

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 00991

Assessment Roll Number: 3508272

Municipal Address: 11630 KINGSWAY NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Brian Frost, Board Member
Taras Luciw, 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 members of the Board stated they had no bias in respect of this matter.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a two storey 8,839 square foot office building located at 11630 Kingsway Avenue. The subject property is classified as a "A" office building in the 118th Avenue market segment. The subject property has an effective age of 1977 and the 2013 assessment is for \$2,289,000.

Issue(s)

[4] The issues are as follows:

- What is the appropriate capitalization rate for the subject property?
- What is the appropriate suburban building class for the subject property?
- Should the sale of the subject property, prior to valuation date, support the assessment?

Legislation

[5] 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

[6] The Complainant filed this complaint on the basis that the subject property assessment of \$2,289,000 is in excess of market value and inequitable. In support of this position, the Complainant submitted an evidence package containing 21 pages (Exhibit C-1) and Rebuttal, containing 17 pages (Exhibit C-2). The Complainant stated the subject office building was an “A” class building in the 118th Avenue office building district (Exhibit C-1 page 1).

[7] The Complainant advised the Board the issues being addressed were as follows:

- a. the capitalization rate (cap rate) is too low compared to cap rates from sales of recent comparable properties.
- b. the subject property should be in the “B” class office building inventory in the 118th Avenue district rather than the “A” class, as it currently is, based on the current lease rate.

[8] The Complainant detailed eight sales comparables (Exhibit C-1 page 2) which sold between January 2010 and July 2012, whose cap rate ranged from 6.93 to 8.61%.

[9] The Complainant advised the Board that a cap rate of 8.00% would be appropriate for the subject property, based on the sales comparables #'s 2 (7.90% cap rate), 5 (7.91% cap rate) and 8 (8.61% cap rate).

[10] The Complainant detailed the actual income statements for the subject property for the year's 2010 and 2011 (Exhibit C-1 pages 1/2).

[11] The Complainant provided the Board with the 2013 suburban office buildings valuation rates in the Edmonton area (Exhibit C-1 page 9).

[12] The Complainant advised the Board that utilizing the class "B" office building lease rate of \$12.50 per square foot, an office vacancy rate of 9.5%, regarding the 118th Avenue district, the net income would be \$87,915. This approximates the actual net income of the subject property. When capitalizing the net income at the "B" class office building rate of 7.0%, it results in a value of \$1,255,943.

[13] The Complainant then advised the Board that capitalizing the net income of \$87,915 based on the "B" class office building results, with the appropriate cap rate of 8.0%, results in a value of \$1,098,950 (Exhibit C-1 page 3).

[14] During cross-examination of the Complainant by the Respondent, the Complainant advised the Board of the following:

- a. the subject property is owner-occupied, the income increased by 10.0% and the expenses also increased.
- b. dividing the income by 8800 square feet, the resulting lease rate is \$17.00 per square foot. This is a gross amount for the lease rate.
- c. the 9.5% vacancy rate used was based on the "B" class suburban office building inventory in the 118th Avenue district.
- d. the net income based on the class "B" building figures is close to the actual net income of the subject property.
- e. the subject property was renovated about 2-3 years ago.
- f. with the 118th Avenue district, all AA/A office building inventory has a cap rate of 6.75%.
- g. the financial statements were not available for the 2012 year. There was no evidence presented regarding the increase in repairs and maintenance and professional fees.
- h. the \$2,358,000 gain is on the sale of the older building.
- i. the time-adjusted figures of the City of Edmonton are accepted.
- j. the Network documents are based on the actual figures.

[15] The Complainant presented the Board with a Rebuttal evidence package (Exhibit C-2 17 pages), showing the network documents compared with the City documents. In addition, the Complainant advised the Board that the weight of evidence should be placed on market data.

[16] During cross-examination of the Complainant by the Respondent, the Complainant advised the Board of the following:

- a. most weight should be placed on the actual income.

- b. the sales comparables at 1281 91st Street SW and 11635 160th Street do not have any income information (Exhibit C-1 page 4 and 11).
- c. the sales comparable at 11630 Kingsway Avenue is the sale of the subject property and has undergone extensive renovations (Exhibit C-2 page 5).
- d. the sales comparables number page 6 (10345 105th Street), number 9 (6020 104th Street), and number 10 (1125 Youville Drive West), are all older properties.
- e. the sales comparable at 11010 101st Street has no vacancy (Exhibit C-2 page 8).
- f. the sales at 2308 96th Street has 47% vacancy and is to be occupied by the purchaser (Exhibit C-2 page 13).
- g. the sales comparable at 18807 Stony Plain Road is fully leased and considered new (Exhibit C-2 page 14).
- h. the sales comparable at 13151 146th Street is part of a nine property portfolio sale (Exhibit C-2 page 15).
- i. the sales comparable at 3720 76th Avenue has a significant upside as the current lease is substantially below market (Exhibit C-2 page 17).

[17] During argument and summation, the Complainant advised the Board that the subject property was an unusual property and could not achieve the \$20.00 per square foot of assessment. The Complainant stated the subject property should be assessed as a class "B" building.

[18] With regard to the cap rates, the actual sales support the real value. The City has used artificial income data to determine the overall cap rate and this causes a lower overall cap rate.

[19] The Complainant stated the design of the subject property has functional deficiency.

[20] The Complainant advised the Board that a 8.00% cap rate is the correct cap rate.

[21] With the Complainant having the last word, the Complainant advised the Board that the Network correctly adjusts vacancy to account for vacancy etc. and the Network reflects the actual action of the buyers/sellers.

[22] The Complainant requests the Board to reduce the 2013 assessment of \$2,289,000 to \$1,200,000.

Position of the Respondent

[23] In defending the current year's assessment, the Respondent submitted a 113 page evidence package (Exhibit R-1) in support of the argument that the 2013 assessment is fair and equitable.

[24] The Respondent explained to the Board the mass appraisal brief regarding the methodology for valuing individual properties. The mass appraisal properties are stratified into

groups of comparable properties, common property attributes are identified for the property in each group and a uniform valuation model is calibrated for each group using market information incorporating the property attributes (Exhibit R-1 pages 85-100). The Respondent noted that the City of Edmonton has met all governing legislation including regulations and quality standards (Exhibit R-1 page 100).

[25] The Respondent noted the Complainant's request for information including the tenant's rent roll (Exhibit R-1 pages 19-24).

[26] The Respondent advised the Board regarding the Complainant's reconstructed rent roll (Exhibit R-1 page 25).

[27] The Respondent advised the Board about the 2013 suburban office buildings valuation rates for the office building inventory (Exhibit R-1 page 47).

[28] The Respondent advised the Board about the available suburban rental rates on the "A" class office buildings in the 118th Avenue market segment. The time-adjusted median net rent is \$20.13 per square foot and the average net rent is \$18.72 per square foot (Exhibit R-1 page 48).

[29] The Respondent advised the Board regarding the equity for suburban 118th Avenue class "A" office buildings. The 118th Avenue suburban office buildings were all assessed \$20.00 per square foot and a cap rate of 6.75% (Exhibit R-1 page 49).

[30] The Respondent advised the Board of the sale of the subject property for \$2,650,000 in June 2010 (Exhibit R-1 pages 50-55).

[31] The Respondent advised the Board that the City considers the sale of the subject property to be a valid sale and the sale was used in the cap rate study (Exhibit R-1 pages 53/54).

[32] The Respondent explained the analysis of the cap rate study and the factors that make up the determinants in the cap rate study. As it is indicated in the City's capitalization rate study the range of OCR (for available valid sales of AA and A class suburban office properties) was from 4.25% to 9.10%. The City consistently applies the same methodology of developing overall cap rates for different office classes; median rate (helps to reduce the influence of outliers) came to 6.60%. The City therefore determined that typical overall cap rate for AA and A suburban office class buildings in the 118th market segment should be utilized at 6.75% (Exhibit R-1 pages 19, 20 and 26).

[33] The Respondent provided an example to the Board concerning a hypothetical sale of a downtown office building which displays the direct relationship between market rents and capitalization rates (Exhibit R-1 page 28).

[34] The Respondent advised the Board of the sale of the subject property in June 2010 for \$2,650,000. The Respondent noted that there have been extensive renovations to the subject property. The City has analyzed the sale of the subject property and determined that the sale is a valid sale (Exhibit R-1 page 30).

[35] During cross-examination of the Respondent by the Complainant, the Respondent advised the Board of the following:

- a. while the Complainant suggested the sale of the subject property was motivated by the Complainant due to expropriating of another property, the Respondent advised the Board there was no evidence presented to substantiate this assertion.
- b. the Complainant asked the Respondent if the expropriation was a motivating factor in the Complainant's desire to purchase the subject property, would this cause an adjustment? The Respondent stated the City concluded the sale was valid.
- c. the Respondent advised the Board that the tenant spaces were small for the business centre and this was not typical.
- d. the Respondent advised the Board that 3000 square feet was leased at a gross rate of \$19.44 per square foot, and with the op costs of \$13.00 per square foot, this reduces the net rental rate to \$6.44 per square foot on the 3000 square feet.

[36] During argument and summation, the Respondent stated one of the issues was onus. While the main issue was classification of the subject property, the Complainant failed to provide photos of the subject property or other class A and class B office buildings.

[37] The Respondent notes there is no arms length market rent for the subject property to determine the building classification.

[38] The Respondent questions if the income data is correct, considering the subject property sold in 2010 and there was a 10% increase in income and a huge expense increase.

[39] The City has photos of the interior of the subject property and there is no evidence to suggest a change of building classification.

[40] The Respondent advised the Board that the space occupied by the owner is leased at well below market.

[41] The Respondent referred the Board to a previous ECARB decision which states:

“With respect to the Complainant's source of capitalization rates, the rates published by the Network are derived from the actual NOI at the time of sale. The Board finds that the Complainant's cap rates are “leased fee” cap rates, and should not be used for assessment purposes. When the actual lease rents differ from the typical market rents and are used to derive the cap rate, the result is a “leased fee” cap rate. The cap rates must be derived and applied in a consistent manner. In conclusion, the Board finds that the Respondent's cap rates are more reliable because the Respondent consistently used the 2013 stabilized NOI and the time adjusted sale price to derive the cap rate. Further, there is insufficient evidence to prove that the subject property assessment is inequitable or incorrect.” (*CVG v The City of Edmonton*, [2013] ECARB 00972, at para 26, 27)

[42] The Respondent stated the best comparable is the sale of the subject property for \$2,650,000.

[43] The Respondent requests the Board to confirm the 2013 assessment of \$2,289,000.

Decision

[44] The decision of the Board is to confirm the 2013 assessment of \$2,289,000.

Reasons for the Decision

[45] The Board did not accept the Respondent's contention that the Complainant did not meet onus.

[46] The Board believes the best indicator of market value is the sale of the subject property itself close to valuation date. While the subject property sold in June 2010, the time adjusted factor of the City utilizes 1.00 for the last 2 years.

[47] In addition, the City has assessed the subject property at \$2,289,000, which is lower than the sale price of \$2,650,000.

[48] The Board was not persuaded by the Complainant's argument that the higher sale price was due to the extreme motivation of the purchaser having had another property expropriated and thus had to find another property quickly. There is no evidence to back up this assertion of the Complainant.

[49] The Board accepts the Respondent's cap rate analysis to determine the assessed value of the subject property. The adjusted cap rate median of 6.60% reflects the cap rate analysis provided by the City. The City therefore utilized 6.75% by the City for class "A" and class "AA" properties in the Edmonton office suburban building market. The Board accepts that 6.75% cap rate is fair and equitable for the subject property.

[50] The Board realizes that income performance determines the suburban office building class. However, when the building owner occupies the vast majority of space, the lease cannot be considered a non-arms length lease. The rent roll states the owner pays \$19.44 per square foot gross. With \$13.00 op costs, the net rent achieved is \$6.44 per square foot, which does not seem plausible. Therefore, the Board placed less weight on the actual lease and the actual income achieved by the owner-occupied Complainant.

[51] The photographs by the Respondent indicate the premises seem to be that of other class "A" suburban office buildings.

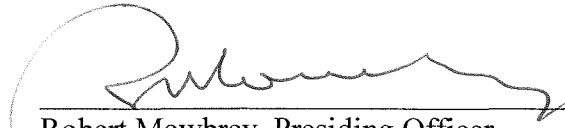
[52] The Board accepts the \$20.00 per square foot rental rate governing suburban rental rates for 118th Avenue class "A" office buildings. The 5 renewals and 2 new leases signed within 18 months of valuation for a time-adjusted median of \$20.13 per square foot indicate the \$20.00 per square foot assessment is fair.

Dissenting Opinion

[53] There is no dissenting opinion.

Heard commencing September 27, 2013.

Dated this 18th day of October, 2013, at the City of Edmonton, Alberta.



Robert Mowbrey, Presiding Officer

Appearances:

Tom Janzen
for the Complainant

Tanya Smith, Legal Counsel
Vasily Kim, Assessor
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.