Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01006

Assessment Roll Number: 9947890
Municipal Address: 14010 127 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
Darryl Menzak, Board Member
Lillian Lundgren, 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.

Background

[2] The subject property, known as Pembina Plaza, is located at 14010 127 Street NW. The building has 7,095square feet (sf) of net leasable area that was constructed in 1998. It comprises two Commercial Retail Unit (CRU) spaces and three restaurant spaces. The lot size is 55,895sf with 13% site coverage. The subject property borders a large vacant field to the west and a smaller vacant field to the north. It is assessed at $2,316,500.

Issue(s)

1. Is the subject property assessment *correct?
   (a) Is the 6.5% capitalization rate used to prepare the assessment correct?
2. Is the subject property equitably assessed with similar properties?
   (a) Is the 6.5% capitalization rate equitable?
3. Is the rental rate and area for the restaurant space(s) correct?

*The Board is using the term in relation to the valuation standard of market value.

Legislation

[3] 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

[4] The Complainant filed this complaint on the basis that the subject property assessment is incorrect and inequitable.

[5] The Complainant argued that the 6.5% capitalization rate used to prepare the assessment is incorrect. In support of this position, the Complainant presented ten sales of retail centres that transacted between March 2011 and October 2012 (Exhibit C-1 page 1).The transactions were taken from documents prepared by The Network. The properties range in building size from 6,438sf to 139,962sf and were constructed between 1957 and 1995. The capitalization rates for the sale comparables range from 6.63% to 7.34%.

[6] The Complainant stated that sale comparables #2, #8, #9 and #10 are more similar in magnitude to the subject property and therefore more comparable.

- Sale #2 located at 6655 178 Street sold in June, 2011 with a capitalization rate of 7.03%. It has a building area of 12,289sf that was constructed in 1986. The Complainant stated that the net income per square foot of this property is very similar to the subject property.
- Sale #8 located at 10415 158 Avenue sold in September, 2012 with a capitalization rate of 7.34%. It has a building area of 10,853sf that was constructed in 1981. The Tempo Gas Bar includes a literage rent generating an additional $24,000/year. This property also has a net income per square foot similar to the subject.
- Sale #9 located at 7321 /29 101 Avenue sold in September, 2012 with a capitalization rate of 7.0%. It has a building area of 6,438sf that was constructed in 1957. All of the tenancies are month to month at rates considered below market.

- Sale #10 located at 14908 45 Avenue sold in October, 2012 with a capitalization rate of 6.88%. It has a building area of 16,402sf that was constructed in 1983. The site was remediated when the gas bar closed but there is still some contamination underneath the building.

[7] The Complainant acknowledged that the sale comparables were not time adjusted; however, they are recent sales that occurred in 2011 and 2012. The Complainant also acknowledged that The Network determined its capitalization rates using the net operating income on the sale date, and that the capitalization rates are leased fee rates.

[8] The Complainant argued that the subject property is treated inequitably because the Respondent applied higher capitalization rates to similar retail properties. In support of this position, the Complainant presented nine equity comparables with capitalization rates of 7.0% and 7.5% (Exhibit C-1 page 2). The subject is assessed using a 6.5% capitalization rate.

[9] The Complainant also challenged the $30.00/sf rental rate applied to the restaurant component, because two free-standing restaurants on corner lots at the intersection to the south, ABC Restaurant and Dairy Queen, are assessed using rental rates of $26.00/sf and $30.00/sf respectively. The Complainant concluded that the restaurant space in the subject property should be assessed using a rental rate of $26.00/sf.

[10] In conclusion, the Complainant requested the Board to reduce the assessment to $1,875,000 based on a 7.5% capitalization rate and a $26.00/sf rental rate for the restaurant space.

Rebuttal

[11] The Complainant stated that the Respondent uses a hypothetical capitalization rate to value properties because the Respondent determines a capitalization rate using a time adjusted sale price and a stabilized net operating income. According to the Complainant, "a cap rate is a cap rate" and the marketplace recognizes the capitalization rate on the sale date based on the actual income stream.

[12] The Complainant considered most of the Respondent's sale comparables to be superior to the subject property in terms of size and location. In addition, the subject property is not competing in the same market place with the Respondent's sale comparables: Superstore-Kingsway Centre, Century Park, Namao Centre, Callingwood Market, Market at Magrath or Kensington Crossing. The subject property consists of a7,095sf building with five tenants. Furthermore, it is not part of a larger shopping centre.

[13] In addition, the Complainant presented details on each of its equity comparables (Exhibit C-2) showing a map of the area and various assessment details such as age, building class, building size, lot size and site coverage.

<u>Position of the Respondent</u>

[14] The Respondent defended the 6.5% capitalization rate used to prepare the subject assessment with a Shopping Centre Capitalization Rate Analysis (Exhibit R-1page 16). The analysis is based on fourteen sales of shopping centres that transacted from August 2010 to April 2012. The median capitalization rate is 6.18%.

[15] The Respondent explained that the subject property is located on 127 Street approximately two blocks from the entrance to Castle Downs. The Respondent highlighted the sale of a power centre, known as Kensington Centre, at 12504 137 Avenue NW as the best comparable because it is located relatively close to the subject. It sold on January 16, 2012 for a time adjusted sale price of $16,489,620 with a capitalization rate of 6.61%. It has four buildings and a total area of 63,460sf.

[16] In terms of the methodology, all of the Respondent's sale comparables were time adjusted to the valuation date of July 1, 2012, and in some cases, market adjustments were applied. For example, the sale price for 100 Manning Crossing was adjusted upward because the interest rate on the mortgage was above average. The stabilized net operating income and the time adjusted sale price were consistently used to derive an appropriate "fee simple" capitalization rate.

[17] The Respondent dismissed the Complainant's argument that the subject property is inequitably assessed with similar properties because the equity comparables presented by the Complainant are not in the shopping centre group. The Respondent applied a 6.5% capitalization rate to each of the properties in the shopping centre inventory including the subject property.

[18] The Respondent commented that none of the Complainant's sale comparables are time adjusted and sales #8, #9 and #10 are post facto sales that are not similar to the subject property. Sale #8 has a Tempo Gas Bar with literage rent that may have affected the sale price. Sale #9 was constructed in 1957 and has all month to month tenancies at rates considered below market. Sale #10 was previously the site of a Petro- Canada gas bar and some contamination exists beneath the building.

[19] In response to the Complainant's concern regarding the restaurant portion of the assessment, the Respondent submitted a revised proforma with changes to the rental rate and leasable area for the restaurant spaces. The Respondent conceded that the rental rate of $30.00/sf may have been overstated on a square foot basis, and a rental rate of $26.00/sf is more appropriate considering the assessed rates of the ABC Restaurant and Dairy Queen nearby. The Respondent also corrected the net leasable areas occupied by each of the restaurants based on the rent roll: Pho Du Inc. 1,96sf, Sunbake Pita Baker 1,585sf and Panago Pizza 1,013sf for a total area of 4,394sf. These corrections result in an assessment of $2,374,500 which is greater than the current assessment of $2,316,500; however, the Respondent is not seeking an increase in the assessment.

[20] In summary, the Respondent requested the Board to confirm the assessment at $2,316,500.

<u>Decision</u>

[21] The subject property assessment is reduced to $2,205,000.

<u>Reasons for the Decision</u>

[22] The main dispute in this complaint is the 6.5% capitalization used to prepare the subject assessment. The Complainant argued that sales of similar retail properties have capitalization rates that support the use of a 7.25% rate, and the assessed capitalization rates of similar properties support the use of a 7.5% rate. Based on this analysis, the Complainant requested a 7.5% capitalization rate.

[23] The Board finds that the Complainant has not provided sufficient evidence in their sales comparables to demonstrate that the 6.5% capitalization rate used to prepare the subject assessment is incorrect. The Complainant identified sale comparables #2, #8, #9 and #10 as the most comparable. The Board does not accept these comparables as good indicators of value for the subject property on the valuation date because they have not been time adjusted. Further, sales #8, #9 and #10 are not comparable in quality for the reasons identified by the Respondent.

[24] The Board finds that most of the Respondent's sale comparables used in the Shopping Centre Capitalization Rate Analysis are superior in size and location to the subject property. Furthermore, three of the sales used by the Respondent are power centres and one sale is a big box centre.

[25] The Board disagrees with the Respondent that the Kensington Crossing sale comparable is a good comparable to the subject property. Kensington Crossing has 63,460sf of retail space and benefits from intensive retail development on 137 Avenue. The subject property has only 7,095sf of leasable space on 127 Street, and if considered together with the adjoining property, has 15,831sf of leasable space. The land to the north and the west of the subject property is undeveloped.

[26] The Board finds that the Complainant's equity comparables are similar to the subject in terms of size and location. The comparables are assessed using capitalization rates of 7.0% and 7.5%.The equity comparable located at 12703 97 Street is a good comparable and is assessed using a 7% capitalization rate.

[27] With respect to an equitable capitalization rate, the Board finds that an appropriate rate for the subject property is 7%. The Board accepts the argument advanced by the Complainant that the subject property is a small centre that is not part of a larger shopping centre. While it appears to be operated in conjunction with the small retail centre on the adjoining property to the south, it is bounded on the north and the west by large undeveloped fields.

[28] The Complainant also disputed the rental rate applied to the restaurant component of the subject assessment, and the Board finds that the rental rate and area are incorrect. The Board accepts the corrections presented to the Board by the Respondent respecting a rental rate of $26.00 per square foot for an area of 4,394sf. The revised rental rate compares favorably with the assessed rental rate of the equity comparable (ABC Restaurant) and the revised restaurant space of 4,394sf is based on the rent roll.

[29] The Board decision is to reduce the assessment from $2,316,500 to $2,205,000 to ensure fairness and equity. The Board appreciates that this reduction is within 5% of the original assessment and ordinarily the Board would not alter an assessment when the revised assessment is within 5% of the original assessment. However, this reduction includes corrections to the rental rate and area of the restaurant space, as well as, a change in the capitalization rate.

[30] Finally, the method of deriving a capitalization rate is not an issue identified on the complaint form, but it is an underlying issue in this dispute. The legislation requires that all properties be valued on the fee simple estate; and further, that all properties be valued using typical market conditions. The Board understands that the capitalization rates prepared by third parties are used in the real estate market. However, there can be material differences between the reported net operating income and the legislated typical net operating income which results in a different capitalization rate. For assessment purposes, the Board accepts the Respondent's method of calculating a capitalization rate.

Heard July 23, 2013.

Dated this 15th day of August, 2013, at the City of Edmonton, Alberta.

John Noonan, Presiding Officer

Appearances:

Peter Smith
for the Complainant

Cam Ashmore, Legal Counsel
John Ball, Assessor
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.