

Edmonton Composite Assessment Review Board

Citation: Jan Goresht, Cushman & Wakefield Ltd v The City of Edmonton, 2014 ECARB 00262

Assessment Roll Number: 3263308
Municipal Address: 10029 111 STREET NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$1,405,000

Between:

Jan Goresht, Cushman & Wakefield Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Lynn Patrick, Presiding Officer
Joseph Ruggiero, Board Member
Randy Townsend, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the Respondents indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a 2.5 story walk up apartment structure situated at 10029 111 Street NW in market area 1C in the Oliver neighborhood. The effective year built for the subject is 1965. There are 12 suites made up of 6 one bedroom and 6 two bedroom suites. The average suite size is 796.5 square feet. The subject is assessed under the income approach using a Gross Income Multiplier of 11.6 and a vacancy rate of 2.5%. The assessment for the subject is \$1,405,000.

Issue

[4] What is the correct market value of the subject for the 2014 taxation year?

Position of the Complainant

[5] The Complainant contends the correct market value for the subject is \$1,310,000. In support of this contention the Complainant provided a 59 page submission electronically in the absence of any actual personal representation. The submission contained a 57 page appraisal dated February 8, 2012 with an effective date of value of February 2, 2012. The balance of the submission is made up of a cover page entitled Disclosure of Evidence and an Assessment Notice pertaining to Roll No. 4315305, not the subject. An email directed to the Board requested that the Board accept into evidence the submission notwithstanding the absence of personal representation on behalf of the Complainant at the hearing. The Board accepted the submission in evidence as Exhibit C-1. The cover page of the submission stated that the correct market value, found through the appraisal component of the submission, is the sum of \$1,310,000.

[6] The Appraisal contains a cover letter addressed to Nexus Asset Group Inc. which states that the estimated value of the subject property is \$1,310,000. The Executive Summary appearing on the seventh page of the submission under the heading of VALUE ESTIMATE states that by the use of an Income Capitalization Method the value estimate is \$1,310,000 and that by the Direct Comparison Approach the value estimate is \$1,320,000. The Executive Summary also states that the rental rates are well below market and that the Appraisal reflects stabilized rents and operating expenses at market rates.

[7] The Appraisal provides rental information attributed to one and two bedroom apartments in the market area and arrives at a rental rate of \$850.00 per month for the one bedroom suites and \$1,000 per month for the two bedroom suites which results in an Effective Gross Income of \$131,707. The Appraisal suggests that the CMHC report for a point in time relevant to the date of the Appraisal supports a vacancy rate of 3.00%. The Appraisal states that an analysis of operating statements of similar developments led to the establishment of a stabilized expense total of \$46,481 and thus to a Net Operating Income (NOI) of \$85,226. The Appraisal provides a capitalization rate (cap rate) study based on examination of 5 comparables. The analysis of those sales which occurred from February 2011 to November 2011, shows a range of cap rates of 5.22% to 6.73% from which is selected a rate of 6.50%. This results in a value of \$1,311,692 which is rounded down to \$1,310,000.

[8] The Appraisal also contains an analysis of the market based upon the direct comparison approach. The analysis is of the 5 sales from the cap rate analysis and of which number 5 is the only sale located in the subject market area. The Appraisal notes that the sales utilized involve the transfer of the leased fee interest and as such the subject is appraised upon the leased fee basis, therefore, no adjustments were necessary. The NOI of the subject of \$85,226 results in an NOI of \$7,102 per suite and a value of \$109,167 per suite. The NOI adjustment derived from the subject suite NOI divided by the comparables NOI results in a factor to be applied against the sale price per suite of each comparable resulting in an adjusted average suite value of \$120,597. From that the value of \$110,000 per suite is selected resulting in a value for the subject of \$1,320,000 (rounded).

Position of the Respondent

[9] The Respondent presented their submissions in two parts. The first part consisted of a number of comments upon the use of an appraisal by the Complainant and the second part consisted of a presentation of information in support of the assessment.

[10] The Respondent's issues with the submission of the Complainant are as follows: (a) the date of the Appraisal is February 2, 2012 which is 17 months prior to the mandated valuation date for the 2014 valuation date of July 1, 2013; (b) it was prepared for a third party, not the Complainant and no consent by the third party to its use before the Board was provided; (c) the purpose of the appraisal is expressed to be for financing not assessment; (d) the valuation being made is based upon a leased fee basis and not fee simple as required by the legislation; (e) comparable sales are from different locations than the market area in question; (f) the number of suites range considerably higher than the subject and the sale dates are all in an earlier year without time adjustments; (g) no expense estimate analysis sources are disclosed; and (h) the vacancy rate chosen of 3% is from an earlier CMHC study and not current to the valuation date for the assessment. The Respondent took issue with the absence of the Appraiser and the lack of representation of the Complainant at the Hearing in that no opportunity was presented to question the contents of the Appraisal submitted by the Complainant.

[11] The Respondent submitted a 60 page brief entered as Exhibit R-1 in support of a value based upon the income approach using typical potential gross income (PGI), typical vacancy and typical gross income multiplier (GIM). The Respondent stated that the income data from the request for information process has been analyzed to establish the PGI to which has been added typical parking and laundry income. The typical vacancy rate used of 2.5% is similarly derived from an analysis of reported vacancies from the income and expense statements in the responses to the requests for information. The GIM rate of 11.6 was derived from market analysis of sales.

[12] The Respondent submitted a chart of the analysis of four sales of low rise multi-residential properties in the market area of the subject. The comparables are all 2.5 story properties ranging in age from 1961 to 1969 which encompasses the age of the 2.5 story subject, which is 1965. The number of suites ranges from 12 to 65 respectively and the vacancy rate is 2.5% in each comparable. The City of Edmonton income analysis and the time adjusted sales prices produce a range of GIM's of 10.54 to 12.09, which compare to the GIM for the subject at 11.6. The sale dates of the comparables range from February 2011 to April 2012 and are time adjusted to the valuation date of July 1, 2013.

[13] The Respondent also submitted a chart of the analysis of four equity comparables located in market area 1C. These comparables are all 2.5 story low rise properties each consisting of 12 suites in an age range of 1960 to 1966. The GIM range is from 11.55 to 11.65 compared to the subject's of 11.6. The assessment per suite range is from \$115,250 to \$117,166 compared to the subject's which is \$117,083.

Decision

[14] The decision of the Board is to confirm the 2014 assessment of \$1,405,000.

Reasons for the Decision

[15] The Board was faced with the difficulty of dealing with the absence of any representative on behalf of the Complainant and the emailed request by the agent to accept into evidence the Disclosure Brief that had been filed with the Respondent and the Composite Assessment Review Board pursuant to S.8 of MRAC. The Board acknowledges that pursuant to S. 16(1) of MRAC, in lieu of attending a hearing a party may file a written presentation with the clerk. The Board

accepts that the Disclosure document (exhibit C-1) satisfies the requirement of S.16(2)(b) of MRAC.

[16] Having made the decision to accept the information contained in Exhibit C-1 into evidence the Board proceeded to examine the contents of the 57 page Appraisal contained in the exhibit and gave it due consideration. The Board noted four matters that gave concern about the Appraisal. The first matter that affects the significance is the date of the appraisal being February 2, 2012 which is before the valuation date of the subject. There is no time adjustment provided for the appraised value of \$1,310,000 to bring it forward to July 1, 2013. The second matter of concern is that it expresses the condition that it is prepared for third party and not for the Complainant and no consent to its use before this hearing was present. The third matter considered to be of concern is that the Appraisal was prepared for the purpose of financing and not for assessment.

[17] This leads to the fourth matter of concern in that the Appraisal expressly states it was prepared on a lease estate basis. S.2(b) of MRAT provides that in mass appraisal an assessment of property based on market value must be an estimate of the fee simple estate in the property. This departure from the legislated basis for making the estimate renders the Appraisal of little weight to the Board as to the valuation reached by the Appraiser for assessment purposes.

[18] Giving full consideration to all the information in the Appraisal, the Board reviewed the sales comparables cited by the Complainant to determine if they bore similarity to the subject and if so, whether they are better evidence of market value than those of the Respondent. The Board concluded that based on the location of those comparables, only one was within the market area of the subject. Comparable number 5, at the numbered page 31 of the Appraisal, consists of three 2.5 story buildings of which two are located in the 102 block of 122 Street and one is located in the 103 block of 122 Street. This comparable is also included in the Respondent's comparables. These buildings total 66 suites in the Appraisal and 65 suites in the Respondents submission. There are two separate Roll Numbers for the buildings. The Board does not consider this comparable as similar to the subject and thus did not give it much weight.

[19] The Respondent submitted four equity comparables. All of these properties are located in proximity to the subject and have many similarities to the subject and are thus persuasive to the Board that the GIM rate of 11.6 is the correct rate and is fair and equitable. The three sales comparables of the Respondent excluding the common comparable also support the assessment. The Board finds that the Respondent's PGI and vacancy rate are supported by the sales comparables.

Dissenting Opinion

[20] There is no dissenting opinion.

Heard May 21, 2014.

Dated this 5th day of June, 2014, at the City of Edmonton, Alberta.



Lynn Patrick, Presiding Officer

Appearances:

None

for the Complainant

Cameron Ashmore

Keivan Navidikasmaei

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.

Appendix

Legislation

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.

The *Matters Relating to Assessment Complaints Regulation*, AR 310/2009:

Disclosure of evidence

s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,
 - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence.

Personal attendance not required

s 16(1) Parties to a hearing before an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk of the assessment review board.

(2) A party who files a written presentation under subsection (1) must provide a copy of it to the other parties,

- (a) in the case of a hearing before a local assessment review board, at least 3 days before the hearing;
- (b) in the case of a hearing before a composite assessment review board, at least 7 days before the hearing.

The Matters Relating to Assessment and Taxation Regulation, AR 220/2004:

Mass appraisal

- s 2 An assessment of property based on market value
 - (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.

Exhibits

Complainant's Brief, C1 – 59 pages
Respondent's Brief, R1 – 60 pages