

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01004

Assessment Roll Number: 3799392

Municipal Address: 10965 23 AVENUE NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

John Noonan, Presiding Officer

Darryl Menzak, Board Member

Lillian Lundgren, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matter before them.

Background

[2] The subject property, known as Western Cellar, is a 4,826 square foot (sf) building located at 10965 23 Avenue NW in the Heritage Square shopping centre. The building was converted from a bank to a liquor store and has an effective year built of 2006. The lot size is 19,991sf. The property is assessed at \$1,618,500.

Issue(s)

1. Is the subject property assessment *correct?
 - (a) Is the 6.5% capitalization rate used to prepare the assessment correct?
2. Is the subject property equitably assessed with similar properties?
 - (a) Is the 6.5% capitalization rate equitable?

*The Board is using the term in relation to the valuation standard of market value.

Legislation

[3] 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

[4] The Complainant filed this complaint on the basis that the subject property assessment is incorrect and inequitable.

[5] The Complainant argued that the 6.5% capitalization rate used to prepare the assessment is incorrect. In support of this position, the Complainant presented ten sales of retail centres that transacted between March 2011 and October 2012 (Exhibit C-1 page 1). The transactions were taken from documents prepared by The Network. The properties range in building size from 6,438sf to 139,962sf and were constructed between 1957 and 1995. The capitalization rates for the sale comparables range from 6.63% to 7.34%.

[6] The Complainant stated that sale comparables #2, #8, #9 and #10 are more similar in magnitude to the subject property and therefore more comparable.

- Sale #2 located at 6655 178 Street sold in June, 2011 with a capitalization rate of 7.03%. It has a building area of 12,289sf that was constructed in 1986. The Complainant stated that the net income per square foot of this property is very similar to the subject property.
- Sale #8 located at 10415 158 Avenue sold in September, 2012 with a capitalization rate of 7.34%. It has a building area of 10,853sf that was constructed in 1981. The Tempo Gas Bar includes a literage rent generating an additional \$24,000/year. This property also has a net income per square foot similar to the subject.
- Sale #9 located at 7321 /29 101 Avenue sold in September, 2012 with a capitalization rate of 7.0%. It has a building area of 6,438sf that was constructed in 1957. All of the tenancies are month to month at rates considered below market.
- Sale #10 located at 14908 45 Avenue sold in October, 2012 with a capitalization rate of 6.88%. It has a building area of 16,402sf that was constructed in 1983. The site was

remediated when the gas bar closed but there is still some contamination underneath the building.

[7] The Complainant acknowledged that the sale comparables were not time adjusted; however, they are recent sales that occurred in 2011 and 2012. The Complainant also acknowledged that The Network determined its capitalization rates using the net operating income on the sale date, and that the capitalization rates are leased fee rates.

[8] The Complainant argued that the subject property is treated inequitably because the Respondent applied higher capitalization rates to similar retail properties. In support of this position, the Complainant presented nine equity comparables with capitalization rates of 7.0% and 7.5% (Exhibit C-1 page 2). The subject is assessed using a 6.5% capitalization rate.

[9] In summary, the Complainant stated that the sale comparables and the equity comparables are all good quality retail centres and for the most part located on major thoroughfares. Based on an analysis of the comparables, a more appropriate rate for the subject property for the 2013 assessment would be 7.25%. This results in the requested value of \$1,450,000.

Rebuttal

[10] The Complainant stated that the Respondent uses a hypothetical capitalization rate to value properties because the Respondent determines a capitalization rate using a time adjusted sale price and a stabilized net operating income. According to the Complainant, "a cap rate is a cap rate" and the marketplace recognizes the capitalization rate on the sale date based on the actual income stream.

[11] In addition, the Complainant presented details on each its equity comparables (Exhibit C-2) showing a map of the area and various assessment details such as age, building class, building size, lot size and site coverage.

Position of the Respondent

[12] The Respondent submitted that the subject property assessment of \$1,618,500 is correct and equitable.

[13] The Respondent explained that, the subject property forms part of a neighborhood shopping centre in South Edmonton. The centre contains a Sobeys food store, a drugstore, fast food restaurants, sit down restaurants and personal service outlets. The property is located on the south side of 23 Avenue with the terminus of the LRT directly across the avenue from the subject property.

[14] The Respondent defended the 6.5% capitalization rate used to prepare the subject assessment with a Shopping Centre Capitalization Rate Analysis (Exhibit R-1 page 16). The analysis is based on fourteen sales of shopping centres that transacted from August 2010 to April 2012. The median capitalization rate is 6.18%.

[15] The Respondent highlighted the sale, known as Century Park, at 2303 111 Street NW as the best comparable because it is located across the avenue from the subject property. It sold on June 17, 2011 with a capitalization rate of 5.81%.

[16] In terms of the methodology, all of the Respondent's sale comparables were time adjusted to the valuation date of July 1, 2012, and in some cases, market adjustments were applied. For example, the sale price for 100 Manning Crossing was adjusted upward because the interest rate on the mortgage was above average. The stabilized net operating income and the time adjusted sale price were consistently used to derive an appropriate "fee simple" capitalization rate.

[17] The Respondent dismissed the Complainant's argument that the subject property is inequitably assessed with similar properties because the equity comparables presented by the Complainant are not in the shopping centre group. The Respondent applied a 6.5% capitalization rate to each of the properties in the shopping centre inventory including the subject property.

[18] The Respondent commented that none of the Complainant's sale comparables are time adjusted and sales #8, #9 and #10 are post facto sales that are not similar to the subject property. Sale #8 has a Tempo Gas Bar with literage rent that may have affected the sale price. Sale #9 was constructed in 1957 and has all month to month tenancies at rates considered below market. Sale #10 was previously the site of a Petro- Canada gas bar and some contamination exists beneath the building.

[19] In summary, the Respondent requested the Board to confirm the assessment at \$1,618,500.

Decision

[20] The subject property assessment is confirmed at \$1,618,500.

Reasons for the Decision

[21] In determining this matter, the Board finds that the Complainant has not provided sufficient evidence to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect or inequitable.

[22] With respect to correctness, the Complainant identified sale comparables #2, #8, #9 and #10 as the most comparable. The Board does not accept these comparables as good indicators of value for the subject property on the valuation date because they have not been time adjusted. Further, sales #8, #9 and #10 are not comparable in quality for the reasons identified by the Respondent. By contrast, the Board finds that the Respondent's sale comparables support the use of a 6.5% capitalization rate for the subject shopping centre.

[23] Respecting equity, the Complainant failed to establish that any similar properties are assessed using higher capitalization rates. The Board accepts the Respondent's evidence that all shopping centre properties are assessed in the same manner as the subject property using a capitalization rate of 6.5%.

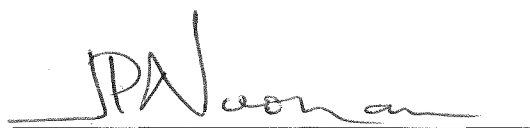
[24] While the method of deriving a capitalization rate is not an issue identified on the complaint form, it is an underlying issue of this complaint. The legislation requires that all properties be valued on the fee simple estate; and further, that all properties be valued using

typical market conditions. The Board understands that the capitalization rates prepared by third parties are widely used in the real estate market. However, there can be material differences between the reported net operating income and the legislated typical net operating income which results in a different capitalization rate. For assessment purposes, the Board accepts the Respondent's method of calculating a capitalization rate.

[25] Accordingly, the assessment is confirmed.

Heard July 23, 2013.

Dated this 19th day of August, 2013, at the City of Edmonton, Alberta.

A handwritten signature in dark ink, appearing to read 'JPA Noonan', is written over a horizontal line.

John Noonan, Presiding Officer

Appearances:

Peter Smith
for the Complainant

Cam Ashmore, Legal Counsel

John Ball, 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.