Edmonton Composite Assessment Review Board

Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of Edmonton, 2013 ECARB 00639

Assessment Roll Number: 9945146
Municipal Address: 13520 Victoria Trail NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
John Braim, Board Member
Judy Shewchuk, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members each indicated they had no bias in this matter.

Preliminary Matters

[2] There were no preliminary matters for the Board to deal with.

Background

[3] The subject parcel is a rectangular shaped lot facing Victoria Trail at 13520 Victoria Trail NW containing 0.914 acres with 13,685 square feet of retail development occupying 35% of the site. The development contains 2 structures consisting of the main retail building with 4 retail units and 2 restaurants, and a separate building containing a bank. The property is part of the Belmont Town Center, abuts other parts of that Center and is across a parking area from a supermarket which is also part of the Belmont Town Center. The effective year built of the subject is 1998.

Issue(s)

[4] Is the rental rate for the restaurant tenants in the assessment correct?

[5] Is the capitalization rate used in the assessment correct?

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 presented a written submission (Exhibit C-1, 48 pages), oral argument and a rebuttal submission (Exhibit C-2, 21 pages) for the Board's review and consideration. The rebuttal submission will be dealt with below. In respect to the first issue, the Complainant contends that the income approach to valuation is the correct approach, however, the rental rate of $26.00 per square foot for the restaurant portion is too high. From a review of the market rents, the Complainant submits the proper rental rate ought to be $23.00 per square foot for the 2,214 square feet of restaurant space allocated to the two restaurants in the Restaurant-Good category of the subject. This would reduce the Potential Gross Income from $337,486 to $330,844. In support of this contention, the Complainant put forward the actual restaurant leases that averaged $23.00 per square foot. The Complainant provided the tenant names, size, start date and term. Although the leases are not in evidence, the rent roll is in evidence in C-1at page 13.

[8] In respect to the second issue, being the capitalization rate, the Complainant contended that the categorization of the subject as a Neighborhood Shopping Center as defined by the Respondent in its 2013 Shopping Center Valuation Guide is in error. That it is not a Shopping Center but is a Retail Plaza and that therefore the capitalization rate of 6.5% assigned to the Shopping Center inventory in the City of Edmonton for the purposes of this assessment year is in error. It is contended by the Complainant that the 4 retail properties contained in the evidence in Exhibit C-1 are made up of 2 retail properties that are Shopping Centers within the Valuation Guide definitions and have been assessed with the capitalization rate of 6.5% and 2 properties that do not meet any definition in the Valuation Guide and thus are not Shopping Centers and thus have capitalization rates of 7.5%. The requested rate by the Complainant is 7.0% which, it is

contended, is in line with the current assessments of similarly aged properties closer to retail plazas or strip malls as distinct from Shopping Centers. The most significant factor missing from a non-Shopping Center property is the anchor tenant such as a supermarket. The Complainant submits that a bank does not meet the standard of an anchor tenant.

[9] The Complainant also presented 5 sales comparables, one of which is post-facto, ranging in size from 10,853 square feet to 59,539 square feet with an average of 32,577 square feet. The year of construction ranges from 1970 to 1990 with an average of 1982 and the sale dates range from June 2011 to September 2012. The capitalization rates range from 7.03% to 7.34%. The information respecting these sales is derived from The Network reports appearing in Exhibit C-1 which, the Complainant submits, supports its request for the assessment to be lowered to $4,477,877. This value is based upon the adjusted request for a Net Operating Income of $313,431 as a result of withdrawing the issue of the rental rate for the bank.

Position of the Respondent

[10] The Respondent's position with respect to the restaurant rental rate argument made by the Complainant is that the evidence submitted by the Complainant in support of its contention is the actual rental rates for the 2 restaurant tenants. It would be contrary to the purpose of mass appraisal to mix actual and typical factors as typical market conditions must be reflected in the assessment. The Respondent's written submission (Exhibit R-1, 147 pages) provides 3 tables at page 47 which are a compilation of the returns of the Request For Information process employed by the Respondent in establishing typical rental rate for restaurants in the category assigned to the subject. The results were further presented in a scatter graph to illustrate a differential between rental rates for properties newer than 2003 and older than 2002 that appeared from the analysis. The results for the total category ranged between $13 per square foot and $42 per square foot with a median rate of $26.58 per square foot.

[11] The Respondent also submitted a Shopping Center Capitalization Rate Analysis containing 14 time adjusted sales showing a median rate of 6.32% and an average rate of 6.34%. The Respondent contends that the 14 comparables are all Shopping Centers as defined by the 2013 Shopping Center Valuation Guide. It is contended by the Respondent that the property is a Neighborhood Center within the definition of the Guide and that the bank tenant is the anchor tenant. The capitalization rate of 6.50% is applied globally by the Respondent to all Shopping Centers, so defined, in Edmonton and is applicable to the subject on the basis of fairness and equity. The Respondent further contends that through income analysis of their comparables, the rate is correct.

[12] In further support of the 6.50% capitalization rate, the Respondent submitted a Fairness and Equity Chart containing 26 equity comparables that the Respondent contends fall within the range of Shopping Centers described in the Guide and are assessed using the 6.50% rate (R-1, p.22). Other industry reports from commercial real estate agencies CBRE and Colliers International Canada show support for this category of retail property at the 6.50% capitalization rate. The Respondent requests that the assessment of $4,924,000 be confirmed on the basis that the Complainant failed to satisfy the onus with respect to correctness of the assessment and that the evidence of the Respondent be considered conclusive of the correctness of the assessment should the Board not accept the question of onus.

[13] The Complainant submitted a written Rebuttal (C-2, 21 pages) containing comments respecting the validity of the 14 sales comparables submitted by the Respondent in support of the capitalization rate used in the assessment. It also contained 2 charts dividing the 14 properties

into 2 categories being pre 2000 and 2000 and later. It was contended that the pre 2000 sales showed an average capitalization rate of 6.66% and the more recent group an average rate of 5.71%. When the invalid sales are deleted from the Chart, the remaining valid sales show an average rate of 6.98% which, the Complainant submits, supports the request for a change from 6.50% to 7.00%.

Decision

[14] The assessment is confirmed at $4,924,000.

Reasons for the Decision

[15] In respect to the first issue, being the rental rate for the restaurant components, the evidence in support of a reduction of the rate is the contract rate for the 2 tenants which the Board finds to be flawed methodology. It has been the subject of many decisions of the MGB and the CARBs that the correct methodology in determination of typical NOI is the use of typical factors and that mixing of actual and typical is contrary to the correct process. Although this Board is not bound by those decisions, there is a consistency element that is required and is supported by the jurisprudence. The inherent risk in using contract rents is that they may vary from typical to the extent that the assessment may not capture the fee simple interest as mandated by the legislation.

[16] In respect to the second issue, being the capitalization rate, the Board finds that the Respondent has applied a blanket rate of 6.50% to those properties that fall within the definition of Shopping Center contained within the 2013 Shopping Center Valuation Guide. The methodology used by the Respondent in the mass appraisal of the Shopping Center inventory is found by the Board to be correct and therefore the question remains as to whether the subject meets the definition in the guide. The description of a Neighborhood Center suggests that a typical property would contain retail facilities including convenience and personal service outlets and pad sites and typically an anchor tenant would be a supermarket. In this case the bank tenant, although a junior anchor tenant, does constitute an anchor tenant and brings the subject into the definition. The 14 sales comparables and the 26 equity comparables carry substantial weight with the Board in support of the Respondent's assessment and the Board notes the evidence of the Complainant does not satisfy the onus borne by the Complainant in this matter.

[17] It is noted by the Board that the Complainant withdrew the issue of the rental rate for the bank tenant.

Heard on June 18, 2013.

Dated this 16th day of July, 2013, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Stephen Cook
Greg Jobagy
for the Complainant

Tracy Ryan
Tanya Smith
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.