental income of \$13.20 per square foot and a capitalization rate of 8.5%.
- b. Assessment value of \$388,000 based on the Direct Comparison approach using \$170.00 per square foot.
- c. Assessment value of \$234,500 based on Tax-to-Rent approach.

[22] The Complainant requested the Board to reduce the 2013 assessment from \$791,500 to \$335,000, based on the Income Approach (C-1, p.26).

Position of the Respondent

[23] In defence of the 2013 assessment for the subject property, the Respondent provided an Assessment Brief (R-1) of 95 pages that contained a Law & Legislation brief, location maps, traffic volume analysis, a third party capitalization rate report, two recent Composite Assessment Review Board (CARB) decisions in respect of the subject property.

[24] The Respondent advised the Board that the Direct (Sales) Comparison approach was the best method for valuing Retail/Office Condominiums. As a large number of the more than 1,600 condominium properties are owner occupied, and little information was available to confirm the current market lease rates, it would not be appropriate nor equitable to rely on the Income Approach to value the subject property.

[25] The Respondent provided a condominium sales chart using the same four comparables as the Complainant (C-1, p. 19), but showing detailed adjustments for size, parking, location, second floor placement and unfinished space. The average of the adjusted price for all four comparables was shown to be \$239.26 per square foot; and the average of the two *Cambridge Lofts* comparables as \$241.16 per square foot (R-1, p. 9).

[26] A recommendation was put forward by the Respondent for the 1,396 square feet of the unfinished space. Allowing a reduction of \$55.00 per square foot for the unfinished space, the 2013 assessment for the subject property was reduced from \$791,500 to \$714,500 (R-1, page 9).

[27] A direct sales comparison chart, containing five properties in downtown Edmonton, was provided by the Respondent. These properties ranged in size from 470 to 3,068 square feet and were sold between January 31, 2008 and October 26, 2011. After adjustments for size and unfinished space, the average per square foot value of sales comparables was given to be

\$331.26. As sales comparables #4 and #5 were much smaller properties, the Respondent showed the average of sales comparables #1 - #3 at \$277.90 per square foot (R-1, page 23).

[28] In response to the Income Approach evidence submitted by the Complainant, the Respondent provided a Capitalization Rate Study table (R-1, p.13) presenting the sales of five properties having a Predicted City Capitalization Rate ranging from 4.09% to 9.08% with an average capitalization rate of 6.59%. A third party Capitalization Rate Report, for retail (Q3 2012), prepared by Colliers International, was provided to further support a capitalization rate for retail (community centres) in the Edmonton market of 6.25% to 6.75% (R-1, p.22).

[29] A Typical/Market Rents chart containing five main floor CRU (Commercial Retail Unit) spaces in the downtown Edmonton market was provided to the CARB by the Respondent, giving rents ranging from \$15.00 to \$20.00 per square foot, with an average net rent of \$18.00 per square foot. In response to the Income Approach argument of the Complainant, the Respondent derived an income value for the subject property of \$758,788, based on a capitalization rate of 6.5% and a net rental rate of \$18.00 per square foot that supported the 2013 recommended assessment of \$714,500 (R-1, p. 29).

[30] The Respondent provided a chart containing nine downtown equity rental comparables. The average rental rate was given to be \$17.17 per square foot. Using this average rental rate and capitalization rate of 6.5%, the Respondent derived a value of \$715,403 for the subject property based on the Income Approach (R-1, p.30). This too supported the recommended assessment of \$714,500.

[31] In summary, the Respondent stated that the Direct Sales Comparison of comparables #1 - #3 (R-1, p. 23) supports the 2013 assessment of the subject at \$261.31 per square foot or \$791,500. The Respondent also recommended a reduction of \$55.00 per square foot for the unfinished 1,396 square foot portion of the space or \$206.31 per square foot. The Respondent requested the CARB to accept the recommended 2013 assessment of \$714,500.

Decision

[32] The decision of the CARB is to reduce the 2013 assessment to \$684,500.

Roll Number	Original Assessment	New Assessment
4132072	\$791,500	\$684,500

Reasons For The Decision

[33] The CARB appreciates the innovative approach developed by the Complainant to support the argument that the subject property was over assessed, by comparing the tax per square foot to the actual net rent per square foot; firstly, of the six main floor *Capital Centre* condominium units, and secondly of the three main floor retail units only. Using this approach, together with the Complainant's assumption that the tax-to-rent percentage must be similar for comparable properties as an indication of market value, the Complainant derived a value of \$77.42 per square foot or \$234,500 for the subject property. Given that the tax per square foot varies from \$4.86 per square foot to \$4.98 per square foot for the main floor condominium units of the *Capital Centre* and the actual net rents for the main floor condominium units vary from \$11.00 per square foot to \$25.00 per square foot, the CARB finds the relative variability of the per

square foot net rent rates versus the relative consistency of the tax value per square foot gives little for the CARB to rely upon as an indicator of market value.

[34] The Complainant provided the CARB with an average net rent of \$13.21 per square foot for the five main floor occupied condominium units in the building. Applying an average capitalization rate of 8.5%, determined from three suburban retail investment properties, the Complainant arrived at a requested 2013 assessment of \$412,000 or \$136.02 per square foot. This value is further reduced to \$335,000 by reducing the value of the unimproved portion (1,396 square feet) of the subject property by \$55.00 per square foot. This reduction was not argued by the Respondent. However, the Respondent provided five suburban retail buildings with capitalization rates ranging from 4.09% to 9.08%, averaging to 6.59%. All of the Respondent's capitalization rate study comparables were free standing, contained land greater than site coverage, had an assessment per square foot ranging from \$61.06 to \$105.23 per square foot, and were built between 1936 and 1980. The CARB was informed by the Respondent that the subject property's 2013 assessment was not based on these capitalization rates and these comparables were provided only in response to the Complainant's evidence regarding capitalization rates. The Board finds that it can place little reliance on the capitalization rates put forward by either party as the comparables provided by both parties appear to be lacking in similarity to the characteristics to the subject property including such as lease terms as net rental rates. Moreover, without a reliable indication of the capitalization rate it is difficult for the CARB to determine the value of the subject property by the Income Approach.

[35] The Direct (Sales) Comparison approach is the methodology used by the Respondent to determine market value for the subject property. The CARB heard arguments and evidence from the Complainant that due to site specific factors in the *Capital Centre* development, including but not limited to lack of customer parking, reduced street visibility and access to 109th Street due to the configuration of *Capital Centre's* frontage, the atypical shape (deep compared to typical retail spatial ratios) and condominium nature of the development, all represent negative effects on the market value of the subject property. The Complainant provided four sales of similar properties ranging in value from \$157.25 to \$227.62 per square foot, all retail condominium units located in developments with high-rise residential units above. Of the four, two were from the *Cambridge Lofts* development located at 10030 Jasper Avenue. The Respondent provided five sales, two of which were the same sales comparables as the Complainant's from *Cambridge Lofts*, two were of much smaller about 25% to 30% the size of the subject property and one about 50% to 60% smaller. The backup sheets to the sale of the three smaller properties, not located in the *Cambridge Lofts*, stated that at least one was owner occupied raising uncertainty regarding the three smaller sales comparables. The Respondent using the same four comparables as the Complainant, provided adjustments for such factors as size, parking, second floor location and improvements (developed space). The average adjusted price per square foot of the four comparables as determined by the Respondent was \$239.26 versus the adjusted price (for parking stall only) of \$187.45 as determined by the Complainant.

[36] Given the use of two of same sales comparables by both parties, \$55.00 per square foot as an adjustment for interior improvements, \$30,000 per parking stall and other adjustments for location and second floor, together with a indication that at least one of the three sales comparables given by the Respondent, not located in the *Cambridge Lofts*, was owner occupied, the CARB finds the indication of market value of \$239.26 per square foot, as determined by the Respondent's adjustments to the Complainant's sales comparables to be reflective of the value of the subject property.

[37] In summary, based on its consideration of the above reasons the Board finds the market value of the subject property, in accordance with Direct (Sales) Comparison approach, to be \$684,500, based on a rate of \$239.26 per square foot for the finished space (1,633 square feet) and \$184.26 per square foot ($\$239.26 - \$55 = \184.26) for the unfinished space (1,396 square feet).

Dissenting Opinion

[38] There was no dissenting opinion.

Heard commencing July 2, 2013.

Dated this 25th day of July, 2013, at the City of Edmonton, Alberta.



Larry Loven, Presiding Officer

Appearances:

Stephen Cook

Greg Jobagy

Kevin Petterson

for the Complainant

Tim Dueck

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.