Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01510

Assessment Roll Number: 3404100
Municipal Address: 11516 Jasper Avenue N W
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 2-storey retail building located at 11516 Jasper Avenue NW in the Oliver neighbourhood of west-central Edmonton. The building was built in 1967, with an effective year built of 1984, is in average condition, and has a gross building area of 8,106 square feet. The building is situated on a lot 8,003 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 $1,299,000.

Issue

[5] Is the 6.5% cap rate applied to the subject property to calculate the 2013 assessment of the subject property 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.
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> 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,
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> (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] In support of his position that the 2013 assessment of the subject property is excessive, the Complainant presented a 32-page brief (Exhibit C-1) and a 9-page rebuttal (Exhibit C-2). The Complainant considered the rental rates and allowances used by the City in determining the NOI reasonable, 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 eleven properties that he put forward, a cap rate of 7.0% would be more appropriate in determining the value of the subject property.

[8] 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, 8 and 9 that have the most similar NOIs per square foot compared to the subject, the Complainant considered a cap rate of 7.0% as being reasonable to be applied to the subject property instead of the 6.5% applied by the City. (Exhibit C-1, page 2)

[9] The Complainant also submitted eleven 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 63,035 square feet. Two of the comparables were 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 two properties 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. Comparable no. 11 known as the Canterra Centre has the best retail location in west downtown Edmonton. 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)

[10] Based on an analysis of the sales and equity comparables, the Complainant suggested that a cap rate of 7.0% would be more appropriate, and when applied to the Respondent's NOI of $84,462, the assessment would be reduced to $1,206,600. (Exhibit C-1, page 3)

[11] 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.

[12] The Complainant submitted a rebuttal, taking exception to the cap rates calculated by the Respondent on page 12 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 four sales to divide into the City predicted NOI, resulting in all the cap rates increasing.

[13] 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.

[14] In conclusion, the Complainant requested that the 2013 assessment of the subject property be reduced from $1,299,000 to $1,200,000.

Position of the Respondent

[15] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support his position, the Respondent presented a 92-page assessment brief (Exhibit R-1) that included law and legislation. He also presented a 6-page sur-rebuttal (Exhibit R-2).

[16] The Respondent provided a "Cap Rate Comparables" Study based on four sales that occurred between July 4, 2011 and April 11, 2012. The sales resulted in stabilized cap rates that produced an average of 6.32% and a median of 6.33%, supporting the 6.5% cap rate applied to the subject property. In arriving at the predicted cap rate, the Respondent had predicted the NOI of the four properties by using typical rental rates and dividing the resulting NOIs by the time-adjusted sale prices of the four sales. (Exhibit R-1, page 12)

[17] In support of the position that the subject was equitably assessed, the Respondent provided a "Cap Rate Equity Comparables" chart of four properties in close proximity to the subject. All four of the comparables were assessed using a cap rate of 6.5% (Exhibit R-1, page 17). In addition, the Respondent provided an assessment map of these four properties, confirming the proximity of the comparables to the subject (Exhibit R-1, page 18).

[18] 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)

[19] 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*

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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 33, paragraph 45)

[20] 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 78, paragraph 28)

[21] The Respondent provided a sur-rebuttal, adding two columns to the chart that had been presented in Exhibit R-1, page 12. The first column showed the 2013 assessments of the four sales comparables while the second column showed the assessed cap rates. 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 four properties.

[22] In summation, the Respondent pointed out that the Complainant did not have any problem with the City's NOI, and questioned why the Complainant had removed two sales with the lowest cap rates from the cap rate study that had been used in hearing a year ago and used again for this hearing. He again referred to the two CARB decisions that questioned the use of third party derived cap rates.

[23] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at $1,299,000.

Decision

[24] The decision of the Board is to confirm the 2013 assessment of the subject property at $1,299,000.

Reasons for the Decision

[25] The Board considered, but ultimately placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

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. However, 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 while the median was actually increased to 7.02%, both values somewhat higher than the 6.5% cap rate applied to the subject property.

c) The Complainant provided eleven equity comparables. Only one was in close proximity to the subject on Jasper Avenue as is the subject, and was assessed with a 6.5% cap rate, the same as the subject. The balance of the equity comparables were from all over the city, 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 of 7.0% and median cap rate of 7.0% 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". In the case of the subject property, its assessed cap rate of 6.5% is well supported by the cap rates (average of 6.32% and median of 6.33%) derived from the parameters that an investor would depend upon in deciding whether or not to invest in a particular property. Therefore, the Board placed little weight on the Complainant's suggested method of determining a cap rate.

e) 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.*"

[26] The Board placed greater weight on the evidence and argument put forward by the Respondent for the following reasons:

a) The cap rates derived by the Respondent in his "Cap Rate Comparable" chart were based upon parameters as of the July 1, 2012 valuation date. The resulting average cap rate of 6.32% and median cap rate of 6.33% support the 6.5% cap rate applied by the City in calculating the 2013 assessment of the subject property. As much as the Complainant argued that the incomes used by the Respondent in calculating the NOI as of the valuation date were "hypothetical", he had stated in his evidentiary package that the *"income estimate utilized by the City are considered reasonable"*. As well, typically the Complainant utilizes the time-adjustment factors used by the City in time-adjusting sale prices to the valuation date. Therefore, this Board found no reason to question the validity of the "Predicted City Cap Rates" as calculated in its study.

b) The Board is satisfied that the subject property was equitably assessed using the 6.5% cap rate, in that this cap rate was applied to other similar retail properties in the immediate vicinity of the subject, two of the comparables being on either side of the subject.

c) The Board was persuaded that the Respondent prepared the assessment of the subject property in accordance with s. 2(a) the *Matters Relating to Assessment and Taxation Regulation* that states: *"An assessment of property based on market value must be prepared using mass appraisal"*.

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

[28] 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. In this case, the sur-rebuttal did not change any information in the original evidentiary package. Instead, a column was added to show the 2013 assessments of the comparable sales, and another column to show the respective assessed cap rates. The Board was concerned as to how this revised information may impact the Complainant. 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 four cap rate comparables in the sur-rebuttal averaged 7.0% and the median was 7.0% as well. However, the Board noted that the only comparable located on Jasper Avenue (a main thoroughfare) as is the subject, was assessed with a 6.5% cap rate while the other three properties were not, proving that location is an important factor in the valuation process.

[29] The Board was persuaded that the 2013 assessment of the subject property at $1,299,000 was fair and equitable.

Dissenting Opinion

[30] There was no dissenting opinion.

Heard November 26, 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.