

## **Edmonton Composite Assessment Review Board**

**Citation: CVG v The City of Edmonton, 2013 ECARB 01525**

**Assessment Roll Number:** 3105624  
**Municipal Address:** 10505 82 AVENUE NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**CVG**

Complainant

and

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

Respondent

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### **DECISION OF**

**Larry Loven, Presiding Officer**

**Brian Frost, Board Member**

**Martha Miller, Board Member**

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### **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, two-storey, multi-tenant retail building, with basement, located in the Strathcona neighborhood at 10505 – 82nd Avenue NW. The building, known as the *Old Post Office*, was constructed in 1938, and its effective year built is 1985. The net leasable area is 16,685 sq ft. The 2013 assessment, based on the income approach to value, is 4,263,500.

### **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 \$4,263,500 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package to the Board containing 28 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 sale 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 between 6.54% and 7.23%.

[11] The Complainant stated that on analysis of sale comparables #5, #7, #8, #10 and #11, the five with the most similar NOI per sq ft and sale comparables #10 and #11 the 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 ten 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 retail centres located on major thoroughfares, were assessed using

cap rates ranging from 6.50% to 7.50%. The equity comparable that reflected the 6.50% cap rate was very near the subject and was built in 2004.

[13] The Complainant reiterated that the subject property was built in 1938, and while it has been renovated to bring about its 1985 effective age, it still contains some of the antiquated mechanical systems and is far from energy efficient, thus it is a higher risk than a newer property. Further, cash flow is from leases to restaurants, where the risk is significantly higher than it is for other forms of retail tenancy.

[14] The Complainant concluded in stating that, based on the strength of the evidence exhibited in the sale comparables, supported by the range of cap rates evidenced in the equity comparables, a cap rate of 7.00% should more correctly be used in the assessment, resulting in a request for reduction of the 2013 assessment of the subject property from \$4,263,500 to \$3,959,000.

[15] In Rebuttal (C-2) the Complainant provided Network summaries for each of the Respondent's four sale comparables, noting that income data was not available on one sale and the purchaser owned the adjacent property suggesting a motivated buyer, one sale had below market leases yet the sale was subject to the leases in place, and one has escalating leases. There was no Network data on the fourth sale. The Complainant suggested all sales were suspect by their motivation.

[16] The Complainant requested that the Board reduce the 2013 assessment for the subject property to \$3,959,000.

### **Position of the Respondent**

[17] In defending the current assessment, the Respondent submitted a 102 page brief, Exhibit R-1 (R-1), in support of the argument that the 2013 assessment of the subject property 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 report on cap rates calculated on a leased fee basis, as determined by actual leases in place at the time of 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. 20-21). The Respondent contended that the cap rates were derived from differing leased fee incomes; whereas, had they based on a fee simple income, there would have been no question as to the consistency of data.

[21] The Respondent presented four sale comparables in support the cap rate used in the assessment of the subject property (R-1, p.14). They ranged from September 2009 to March 2011 and reflected cap rates from 5.12% to 6.14%, averaged 5.66% and had a median of 5.69%. The Respondent stated these sale comparables were all within two blocks of the subject property and that they fully supported the 6.50% cap rate used in the assessment.

[22] The Respondent charted the Complainant's sales comparables (R-2, p. 19), 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. 22) that showed all Whyte Avenue Central commercial retail properties colour coded as to cap rate used in their assessment. The map showed all commercial retail properties were assessed using a 6.50% cap rate.

[24] Lastly, the Respondent provided a list of the Complainant's equity cap rate comparables and identifying each property location. Two were located in the neighbourhood of Strathcona, while all the others were located 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] The Respondent requested confirmation of the 2013 assessment of \$4,263,500.

### **Decision**

[27] It is the decision of the Board to confirm the 2013 assessment of the subject property at \$4,263,500.

### **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] Regarding equity comparables, the Board finds all the Complainant's equity comparables to be located in suburban neighbourhoods, excepting the two on Whyte Avenue in the Strathcona neighborhood assessed at 7.00% and 6.5%. The Board finds the equity comparable assessed at a cap rate of 6.5% is located in the same central Whyte Avenue commercial retail area as the subject property and supports in equity the assessment of the subject property.

[30] The Board finds the Respondent's analysis the Complainant's sales comparables, especially those relied upon by the Complainant, #5, #7, #8, #10 and #12, appear to support the Complainant's requested cap rate of 7.00%. Although the Board also finds that most of the Respondent's sales comparables were assessed as Shopping Centres or Retail Plazas, the Board did not hear of a variation in the assessed cap rates regarding the type of retail property.

[31] Regarding location of the sales comparables, the Board finds that most of the Complainant's sales comparables were located in suburban locations, unlike that of the subject property located in central Whyte Avenue and all of the Respondent's sales comparables.

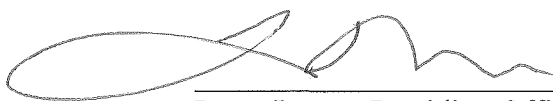
[32] Regarding age of the sales comparables, even though most of the Complainant's sales comparables were approximately the same age or up to 20 years newer than the effective age of the subject property, there appears to be little correlation of the age of either parties sales comparables to either the cap rates given by the Complainant or those as adjusted by the Respondent.

[33] The Board notes that even though the Complainant demonstrated third party information for the three of the Respondent's four sales comparables did not provide income information, the cap rates derived by the Respondent from typical or stabilized time adjusted sales cap rates were below the assessed cap rates of 6.5% of the Respondent's sales comparables, as well as that of the subject property, thus supporting the assessed cap rate of the subject property.

[34] In summary, based on its consideration of the above findings, the Board finds the subject property to be fairly and equitable assessed.

Heard commencing October 3, 2013.

Dated this 30<sup>th</sup> day of October, 2013, at the City of Edmonton, Alberta.



Larry Loven, 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.*