Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2012 ECARB 1737

Assessment Roll Number: 9947940
Municipal Address: 8625 109 Street NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
Darryl Menzak, Board Member
Judy Shewchuk, Board Member

Preliminary Matters

[1] There were no preliminary issues raised. 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.

Background

[2] The subject is a 29,861 sq. ft. retail/office building, located at 8625 109 Street NW in the Garneau neighbourhood of the City of Edmonton. It is a two storey structure with a basement. It was built in 1957 and has an effective year built of 1982, a capitalization (cap) rate of 7%, and a 2012 assessment of $3,637,500.

Issue(s)

[3] Are the lease rates used by the assessor to prepare the assessment correct?

[4] Is the cap rate used by the assessor too low?

Legislation

[5] The Municipal Government Act reads:

***Municipal Government Act*, RSA 2000, c M-26**

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

[6] The Complainant submitted an evidence package of 19 pages marked C-1.

[7] The Complainant contends that the net operating income (NOI) calculated by the Respondent is too high based on a disputed rental rate for part of the basement area. The Complainant submitted a *pro forma* based on the rental rates used by the Respondent for the main floor, indicating $16.00 per square foot, and for the second floor indicating $8.00 per square foot. The rate used in the *pro forma* for the basement is the actual rate of $2.50 per square foot for the leased area versus $8.00 per square foot which was used by the Respondent (C-1, page 2). There is a storage area which is also in the calculation at $1.50 per square foot and is not in dispute. The lease for the basement area has recently (June 2012) been renewed at $2.50 per square foot (triple net, where the tenant pays for utilities, property taxes, insurance and maintenance).

[8] The Complainant further contends that the cap rate used by the Respondent was too low at 7.00% and requests that the rate be raised to 8.00% considering the age, condition, and location of the subject on 109 Street in the Garneau Neighborhood. The Complainant notes that the blanket cap rate for Whyte Avenue and 109 Street are both at 7.00% and submits that there is a distinction to be made in that the assessment factors are not the same for those two thoroughfares.

[9] The Complainant presented 11 comparables in support of the suggested cap rate from various market areas in the City. They ranged in year built from 1964 to 2008. Building size ranged from 8,830 to 88,820 square feet, and sale dates ranged from October 2009 to June 2011. The cap rates presented ranged from 7.08% to 8.88% and were derived from the Network (third-party) documents.

[10] The Complainant relied on the cap rates of three comparables. These rates were 8.24%, 7.43% and 7.71%, and the Complainant submitted they were the best representations of market cap rates. The Complainant stated that the building was older than all of the comparables and should receive even a higher cap rate for the loss in return of capital cost and a return on investment over a shorter period of time.

[11] The Complainant applied a cap rate of 8.00% in the *pro forma* versus 7.00% which was used by the Respondent in the assessment.

Position of the Respondent

[12] The Respondent submitted an evidence package (including a law brief) of 80 pages marked exhibit R-1.

[13] The Respondent took the position that the sales comparables used by the Complainant were not acceptable for various reasons, the primary one being location. None of the comparables are in the Garneau Neighborhood, notwithstanding that comparable number two from the Respondent's sales comparables is located within approximately two blocks of the subject and shows a cap rate of 6.69%. The Respondent further submitted that the Complainant used a vacancy rate and a rental rate in respect of the basement that are not typical. The Respondent contends that mixing actual or estimated factors with typical factors is not an acceptable approach in assessment matters.

[14] The Respondent provided the Board the Request For Information form which had been sent to the Complainant, completed and returned to the Respondent. The form discloses actual rent roll and indicates a net operating income (NOI) of $265,859 for the subject property (R-1, pages 9-10) compared to an NOI of $221,654 from the Complainant's *pro forma*. The Respondent submits that such results do not support the contention of higher risk which would derive a higher cap rate.

[15] The Respondent took the position that similar neighbouring properties are assessed using the same cap rate. The Respondent presented a table of seven properties (R-1 page 11) indicating that a cap rate of 7.00% was used to prepare the assessments. The age of the properties ranged from 1935 to 1983 and sizes ranged from 1,979 to 14,604 square feet. Three of the properties are on the same street as the subject.

[16] The Respondent provided a table of rent rates of properties with basements (R-1, page 20). The Respondent stated that all properties are treated equally with respect to the rent rates used in the preparation of assessments. When determining rental rates for basement spaces, the Respondent's practice is to assign a rental rate equal to half of the main floor rate. Thus, the Respondent assessed the basement at $8 per square foot.

[17] The Respondent provided three sales comparables of older properties indicating a cap rate average of 7.21%. Comparable number two is located in close proximity to the subject in the Garneau Neighborhood and has a cap rate of 6.69%. The cap rates of the group were determined using sales prices, estimated typical rent and other factors, and support the contention that 8.00% is not justified.

[18] In summation the Respondent submitted that the three sales comparables' age does not affect the cap rate as much as the Complainant contends, and that the difference in age, condition and location are captured in rental rates.

<u>Decision</u>

[19] The assessment for the subject property is confirmed at $3,637,500.

<u>Reasons for the Decision</u>

[20] The establishment by the Respondent of a blanket cap rate for the Garneau Neighborhood of 7.00% was done using the direct capitalization approach, where capitalization rates are derived from comparable sales of income producing properties. In this process the net operating income of each comparable property is divided by the sale price.

[21] The eleven sales comparables presented by the Complainant were scattered about the City, there being no sale in the subject neighborhood, notwithstanding the Respondent's second sales comparable located nearby in the Garneau Neighborhood. The Complainant's suggested emphasis upon comparables 3, 6 and 10 was based upon age, condition and location. The Board finds that for all but one, none are the same age as the subject. That sale and number 10 are far removed locationally from the subject, reflecting the risk/return factors compared to the Garneau location.

[22] The questionable reliability of the information used by the Complainant from the Network reports is illustrated in the chart of the Complainant's comparables prepared by the Respondent. This chart, which corrects the Net Operating Income and the resulting cap rates, demonstrates there is a decline in the average that had been developed by the Complainant. As such, the Complainant's information does not support the 8% level requested.

[23] Of the three sales comparables of the Respondent, one is in close proximity to the subject and is compelling particularly because it is left out of the Complainant's comparables.

[24] The Board finds that the equity comparables in the Cap Rate Comparables chart on page 11 of Exhibit R-2 to be compelling. These comparables support the correctness of the 7% cap rate developed by the Respondent for the Garneau Neighborhood, regardless of the fact that properties in this neighborhood have a variety of uses and ages. As such, the Board finds both the current cap rate and assessment to be fair and equitable.

Dissenting Opinion

[25] There was no dissenting opinion.

Heard commencing November 6, 2012.

Dated this 5 day of December, 2012, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Tom Janzen
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.