Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00828

Assessment Roll Number:	4132064
Municipal Address:	10165 109 STREET 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
Larry Loven, Presiding Officer
Howard Worrell, Board Member
Jasbeer Singh, Board Member

Procedural Matters

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

[2] Evidence, argument and submissions were brought forward file from roll #4132072 where applicable.

Preliminary Matters

[3] None noted.

Background

[4] The subject property is a retail condominium unit located on the main floor of a mixed use high-rise building known as *Capital Centre* located in the downtown neighbourhood of the City of Edmonton. Built in 1981, this building was converted to a condominium development in 1990. The subject property is comprised of unit #516, measuring 2,541 square feet in total. The 2013 assessment for the subject property is $670,500.

Issue(s)

[5] While the primary issue concerning the subject property is its 2013 assessment value of $670,500, for sake of clarity, this may be stated as;

a. Is the 2013 assessment of $670,500 correct?
b. Is the Direct Comparison approach utilized by the City for the 2013 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 filed this complaint on the basis that the subject property assessment of $670,500 was inequitable and in excess of market value. In support of this position, the Complainant presented a 68 page assessment brief (C-1) that questioned the Respondent's valuation of the subject property.

[8] The Complainant advised the CARB that although the subject property had been stratified as a retail condominium, the subject property is a part of a larger commercial investment and should be treated in the same manner that most investment properties are assessed; that is, on its income earning potential. Also, since the subject property is not owner occupied, the Complainant argued that for all practical purposes, the subject property was an investment property and ought to be assessed on the Income Approach (C-1, p.4).

[9] The Complainant provided a table of the six retail spaces on the main floor of the development; and, showed that the rental income averaged $15.53 per square, reduced to $13.21 per square foot, when the two spaces leased to *Norquest College* for a non-retail use, were excluded (C-1, p.14).

[10] The Complainant argued that the subject property is a class 'C' retail property and provided three retail and three office sales in respect of other class 'B' and class 'C' properties, located in different parts of the City of Edmonton, showing average capitalization rates

averaging to 8.25 and 8.5% respectively. The Complainant provided further argument that the leasability, low rental rates and condominium nature of the development supported a higher market capitalization rate of 8.5% for the subject property (C-1, pp.15-16). The Complainant stressed that the capitalization rate of 6.5% used by the Respondent was low.

[11] Using the Income Approach, based on the rental rate of $13.21 per square foot (C-1, p.14), rounded to $13.20, and a capitalization rate of 8.5%, the Complainant derived a value of the subject property of $345,500 or $135.97 per square foot (C-1, p.17).

[12] Using the same per square foot rental rate of $13.21 and the 2013 average assessment of the three retail condominiums in *Capital Centre* of $261.19 per square foot, the Complainant approximated the resulting capitalization rate to be 5.06%; and stated that this was significantly lower than for any of the sales comparables provided, and does not support the actual market value of the subject property (C-1, p.18).

[13] The Complainant provided a table containing four retail condominium sales in downtown Edmonton that showed an average selling price of $200.47 per square foot. The Complainant argued that the subject property had been assessed excessively and unfairly at $261.31 per square foot. The Complainant provided additional argument that due to inferior location, larger size and long narrow shape of the subject property, especially when compared to the *Cambridge Lofts* properties, value of the subject property should be around $170 per square foot or $431,500 (C-1, pp.19-20).

[14] The Complainant stated that two of the retail condominium sales included parking spaces, whereas the subject property had none. Based on a market value of $30,000 per parking stall, the adjusted average selling price was shown to be $187.45 per square foot and was stated to more strongly support a property value of $170 per square foot, or $431,500 (C-1, p. 21).

[15] Based on the Income Approach, the Complainant put forward argument that the relative tax-to-rent ratios must be similar for comparable properties. In support of this argument, the Complainant provided a chart showing the tax as a percentage of the net rent for five of the six occupied main floor condominium units in the same building.

[16] The average of the tax-to-rent ratio was given to be 33.1% and if the two spaces occupied by *Norquest College* were excluded, this ratio increased to 38.1%. In comparison, the condominium unit occupied by a restaurant/pub, *The Pint*, on the main floor of the development gave a tax -to-rent ratio of 18.9%. This, according to the Complainant, based on an assessment at fair value for the unit occupied by *The Pint*, shows the remaining retail units are over assessed.

[17] The Complainant provided four comparable retail lease properties, showing an average rent-to-tax ratio of 14.7%. The Complainant argued that this further showed inequities in 2013 assessment (C-1, pp. 22-24) and calculated an assessment for the subject property of $261,000, based on $102.77 per square foot.

[18] The Complainant concluded the presentation with a summary (C-1, p.26) that showed:

a. Assessment value of $345,500 based on Income Approach using a net rental income of $13.21 per square foot and a capitalization rate of 8.5%.
b. Assessment value of $431,500 based on the Direct Comparison approach using $170 per square foot determined from a set of four comparables.
c. Assessment value of $261,000 based on Tax-to-Rent approach.

[19] The Complainant requested the Board to reduce the 2013 assessment from $670,500 to $345,500, based on the Income Approach.

Position of the Respondent

[20] In defence of the 2013 assessment, the Respondent provided an Assessment Brief (R-1) of 77 pages that contained location maps, traffic volume analysis, a third party capitalization rate report and two recent Composite Assessment Review Board (CARB) decisions in respect of the subject property's assessment.

[21] The Respondent advised the Board that the Direct Sales approach was the best method for valuing Retail/Office Condominiums. As a large number of the more than 1,600 condo properties were owner occupied and little information was available to confirm the current market lease rates, it would not be appropriate nor equitable to rely on the Income Approach to value.

[22] The Respondent provided an adjusted condominium sales chart, using the same four comparables as the Complainant (C-1, p. 19) but adjusting for such factors as size, parking, location, second floor and unfinished space. The average of the value per square foot of the Complainant's sales comparables, as adjusted by the Respondent was shown to be $239.26 per square foot (R-1, p.9).

[23] A direct sales comparison chart was provided by the Respondent containing five properties in downtown Edmonton. These properties ranged in size from 470 square feet to 3,068 square feet and were sold between January 31, 2008 and October 26, 2011. After adjustments for size and unfinished space, the average per square foot value of sales comparables was given to be $331.26 per square foot. As sales comparables #4 and #5 were much smaller in size, the Respondent showed the average of sales comparables #1 to #3 at $277.90 per square foot (R-1, p.23).

[24] In response to the Income Approach evidence submitted by the Complainant, the Respondent provided a Cap Rate Study (R-1, p.13) presenting the sales of five properties having a Predicted City Cap Rate ranging from 4.09% to 9.08% with an average capitalization rate of 6.59%. A third party Capitalization Rate Report for retail (Q3 2012), prepared by Colliers International, was provided to further support a capitalization rate for retail (community centres) in the Edmonton market of 6.25% to 6.75% (R-1, p.22).

[25] A Typical/Market Rents chart containing five CRU (Commercial Retail Unit) spaces in the downtown Edmonton market was provided to the CARB by the Respondent giving rents ranging from $15.00 to $20.00 per square foot with an average net rent of $18.00 per square foot. In response to the Income Approach argument of the Complainant, the Respondent derived an income value for the subject property of $636,540, based on a capitalization rate of 6.5% and a net rental rate of $18.00 per square foot (R-1, p. 29).

[26] The Respondent provided a chart containing nine downtown equity rental comparables. The average rental rate was given to be $17.17 per square foot. Using this average rental rate and capitalization rate of 6.5%, the Respondent derived a value of $600,145 for the subject property, based on the Income Approach (R-1, p.30).

[27] In summary the Respondent stated that the Direct Comparison of comparables #1 to #3 (R-1, p. 23), supports the 2013 assessment of the subject at $263.87 per square foot or $670,500. The Respondent requested the CARB confirm the 2013 assessment of $670,500.

Decision

[28] The decision of the CARB is to reduce the 2013 assessment from $670,500 to $608,000.

Roll Number	Original Assessment	New Assessment
04132064	$670,500	$608,000

REASONS FOR THE DECISION

[29] The CARB appreciates the innovative approach developed by the Complainant to support the argument that the subject property was over assessed, by comparing the tax per square foot to the actual net rent per square foot; firstly, of the six main floor *Capital Centre* condominium units, and secondly of the three main floor retail units only. Using this approach, together with the Complainant's assumption that the tax-to-rent percentage must be similar for comparable properties as an indication of market value, the Complainant derived a value of $102.77 per square foot or $261,000 for the subject property. Given that the tax per square foot varies from $4.86 per square foot to $4.98 per square foot for the main floor condominium units of the *Capital Centre* and the actual net rents for the main floor condominium units vary from $11.00 per square foot to $25.00 per square foot, the CARB finds the relative variability of the per square foot net rent rates versus the relative consistency of the tax value per square foot gives little for the CARB to rely upon as an indicator of market value.

[30] The Complainant provided the CARB with an average net rent of $13.21 per square foot for the five main floor occupied condominium units in the building. Applying an average capitalization rate of 8.5%, determined from three suburban retail investment properties, the Complainant arrived at a requested 2013 assessment of $345,500 or $135.98 per square foot. However, the Respondent provided five suburban retail buildings with capitalization rates ranging from 4.09% to 9.08%, averaging to 6.59%. All of the Respondent's capitalization rate study comparables were free standing, contained land greater than site coverage, had an assessment per square foot ranging from $61.06 to $105.23 per square foot, and were built between 1936 and 1980. The CARB was informed by the Respondent that the subject property's 2013 assessment was not based on these capitalization rates and these comparables were provided only in response to the Complainant's evidence regarding capitalization rates. The Board finds that it can place little reliance on the capitalization rates put forward by either party as the comparables provided by both parties appear to be lacking in similarity to the characteristics to the subject property including such as lease terms as net rental rates. Moreover, without a reliable indication of the capitalization rate it is difficult for the CARB to determine the value of the subject property by the Income Approach.

[31] The Direct (Sales) Comparison approach is the methodology used by the Respondent to determine market value for the subject property. The CARB heard arguments and evidence from

the Complainant that due to site specific factors in the *Capital Centre* development, including but not limited to lack of customer parking, reduced street visibility and access to 109th Street due to the configuration of *Capital Centre's* frontage, the atypical shape (deep compared to typical retail spatial ratios) and condominium nature of the development, all represent negative effects on the market value of the subject property. The Complainant provided four sales of similar properties ranging in value from $157.25 to $227.62 per square foot, all retail condominium units located in developments with high-rise residential units above. Of the four, two were from the *Cambridge Lofts* development located at 10030 Jasper Avenue. The Respondent provided five sales, two of which were the same sales comparables as the Complainant's from *Cambridge Lofts*, two were of much smaller about 25% to 30% the size of the subject property and one about 50% to 60% smaller. The backup sheets to the sale of the three smaller properties, not located in the *Cambridge Lofts*, stated that at least one was owner occupied raising uncertainty regarding the three smaller sales comparables. The Respondent using the same four comparables as the Complainant, provided adjustments for such factors as size, parking, second floor location and improvements (developed space). The average adjusted price per square foot of the four comparables as determined by the Respondent was $239.26 versus the adjusted price (for parking stall only) of $187.45 as determined by the Complainant.

[32] Given the use of two of same sales comparables by both parties, $55.00 per square foot as an adjustment for interior improvements, $30,000 per parking stall and other adjustments for location and second floor, together with a indication that at least one of the three sales comparables given by the Respondent, not located in the *Cambridge Lofts*, was owner occupied, the CARB finds the indication of market value of $239.26 per square foot, as determined by the Respondent's adjustments to the Complainant's sales comparables to be reflective of the value of the subject property.

[33] In summary, based on its consideration of the above reasons the Board finds the market value of the subject property, in accordance with Direct (Sales) Comparison approach, to be $608,000, based on a rate of $239.26 per square foot.

Dissenting Opinion

[34] There was no dissenting opinion.

Heard commencing July 2, 2013.
Dated this 25th day of July, 2013, at the City of Edmonton, Alberta.

Larry Loven, Presiding Officer

Appearances:

Stephen Cook
Greg Jobagy
Kevin Petterson

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.