Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01507

Assessment Roll Number: 7173602
Municipal Address: 10918 88 Avenue NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
George Zaharia, Presiding Officer
Brian Carbol, Board Member
Brian Frost, 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.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a two-storey retail building located at 10918 88 Avenue NW in the Garneau neighbourhood of south-central Edmonton. The building was built in 1935 and has an effective year built of 1941. It is in average condition, and has a gross building area of 8,480 square feet. The building is situated on a lot 5,985 square feet in size.

[4] The subject property was valued on the income approach using a capitalization rate (cap rate) of 6.5% resulting in a 2013 assessment of $1,235,500.

Issues

[5] Is the 6.5% cap rate applied to the subject property to calculate the 2013 assessment of the subject property too low?

[6] Is the square footage as applied to the main floor (4,027.8 square feet) and the upper floor (3,815.8 square feet) in excess of the actual square footage within the subject property?

Legislation

[7] **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
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> (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

[8] In support of his position that the 2013 assessment of the subject property is excessive, the Complainant presented a 33-page brief (Exhibit C-1), a 9-page rebuttal (Exhibit C-2), a 10-page rebuttal (Exhibit C-3), and a 3-page rebuttal (Exhibit C-4). The Complainant accepted the rental rates and allowances used by the City in determining the NOI, but argued that based on an analysis of the cap rates from the eleven sales, and an analysis of an equity cap rate study of ten properties that he put forward, a cap rate of 7.25% would be more appropriate in determining the value of the subject property. He also argued that the difficulty in accessing the property should support an increased cap rate.

[9] In support of this position, the Complainant provided eleven comparable sales of properties similar to the subject. The comparables sold between March, 2011 and May, 2012, ranged in size from 5,500 to 139,962 square feet, had NOIs ranging from $11.48 to $30.12 per square foot, and sold for cap rates that ranged from 6.54% to 7.23%. The Complainant stated that sale nos. 2, 3, 4 and 8 are parts of larger retail projects with major "shadow" anchors with incomes considered more stable than the subject's. Based on sale nos. 5, 7 and 9 that have the most similar NOIs per square foot compared to the subject, the Complainant considered a cap rate of 7.25% as being reasonable to be applied to the subject property instead of the 6.5% applied by the City. (Exhibit C-1, page 2)

[10] The Complainant also submitted ten equity comparables to demonstrate that the 6.5% cap rate applied to the subject property was too low. The comparables ranged in age from 1976 to 2004, and in building size from 12,903 to 51,542 square feet. One of the comparables was assessed based on a cap rate of 6.5%, three on a cap rate of 7.0%, and six on a cap rate of 7.5%. The Complainant argued that it was inequitable to compare the one property assessed with a cap rate of 6.5% to the subject. Comparable no. 10 known as Main on Whyte is the newest and best located property on Whyte Avenue. The equity comparables were considered as all good quality retail centres, and for the most part located on main thoroughfares. (Exhibit C-1, page 2 and 3)

[11] With regards to the assessable square footage of the subject, the Complainant stated that "*the City uses leasable areas of 4,028 sq ft on the main floor and 3,816 sq ft on the second floor. However, the actual area from the rent roll shows 3,360 sq ft on the main floor and 3,350square feet on the second floor.*" By applying these corrected sizes to the City's pro forma, the City's NOI would be reduced from $80,284 to $68,087.

[12] Based on an analysis of the sales and equity comparables, the Complainant suggested that a cap rate of 7.25% would be more appropriate. Also, by correcting the leasable area, this would result in a revised NOI of $68,087. By capitalizing this revised NOI by the higher cap rate of 7.25%, the assessment would be reduced to $939,131. (Exhibit C-1, page 3)

[13] In response to a question from the Respondent, the Complainant acknowledged that no adjustments were made to the selling price and NOI of the nine sales comparables to bring the values to the July 1, 2012 valuation date.

[14] The Complainant submitted a rebuttal, taking exception to the cap rates calculated by the Respondent on page 11 of Exhibit R-1. Rather than using the time-adjusted sale price determined by the Respondent and dividing it into the City predicted NOI, he used the 2013 assessments of the eight sales to divide into the City predicted NOI, resulting in all the cap rates increasing.

[15] The Complainant submitted a second rebuttal that included a CARB decision (2013 ECARB 01562) dated October 30th, 2013 that increased the cap rate from 6.5% to 7.0% for the property located at 8625 109 Street NW, used by the Respondent in his "Cap Rate Equity Comparables" chart. (Exhibit C-3, page 5, paragraph 28)

[16] The Complainant submitted a third rebuttal addressing the leasable area of the subject. Although the document indicated that the property manager (Joel Helm) was to be in attendance at the hearing to answer questions that was not the case. In a response to a question by Mr. Smith, Mr. Helm wrote that the net leasable space in the subject was 6,710 square feet, with this number being supported by a "Unit Directory" that showed the sizes of each unit. (Exhibit C-4, pages 2 and 3)

[17] In summation, the Complainant argued that if the NOI and the sale price at the time of the sale are used at some point after the sale, that the relationship is maintained. He also argued that his sales were better, using income at the time of the sale that an investor would know, rather than the hypothetical or "predicted NOI" used by the Respondent. In terms of the assessed size of the subject, the Complainant argued that the leasable space was clearly 6,710 square feet and offered a critique of the City's methodology in that it does not differentiate between old and new buildings.

[18] In conclusion, the Complainant requested that the 2013 assessment of the subject property be reduced from $1,235,000 to $940,000.

Position of the Respondent

[19] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support his position, the Respondent presented a 98-page assessment brief (Exhibit R-1) that included law and legislation. He also presented a 10-page sur-rebuttal (Exhibit R-2).

[20] The Respondent provided a cap rate study broken into two groups: 1) "Cap Rate Study (Area Based)" – group one, and "Cap Rate Study" – group two. Each study was based on four

sales. The sales in group one occurred between December 2, 2011 and May 17, 2012. The sales resulted in stabilized cap rates that produced an average of 5.72% and a median of 5.6%, supporting the 6.5% cap rate applied to the subject property. The sales in group two occurred between July 4, 2011 and June 7, 2012. The sales resulted in stabilized cap rates that produced an average of 6.38% and a median of 6.38%, supporting the 6.5% cap rate applied to the subject property. The Respondent advised that sale comparables nos. 6, 7, and 8 of group two were located in an inferior location compared to the subject. In arriving at the predicted cap rate, the Respondent had predicted the NOI of the eight properties by using typical rental rates and dividing the resulting NOIs by the time-adjusted sale prices of the eight sales. The Respondent also included in his cap rate study the sale of a neighbouring property at 10926 88 Avenue NW that sold September 2, 2010 for a stabilized cap rate of 6.13%. (Exhibit R-1, page 11)

[21] In support of the position that the subject was equitably assessed, the Respondent provided a "Cap Rate Equity Comparables" chart of seven properties in close proximity to the subject. All seven of the comparables were assessed using a cap rate of 6.5% (Exhibit R-1, page 24). In addition, the Respondent provided an assessment map of these seven properties, confirming the close proximity (two being on each side of the subject) of the comparables to the subject (Exhibit R-1, page 25).

[22] The Respondent provided a review of the Complainant's eleven sales comparables used in his cap rate study. The cap rates as provided by the Complainant were taken from the Network's sale reports that reflected the sales price and NOI at the time of sale. The sales occurred between March, 2011 and May, 2012 that resulted in an average cap rate of 6.96% and a median cap rate of 7.02%. However, when the sale prices were time-adjusted, and the NOI was calculated using typical values as at the July 1, 2012 valuation date, the average fee simple cap rate was reduced from 6.96% to 6.71% and the median time-adjusted fee simple cap rate was reduced from 7.02% to 6.77%. (Exhibit R-1, page 26)

[23] The Respondent provided a chart entitled "Reported Space vs. Assessed Space" showing space in three columns headed 1) "Reported Area", 2) "Assessed Gross Area", and 3) "Assessed Rentable Area". He provided three examples of properties that showed assessed rentable area as either 95% or 90% of the assessed gross area depending on the floor. He wrote: *"This is applied to all retail properties for two reasons: 1) It is typical of the market (accounts for space loss including walls and common areas) 2) Avoids some properties reporting much lower rental spaces than actual. The end result is fair and equitable assessments for all properties."* (Exhibit R-1, page 27)

[24] The Respondent provided a CARB decision (2013 ECARB 00860) dated September 4th, 2013 wherein the Board opined that *"third party publications such as the Network are difficult to evaluate as it is unclear what parameters were used in establishing the cap rates. It is important that the methodology is consistent in the derivation and application of the factors used to calculate the cap rate. For example if the Network uses actual income figures, it should not be used in conjunction with typical data the City is mandated to use in the assessment process."* (Exhibit R-1, page 46, paragraph 45)

[25] The Respondent provided a second CARB decision (2013 ECARB 01272) dated September 10th, 2013 addressing the shortcomings of third party information. The Respondent paraphrased a point made by the CARB that there were "*too many unknown variables*" when using information provided in third party reports. In the decision, the CARB wrote "*The Board recognizes that third-party sources are at the mercy of owners as to what information they*

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 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." (Exhibit R-1, page 38, paragraph 28)

[26] The Respondent provided a third CARB decision (2012 ECARB 2248) dated December 5th, 2012 that upheld the cap rate applied to the subject property for its 2012 assessment (Exhibit R-1, page 31, paragraph 27 and 28).

[27] The Respondent provided a sur-rebuttal, making corrections to the two cap rate studies that had been presented in Exhibit R-1, page 13, stating that the revised numbers reflect the 2013 assessment values, rather than the originally applied numbers. He also added a column to the chart that had been presented in Exhibit R-1, page 13 that showed the assessed cap rates for the eight comparable sales. These assessed cap rates ranged from 6.5% to 7.5%. (Exhibit R-2, page 2) In support of this information, the Respondent provided copies of the City of Edmonton Detail Reports for the eight properties. He also included the sale of the neighbouring property that sold at for a stabilized cap rate of 6.13% and was assessed at a cap rate of 6.5%, the same as the subject.

[28] In summation, the Respondent pointed out that the Complainant did not have any problem with the City's NOI, other than to revise it based on a reduced leasable area. He again referred to the two CARB decisions that questioned the use of third party derived cap rates. He argued that no drawings were presented to support any change in the leasable area. In terms of the 2013 CARB decision that changed the cap rate of one of his comparables from 6.5% to 7.0%, the Respondent stated that he disagreed with this decision, and that access has not shown to have any effect on the cap rate of a property.

[29] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at $1,235,000.

Decision

[30] The decision of the Board is to reduce the 2013 assessment of the subject property from $1,235,000 to $1,147,000.

Reasons for the Decision

[31] The Board first reviewed the evidence and argument put forward by the Complainant and noted the following:

a) The Complainant provided eleven sales comparables, and relied upon the cap rates provided by a third party source (The Network) derived from the NOI and sale price at the time of the sale, up to 16 months prior to the July 1, 2012 valuation date.

b) Based on the information submitted by the Complainant, gleaned from third party sources, it would appear that the cap rate applied to the subject was too low. When the Respondent time-adjusted the sale prices to the July 1, 2012 valuation date and revised the NOI based on typical rental rates (that the Respondent is mandated to use by regulation), the average cap rate was reduced to 6.71% cap rate, higher than the 6.5% cap rate applied to the subject, while the median was increased to 7.02%, higher than the subject's applied cap rate, suggesting that the cap rate may be too low.

c) The Complainant provided ten equity comparables. None of the comparables were in close proximity to the subject. The equity comparables were from all over the city, some at far distances from the subject and the Board was not persuaded that these were good comparables.

d) The Complainant challenged the City's predicted cap rates. The Complainant suggested instead that the 2013 assessed values of the comparables should be used rather than the time-adjusted sale price. By dividing the assessed value into the predicted NOI, the resulting average cap rate for group one of 7.6% and median cap rate of 7.4%, and the resulting average cap rate for group two of 7.4% and median cap rate of 7.5% would suggest that the 6.5% cap rate of the subject is too low. However, this method of calculating a cap rate is not consistent with the cap rate derived from the NOI and sale price of a property when a buyer is considering "risk".

e) The Board was swayed by the Complainant's argument that since the subject property has access issues that this should cause for an increase to its cap rate. The fact that that the subject has the same 6.5% cap rate as properties on Whyte Avenue is in the Board's opinion unreasonable.

f) The subject's cap rate appeared to be supported by the stabilized cap rate resulting from the sale of the neighbouring property. However, the Board noted that there was a significant discrepancy between the square footage shown by the Respondent and the Network, bringing the resulting cap rate into question. In questioning, the Respondent was not able to provide any clarification.

g) Although this Board is not bound by decisions rendered by other CARBs, this Board agrees with the positions taken by the other two CARBs in the September 2013 decisions. Specifically, this Board agrees with the statement made by the CARB in 2013 ECARB 00860 where the CARB wrote: "*It is important that the methodology is consistent in the derivation and application of the factors used to calculate the cap rate. For example if the Network uses actual income figures, it should not be used in conjunction with typical data the City is mandated to use in the assessment process.*"

h) The Board did not have any concrete evidence upon which to make a change to the leasable area of the subject property. The Board did not find the email correspondence from the property manager as compelling evidence to support a change in the assessed rentable area. Without building plans that could prove that the City was wrong in its typically calculated sizes, the Board could not accept the Complainant's requested reduced leasable area. However, the Board found the Respondent's explanation as to how the assessed rentable area is determined to be very instructive.

[32] The Board then reviewed the evidence and argument put forward by the Respondent and noted the following:

a) The cap rates derived by the Respondent in his "Cap Rate Study" chart were based upon parameters as of the July 1, 2012 valuation date. The resulting average cap rate for group one of 5.72% and median cap rate of 5.60%, and the resulting average cap rate for group two of 6.38% and median cap rate of 6.38%, support the 6.5% cap rate applied by the

City in calculating the 2013 assessment of the subject property. However, these comparables failed to recognize the access difficulties experienced by the subject property or its location.

b) The subject property was assessed using the 6.5% cap rate; however, the Board notes that one of the equity comparables submitted by the Respondent had its cap rate increased in a previous Board decision from 6.5% to 7.0% due to locational concerns.

[33] The Board noted that both parties used different types of properties within the retail group such as neighbourhood shopping centres, office buildings, retail/apartment up, and retail plazas to support their respective positions. No argument was made by either party that this was incorrect.

[34] The Board was concerned that the Respondent submitted a sur-rebuttal to his own information that was initially used in his evidentiary package in support of the assessment. Although the Respondent rationalized that the sur-rebuttal was a correction to his initial evidence, the Board was concerned as to how this revised information may impact the Complainant. The Respondent also added a column that indicated the assessed cap rates for the two groups of cap rate studies. Although the Complainant raised the matter as a concern, he did not challenge its inclusion, and the hearing was concluded with the sur-rebuttal as part of the evidence. The resulting "assessed cap rates" of the Respondent's group one (properties that were area based) in the sur-rebuttal averaged 7.0% and the median was 7.0% as well. The resulting "assessed cap rates" of the Respondent's group two (properties that were not locational close to the subject) in the sur-rebuttal averaged 7.38% and the median was 7.5% as well. This supports the Complainant's request for a higher cap rate, although the Board determined that the cap rate should be increased to 7.0%.

[35] The Board concluded that the reduced 2013 assessment of the subject property at $1,147,000 was fair and equitable.

Dissenting Opinion

[36] There was no dissenting opinion.

Heard commencing November 27, 2013
Dated this 9th day of December, 2013, at the City of Edmonton, Alberta

George Zaharia, Presiding Officer

Appearances:

Peter Smith
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.