

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01516

Assessment Roll Number: 2710812

Municipal Address: 12320 105 Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
George Zaharia, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

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

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is two-storey office building located at 12320 105 Avenue NW in the Westmount neighbourhood of west-central Edmonton. There is one building on site built in 1962 with an effective age of 1982, totaling 2,513 square feet of main floor space plus 2,381 square feet of upper floor space. The building is situated on a lot 6,750 square feet (0.15 acres) in size with site coverage of 37%.

[4] The subject property was valued on the income approach resulting in a 2013 assessment of \$621,000.

Issue(s)

[5] Is the 7.50% capitalization rate (cap rate) used in calculating the assessment of the subject property too low?

[6] Should 50% of the upper floor space be assigned a \$0.0 rental rate since it is "gutted and uninhabitable"?

[7] Should the assessment class of the subject be changed from 100% non-residential to 50% non-residential and 50% other residential?

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 460(5) A complaint may be made about any of the following matters, as shown on the assessment or tax notice:

(d) an assessment class

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

[9] In support of his position that the 2013 assessment of the subject property is excessive and there should be a change in the assessment class, the Complainant presented a 26-page brief (Exhibit C-1), a 1 page copy of the City assessment (Exhibit C-2), and a two-part rebuttal with Part 1 containing 11 pages (Exhibit C-3), and Part 2 containing 9 pages (Exhibit C-4). The Complainant argued that: 1) the subject was incorrectly classed for assessment purposes as 100% non-residential, 2) 50% of the upper floor space should be valued at “zero”, and 3) based on an analysis of sales of similar properties the cap rate was too low.

[10] The Complainant agreed with all the City’s rates and allowances, except for the cap rate and the rental rate applied to the gutted space on the second floor. The Complainant accepted the \$13.75 per square foot rental rate applied to the main level but believed that the City’s lease rate of \$7.00 per square foot that was applied to the second level should only be applied to half of the space since the other half was gutted and uninhabitable (Exhibit C-1, page 24).

[11] However, the Complainant disagreed with the City’s classification of the building as a two-storey office building. He submitted a copy of the “Annual Realty Assessment Notice for 2013” that identified the assessment class as being 100% non-residential (Exhibit C-2, page 1). The Complainant described the subject property as having one apartment suite on the main level and two apartment suites on the second level, thus the assessment class should be changed to 50% residential and 50% non-residential (Exhibit C-1, page 2).

[12] To support the request for a higher cap rate, the Complainant provided 10 sales that occurred between October, 2009 and June, 2011. The cap rates ranged from 7.43% to 8.88% while the subject property had a 7.50% cap rate applied in determining its assessment. Based on the range of cap rates, with most weight on sales nos. 3, 5, 6 and 9, the Complainant stated that an appropriate cap rate would be 8.00% (Exhibit C-1, page 2).

[13] In Part 1 of the rebuttal (Exhibit C-3) the Complainant challenged the cap rates and income data supplied by the City in its "cap rate comparables" chart gleaned from sales data provided by the Network. These sales reports showed substantially different data from that indicated by the City. The sales reports indicated high vacancies, unknown income, and no cap rates were provided. In absence of any details at the time of sale, the City simply estimated incomes to predict net operating incomes and cap rates for these four sales. In the Complainant's opinion, it would take a large mental leap to accept the City's information. The Complainant included the 2013 assessments for the comparables as well.

[14] In Part 2 of the rebuttal (Exhibit C - 4) the Complainant presented photographs of the City's eight equity comparables and described them as all being physically and locationally superior to the subject property.

[15] Based on an increased cap rate of 8.0% and reducing the amount of upper floor space from 2,381 to 1,190 square feet to which the \$7.00 per square foot rental rate would be applied, the Complainant requested that the 2013 assessment of the subject property be reduced from \$621,000 to \$485,000. The Complainant also requested that the assessment class of the subject be changed from 100% non-residential to 50% non-residential and 50% other residential.

Position of the Respondent

[16] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support his position, the Respondent presented a 109-page assessment brief (Exhibit R-1) that included law and legislation.

[17] The Respondent provided a "cap rate comparables" chart based on four sales that occurred between July 4, 2011 and April 11, 2012. The sales resulted in stabilized cap rates that resulted in an average of 6.32% and a median of 6.33%, supporting the 7.5% rate applied to the subject property (Exhibit R-1, page 14).

[18] The Respondent provided equity comparables for eight properties located in close proximity to the subject property. Five of the comparables had cap rates of 7.0% while three were at 7.5%, supporting the 7.5% applied to the subject property (R-1, pages 20 to 28).

[19] The Respondent provided a review of the Complainant's ten sales comparables used in his cap rate study. One was a multiple parcel sale and therefore not included. The cap rates as provided by the Complainant were taken from the Network's sale reports. These cap rates were derived from sales that occurred between October 26, 2009 and June 27, 2011 that resulted in a median cap rate of 8.10%. However, when the sale prices were time-adjusted to the July 1, 2012 valuation date, the median time-adjusted fee simple cap rate was reduced to 6.86%. (Exhibit R-1, page 82)

[20] The Respondent down-played the Complainant's sales comparables as they were not time adjusted and the effective dates of the leases were unknown.

[21] During questioning by the Respondent, the Complainant answered that he did not have any evidence to support his request to change the assessment class of the subject. As well, the Complainant confirmed that he added “zero value” for the 50% of upper floor space that he described as “gutted and uninhabitable”.

[22] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at \$621,000.

Decision

[23] The decision of the Board is to confirm the 2013 assessment in the amount of \$621,000, and the assessment class as 100% non-residential.

Reasons for the Decision

[24] The Board placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

- a) In support of his request that 50% of the upper floor space be applied a \$0.0 rental rate, the Complainant provided a picture and an email from the owner stating that the space was “demolished” and that a tenant had not been located “to build it for”. The Board did not find this information sufficiently compelling to place a “zero value” on 50% of the upper floor space.
- b) The evidence provided by the Complainant was not convincing so as to change the assessment class of the subject. It is clear from the picture provided by the Respondent, that Maxwell’s Tailors is located on the second floor. However, the Complainant states that there are two apartment suites on the second floor as well. Since it would be reasonable to assume that Maxwell’s Tailors occupies the 50% space that the Complainant is accepting the \$7.00 per square foot rental rate, then the two apartment suites that are deemed to be on this upper level are in the “gutted and uninhabitable” space. This now leaves in question the one apartment suite that is said to be on the main floor, but there is no evidence that anyone is living there. The Board, therefore, finds no justification to change the “non-residential” assessment class attributed to the subject.
- c) The cap rate study provided by the Complainant showed the cap rates based on the net operating incomes and sale prices at the time of sale. The cap rates were not stabilized to the July 1, 2012 valuation date. As well, the third party sales information lacked definitive lease rate and lease term information.
- d) When the Complainant’s cap rate study was time-adjusted by the Respondent, excluding the multiple parcel sale, the median time-adjusted fee simple cap rate was reduced from 8.10% to 6.94%, supporting the 7.5% cap rate applied by the Respondent to arrive at the 2013 assessment of the subject property.

[25] Although the Complainant provided ten sales comparables to suggest the cap rate was too low, and questioned the assessment class of the subject, the burden lies with the Complainant to provide sufficiently compelling evidence upon which the Board can make a change in the assessment and the assessment class. This, the Complainant did not do.

[26] The Board placed greater weight on the eight equity comparables submitted by the Respondent since all the comparables were in close proximity to the subject, four of the comparables were very similar in size to the subject, and seven of the comparables were of an age similar to the subject. Five of the equities had a cap rate of 7.0% while the remaining three had a cap rate of 7.5%, all supporting the 7.50% cap rate applied to the subject property.

[27] However, the Board was not persuaded by the "Cap Rate Comparables" chart submitted by the Respondent. The third party reports used by the Respondent to substantiate the sales had no income information to support the net operating income from which a cap rate would be derived. Recognizing this shortcoming, the Respondent named the income and cap rate columns as "City Predicted NOI" and "Predicted City Cap Rate".

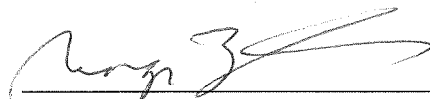
[28] The Board was persuaded that the 2013 assessment of the subject property at \$621,000 is fair and equitable.

Dissenting Opinion

[29] There was no dissenting opinion.

Heard October 25, 2013.

Dated this 15th day of November, 2013, at the City of Edmonton, Alberta.



George Zaharia, Presiding Officer

Appearances:

Peter Smith
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.