

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01527

Assessment Roll Number: 3016102

Municipal Address: 10572 101 Street 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
Brian Carbol, Board Member
Brian Frost, 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.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a one-storey retail/warehouse building located at 10572 101 Street NW in the Central McDougall neighbourhood of north-central Edmonton. The building was built in 1962 and has an effective year built of 1965. It is in fair condition, and per City records has a gross building area of 26,722.5 square feet, 4,560 square feet of which is mezzanine, which has apparently been removed. The building is situated on a lot 22,491 square feet in size.

[4] The subject property was valued on the income approach using a capitalization rate (cap rate) of 7.5% resulting in a 2013 assessment of \$1,412,500.

Issues

[5] Is the 7.5% cap rate applied to the subject property to calculate the 2013 assessment of the subject property too low?

[6] Is the typical lease rate of \$5.50 per square foot used in the assessment too high?

Legislation

[7] **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

[8] In support of his position that the 2013 assessment of the subject property is excessive, the Complainant presented an 18-page brief (Exhibit C-1) and a 5-page rebuttal (Exhibit C-2). The Complainant considered the rental rates used by the City in determining the NOI not supported by the realized NOIs for 2011 and 2012, and argued that based on an analysis of the cap rates from the nine sales he put forward, a cap rate of 8.50% would be more appropriate in determining the value of the subject property. The Complainant also argued that the lease rate applied to the subject property creates a net operating income (NOI) that is too high.

[9] In support of this position, the Complainant provided nine comparable sales of properties similar to the subject. The comparables sold between October, 2009 and June, 2011, ranged in size from 8,830 to 88,820 square feet, and sold for cap rates that ranged from 7.45% to 8.88%. (Exhibit C-1, page 2)

[10] Considering the age, condition, size, and location of the subject property, the Complainant considered sale nos. 3, 7 and 8 as being the best indicators for an appropriate cap rate. Consequently, the Complainant selected a cap rate of 8.5% and when applied to the Respondent's net operating income (NOI) of \$105,972, the assessment would be reduced to \$1,246,729. However, by applying the 8.5% cap rate to the 2012 NOI of \$90,108 realized by the subject, the assessment would be reduced to \$1,060,094 (Exhibit C-1, page 2)

[11] The Complainant submitted a rebuttal, taking exception to the cap rates calculated by the Respondent on page 12 of Exhibit R-1. Rather than using the time-adjusted sale price determined by the Respondent and dividing it into the City predicted NOI, he used the 2013 assessments of the four sales to divide into the City predicted NOI, resulting in a range of capitalization rates from 7.0% to 8.9%.

[12] In summation, the Complainant argued that if the NOI and the sale price at the time of the sale are used at some point after the sale, that the relationship is maintained. He also argued that his sales were better, using income at the time of the sale than an investor would know, rather than the hypothetical or "predicted NOI" used by the Respondent.

[13] In support of a lower NOI the Complainant submitted income statements for the subject property that showed that the net operating income for 2012 was \$90,108 and for 2011 was \$43,109, inclusive of "Interest, Dividends & Other". (Exhibit C-1 page 14)

[14] In summation, the Complainant argued that the subject property was located in an inferior inner city location with very little ability to achieve a lease rate of \$5.50 per sq ft as was used by the City to derive the NOI for this property. The Complainant provided photos and a map to illustrate the inferior condition and location of the subject property. (Exhibit C-1 pages 15-18)

[15] In summary the Complainant requested that a reduced income of \$90,108 be used to derive the assessment resulting in a reduced assessment from \$1,412,500 to \$1,100,000.

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 60-page assessment brief (Exhibit R-1) that included law and legislation as well as a 2-page sur-rebuttal (Exhibit C-2).

[17] The Respondent provided a "Capitalization Rate Comparables" based on four sales that occurred between October, 2010 and April, 2012. The sales resulted in stabilized cap rates that produced an average of 6.7% and a median of 6.53%, suggesting that the 7.5% cap rate applied to the subject property was not too low. In arriving at the predicted cap rate, the Respondent had predicted the NOI of the four properties by using typical rental rates and dividing the resulting NOIs by the time-adjusted sale prices of the four sales. (Exhibit R-1, page 12)

[18] The Respondent provided a review of the Complainant's nine sale comparables used in his cap rate study. One sale was a multiple parcel sale that was condominiumized after sale, a second was also a multiple parcel sale sold with two other accounts, and therefore no revised values were provided by the Respondent. The cap rates as provided by the Complainant were taken from the Network's sale reports that reflected the sales price and NOI at the time of sale. The sales occurred between October 26, 2009 and June 27, 2011. However, when the sale prices were time-adjusted, and the NOI was calculated using typical values as at the July 1, 2012 valuation date, the average fee simple cap rates were reduced in all but one case, ranging from 5.21 % to 9.71% (Exhibit R-1, page 17). The Respondent argued that this supports the 7.5% cap rate applied to the subject.

[19] The Respondent provided a CARB decision dated September 4th, 2013 wherein the Board opined that *"third party publications such as the Network are difficult to evaluate as it is unclear what parameters were used in establishing the cap rates. It is important that the methodology is consistent in the derivation and application of the factors used to calculate the cap rate. For example if the Network uses actual income figures, it should not be used in conjunction with typical data the City is mandated to use in the assessment process."* (Exhibit R-1, page 26 paragraph 45)

[20] The Respondent provided a second CARB decision dated September 10th, 2013 addressing the shortcomings of third party information. The Respondent paraphrased a point

made by the CARB that there were “*too many unknown variables*” when using information provided in third party reports. In the decision, the CARB wrote “*The Board recognizes that third-party sources are at the mercy of owners as to what information they choose to disclose, or even how the books are kept. As an example, where triple-net leases were implied, the operating expenses per square foot showed an unexpectedly wide variance. In absence of any evidence showing the sources of information input and the methodology used to arrive at the results produced, the Board put less weight on such evidence.*” (Exhibit R-1, page 33 paragraph 28)

[21] The Respondent submitted a sur-rebuttal document that corrected the stabilized NOI for sale nos. 1 and 4 of the comparables resulting in a reduced cap rate for these two properties. The resulting average cap rate was 6.19% and the median was 5.98%. (Exhibit R-2, page 2)

[22] In terms of the applied lease rate of \$5.50 per square foot, the Respondent argued that the subject property was correctly assessed as a warehouse with an NOI derived using typical lease rates under mass appraisal methodology.

[23] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at \$1,412,500

Decision

[24] The decision of the Board is to reduce the 2013 assessment of the subject property from \$1,412,500 to \$1,201,500.

Reasons for the Decision

[25] Regarding the cap rate, the Board placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

- a) The Complainant provided nine sales comparables, and relied upon the cap rates provided by a third party source (The Network) derived from the NOI and sale price at the time of the sale, as much as 2 years and 9 months prior to the July 1, 2012 valuation date.
- b) Based on the information submitted by the Complainant, gleaned from third party sources, it would appear that the cap rate applied to the subject was too low. However, when the Respondent time-adjusted the sale prices to the July 1, 2012 valuation date and revised the NOI based on typical rental rates (that the Respondent is mandated to use by regulation), the resulting average cap rate was 7.39% (less than the City applied cap rate of 7.5%) and the median was 8.05% (less than the Complainant's requested 8.5%).
- c) The Complainant challenged the City's predicted cap rates. The Complainant suggested instead that the 2013 assessed values of the comparables should be used rather than the time-adjusted sale price. By dividing the assessed value into the NOI, the resulting average cap rate of 7.91% and median cap rate of 7.87%, higher than the 7.5% cap rate applied to the subject property. However, when the NOIs of comparable nos. 1 and 4 are corrected, the resulting average and median are both at 7.25%, supporting the 7.5% cap rate applied to the subject.

- d) Although this Board is not bound by decisions rendered by other CARBs, this Board agrees with the positions taken by the other two CARBs in the September 2013 decisions. Specifically, this Board agrees with the statement made by the CARB in 2013 ECARB 00860 where the CARB wrote: *"It is important that the methodology is consistent in the derivation and application of the factors used to calculate the cap rate. For example if the Network uses actual income figures, it should not be used in conjunction with typical data the City is mandated to use in the assessment process."*

[26] Regarding the cap rate, the Board placed greater weight on the evidence and argument put forward by the Respondent for the following reasons:

- a) The cap rates derived by the Respondent in his "Capitalization Rate Comparables" study were based upon parameters as of the July 1, 2012 valuation date. The resulting average cap rate of 6.70% and median cap rate of 6.53% support the 7.5% cap rate applied by the City in calculating the 2013 assessment of the subject property is not too low.
- b) The Board was persuaded that the Respondent prepared the assessment of the subject property in accordance with s. 2(a) MRAT that states: *"An assessment of property based on market value must be prepared using mass appraisal"*.

[27] The Board noted that both parties used different types of properties within the retail group such as neighbourhood shopping centres, office buildings, retail/apartments, and retail plazas to support their respective positions. No argument was made by either party that this was incorrect.

[28] The Board was concerned that the Respondent submitted a sur-rebuttal to her own information that was initially used in her evidentiary package in support of the assessment. Although the Respondent rationalized that the sur-rebuttal was a correction to her initial evidence, the Board was concerned as to how this revised information may impact the Complainant. Although the Complainant raised the matter as a concern, he did not challenge its inclusion, and the hearing was concluded with the sur-rebuttal as part of the evidence. Although the resulting "predicted cap rates" in the sur-rebuttal were reduced, the Board did not have to rely upon the revised cap rates to arrive at its decision.

[29] The Board was persuaded that the cap rate of 7.5% used to derive the assessment of the subject property was fair and equitable.

[30] In terms of the typical lease rate of \$5.50 applied by the City to the subject, the Board agreed with the Complainant that the property, due to its inferior location and condition, was not capable of producing the typical income used by the City in deriving the assessment.

[31] The Board agreed with the Complainant that the subject was negatively impacted by its location and condition and therefore, gave more weight to the evidence submitted by the Complainant that showed the NOI for 2012 as being \$90,108. Capitalizing this income at 7.5% results in a reduced assessment of \$1,201,440, rounded to \$1,201,500.

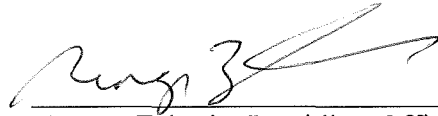
[32] The Board was persuaded that a reduced 2013 assessment of the subject property at \$1,201,500 was fair and equitable.

Dissenting Opinion

[33] There was no dissenting opinion.

Heard November 27, 2013

Dated this 9th ay of December, 2013, at the City of Edmonton, Alberta.

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

George Zaharia, Presiding Officer

Appearances:

Peter Smith
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.