

## **Edmonton Composite Assessment Review Board**

**Citation: 1065995 Alberta LTD. v The City of Edmonton, 2013 ECARB 01252**

**Assessment Roll Number:** 2720282

**Municipal Address:** 10310 124 Street NW

**Assessment Year:** 2013

**Assessment Type:** Annual New

Between:

**1065995 Alberta LTD.**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Dean Sanduga, Presiding Officer**  
**Jack Jones, Board Member**  
**Robert Kallir, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer the parties before the Board stated that they had no objection to the Board's composition. In addition, the Board Members stated that they had no bias with respect to this file.

[2] The parties giving evidence at the hearing were sworn in.

### **Preliminary Matters**

[3] The Respondent requested that the Complainant state to what issues each of his witnesses would testify. The Complainant advised that Mr. M. Borys would deal with the issues set out in Exhibit C-2 as Mr. D. Shultz (the author of the Exhibit) was not available for this hearing and that Mr. B. Gettel would deal with the issues set out in Exhibit C-1. Neither party had any objection to the presentation of Exhibits C-3, C-4 or C-5 as evidence.

### **Background**

[4] The subject property is a commercial property located at 10310 124 Street, Edmonton in the 124<sup>th</sup> street district. The building contains 14,560 square feet of office space, 4,611 square feet of CRU space and 35 underground parking stalls. The subject property has been assessed for 2013 utilizing the income approach to valuation.

### **Issue(s)**

- [5] Is the Capitalization rate ("CAP") of 7% utilized to derive the 2013 assessment of the subject property correct?
- [6] Does the subject property qualify as a property with chronic vacancy?
- [7] Is the 2013 assessment of the subject property at \$3,358,500 fair and equitable?

### **Legislation**

**[8] 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 289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

s 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and
- (b) follow the procedures set out in the regulations.

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.

[9] The *Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004* (MRAT) reads:

s 2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property,  
and
- (c) must reflect typical market conditions for properties similar to that property.

s 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

### **Position of the Complainant**

[10] The Complainant presented evidence Exhibits (C-1, C-2, C-3, C-4 and C-5) and argument for the Board's review and consideration. Exhibit C-1 was evidence from Gettel Appraisals Ltd; Exhibit C-2 was the letter from Mr. D. Shultz; Exhibit C-3 was the assessment of the Respondent for the subject property; Exhibit C-4 was the Complainant disclosure of evidence and written argument; Exhibit C-5 was a decision of the Edmonton Composite Assessment Review Board.

[11] The Complainant advised that the only issues before the Board was the CAP rate utilized in the 2013 assessment of the subject property and the issue of the vacancy level of the subject property. The Complainant argued that a CAP rate of 8.0% should be used instead of a 7.0% CAP rate applied within the 2013 assessment.

[12] The Complainant presented Mr. M. Borys (the property manager of the subject property) as a witness. Mr. Borys addressed the issues set out in Exhibit C-2 relating to vacancy, lack of an elevator in the subject property, the condition of the second floor common areas and the requested CAP rate of 8%. With respect to the second floor common areas Mr. Borys informed the Board that access to the second floor is from the street and that the second floor common area had been improved subsequent to July 1, 2012. In addition, Mr. Borys advised that the Guardian Building is an 8 story building that had sold at a 7.7% CAP rate in January 2012 and had more amenities and a better location than the subject property as well as 2 elevators and valuable views. The subject property was listed for lease with Avison Young to attempt to obtain tenants for the vacant space in the subject property.

[13] The Complainant presented Mr. B. Gettel as an expert witness. Mr. Gettel informed the Board that he had been in the property appraisal business since 1978, had established and operated his own appraisal company since 1981 and that the Network was a subsidiary of his appraisal company. The Respondent acknowledged Mr. Gettel as a qualified appraiser.

[14] Mr. Gettel addressed the issues set out in Exhibit C-1 and C-3. He stated that he had no issues with the rental rates utilized by the Respondent as set out in Exhibit C-3. Mr. Gettel referred to Exhibit C-1 and addressed the issues related to the CAP rate, lack of an elevator, condition of the property, limited street parking and the data for the 8 sales set out. Mr. Gettel noted that the data related to the 8 sales was (a) actual rents and actual vacancy (b) the actual

vacancy calculations with respect to the properties had some consistency issues and (c) that not all of the 8 properties in question were 2 story buildings.

[15] In his capacity as a qualified appraiser Mr. Gettel advised the Board that he believed the subject property should be classified as a Class C building and that a CAP rate of 8% should be utilized in assessing the value of the subject property. Mr. Gettel noted that the assessed value of the subject property utilizing an 8% CAP rate would be \$2,951,562.

[16] The Complainant addressed the issue of the vacancy rate for the building and noted that at the time of purchase in April 2010 the subject property was fully leased. In dealing with the vacancy issue the Complainant referred to Exhibit R-1 pages 15-17 and 39-42 stated that in his opinion the data therein set out evidenced that the subject property exhibited chronic vacancy.

[17] In summary of his position the Complainant requested that an 8.0 % capitalization rate be applied to the 2013 assessment of the subject property reducing the assessment from \$3,358,500 to \$2,800,000.

### **Position of the Respondent**

[18] The Respondent presented evidence (R-1) and argument for the Board's review and consideration.

[19] The Respondent reviewed the methodology of mass appraisal (R-1, pages 159 to 174) utilized to determine market value for the purposes of property assessment.

[20] The Respondent presented the response summary of the Respondent for subject property (R-1, pages 11 to 14) as well as the Respondent's analysis of that information.

[21] The Respondent drew the Board's attention to the rent roll data including the vacancy rates for the years in question set out in Exhibit R-1 pages 15-17 which said information had been provided to the Respondent by the Complainant. He stated that the policy of the City for a property to qualify for a chronic vacancy adjustment is that the vacancy would need to be in excess of 10% for years 2010, 2011 and 2012. The Respondent stated that the subject property, on the basis of the provided data, did not qualify for a chronic vacancy adjustment.

[22] The Respondent addressed the analysis of the Complainant's CAP rate comparables set out in Exhibit R-1 page 18 and noted the median and average CAP rates of 6.67% and 6.46% respectively.

[23] The Respondent addressed the Suburban Capitalization Rate Analysis set out in Exhibit R-1 page 19 and noted the median CAP rate set out was 6.98%. In dealing with the CAP rate set out for the subject property the Respondent noted that significant interior renovations (Exhibit R-1 pages 11, 40 and 41) had taken place since the sale date and as such the sale CAP rate is no longer applicable.

[24] The Respondent referred to the 2013 Suburban Valuation Rates set out in Exhibit R-1 page 33 and stated that the CAP rates utilized by the Respondent in assessing Class B and C properties in 124 street district where the subject property is located is 7.00% and 7.5% respectively.

[25] The Respondent referred to data for Class B buildings in the suburban 124<sup>th</sup> street district (Exhibit R-1 page 34) where the subject property is located and noted that the designation of the subject property as a Class B property had not been disputed by the Complainant.

[26] The vacancy of a 2 story building is not detrimentally affected by its lack of an elevator as evidenced by the city analysis set out in Exhibit R-1 pages 37-38.

[27] The Respondent advised the Board that the Complainant's reliance on "Network" data sheets included a number of unsupported and inconsistent applications with respect to cap rates, income and vacancy rates and at best were a reflection of market conditions at the time of sale and not at the valuation date.

[28] In summary the Respondent requested the 2013 assessment be confirmed at \$3,358,500 utilizing a 7% CAP rate.

### **Decision**

[29] The decision of the Board is to confirm the correct capitalization rate for the derivation of the 2013 assessment of the subject property is 7.0%.

[30] The subject property does not qualify as a property with chronic vacancy.

[31] The decision of the Board is to confirm the 2013 assessment of the subject property at \$3,358,500 as fair and equitable.

### **Reasons for the Decision**

[32] After review and consideration of the evidence and argument presented by both parties the Board determined that the 2013 assessment of the subject property at \$3,358,500 was appropriate.

[33] The Board placed greatest weight on the Respondents evidence and methodology with respect to deriving an accurate CAP rate for the subject property as of the valuation date of July 1, 2012. The Respondent utilized a time adjusted sales price along with typical market lease rates as of the valuation date to determine a valuation date cap rate.

[34] The Complainant did not provide the Board with sufficiently compelling evidence upon which a change in the assessment of the Respondent can be based. As determined in "Calgary (City) v Alberta (Municipal Government Board) 2010 ABQB 719 the ultimate burden of proof or onus rests on the Appellant, at an assessment appeal, to convince the Board that their argument, facts and evidence are more credible than that of the Respondent.

[35] The vacancy of a 2 story building is not detrimentally affected by its lack of an elevator as evidenced by the analysis of the Respondent set out in Exhibit R-1 pages 37-38.

[36] The Complainant did not dispute the classification of the subject property as a Class B property and in fact itself classified the subject property as a Class B property (Exhibit R-1 page 39)

[37] There was no data provided by the Complainant to justify an 8% CAP rate adjustment. The only evidence provided was opinion evidence.

[38] The Network data sheets provided by the Complainant included a number of unsupported and inconsistent applications with respect to cap rates, income and vacancy rates and at best were a reflection of market conditions at the time of sale and not at the valuation date.

[39] There was no evidence submitted to establish that the subject property had a chronic vacancy rate in excess of 10% for years 2010, 2011 and 2012. The two unit numbers (100 and 202 in Exhibit R-1 pages 39-42) noted as vacant conflicted with the data set out in Exhibit R-1 pages 16 and 17 provided by the Complainant which said data set out that the units in question were leased until May 31, 2012. The difference in leasable space as set out in Exhibit R-1 pages 10, 16 and 17 is also noted.

[40] There was no data provided by the Complainant as to how the requested assessment of \$2,800,000 was determined.

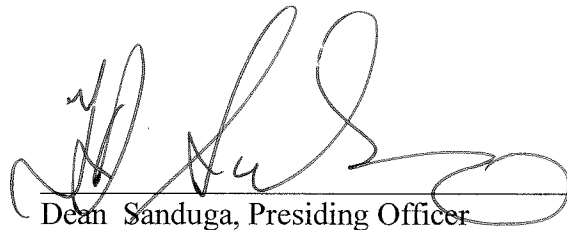
[41] The Board finds that the Respondent has properly applied the legislated mass appraisal methodology in determining the 2013 assessment of the subject property.

### **Dissenting Opinion**

[42] There was no dissenting opinion.

Heard commencing October 8, 2013.

Dated this 28<sup>th</sup> day of October, 2013, at the City of Edmonton, Alberta.



Dean Sanduga, Presiding Officer

### **Appearances:**

Brian Gettel

Jack Agrios

Myron Borys

for the Complainant

James Cumming

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.*