

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 00968

Assessment Roll Number: 9975606

Municipal Address: 1403 99 Street NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Larry Loven, Presiding Officer

Brian Hetherington, Board Member

Jack Jones, Board Member

Procedural Matter

[1] The parties indicated that they had no objection to the composition of the Board. In addition, the Board members indicated that they had no bias on this file.

[2] At the request of the Respondent all witnesses were sworn in.

[3] At the request of both parties, evidence and argument from this roll number 9975606 was carried forward to 9980519, 9987061 and 10169995, as applicable.

[4] No other procedural matters were noted.

Preliminary Matters

[5] The matter of the correct municipal address was raised, 1403 99th Street or 1404 Parsons Road. The parties agreed the correct legal description was Plan 9926548, Block 15, Lot 1. The Board notes the subject property is located immediately north of the junction of 99th Street and Parsons Road, occupying the land lying between this junction. The municipal addresses of the Commercial Retail Units ('CRU's) on the subject property indicate both 99th Street and Parsons Road. Specifically, 1404 Parsons Road is shown to be the municipal address for the CRU occupied by H&M. The CARB further notes name 'H & M SEC' appears on the City of Edmonton Power Centre Valuation Summary for roll number 9975606 and 1403 99th Street appears on the City of Edmonton 2013 Assessment for the same tax roll. Based on its consideration of the foregoing, the Board finds 1403 99th Street to be the correct municipal address for roll number 9975606.

[6] No other preliminary matters were raised.

Background

[7] The subject property contains three buildings totaling 97,939 square feet, built in 2009 as a neighbourhood shopping centre, and is located in South Edmonton Common.

Issue(s)

[8] The issues being raised are:

- a. Is the 2013 assessment of the subject property fair and equitable?
- b. Is the capitalization rate of 6.00% utilized in preparing the 2013 assessment for the subject property correct?

Legislation

[9] **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

[10] The Complainant presented 42 page document (C-1) containing evidence and and argument for the Board’s review and consideration.

[11] The Complainant identified the subject property as a retail project located in south Edmonton. The Board notes the subject property is assessed as a power centre. The Complainant considered the lease rates, vacancy shortfall and structural allowance used for assessment to derive the net operating income (NOI) of \$2,097,019 for the subject property to be reasonable, as well as a deduction of \$459,855 for unfinished space (C-1, p.4).

[12] The Complainant provided a chart containing nine sales comparables ranging in sale dates from March, 2011 to May 2012, in sizes from 33,541 to 139,962 square feet and capitalization rates from 6.06% to 7.15%, versus assessed capitalization rates for the same properties ranging from 6.50% to 7.50% (C-1, p. 1). The Complainant stated that the sales comparables presented are all good quality retail centres located on major roadways, and some

may have below market rates that indicate a potential upside. Based on the capitalization rate of the sales comparables presented, the Complainant put forward that a reasonable capitalization rate to apply to the subject property would be 6.5%.

[13] Additionally, the Complainant provided a table containing twelve retail centres varying in sizes from 22,569 to 254,959 square feet, stating all are good quality retail centres located on main roadways and assessed using a capitalization rate of 6.5%.

[14] In summary, the Complainant requested the 2013 assessment be reduced to \$31,801,500 based on capitalizing a net income of \$2,097,019 by 6.5% and deducting the construction allowance.

[15] In response to the Respondent's submission, the Complainant provided a 33 page rebuttal document (C-2) containing the following: the subject property's 2012 assessment pro forma showing a capitalization rate of 7.00% versus 6.00% for the 2013 assessment; Network sales data for seven of the Respondent's sales comparables and 2013 Assessment Valuation Summaries for five of those sales; a chart comparing capitalization rates calculated by the Respondent and those calculated by Network compared to the assessment capitalization rates; and, MGB decision 039/05 ruling it is most appropriate to calculate capitalization rates by dividing actual NOI by the actual sale price.

Position of the Respondent

[16] The Respondent provided the Board with a 209 page document (R-1) that included pictures, aerial and maps, a pro forma, a 2012 rent return, a capitalization rate study, five board orders, and shopping centre mass appraisal, retail and law briefs.

[17] The Respondent indicated to the Board the location of the subject property on a map (R-1, p. 12) and South Edmonton Common Master Site Plan (R-1, p.13), and included a directory of stores and restaurants from the web site, <http://www.southedmontoncommon/directory>.

[18] The Respondent's submission included excerpts from the Average Traffic Volumes Annual Daily 2007-2012, City of Edmonton Transportation and Planning (R-1, pp. 20-24) and referenced the traffic volumes for 23rd Avenue West of Mill Woods Road, 99th Street and Calgary Trail as 25,700, 27,300 and 33,400 respectively; and, Gateway Boulevard north of 23rd Avenue as 34,900. The Respondent confirmed the traffic volumes given were for vehicles per day.

[19] The Respondent's submission also included the Commercial Tenant Rent Roll for 1403 99th Street showing net income of \$2,770,593.25 (R-1, pp. 25-34).

[20] The Respondent provided a table, entitled Shopping Centre Capitalization Rate Analysis (R-1, p. 35), containing fourteen sales comparables ranging in sale dates from August, 2010 to April 2012, time adjusting the sale prices to a rounded sale date, and dividing the 2013 assessed NOI by the time adjusted rounded sales price to determine the adjusted capitalization rate for each sales comparable. The adjusted capitalization rates for the sales comparables ranged from 4.65% to 8.04% with a median of 6.18% and an average of 6.20%. The Respondent noted that the sales comparable located at 2303 111th Street, known as the Century Park Shopping Centre, with an adjusted capitalization rate of 5.81% was physically the closest to the subject property.

[21] The Respondent's Capitalization Rate Rebuttal (R-1, p. 62) submits that the Complainant's sales comparables are not time adjusted, dated and not similar to the subject property with respect to location, age, and land leases; whereas, *"The subject properties are located in what is considered to be the superior Power Centre in the City of Edmonton....agreed to by various assessment tribunals... heavy traffic flows, low to non-existent vacancy rates and one of(f) retailers... attests to the desirability of this development."*

[22] The Respondent submitted MGB DL 132/09 (R-1, pp. 73-78) regarding nineteen properties located in South Edmonton Common, drawing the Board's attention to the Reasons finding that *'...South Edmonton Common enjoys advantages over other power centres is consistent with its findings in MGB 0117/06, which also recognized that the superior features of South Edmonton Common result in a comparatively lower cap(italization) rate'*(R-1, p 77). The Board noted this decision confirms a capitalization rate of 6.5% versus a requested 7.0%.

[23] The Respondent also submitted Board Order MGB 017/06 (R-1, pp.79-89), regarding fourteen properties located in South Edmonton Common, again drawing the Board's attention to the Reasons in terms of size, *"The subject properties form part of the largest cluster of retail boxes in Edmonton with retail space of over 2.3 million square feet compared to the Appellant's Centres in the 200,000 to 400,000 square foot range. Further the subject location is clearly superior with daily traffic counts of 100,000 vehicles per day compared to the Appellant's Centres with ranges from 35,000 to 65,000 per day."* confirming a capitalization rate of 9.25% versus a requested 9.75%.

[24] The Respondent submitted a third decision, MGB Notice of Decision DL 057/10 (R-1, pp.90-102) which dealt with the assessment of *Commerce Place*, a high rise office building located in downtown Edmonton, bringing to the CARB's attention a paragraph in the Reasons, *"... if cap rates are determined using dated sales, there is a danger that the resulting cap rate will not reflect the market conditions as of the valuation date. One way to guard against the danger is to "time adjust" the sale prices of comparable properties that did not sell on the valuation date to July 31, 2008; when this is done, logic and consistency suggest that the lease rates used to estimate income for the comparables should also reflect conditions as of the same regulated date."*

[25] In the fourth decision, the Respondent provided a Board Order MGB 045/09 (R-1, pp.104-132), regarding Canterra Tower in downtown Calgary, bringing the CARB's attention to the first paragraph in Methodology under Reasons regarding the appropriate capitalization rate (R-1, p.119), *"In examining questions of cap rate methodology, the overriding principle is that cap rates should be derived and applied in a fashion that is consistent with the NOI capitalized."*

[26] The Respondent's fifth Board decision was MGB Board Order 145/07(R-1, pp.133-170), regarding 28 downtown high rise office buildings in the City of Calgary. The Respondent brought the Board's attention to the Reasons for Findings on Issue 2 – Cap Rate (R-1, p. 157) *"CAP rates for downtown office properties should be developed using typical NOI inputs if they are going to be applied to subject properties who's NOI was developed with typical NOI inputs"* and *"In order to achieve consistency in the methodology for the subject properties a CAP rate applied to NOI based on typical inputs must be a CAP rate that also has been derived using typical NOI inputs."* Under Reasons Issue 2 – CAP (R-1, p.159) Leasehold Interest versus Fee Simple Estate, *"The MGB agrees with the Respondent that the full fee simple interest must be reflected in the assessment...the actual NOI which reflects both current and dated leases will not reflect a market value in an income calculation which reflects the fee simple estate. ... The*

Leasehold interest would have value when the contract rent payable ... is lower than the market rent... The method of calculating the capitalization rates used by the Respondent is based on "typical" rent which provides consistency in the analysis of sales ... The use of a CAP rate determined by the use of a typical NOI then applied to a typical NOI provides a consistent approach."

[27] In response to the Complainant's Rebuttal, the Respondent submitted 2013 ECARB 00971 (R-2) containing 5 pages, confirming a 6.0% assessment capitalization rate (R-2, p. 4, para. 24) of a property located within South Edmonton Common, and brought para. 26 to the Board's attention regarding "leased fee" capitalization rates.

Decision

[28] It is the decision of the Board that the correct capitalization rate to apply to the 2013 assessment of the subject property is 6.0%.

[29] It is the decision of the Board to confirm the 2013 assessment of \$34,490,000.

Reasons for the Decision

[30] The Complainant did not argue or provide evidence with respect to the factors used to determine the NOI for the subject property such as area, market rent, vacancy allowance, structural allowance and vacancy shortfall. The only factor the Complainant argued was the capitalization rate used to derive the value of the subject property by using the Income Approach.

[31] In the absence of current traffic information for other major arterial roadways such as 137th Avenue or 170th Street for comparative purposes, the Board finds little it can rely upon in terms of traffic volumes that supports the superior location of South Edmonton Common, let alone the value of the subject property.

[32] The Board finds that the subject property alone has little to differentiate it from other similar properties located in developments such as those along the 170th Street south of Stony Plain Road, east along 137th Avenue from 142nd Street, or Calgary Trail and Gateway Boulevard north of 34th Avenue. However, as the subject property is located within the neighborhood and development known as South Edmonton Common, the development's uniqueness seems to be that it is being developed and marketed as a unified approach to a singular destination, perhaps has more "*first(s) [stores]*", and may be the largest and first of its type in Edmonton. The apparent *synergy* attributable to the development (known as super power centres in other markets) would expected to be manifest in the sales of similarly located properties, market rental rates or capitalization rates.

[33] In the absence sales of properties located within South Edmonton Common, the Board considered the capitalization rates of the sales comparables provided. The Board accepts that the capitalization rates are reflective of risk as represented by such indicative factors as access, location, rental rates, vacancy and contamination. The Board further accepts that for assessment purposes the sale price should be adjusted to the valuation date of July 1. Regarding the adjustment of the rental rates to typical versus actual, the Board accepts that if the actual rental rates are below typical then the resulting capitalization rate may not reflect the fee simple value of a property valued on the Income Approach; conversely, market rents exceeding the typical or assessed rates may result in an excess or value greater than the fee simple value. If the capitalization rate was based on the actual income (greater than typical), and the 2013 market

estimate value, this would result in a higher capitalization rate. On the other hand, capitalizing the actual income (greater than typical) at the assessed rate of 6% would result in a higher market value. For example, the subject property has an actual net income of \$2,700,593.25 (R-1, p. 34) versus a typical NOI of \$2,097,019. If the capitalization rate was based on the actual income and the 2013 market estimate value, this would result in a capitalization rate of 7.74%; whereas, capitalizing the actual income at the assessed rate of 6.0% would result in a value of \$46,176,554. As the assessed rent rate was not raised as an issue, the Board is drawn to closely consider the capitalization rates of the sales comparables relied upon by both parties.

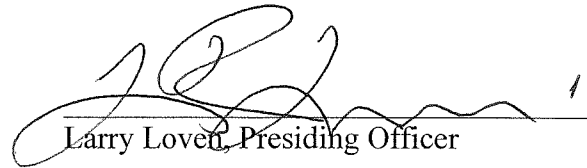
PROPERTY	COMPARABLE	NWK	δ	ASSESSED	δ	CITY
11403/621 Kingsway	CITY			n/a		8.04
6655 178 St	CITY			6.50	-0.13	6.63
6410 28 Ave	CVG	7.15	-0.15	7.00		
2303 111 St	BOTH	6.12	0.38	6.50	0.69	5.81
16620 95 St	CVG	6.54	-0.04	6.50		
6655 178 St	CVG	7.03	-0.53	6.50	0.18	6.32
14007/127 23 Ave	CVG	6.88	-0.38	6.50	1.54	4.96
1121/25 104 Ave	CVG	6.33	0.17	6.50		
5074 130 Ave	CITY	7.02	-0.52	6.50	0.44	6.06
		6.8	-0.3			
10503 Kingsway	CITY	7.07	0.43	7.50		
12504 137 Ave	BOTH	6.62	-0.12	6.50	-0.11	6.61
14215/307 23 Ave	CITY			6.50	0.88	5.62
					1.85	4.65
23 Ave	CVG	6.06	0.44	6.50		
100 Manning Dr	CITY	6.63	-0.13	6.50	0.19	6.31
9507 167 Ave & 16504 95 St	CITY	6.54		n/a		5.97
6104 90 Ave	CITY	7.23	0.27	7.50	0.08	7.42
15311 97 St	CVG	6.76	0.74	7.50		
1050351 Ave	CVG	7.04	-0.54	6.50		
Average	δ (all assessed)	6.74	-0.02	6.72	0.56	6.16
	δ (6.5 only)	6.64	-0.14	6.50	0.61	5.89
	δ (CVG only)	6.65	0.00	6.65		
	δ (CITY only)			6.75	0.26	6.50
Subject				6.00		

[34] In the absence of any comparable properties assessed at a capitalization rate of 6.0%, together with the finding of a potential differential in the assessed capitalization rate of the subject property as located within South Edmonton Common, and based on its analyses of the above table, as summarized from Complainant's comparison of the Network and Respondent's sales comparables capitalization rates to the sales comparable's respective assessed capitalization rates (C-2, p. 15), the Board finds that the subject property may have a market capitalization rate approximately 0.25% to 0.50% below assessed (assuming no differential based on location within South Edmonton Common) or correctly assessed at a capitalization rate of 6.00% (assuming a differential based on location within South Edmonton Common).

[35] In conclusion, based on its consideration of the foregoing, the Board finds the capitalization rate of 6.00% as assessed by the Respondent to be indicative of market, resulting in a market value of \$34,490,000.

Heard on July 18, 2013.

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



Larry Lovett, Presiding Officer

Appearances:

Tom Janzen
for the Complainant

Cam Ashmore

John Ball
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.