Edmonton Composite Assessment Review Board

Citation: John C. Manning v The City of Edmonton, 2012 ECARB 2248

Assessment Roll Number:	7173602
Municipal Address:	10918 88 Avenue NW
Assessment Year:	2012
Assessment Type:	Annual New

Between:

John C. Manning

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 an 8,479 sq. ft retail/office building, located at 10918 88 Avenue NW in the Garneau neighbourhood of the City of Edmonton. The gross area is 8,479 square feet while the assessable area based on leasable area according to the Respondent is 7,844 square feet. It was built in 1935 with an effective year built of 1941, a capitalization (cap) rate of 7%, and a 2012 assessment of $1,146,500.

Issue(s)

[3] Is the cap rate used to prepare the assessment correct?

[4] What is the correct leasable area for assessment purposes?

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 17 pages marked Exhibit C-1.

[7] The Complainant took the position that the leasable area used by the Respondent in its assessment is incorrect when compared to the rent roll for the property. In their preparation of the assessment, the Respondent used 4,028 square feet for the main floor and 3,816 square feet for the second floor, for a total of 7,844 square feet. The rent roll, entered in the Complainant's evidence, indicates 3,360 square feet on the main floor and 3,350 square feet on the second floor, for a total of 6,710 square feet. The difference is 1,134 square feet.

[8] The Complainant prepared a *pro forma* based on the actual rent roll area, and typical lease rates, vacancy rate, structural allowance and vacancy shortfall, to come up with a net operating income (NOI) of $68,087. The Complainant applied a cap rate of 8.50% to arrive at a requested value of $801,000

[9] The Complainant submitted that the cap rate of 7.00% used by the Respondent in the preparation of assessments in the 5200 Garneau Neighborhood is too low with respect to the subject. The 7.00% cap rate for major traffic routes in this neighborhood may be justified for some properties; however, for properties like the subject, which are not on major routes such as 109 Street, the cap rate ought to reflect the risk and rate of return differences for being located in a less trafficked area. For these reasons the Complainant submitted a cap rate of 8.50% would be more suitable.

[10] In support of the suggested cap rate, the Complainant presented 11 sales comparables 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.

[11] 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 subject building was older than all of the comparables and should receive an even higher cap rate for the loss in return of capital cost and a return on investment over a shorter period of time.

[12] The Complainant further submitted that whereas newer buildings on busier streets were assessed using a cap rate of 7.00%, it appeared unreasonable to apply that same rate to very old structures.

[13] In response to questions by the Respondent the Complainant stated that there had been no inspection of the property by the Complainant. He also stated that older buildings are less efficient than newer buildings, which may account for the discrepancy in leasable areas used by the parties in their calculations.

Position of the Respondent

[14] The Respondent submitted an evidence package (including a law brief) of 82 pages marked Exhibit R-1.

[15] The Respondent took the position that the assessment prepared for income properties is based on a percentage of the gross area as measured externally by the Respondent. The gross area for the main floor is 4,028 square feet and 3,815 square feet for a total of 7,844 square feet.

[16] The Respondent emphasized they use 95% of the gross area for the main floor and 90% for uppers and basements. This methodology is used for two reasons: it is typical of the market to account for space loss including walls and common areas, and it avoids properties reporting much lower rental spaces than the actual. In the Respondent's view, the 95% used for the main floor, and the 90% used for uppers and basement, accurately represent the gross leasable area of the property.

[17] The Respondent provided an income statement for the property based on the 7,844 square feet indicating that the NOI as of December 2010 was $78,209.75 to which it applied a cap rate of 7.00%.

[18] The Respondent provided three sales comparables (R-1, page 16) of older properties indicating a cap rate average of 7.21%. The sales were located on more heavily trafficked streets, being 118 Avenue at 94th Street, 88 Avenue at 109 Street (next door to the subject) and 97 Street at 105 Avenue. The cap rates were determined using the sales prices and estimated typical rents and support the contention that 8.50% is not justified for locations of lesser significance than 109 Street. The Respondent indicated that the cap rate from the comparable on 88 Avenue was 6.69%, based on an assessed NOI and the sale price of the property. This sales comparable was also considered a valid sale.

[19] The Respondent took the position that similar properties in the subject neighborhood are assessed using the same cap rate. The neighborhood in question is described as Whyte Avenue/109 Street/Garneau. The Respondent presented a table of seven properties in the subject neighborhood indicating that a cap rate of 7.00% was used to prepare the assessments in that neighborhood. The age of the properties ranged from 1934 to 1983 and sizes ranged from 2,804 square feet to 29,862 square feet. Three of the properties are on the same street as the subject and the others are on 109 Street – within two blocks of the subject. The Respondent contends that the difference in rental rates achieved between streets such as 109 Street and 88 Avenue reflect the differences warranted by location within the neighborhood, but do not justify increasing the cap rate for the neighborhood, which is the mark of risk and return on investment and is reflected in the market value.

[20] In response to questions by the Complainant, the Respondent stated that the lease rates used to calculate the NOI in the cap rate study (R-1, p.16) were not available. The Respondent also stated that location is a factor when determining a cap rate.

Decision

[21] The Assessment for the subject property, based upon the external measurement adjusted to 95% for the main floor and 90% for the second floor, is confirmed at $1,146,500.

Reasons for the Decision

[22] The Board finds that because of the lack of any drawings or details of interior measurements, the Complainant has failed to establish that the net rentable area is accurately represented in the rent roll for the subject. Thus, the Board relied on the Respondent's external measurement as adjusted by the 10% and 15% allowances for the main and upper floors respectively.

[23] The establishment by the Respondent of a blanket cap rate for the 5200 Garneau Neighborhood of 7% 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 is divided by the sale price.

[24] The 11 sales comparables presented by the Complainant were scattered about the City and none were from the subject neighborhood. By contrast, a sale of a property adjacent to the subject appeared in the Respondent's comparables, and had a cap rate of 6.69%. The Complainant suggested that emphasis be placed upon its comparables 3, 6 and 10 as carrying the most weight of the eleven being put forward based on age, condition and location. The Board finds that none of the Complainant's comparables were the same age as the subject. The closest in age is comparable number 10 (124 Street at 114 Avenue), which sold at a cap rate of 7.71%. However, 124 Street is not a location where a blanket cap rate of 7% is achieved. It is sufficiently removed from the subject neighborhood, or any other similar neighborhood, that it is not strongly supportive of the contention that age is a factor in this assessment. The condition may also be superior to the subject, but detail on condition is lacking. The location factor becomes the most compelling consideration with the higher cap rate of the 124 Street property reflecting the risk/return factors compared to the Garneau location.

[25] 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 NOI 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 8.50% level requested.

[26] Two of the three sales comparables of the Respondent have location issues, however one is adjacent to the subject and is compelling support for the assessment.

[27] The Board also finds that the equity comparables provided by the Respondent are compelling, and support the Respondent's 7.00% cap rate for the Garneau neighborhood.

[28] For these reasons the Board finds that the cap rate and the 2012 assessment of the subject property are both fair and equitable.

Dissenting Opinion

[29] 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.