Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01881

Assessment Roll Number: 4314324
Municipal Address: 9825 103 S treet NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Shannon Boyer, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, 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] The Respondent advised the Board that there was a recommendation to address the issue pertaining to exemption in respect of certain space occupied by Head Start Society.

[3] The Respondent presented a 16 page Tax Exemption Brief (Exhibit R-1) and stated that an area of 3,360 sq ft occupied by the Head Start Society constituted 57.289% of the total 5,865 sq ft of commercial space. The Respondent made a recommendation to the Board to treat 57.289% of the commercial component of the 2013 assessment, as exempt from taxation beginning September 2013 to the end of this assessment period. This was in accordance with the provisions contained in the *Municipal Government Act s.362(1)c.i2* (Exhibit R-1, page 16). The Respondent's exemption recommendation was acceptable to the Complainant.

Background

[4] The subject property is a 22 storey, 204 unit apartment building located at 9825 - 103 Street NW in market area 1B in the Downtown neighbourhood. Built in 1981 on a lot measuring 3,984 square metres, the property has been assessed as being in average condition. The property was valued by the municipality based on the income approach using typical

potential gross income (PGI), typical vacancy and typical gross income multiplier (GIM). The 2013 assessment of $28,685,500 (or $138,279 per suite) is under complaint.

Issue(s)

[5] The Board heard evidence and argument on the following issues:

a. Is the Gross Income Multiplier (GIM) used for the 2013 assessment of the subject property too high?

b. Is the 2013 assessment of $28,685,500 for the subject appropriate, fair and equitable?

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;

Exemptions for Government, churches and other bodies

s 362 (1) The following are exempt from taxation under this Division:

(i.2) the operator of a charter school established under the *School Act*, or
(ii) the operator of a private school registered under the *School Act*.

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 was arrived at with a Gross Income Multiplier (GIM) of 10.38 which was in excess of the market, resulting in an excessive assessed value of $28,685,500. In support of this position, the Complainant presented a 22 page assessment complaint brief (Exhibit C-1), a seven page Board decision (Exhibit C-2) and argument.

[8] The Complainant described the subject property as having 204 apartment suites (136 one-bedroom suites and 68 two-bedroom suites).

[9] The Complainant stated that an adjoining property, assessed for $359,000, under a separate roll number, was used to provide the required parking spaces for the subject high-rise apartment building and this assessed amount had been subtracted from the subject assessment, to avoid double assessment; once as part of the apartment complex and another

time as a separate property. The Complainant was in agreement with the Respondent's treatment of this parkade property.

[10] The Complainant's evidence (Exhibit C-1) included four sales comparables, as below, with their respective GIMs and adjusted GIMs. The subject property assessment is shown at the bottom of the table of the four comparables.

	Address	Year Built	# of Suites	Network GIM	Adjusted GIM	SP/per Suite	Avg PGI Suite/mo	Adj SP /Suite
1	11350 - 104 Ave	2001	305	11.18	9.18	190,163	1,498	145,225
2	9520 - 103 Ave	1978	27	8.94	9.24	77,000	748	117,765
3	10512/22 - 93 Str	1978	23	8.54	8.84	71,846	730	112,592
4	10368 - 92 Str	1979	8	10.06	10.26	82,750	710	133,332
		Average			9.38		922	127,229
		Median			9.21		739	125,549
Sub	**9825 - 103 Str**	**1981**	**204**	**10.38**		**Assessment**		**138,279**

[11] As seen in the table above, the GIM, as reported by the Network, ranged from 8.54 to 11.18 and after accounting for age, the adjusted GIM ranged from 8.84 to 10.26 with an average of 9.38 and a median of 9.21. Based on this analysis, the Complainant considered a GIM of 9.25 to be appropriate for the subject property.

[12] As additional support for a reduction in GIM value, the Complainant provided a third party market report from Cushman & Wakefield (Exhibit C-1, pages 19 to 22). This report showed the average 2012 Gross Rent Multiplier (GRM) value of 10.0. The four year average from 2009 to 2012 was also shown to be 10.0.

[13] The Complainant noted that the Respondent's assessment model took building type, age and market area into account when estimating the GIM. In this instance, the comparables were from the similar market area and there having been no high-rise sales, the only meaningful variable was age. All properties older than1973, in this market area (1B), had the same multiplier value of 9.58 applied. The multiplier increased by 0.1 for each year for properties newer than 1973.

[14] The subject property, with an effective year built of 1981, had been assessed with a GIM of 10.38 (9.58 + 8 *0.1 = 10.38). The Network GIM in respect of all four comparable properties in the Complainant's chart was adjusted to the subject's age. Sales comparable #1, built in 2001, was 20 years newer than the subject and therefore this property had its GIM value of 11.18 adjusted downward by 2.0 (20 * 0.1 = 2.0), to 9.18, resulting in the above adjusted GIM values shown in the chart above.

[15] The Complainant's sales comparables ranged in size from eight suites to 305 suites and ranged in year built (age) from 1978 to 2001. Due to a lack of sales of high-rise apartments, only one of the sales comparables was a high-rise (five storeys) property located in a superior market area 1c, while the other three were low rise apartments, all located in similar market areas.

[16] The Complainant argued that the significant differences between the subject property and the comparables could be reconciled by applying a market driven adjustment ratio based on

the differences in the income producing potential of the subject property and the comparables.

[17] The Complainant described the process of calculation of the adjustment ratios and the resulting adjusted sales price per suite as follows:

a. Adjustment ratio for each comparable was the ratio between the typical PGI of the subject property, as applied by the City; and the actual income reported by the Network, for each of the comparables.

b. This ratio, applied to the per suite sales price of the comparable, yielded an 'adjusted sales price per suite', that could be used for comparison to the subject property.

c. The Complainant stated that this adjustment in per suite sale price addressed all the significant variables between the subject property and each of the comparables.

[18] The unadjusted sales price per suite for the sales comparables, as reported on the Network sales sheets, ranged from $71,846 to $190,163. The corresponding adjusted sales price ranged from $112,592 to $145,225 with an average of $127,229 and a median of $125,549.

[19] The subject property's GIM was 10.38 and the assessment was $138,279 per suite, both well above the average and median noted above.

[20] The Complainant included a 2011 cash flow report for the subject property and noted that while the actual income was $2,799,830, the Respondent based the assessment on an estimated PGI of $2,801,714. The Complainant found it reasonable to use the Respondent's estimate of typical income to value the subject property.

[21] The Complainant applied the GIM of 9.25 to the Respondent's estimate of typical effective PGI of $2,717,662 resulting in a value of $25,138,374 that was rounded to $25,000,000. Adding the commercial area assessment of $835,500 and subtracting the separately assessed value of $359,000 for the parkade component, the Complainant requested that the total 2013 assessment be reduced from $28,685,500 to $25,476,500 (Exhibit C-1, page 3).

[22] In summation, the Complainant provided a copy of a Board Order 2013 ECARB 01924 (Exhibit C-2) and argued that the Complainant's value adjustment methodology, accepted by the other Board, should be similarly applied in the case of the subject assessment and the 2013 assessment reduced as requested.

Position of the Respondent

[23] In defending the current year assessment, the Respondent presented a 58 page assessment brief (Exhibit R-2) that included a Law & Legislation brief, a Gross Income Multiplier (GIM) brief (Exhibit R-3) and two previous board decisions that supported the Respondent's position and argument (Exhibits R-4 and R-5).

[24] The Respondent informed the Board that the Respondent followed an annual cycle to keep the multi-residential assessment in line with the evolving market conditions. During February – April each year, the city mailed market surveys to owners of residential properties

requesting owner information, rent roll for the property and financial statements, including parking information for the previous calendar year.

[25] In response to approximately 1,700 requests mailed out for the current assessment year, the City received nearly 1,200 responses. The Respondent analyzed these survey results to determine the typical potential gross income (PGI) and typical vacancy and typical GIM for each market area, for each type of property.

[26] The Respondent stated that the most significant attributes considered in valuation that are common to High-Rise properties include:

-Average Suite Size
-Balcony
-Building Type (low-rise or high-rise)
-Commercial Component
-Condition
-Effective Year Built
-Elevator
-Gross Building Area
- Laundry Facility
- Market Area (location)
- Parking
- River View Suites
- Stories
- Suite Mix
- Suite Total

[27] The most significant Gross Income Multiplier (GIM) model variables were identified as:

-Building Type
-Effective Year Built
-Market Area (location)

[28] The Respondent stated that the subject assessment and similar assessments were prepared using the income approach that was based on typical PGI, typical vacancy and typical GIM (Exhibit R-2, page 6). The Respondent further stated the typical gross potential income used to arrive at the 2013 assessment value was not in question but the gross income multiplier (GIM) applied to it, was the only issue before the Board.

[29] The Respondent presented a chart of five sales comparables that supported the GIM value of 10.38 used for the subject assessment (Exhibit R-2, page 27).

	Address	Year Built	# of Suites	Suite Size (sq m)	Sale GIM	Sale Date	Adjusted Sale Pr	TASP /Suite
1	9203 Jasper Ave	1979	16	82	10.18	Apr-12	1,697,000	106,063
2	10368 - 92 Str	1983	8	84	8.72	Dec-11	662,000	82,750
3	9520 - 103 Ave	1983	27	69	8.69	Aug-10	2,180,975	80,777
4	9737 - 105 Str	1977	8	86	10.53	Sep-09	757,584	94,698
5	11230 - 104 Ave	2002	306	103	14.34	Jun-10	61,027,600	199,437
		Average			10.49			
		Median			10.18			
Sub	**9825 - 103 Str**	**1981**	**204**	**99**	**10.38**	**Assessment**		**138,279**

[30] The Respondent further stated that:

a. The sales comparables, except for one (#5) were from the same market area (location) as the subject.

b. Other than one sale (#5) in respect of a five storey apartment complex, all others were 'low-rise' apartment building sales as there had been no other high-rise property sales in the area.

c. Three of the Respondent's sales comparables (#2, #3 and #5) were also included in the Complainant's chart as sales comparables #4, #2 and #1, respectively (Exhibit C-1, pages 2, 15, 16 and 18).

[31] The Respondent pointed out that the GIM values indicated on the Respondent's and the Complainant's sales comparables charts, even in respect of the same sales were different because:

a. The Respondent relied on the time adjusted sales price for each of the sales comparables and the typical potential gross income (PGI) applicable for the assessment year.

b. The Complainant's sales information was obtained from third party (Network) reports that:

i. used actual gross income;

ii. did not identify the year for which the income was shown;

iii. did not apply necessary time adjustment to the sale price; and

iv. did not reflect the changes to the incomes from the time of the sale or the reference point chosen for the third party report.

[32] In addition, the Respondent pointed out that the Complainant's comparables' information did not show any adjustments for the type of building, suite sizes, suite mix, suites with river view and type of construction i.e. wood frame versus concrete high-rise tower.

[33] The Respondent stated that the legislated approach to assessments was based on the use of typical incomes and time adjusted sale prices, in a consistent manner while the Complainant had used third party information that should not be relied upon. The Respondent illustrated the point with an example of a recent sale. The income figures, the vacancy allowance and the GIM values reported by two third-party agencies varied significantly and hence, could not be relied upon (Exhibit R-3, pages 6-7). The Respondent argued that assessment methodology used provided consistent, equitable and reliable outcomes.

[34] The Respondent provided a table of 22 high-rise equity comparables that, considering the subject's age and average suite size, showed support for the subject assessment of $138,279 per suite (Exhibit R-2, page 34).

[35] Citing previous Board decisions on the issue (Exhibits R-4 and R-5) the Respondent argued that in both instances, the Boards supported the Respondent's approach of relying on typical income factors applied in a consistent manner; as opposed to the Complainant's process of calculating the GIM values using arguable adjustments to third-party information from unknown sources.

[36] The Respondent concluded by stating that the Complainant's sales were not verified, were not reliable, it wasn't clear as to which year's income was reported and whether or not the parking and laundry income were included. The Complainant's adjustment ratios were not supported by any text books or guidelines. The Cushman Wakefield GIM report covered various types of property from all areas of the city and could not be applied to the subject assessment without clearly knowing and understanding the supporting information leading to the reported conclusions. The Respondent requested the Board to confirm the 2013 assessment of $28,685,500.

Decision

[37] The decision of the Board is to confirm the 2013 assessment of $28,685,500.

Reasons for the Decision

[38] The Board was convinced by the Respondent's detailed explanation of the problems and inconsistencies that can arise from the use of unverifiable third-party reports, as such reports tend to be all inclusive and do not identify the sources of input or the methodology used to arrive at the conclusions.

[39] The Board noted the third-party documents presented for its consideration. Although third party documents can be used to test an assessment or support a detailed analysis, they should not be used to establish an assessment. The MGB in a decision (MGB 018/10) said:

> *"Third party publications are problematic evidence for many reasons. In particular, the market data used to construct the reports was not in evidence, without which the MGB cannot determine the reliability or applicability of these reports to the subject property."*

[40] The Board found the Cushman Wakefield Report in support of the Complainant's desired GIM value of 9.25, to be of little assistance, as it included sales of different types of property from all areas of the city and was not specific to a neighbourhood or to a type of property similar to the subject in significant attributes.

[41] The Board understood the Complainant's innovative approach used to determine adjusted sales prices in respect of the direct sales comparables. However, in the absence of any evidence of its acceptance and use in industry or for mass appraisal by a municipality, the Board places little weight on this methodology.

[42] The Board noted that the Complainant's analysis of the seven direct sales comparables exposed several areas of concern:

a. The Complainant acknowledged that the rents had increased in the past 3 years but this was not reflected in the income figures used by the Complainant.

b. The adjustment ratio was derived by using the 'typical' income used by the City for its 2013 assessment valuation and the unadjusted income shown on the Network reports.

c. The Board was unable to see the appropriateness of using two income figures from different sources to determine an adjustment factor to address all differences like age, location, building type, levels of amenities, type of construction, building and suite sizes and configurations and income elements like parking and laundry, between the subject property and the sales comparables.

d. The Board noted the inconsistency in the Complainant's chart that showed an eight suite 1979 property with an adjusted GIM of 10.26 and a modern, 2001 built 305 unit apartment complex with an adjusted GIM of 9.18.

[43] The Board concludes that the GIM of 10.38 is fair and equitable. The Board is satisfied with the Respondent's equity evidence that showed that a base GIM of 9.58 was equitable and fair in the subject's market area. This base GIM value increased by 0.1 for each year between 1973 and the age of the property in question. The subject property, built in 1981, is 8 years newer than the base year and hence a GIM value of 10.38 ($9.58 + 8 * 0.1 = 10.38$) which falls within the range of the Respondent's equity comparables.

[44] Accepting the Respondent's exemption recommendation, the Board directs the Respondent to treat 57.289% of the commercial component of the 2013 assessment, as exempt from taxation beginning September 2013 to the end of this assessment period, in accordance with the provisions contained in the *Municipal Government Act s.362(1)c.i2* (Exhibit R-1, page 16).

[45] Jurisprudence has established that the burden of proof of demonstrating an assessment is incorrect rests with the Complainant. The Board finds that the Complainant's evidence, testimony and argument did not provide sufficient and compelling reasons for the Board to reduce the assessment. Accordingly, the Board finds the subject 2013 assessment of $28,685,500 is appropriate, fair and equitable.

Dissenting Opinion

[46] There was no dissenting opinion.

Heard on November 21, 2013.

Dated this 10th day of December, 2013, at the City of Edmonton, Alberta.

Shannon Boyer, Presiding Officer

Appearances:

Tom Janzen

for the Complainant

Amy Murphy

Karen Perry

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.