

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01517

Assessment Roll Number: 4311171

Municipal Address: 10530 170 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 Frost, Board Member

Martha Miller, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. The members of the Board stated they did not have any bias in respect of this matter.

[2] At the outset of the hearing the parties requested argument and evidence be brought forward from roll number 1326701, where applicable.

Preliminary Matters

[3] None noted.

Background

[4] The subject property is a free standing, single tenant, auto service centre, located in the McNamera Industrial neighbourhood at 10530 – 170th Street NW. The building was constructed in 1995. The net leasable area is 19,716 sq ft. The 2013 assessment of the subject property, based on the income approach to value, is \$4,173,000.

Issue

[5] Has the appropriate capitalization rate been used in the assessment of the subject property?

Legislation

[6] 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

[7] The Complainant filed this complaint on the basis that the subject property assessment of \$4,173,000 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package to the Board containing 27 pages, Exhibit C-1 (C-1) and Rebuttal, containing 4 pages, Exhibit C-2 (C-2).

[8] The Complainant stated the capitalization rate (cap rate) used in the assessment was 6.50%. The Complainant further stated this cap rate was not supported by market data which indicated a higher cap rate should have been applied.

[9] In support, the Complainant provided a summary of 11 sales comparables (C-1, p. 2). The Complaint provided Network summaries of each sale (C-1, pp.7-17).

[10] The sales comparables ranged in age from 1970 to 2007, sold between March, 2011 and May, 2012, ranged in building size from 5,500 square feet to 139,962 square feet, showed an average Net Operating Income (NOI) ranging from \$11.48 per square foot to \$30.12 per square foot, and particular to the issue, reflected cap rates ranging from 6.54% to 7.23%.

[11] The Complainant stated that on analysis of sales comparables #5, #7, #8 and #9, the four with the most similar income per square foot, as well as sales comparable #5, the one that was closest in age to the subject property, it could be concluded that the most appropriate cap rate for the subject property's assessment would be 7.00%.

[12] The Complainant charted nine properties similar to the subject property that had been assessed using cap rates greater than the cap rate used in the assessment of the subject property (C-1, p. 2). The Complainant provided the assessment report as provided on the City of Edmonton web site for each of the comparables' assessment. According to the Complainant, the properties, all good quality commercial retail centres located on major thoroughfares, were assessed using cap rates ranging from 7.00% to 7.50%.

[13] The Complainant argued the cap rates of the sales comparables, supported by the range of cap rates of the equity comparables, provides a strong indication that a cap rate of 7.00% should be applied to the subject property. Application of this cap rate resulted in the Complainant's request for reduction of the 2013 assessment of the subject property from \$4,173,000 to \$3,874,500.

[14] In Rebuttal (C-2), the Complainant provided Network summaries for each of the Respondent's three sale comparables, noting that income data was not available on two sales and for the third, based on actual income plus market rent on one vacant bay, the Network indicated cap rate for the sale (C-2, p. 4) was 7.69% as opposed to the Respondent's finding of 6.40% for the same sale. The Complainant further noted that one of the first two sales was occupied by ATB (Alberta Treasury Branch), a very stable tenant, which would likely suggest lower risk and thus a lower cap rate than the subject property would reflect.

[15] The Complainant further added that the subject property is on a high traffic location, however access was limited to one direction which, while it would be more likely to affect the lease rate, was a negative feature in analysis of the market value of the property.

[16] In conclusion, the Complainant requested that the Board reduce the 2013 assessment for the subject property to \$3,874,500.

Position of the Respondent

[17] In defending the current assessment, the Respondent submitted a 100 page brief, Exhibit R-1 (R-1) in support of the argument that the 2013 assessment is fair and equitable.

[18] The Respondent explained that assessment is based on mass appraisal wherein typical lease rates, vacancy rates and operating costs are obtained for each property type on an annual basis. Those typical figures are then used to determine cap rates on market sales on a fee simple basis. The Respondent stated that this is the legislated method of assessment.

[19] The Respondent stated that third party reports, such as those used by the Complainant, cite cap rates calculated on a leased fee basis, as determined by actual leases in place at the time of the sale. These cap rates are not considered reliable by the Respondent, not only because the lease rates may not be reflective of market, but also because the sources are not always reliable or consistent.

[20] As case in point, the Respondent provided reports from the Network and Anderson Data Services on the same sale, unrelated to this assessment, which reported variances in income data sufficient to show cap rates on the same sale of 7.15% and 6.91% (R-1, pp. 17-18). The Respondent contended that cap rates were derived from differing leased fee incomes; whereas, had they been based on a fee simple income, there would have been no question as to the consistency of data.

[21] The Respondent presented three sale comparables in support the cap rate used in the assessment of the subject property (R-1, p. 12). They ranged between February 2010 and June 2012 and reflected cap rates from 5.70% to 7.80%, averaged 6.63% and had median of 6.40%. The Respondent stated these sales comparables fully supported the 6.50% cap rate used in the assessment.

[22] The Respondent charted the Complainant's sales comparables (R-2, p. 16), adding to the chart the fee simple cap rate at the time of sale as well as at the fee simple cap rate time adjusted to the valuation date. Where the Complainant's leased fee derived cap rates ranged from 6.54% to 7.23%, the Respondent's fee simple derived cap rates ranged from 5.44% to 7.51% and, when time adjusted from 5.39% to 7.42%.

[23] The Respondent provided a map (R-1, p. 19) that showed all west end commercial retail properties colour coded as to the cap rate used in their assessment. The map showed all commercial retail properties along 170 Street were assessed using a 6.50% cap rate while those along Stony Plain Road or located off 170 Street were assessed using a 7.00% cap rate.

[24] Lastly, the Respondent provided a list of the Complainant's equity cap rate comparables, identifying each property location. One was located in the neighbourhood of Strathcona while all others were in suburban locations.

[25] The Respondent provided two Board Orders which supported the Respondent's position that leased fee interest must be utilized (*CVG v The City of Edmonton*, [2013] ECARB 00860, at para 46) and (*Deloitte & Touche v The City of Calgary*, [2007] MGB 145/07, at page 27). The lack of strength of third party information was addressed in a third Board Order (*Altus Group v The City of Edmonton*, [2013] ECARB 001272, at para 28).

[26] In conclusion, the Respondent requested confirmation of the 2013 assessment of the subject property at \$4,173,000.

Decision

[27] It is the decision of the Board to reduce the 2013 assessment of the subject property from \$4,173,000 to \$3,874,500.

Reasons for the Decision

[28] The Board recognizes that it is not bound by previous decisions of the Board, nor does the Board consider such citations as evidence; nevertheless, this Board gives such decisions, as cited by the Respondent in regards to third party evidence and leased fee versus fee simple interest, the appropriate weight.

[29] The Board accepts that the Complainant utilized third party documentation to support the argument on the capitalization rate. The Board placed some weight on the Respondent's argument that third party documentation is difficult to evaluate as it is unclear what parameters were used in establishing the cap rates and in particular, that the third party documents are reflective of leased fee and not fee simple as is required in mass appraisal.

[30] The Board finds that the location of the subject property, north of 104th Avenue, although apparently lacking direct access to 170th Street, is assessed as an interior lot and with direct exposure to 170th Street.

[31] The Board finds the Respondent's three sales comparables, two located on Stony Plain Road and one on Mayfield Road, which have adjusted cap rates as determined by the Respondent of 5.70%, 7.80% and 6.40% and were assessed at cap rates of 6.50%, 7.00% and 7.00%,

respectively, as shown on the Respondent's map respectively, give support to the requested cap rate of 7.00%.

[32] The Board finds that the Respondent's map clearly indicates that all 170th Street and Mayfield Road north to 107th Avenue commercial retail properties were assessed with a cap rate of 6.50%, regardless of access; however, the Complainant's equity comparables, all located on main thoroughfares and none were located along 170th Street, as is the subject property, support the requested 7.00% cap rate.

[33] Although the Respondent's analysis of the Complainant's third party documentation notes that most of the Complainant's sales comparables were valued as shopping centres or retail plazas, the Board finds that the fee simple cap rate as determined by the Respondent by dividing the assessed or fee simple NOI by the time adjusted sales price, for the sales comparables relied upon by the Complainant (#5, #7, #8 and #9) support the requested cap rate of 7.00%.

[34] In summary, based on its consideration of the above findings, the Board concludes that that a cap rate of 7.00% to be fair and equitable. Applying this cap rate to the assessed NOI of \$271,247 results in a value of \$3,874,957, or a requested value of \$3,874,500.

Dissenting Opinion

[35] There was no dissenting opinion.

Heard commencing October 3, 2013.

Dated this 30th day of October, 2013, at the City of Edmonton, Alberta.


Larry Loya, Presiding Officer

Appearances:

Tom Janzen
for the Complainant

Gail Rookes
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.