

NOTICE OF DECISION NO. 0098 196/12

Colliers International Realty
Advisors Inc.
3555 - 10180 101 STREET
Edmonton, AB T5J 3S4

The City of Edmonton

Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on August 21, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
1066331	10180 101 STREET NW	Plan: 8121364 Block: 1 Lot: A	\$247,076,500	Annual New	2012

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.

cc: MANUFACTURERS LIFE INSURANCE CO.
1023786 ALBERTA LTD

Edmonton Composite Assessment Review Board

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of
Edmonton, ECARB 2012-002068**

Assessment Roll Number: 1066331
Municipal Address: 10180 101 STREET NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Warren Garten, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member

Preliminary Matters

- [1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board Members indicated no bias with respect to this file.
- [2] There were no other preliminary matters brought forward before the Board related to this roll number.

Background

[3] The subject property is a large downtown high-rise office and retail complex comprising a total assessed building area of 857,782 square feet, of which 115,292 square feet is retail located on the first and second floors. The complex includes 525 underground parking stalls and 4,419 square feet of storage. The subject is classed by the City of Edmonton as a AA Office Building for assessment purposes.

Issue(s)

- [4] There are 3 main issues pertaining to this Assessment appeal

(a) Is Income Approach to Value used in the 2012 City of Edmonton Assessment the correct market value of the subject property as required in the Municipal Government Act?

Sub Issues: Is office rental rate used correct?

Is vacancy rate used correct?

Is cap rate used correct?

Is a retail rental rate increase fair and equitable? – requested by Respondent

(b) On a direct comparison approach to value, is the current assessment correct?

(c) Is the exemption amount used by the City of Edmonton Assessment Department correct? It was agreed by both the Complainant and the Respondent to change the exemption amount to zero since Alberta Health Services vacated from their premises in the subject property.

Legislation

[5] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

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.

S 305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

(a) the assessor may correct the assessment roll for the current year only, and

(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person

(5) If a complaint has been made under section 460 or 488 about an assessed property; the assessor must not correct or change the assessment roll in respect of that

property until a decision of an assessment review board or the Municipal Government Board, as the case may be, has been rendered or the complaint withdrawn.

Position of the Complainant

- [6] Based on the chart on C-1 page 6 the Complainant argued that class A and AA buildings have been leasing office space between \$16.00 and \$21.00 per square foot throughout 2011. The Complainant suggested that the subject property office space should be in the \$19.00 to \$21.00 per square foot range as the Complainant selected \$20.00 per square foot. As the complainant selected \$20.00 per square foot.
- [7] The chart (C-1 pg 6) listed a total of nine leases from the subject building completed in the subject in 2010 ranging from \$20.00 to \$40.02 per square foot.
- [8] The Complainant argued that the actual vacancy rate for the subject office space (C-1 pg. 7) for 2010 was 8.2% and for 2011 was 15.62%. Further for trending purposes, the office vacancy for 2012 is 13.97%.
- [9] The Complainant requested a change in the vacancy rate from the current 8% to 10% which better reflects the current vacancy in the subject. This was evidenced in C-1 pages 20, 21 and 24 including C-2 pages 19, 20 and 21.
- [10] The Complainant then argued that the Cap Rate used in the assessment was too low and should be adjusted to 7.0%.
- [11] The Complainant provided a chart of comparable Cap Rates on C-1 page 7 which included four buildings sold from January 2009 to December 2010. Cap Rates reported on this chart ranged from 6.12% to 7.58% on a lease fee basis.
- [12] The Complainant went on to argue that the Direct Comparison approach to value however placed little weight on this method of valuation. The Complainant provided a chart C-1 page 8 which included the same buildings used in the Cap Rate argument.
- [13] It was pointed out by the Complainant that the treatment of increasing rental rates is inequitable treatment to the taxpayer and an abuse of the process. Had the subject not been under appeal, then this increase rent request would not have been brought forward.
- [14] Notwithstanding the face value of the leases, the Complainant argued in summation that the Net Effective Rent should be used in determining value and not the face value. This would take free rent, landlord's work and tenant improvement allowance into consideration.
- [15] Further in summary, the Complainant argued that of the 6 groups of retail located in the subject there were no comparable leases for 2 of them and as such the rental rate requested by the Respondent could not be relied on as a true comparison.
- [16] The Complainant requested a reduction to the 2012 assessment to \$212,203,500.

Position of the Respondent

[17] The Respondent started the presentation by requesting an increase to the retail rental rate in the subject as it was discovered that there was an error in the model used by the City of Edmonton in the calculation of the retail component of several office buildings in the downtown core. The retail in the A class buildings were assessed too low and the retail in the B class buildings were assessed too high. The Respondent requested the following changes:

- a) Under 1,000 S.F. \$22.00 from \$16.75 per square foot
- b) 1,001 to 3,000 S.F. \$21.00 from \$16.00
- c) 3,001 to 5,000 S.F. \$20.00 from \$15.00
- d) 5,001 to 10,000 S.F. \$19.00 from \$14.25
- e) Over 10,001 S.F. \$17.00 from \$12.75
- f) Restaurants \$23.00 from \$17.50

[18] The Respondent provided a list as evidence of the retail leasing activity on R-1 page 89. The list of 13 comparable leases included 6 leases from the subject. These leases ranged from \$19.11 to \$36.61 per square foot.

[19] In response to the Complainant's Cap Rate position, the Respondent produced a chart R-1 page 24 along with office sales analysis sheets R-1 page 25 to 31. This chart converted a total of 6 sales from a lease fee cap rate calculation to a fee simple cap rate calculation. In addition, the selling prices have been adjusted to reflect the time adjusted selling price up to the valuation date of July 1, 2011.

[20] Overall these 6 time adjusted sales resulted in a cap rate ranging from 4.92% for Petroleum Plaza to 6.79% for the ATCO Centre.

[21] For equity comparison, the Respondent further provided a chart R-1 page 32 that reflected the Downtown Valuation rates used in assessing Office Buildings. AA class offices have all been assessed using a 6.5% cap rate for the 2012 assessment.

[22] In response to the Complainant's Direct Sales Comparison argument, the Respondent provided evidence in a chart R-1 page 34. The chart listed the 6 known office building sales (AH and AL class) over the last 3 years and the resulting time adjusted average selling price is calculated to be \$270 per square foot with a median price of \$269 per square foot. This is in comparison to the subject AA class building assessed at \$288.04 per square foot. Upon questioning it was pointed out in R-1 pages 102 to 108 in the marketing reports that Manulife is a AA building and among the best buildings in Edmonton.

[23] In response to the Complainant's office rent argument, the Respondent point out in the rent roll, leases signed but not included in the Complainant's evidence package. These included unit 3380 page 51 at \$26.00 per square foot and unit 2380 page 48 at \$24.00 per square foot

- [24] The Respondent further provided a chart R-1 page 88 listing numerous comparable leases in AA classed office buildings in the downtown core showing an average of \$21.61 with a median of \$21.36.
- [25] On R-1 page 83 the Respondent provided a summary of the vacancy as per the RFI date from 2008 to 2011 which ranged from a low of 4.61% in 2008 to 10.00% in 2011. Since there is no evidence of over 10% average vacancy for three consecutive years, chronic vacancy would not apply based on the City of Edmonton's policy.
- [26] The Respondent further argued that the weighted average as evidenced in R-1 page 87 of all A classed buildings is 5.7% and the City has used 8.0% as the vacancy allowance in the income approach to value calculation. Upon questioning by the Complainant, the Respondent did not have hard evidence i.e. rent rolls to support the vacancy rate for 2011.
- [27] The Respondent further requested a reduction to the exemption amount to Zero (\$0) for the subject as Alberta Health Services had vacated in October 2011. This was evidenced on R-1 page 45.
- [28] In summary the Respondent pointed out that the Complainant has ignored leases within his evidence package and cannot justify a reduction of office rent from \$21.00 to \$20.00.
- [29] The Respondent brought to the Board's attention that the cap rate analysis used by the Complainant did not convert the selling price to fee simple nor was it time adjusted so it could not be relied upon.

Rebuttal

- [30] As a rebuttal to the Respondent's position, the Complainant argued that the Respondent's comparable leases did not have addresses or building names and could not be verified.
- [31] In response to the Respondent's request for an increase in the retail rental rates of the subject, the Complainant cited on C-3 page 5, the AgPro decision and concluded that this increase in retail rental rates sits outside of MGA s 305.
- [32] Further the Complainant brought forward evidence C-3 page 9 of the Respondent's 6 comparable retail leases that are in the subject property. Three were renewals with two leases having large tenant improvement packages provided by the Landlord. The Second Cup was negotiated in 2005 and Headlines negotiated in 2007. This left one lease of 276 square feet for Dr. Com which is a small comparable and could not be relied on as a market rent.
- [33] The Complainant further cited decision CARB 1571/2011-P where the Board decided that lease renewals were to be given little weight.
- [34] With regards to the Office rent issue the complainant argued that the Respondent used one lease at \$24.00 per square foot which is post facto and had ignored the other 12 post facto leases (C-3 pg. 12) which demonstrated a trend to declining rates

Decision

- [35] The Board's decision is to confirm the assessment at \$247,076,500.

[36] The Board's decision is to reduce the exemption amount to Zero (\$0).

Reasons for the Decision

[37] Although the Board agreed that even though the current office vacancy rate for the subject property was above 10%, this in itself is not considered chronic. Chronic vacancy must be proven over a long period of time. The Board placed the most weight on the Respondent's evidence on the vacancy percentages from 2008 to 2011. As a result the request to increase the vacancy to 10% is denied.

[38] The Board found that there was no conclusive evidence presented by the Complainant to reduce the office rental rate from \$21.00 to \$20.00. The Board placed most weight on the Respondent's list of comparable leases R-1 page 88. As a result this request to reduce the office rent is denied.

[39] The Board found that the cap rate calculation used by the Complainant was calculated using a lease fee approach on C-1 page 7. In addition the Complainant's approach did not adjust for time. The list of buildings used by the Complainant were either AH or AL compared to the subject which is AA. The Board placed the most weight on the Respondent's calculation of cap rate R-1 page 24 which included a total of 6 A class building sales detailed on pages 25 to 31. This chart was calculated using a fee simple approach and the resulting selling price has been time adjusted to July 1, 2011. The adjusted cap rate ranged from 4.92% to 6.79% in building which have been deemed a lower class (AH or AL) by the City of Edmonton. The method used by the Complainant was a lease fee approach which does not adjust the overall rents to current market rents and could distort the overall cap rate calculation for comparison purposes, as at valuation date. As a result the Board found that this would justify a 6.5% cap rate for the subject and has denied the request to increase the cap rate to 7.0%.

[40] The Board considered an increase to the retail rental rates in the subject as requested by the Respondent. In evaluating this position the Board found the R-1 page 89 (list of retail AA comparables) did not agree with the requested amounts on R-1 page 12. This left the Board with a question as to the completeness of the evidence from the Respondent.

[41] Further the Board found that the error made by the City of Edmonton could be corrected by the issuance of amended assessment to all taxpayers (based on MGA s. 305) rather than on a selected basis during the appeal process.

[42] The Board further found that presuming a change to the retail rental rate either higher or lower was granted, it would then appear that the Board would inadvertently cause an inequity towards other buildings which had not gone through the appeal process. .

[43] The Board also found that by increasing the retail rental rate of the subject would in itself result in a harsh penalty for the Taxpayer for continuing with the appeal complaint. As a result the Board found in favor of the Complainant and this request was denied.

[44] The Board also found that the request to reduce the exemption by both the Complainant and the Respondent to be reasonable as the tenant (Alberta Health Services) vacated the

premises in October 2011 as evidence in R-1 page 109 to 124. The Board agrees to reduce the exemption to Zero (\$0).

Dissenting Opinion

[45] There was no dissenting opinion by any member of the Board.

Heard commencing August 21, 2012.

Dated this 13th day of September, 2012, at the City of Edmonton, Alberta.

Warren Garten, Presiding Officer

Appearances:

Greg Jobagy

Stephen Cook

for the Complainant

Brennen Tipton

Cameron Ashmore

for the Respondent