

NOTICE OF DECISION NO. 0098 40/12

CVG
1200-10665 Jasper Avenue
Edmonton, AB T5J 3S9

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 (the Board) from a hearing held on June 26, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10125192	4999 – 98 Avenue NW	Plan: 0821569 Block: 3 Lot: 13A	\$84,946,500	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: Twin Equities Inc.

Edmonton Composite Assessment Review Board (the Board)

Citation: CVG v The City of Edmonton, 2012 ECARB 1886

Assessment Roll Number: 10125192

Municipal Address:

Assessment Year: 2012

Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Hatem Naboulsi, Presiding Officer
Brian Hetherington, Board Member
James Wall, Board Member

Preliminary Matters

[1] Neither party objected to the composition of the Board. The Board Members confirmed that they had no bias with respect to this matter.

[2] At the request of the City's legal counsel, the parties presenting to the Board took an oath to present only factual information.

[3] At the outset, the Board was informed that the City had made an offer to reduce the assessment to \$79,852,000 from \$84,946,500 based on a re-allocation of excess land. However, the Complainant had rejected the offer.

Background

[4] The subject property is a 397,396 square foot office and commercial building, known as Twin Atria and located at the junction of 98 Avenue and 50 Street in Southeast Edmonton in the Eastgate area. The building has underground space for 68 vehicles and an additional space for 761 vehicles in surface lots. The City of Edmonton has assessed the property as an A class building.

Issues

- [5] In the original complaint, three issues were identified:
- (a) Whether the property should be assessed as a B class building rather than an A class building?
 - (b) What is the appropriate capitalization rate (cap rate) for the subject property?
 - (c) What is the appropriate value of the property's excess land?
- [6] At the outset of the hearing, the Complainant acknowledged the City's re-calculation of the excess land, but asked the Board to rule on the first two issues.

Legislation

- [7] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

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

- [8] In support of his appeal, the Complainant presented the Board with a 27-page package (C-1), which included:

- his requests for re-allocation of rental rates and capitalization rates;
- outlines and illustrations of three comparable B class properties in the Eastgate area, which were presented as having \$10.00 per square foot assessment rates, compared to the subject property's \$18.00 per square foot assessment;
- a list of four recent downtown Edmonton office building sales to support his request for a 7.5% capitalization rate;
- photographs and illustrations of the comparable properties;

- a copy of the City's 2012 Suburban Valuation Rates Chart; and
- e-mail communications between the assessor and the Complainant regarding a projected upcoming vacancy when the Environment Canada lease expires.

[9] At the outset, the Complainant told the Board that he accepted the offer of the City to re-calculate the value of the excess land, but would still continue with his appeals regarding the misclassification of the subject property as A class rather than B class and the adjustment of the capitalization rate to 7.5% from 7%.

[10] The Complainant told the Board that the subject property was a unique building, with a lot of government tenants, adding that while it was relatively full at the moment, it would not be next year when a major tenant moves out.

[11] He suggested to the Board that the subject property was being unfairly treated by being assessed as an A class building with a lease rate of \$18.00 per square foot. Neighbouring B class buildings, which he argued were comparable, were assessed using a rate of \$10.00 per square foot.

[12] To support his argument, the Complainant suggested that three neighbouring office buildings, 50th Street Atria, Capilano Centre, and Edmonton Sun Building were each assessed at \$10.00 per square foot and presented selected photographs of the interior and exterior of these buildings and the subject property, suggesting they were all of equal quality.

[13] He requested the Board change the classification of the subject property to B classification, adding: "The Assessment Department has rated this building as an 'A', whereas the others are rated as 'B' buildings. However, these three buildings are very similar in age, condition and location to the subject property and in addition, approximately \$11.00 per square foot would be required in landlord and tenant improvement costs to upgrade the subject space in order to attract new tenants."

[14] He added that "if it is the fee simple estate that should be valued for assessment purposes, then the 'B' rating would be fair and equitable for Twin Atria."

[15] In support of his request for an increased capitalization rate, the Complainant listed four downtown high rise office buildings, which had been sold between April and December 2010. The capitalization rates of those four buildings ranged from 5.85% to 7.58%.

[16] He suggested to the Board that applying the requested 7.5% rate would result in the market value of the building being \$40,146,000 and requested a reduction in the total assessment to \$41,200,000.

[17] In Rebuttal, the Complainant presented the Board with the complete Appraisal Report on the subject property, prepared by Keith Wensel, AACI, together with a summary two-page covering letter from CVG (C2 – 119 pages).

[18] The Complainant told the Board that the Appraisal Report identified two of the Comparable properties, 50th Street Atria and the Edmonton Sun Building, as "two of the primary competing Class A office buildings", which led to the question of why these are assessed at only \$10.00 per square foot, compared to the subject property's assessment of \$18.00 per square foot.

[19] In his covering letter, the Complainant also pointed out that the Wensel report stated that “the contract rent (\$18.27 per square foot) is greater than its market rent (\$16.00 per square foot)”

Position of the Respondent

[20] The Respondent presented the Board with a 164-page brief (R-1) outlining the City’s support for the assessment, including the following:

- Interior and exterior photographs of the subject property and the Respondent’s comparable properties;
- An office market zoning map of the city;
- City charts on office assessment calculations, comparable A class rents and suburban office cap rates;
- A copy of the Complaint form and the Respondent’s comments on each of the issues;
- Operational and rental charts on the subject property;
- Sales analysis sheets on comparable office properties;
- A chart of per square foot sales of the comparable properties presented by both parties;
- Examples of promotional material prepared by the subject property’s representatives showing it as an A class building;
- Extracts from an Appraisal Report on the subject property prepared by Keith Wensel of Altus Group in 2011;
- Extracts from the Alberta Assessors Association Valuation Guide;
- Copies of MGB Board Orders 038/06 and 176/99 and an Edmonton Assessment Review Board decision from 2011;
- The City Assessment Brief on suburban offices; and
- The City’s Law and Legislation Brief.

[20] The Respondent also presented the Board with a copy of a revised seven-page recommendation (R-2), which supported the re-calculation of the excess land, by being classified as parking spaces at the rate of 3.4 parking spots per 100 square metres of floor area. This calculation adjusted the value of the excess land to \$1,053,000 from \$6,147,500, which reduced the overall assessment to \$79,852,000.

[21] The Respondent told the Board that there were only two Class A buildings in the Eastgate area and the other one was owner-occupied.

[22] As comparable properties, the Respondent presented two office properties, which he said were similar to the subject in being well-kept and updated. The two comparables were Hy's Centre at 11010 101 Street, just north of Downtown, and Campus Towers on the U of A campus.

[23] The Respondent told the Board that the City had only received the subject property's rent roll after the valuation date and that it had no lease data at the time of assessment calculations.

[24] The Respondent indicated to the Board that the Complainant had failed to show the age and condition of the equity comparables and had completely ignored the income characteristics of the subject.

[25] The Respondent also indicated that one of the main factors in determining classification is the market rent, adding that the subject property has had two new leases in the last 18 months, which were signed at \$18.00 and \$18.50 per square foot. He added that this is very comparable to surrounding area A class office space, and pointed out to the Board that the owner of Twin Atria, the building manager, Tonko and an appraisal completed for Altus classified the subject property as an A class building.

[26] The Respondent provided the Board with a rent roll for the subject (R-1, pages 19-22) and income and expense statement (R-1, pages 23-26), as well as a recommendation for last year's assessment at a value of \$80,423,500 and submitted an income proforma in defence of the assessment.

Decision

[27] The decision of the Board is to accept the revised assessment proposed by the Respondent at \$79,852,000.

Reasons for the Decision

[28] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board is of the opinion that the Complainant failed to meet this requirement.

[29] The Board finds the Complainant failed to provide data to show the age and condition of the subject. Accordingly, the Board was unable to find that these comparables support his argument that a lease rate of \$10.00 per square foot was being charged in comparable office buildings in the area.

[30] The Board considered the photographic evidence presented by the Complainant of other office buildings in the area and considered them to be insufficient to prove equal classification with the subject building.

[31] The Complainant provided evidence of cap rates for Class A buildings in the city's downtown area. The Board notes that the cap rates relate to properties which lack comparability to the subject. These comparables consisted of downtown high-rises, significantly different from the subject property in both market area and building type. Furthermore, these cap rates ranged from 5.85 to 7.58%, a wide range that does not support an increase in the cap rate.

[32] The Board notes that the Respondent provided copies of promotional information from the subject property's managers, which classified the subject as an A building in very good condition.

[33] Regarding the Wensel appraisal, the Board notes it was not provided as evidence of the subject property's value, but rather as rebuttal to only small portions of it presented by the Respondent in R-1. After reviewing the Appraisal Report, the Board makes the following observations:

- The report states that: "The intended use is to provide Twin Equities Inc. and Tonko Realty Advisers Ltd. with a basis for an internal evaluation and no other use. No additional intended users are identified or intended by the appraiser.";
- The Appraiser refers to the subject property on page 15 of his report as being in "very good condition";
- The Appraiser in his report relied heavily on the discounted cash-flow procedure in estimating the market value of the subject property. This procedure or method of valuing the income stream of a property is often required by property owners to assist in internal decision-making rather than in estimating fee-simple value;

[34] The Board finds that the two current leases in the subject property in the \$18.00 range are compelling evidence of the correctness of the building's classification by the City of Class A.

[35] The Income and Expense Statement provided by the owner to the City (R-1, pages 23-26) indicates a net operating income (NOI) of \$5,996,802, while the City, in its proforma (R-2, page 1) provides a NOI, based on a Class A rental of \$5,515,952 to arrive at its assessment. Had the City utilized the actual NOI from the subject property, the Board notes the assessment would have been much higher.

[36] The Board agrees with the Respondent's methodology (R-2, page 2) in the re-calculation of the excess land value

Dissenting Opinion

[37] There was no dissenting opinion.

Heard commencing June 26, 2012.

Dated this 29 day of June, 2012, at the City of Edmonton, Alberta.

Hatem Naboulsi, Presiding Officer

Appearances:

Peter Smith, CVG

for the Complainant

Brennen Tipton, Assessor

Cam Ashmore, Legal Counsel

Vasily Kim, Assessor

for the Respondent