Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 01272

Assessment Roll Number:	3725454
Municipal Address:	16909 103A Avenue NW
Assessment Year:	2013
Assessment Type:	Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
Jasbeer Singh, Board Member
Randy Townsend, 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.

Preliminary Matters

[2] During the hearing, the Complainant objected to the Respondent's submission of a surrebuttal, as the same had not been previously disclosed. The Board asked the Complainant to first examine the contents of the evidence being presented, before raising an objection for the Board's ruling.

[3] Upon review of the Respondent's sur-rebuttal document, the Complainant did not have any objection to its being admitted as evidence at the hearing.

Background

[4] The subject property is a single-storey building built in 1997 with a total area of 14,233 square feet. This quality '04' property, located at 16909 – 103A Avenue in Youngstown Industrial neighbourhood of Edmonton, is the premises of Royal Bank Mayfield and is located on 103A Avenue between Mayfield Road and 170th Street. The 2013 assessment for the subject property is $5,438,500.

Issue(s)

[5] Is the 2013 assessment capitalization rate of 6.5% too low?

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 $5,438,500 was inequitable and in excess of market value. In support of this position, the Complainant presented a 92 page assessment brief (Exhibit C-1).

[8] To support the position that the assessment was not fair and equitable, the Complainant provided a set of 24 recent sales of retail properties in various parts of the City. This 'Capitalization Rate Sales' analysis showed that the capitalization rates ranged between 6.12% and 9.18% with a median value of 7.04% and an average of 7.15%. (Exhibit C-1, page 16).

[9] The Complainant flagged a number of properties on this list whose inclusion in the analysis could be questioned because one property was part of a portfolio sale that included seven Ontario properties, and five sales were in respect of properties that showed upward potential due to shortly expiring below market leases. Excluding these from the analysis, the median capitalization rate was shown to move up slightly to 7.15% and the average nudging up to 7.24%. This was supported with copies of the independent third-party reports. (Exhibit C-1, pages 16, 23-29 and 48-65).

[10] The Complainant argued that the recent sales activity in respect of similar retail properties in the City, demonstrated that the subject property was unfairly assessed with a capitalization rate of 6.5% that needs to be changed to 7%. (Exhibit C-1, page 14).

[11] In summation, the Complainant argued that the Respondent's time adjustment of the sale prices resulted in 'fictitious' sale prices being used to derive questionable capitalization results that were not indicative of the market conditions on the valuation date.

[12] The Complainant requested the Board to reduce the 2013 assessment to $5,050,000 based on a 7% capitalization rate.

Position of the Respondent

[13] In defending the current year assessment, the Respondent presented a 99 page document (Exhibit R-1) that included an assessment brief and a Law & Legislation brief. In addition, the Respondent also provided a one page surrebuttal addressing questions raised in the Complainant's rebuttal.

[14] The Respondent informed the Board that complying with the legislation, the 2013 assessment in respect of the subject property had been prepared in accordance with the *Mass Appraisal* methodology and representing an estimate of the value of the fee simple estate in the property. (Exhibit R-1 page 9).

[15] The Respondent addressed the Complainant's concerns pertaining to the capitalization rate used for the 2013 assessment as follows. (Exhibit R-1 page 9).

> "1. ***The capitalization rate applied in the assessment is lower than market.***
>
> Direct capitalization is the method of choice employed to value the majority of properties within the Retail inventory. This involves capitalizing the derived net income by an overall rate determined from comparable market sales. The legislation identifies that property assessments must represent an estimate of the value of the fee simple estate in the property.
>
> For assessment purposes, the market value of a property is its "fee simple" value. A fee simple title is regarded as an estate without limitations or restrictions. (The Appraisal of Real Estate, 8th Edition, American Institute of Real Estate Appraisers, p 8-9.) A fee simple title is the ultimate ownership estate in real property and reflects all rights, title, and interests in the property.
>
> The primary area of concern that arises from the use of cap rates as reported by the Network is that it is unclear exactly what parameters were used to calculate those cap rates. It is a basic appraisal principle that a cap rate must be applied in the same manner it was derived, otherwise an estimate of value could become greatly skewed.
>
> In the case of using Network cap rates, if they were derived from actual income figures then those cap rates must be applied to actual income figures, which is problematic in assessment considering that the assessment must be based upon typical market conditions, which would require the use of typical market income parameters. AR 220/2004 is clear that the assessment must be prepared with the use of typical data, not actuals. When actual income data is used to derive and/or apply a cap rate, these cap rates are then more reflective of a leased fee interest, not the fee simple interest which is the mandated standard in the MGA.

> If the Network cap rates were derived using some sort of stabilized income, then the subject property's income would have to be stabilized in the same manner in order for a Network cap rate to be applied in a meaningful manner. This causes further problems because the Network is not explicitly clear where the income parameters reported in each sale come from, or how they are analyzed."

[16] The Respondent argued that the Complainant's reliance on unadjusted sale prices and non-stabilized actual income parameters at the time of sale provided 'leased fee estate' values in respect of the quoted sales and not the 'fee simple estate' values as required by the legislation.

[17] The Respondent provided a table showing the Complainant's 24 sales with adjustments that showed the 'fee simple' picture. The Respondent highlighted to the Board, the differences in the capitalization rates, as presented by the Complainant and as resulting from the time adjusted sales prices and the typical income factors. (Exhibit R-1 page 30).

[18] The Respondent emphasized that for the sake of consistency and comparability, it was essential that typical values were applied in a standard and legislated manner to ensure fairness and equity for all properties assessed.

[19] Stressing the point, the Respondent cited MGB decision (MGB 145/07) that said: (R-1, pages 60, 62 and 71).

> "2. CAP rates for downtown office properties should be developed using typical NOI inputs if they are going to be applied to subject properties whose NOI was developed with typical NOI inputs.
>
> 3. In order to achieve consistency in the methodology for the subject properties a CAP rate applied to NOI based on typical inputs must be a CAP rate that also has been derived using typical NOI inputs."
>
> "The MGB agrees with the Respondent that the full fee simple interest must be reflected in the assessment (see section 2(b) of Regulation AR 220/2004). Thus the assessment must reflect both the owner's and tenant's interest. Accordingly, the actual NOI which reflects both current and dated leases will not reflect a market value in an income calculation which reflects the fee simple estate.
>
> When a property is subject to a lease or a number of leases, the tenant(s) have an interest known as the Leasehold interest or estate. Each of these ownership interests can have value. The Leasehold interest would have value when the contract rent payable by the tenant(s) is lower than the market rent.
>
> The method of calculating the capitalization rate used by the Respondent is based on "typical" rent which provides consistency in the analysis of sales available for analysis. The use of a CAP rate determined by the use of a typical NOI then applied to a typical NOI provides a consistent approach."
>
> ".....The MGB also accepts that there must be a consistent application of typical values in the derived CAP and the application to typical NOIs for the subject downtown office properties as otherwise the value estimate does not achieve the full fee simple estate required by the legislation...."

[20] The Respondent provided a table of four sales of retail properties that are located in very close proximity to the subject property in the West end of the City. This showed capitalization rates ranging from 5.67% to 6.8% with median value of 6.22% and an average of 6.23%. The Respondent argued that this showed strong support for the 6.5% capitalization rate used for the subject property's 2013 assessment. (Exhibit R-1 pages 23 and 29).

[21] In conclusion, the Respondent requested the Board to confirm the 2013 assessment.

Complainant's Rebuttal

[22] The Complainant presented a 14 page rebuttal document (C-2) that questioned the validity of including three of the four retail sales listed in support of the Respondent's defense of the City's capitalization rates for the subject property's assessment, in that;

a. The sale of the property located at 17004 – 107 Avenue (item #1, R-1, page 23) was stated to have been a 'vendor lease back' and thus not a valid arms length sale. (Exhibit C-2 pages 3).

b. The Complainant suggested that the sale of the property located at 10104 – 180 Street (item #3, R-1, page 23) was a motivated purchase with plans to change the property use, not a typical income-producing transaction. Thus, it was deemed not valid for inclusion in the Respondent's capitalization rate analysis. (Exhibit C-2 pages 7).

c. The sale of the property located at 10434 – Mayfield Road (item #4, R-1, page 23) was stated to have been a private sale with the tenant buying the property by exercising an option to buy, that was included in his 5 year lease due to expire in September 2013. Thus, this was not a valid arms length sale. (Exhibit C-2 pages 9).

[23] The Respondent suggested that the property known as Centre 163 and located at 16220 – Stony Plain Road provided the best comparison to the subject property. This was also included in the Respondent's list (item #2, R-1, page 23), as well as in the Complainant's list (item #10, C-1, page 16). The Complainant's evidence showed the capitalization rate for this sale to be 7.69% (C-2, page 6) and the Respondent's evidence indicated a capitalization rate of 6.41%, based on typical income factors and the time adjusted sale price.

Respondent's Sur-Rebuttal

[24] The Respondent excluded the sale of the property located at 17004 – 107 Avenue, that had been shown to be a 'vendor lease back', from the City's capitalization rate analysis and provided a sur-rebuttal document (R-2) that showed median capitalization rate to be 6.41% and the average of 6.29%; both supporting the City's 6.5% capitalization rate applied to the subject property for its 2013 assessment.

Decision

[25] The Board confirms the 2013 assessment at $5,438,500.

Reasons for the Decision

[26] The only issue before the Board was the capitalization rate. The City has used a capitalization rate of 6.5% and the Complainant believes it to be too low and requests the Board to increase it to 7%.

[27] The Board was advised that:

a. The City is mandated to use a standard mass-appraisal methodology that relies on the use of typical income factors and time adjustment of the sales price of the properties used for determination of typical capitalization rates.

b. The Complainant's analysis of 24 recent sales of retail properties indicated that the City's capitalization rate of 6.5% for the subject property is too low and does not represent the actual market conditions on the valuation date.

[28] The Board noted that the Complainant has relied on the third-party (Network) information to support the primary argument. The Board recognizes that third-party sources are at the mercy of owners as to what information they may choose to disclose, or even how the books are kept. As an example, where triple-net leases were implied, the operating expenses per square foot showed an unexpectedly wide variance. In the absence of any evidence showing the sources of information input and the methodology used to arrive at the results produced, the Board put less weight on such evidence.

[29] The property at 10415 – 158 Avenue was shown to have a capitalization rate of 7.34% at the time of its sale in September 2012 (*post-facto*). There was no evidence to show how the sale price was influenced by a literage rent of $24,000 per year, or the fact that one lease was at below market rate. The Board noted that if the literage rent – that was not applicable to most retail properties, was removed from the NOI shown in the evidence, the new capitalization rate of 6.66% supported the City's assessment. The Board found similar cautionary flags in respect of many of the properties included in the Complainant's capitalization rate analysis.

[30] The Board noted that four of the properties included in the Complainant's submission (12504 – 137 Avenue, 11215 & 11525 – 104 Avenue, 11219 – Jasper Avenue, and 2303 – 111 Street) shared, to a large extent, superior location attributes with the subject property. The median of the capitalization rates for these properties was found to be 6.45% and an average of 6.42%. Both these numbers supported the City's assessment.

Dissenting Opinion

[31] There was no dissenting opinion.

Heard September 4, 2013.
Dated this 10th day of September, 2013, at the City of Edmonton, Alberta.

John Noonan, Presiding Officer

Appearances:

Chris Buchanan
for the Complainant

Gail Brooks
Tracy Ryan
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.