



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
Phone: (780) 496-5026

NOTICE OF DECISION NO. 0098 862/11

EMPEROR PROPERTY HOLDINGS INC
BOX 255
FALLIS, AB T0E 0V0

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 March 6 and March 21, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3571353	10080 Jasper Avenue NW	Plan: F Lot: 20 / Plan: F Lot: 21	\$21,250,500	Annual New	2011

Before:

James Fleming, Presiding Officer
Judy Shewchuk, Board Member
Taras Luciw, Board Member

Board Officer: Karin Lauderdale

Persons Appearing on behalf of Complainant:

Glen Cowan, Glen Cowan and Associates

Persons Appearing on behalf of Respondent:

Brennen Tipton, Assessor, City of Edmonton
Cameron Ashmore, Solicitor, City of Edmonton

PRELIMINARY MATTERS

1. It should be noted that due to considerable delays experienced as a result of the City's preliminary challenge of the validity of Altus CARB complaints, including filing of a leave to appeal the CARB decision of the preliminary hearing in the Court of Queen's Bench, the Assessment Review Board (ARB) administration determined it would be unable to meet the deadlines set out in s. 468 (1) of the Municipal Government Act (MGA), and s. 53 (b) of Matters Relating to Assessment Complaints. Accordingly, the ARB administration requested and obtained a Ministerial extension to hear the affected roll numbers, including the subject property, in 2012 under the authority of s. 605(2) of the MGA.
2. At the request of the Respondent the witnesses were sworn.
3. The parties indicated that they had no objection to the composition of the CARB. No bias was raised by any of the parties to this file.

BACKGROUND

4. The subject property is a high rise building with 106,901 square feet of leasable space at the north east corner of 101 Street and Jasper Avenue. It was built in 1962 and is known as the Empire Building. The property is classified as a BH (B High) building and valued using the income approach. Neither the classification nor the valuation method was disputed by either party.
5. The parties had agreed, prior to the hearing, that the size of the office space should be adjusted in order to recognize common areas. As a result, this reduced the office net leasable area from 93,814 square feet to 92,381 square feet and accordingly the assessment was recalculated at \$20,967,500.

ISSUE(S)

6. Although Schedule A of the complaint form identified seven issues, at the hearing only three issues were argued:
 - 1) Is the assessed office rental rate used by the Respondent too high at \$18 per square foot or should it be \$16 per square foot as proposed by the Complainant?
 - 2) Is the typical vacancy rate used by the Respondent too low at 6% or should it be 7% as proposed by the Complainant?
 - 3) Is the capitalization rate used by the Respondent too low at 8% or should it be 8.875% as proposed by the Complainant?

LEGISLATION

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

On the issue of the assessed office rental rate:

7. The Complainant submitted a valuation analysis (C-1) of the subject property and included a tenant schedule/rent roll reflecting rents as at July 1, 2010. The majority of the office leases were on a triple net basis with several others being gross leases and some non-full recovery leases plus several month-to-month tenants (the retail rents were not in dispute). The lease rates ranged from \$6.00 to \$23.00 per square foot. On page 34 of C1, the Complainant noted that a review of recent leases reflected a range of \$14.95 to \$21.00 per square foot in year one of the office leases, with some featuring minor escalations.
8. The Complainant also presented a leasing market analysis (C-1, page 36) wherein new and renewal leases in 12 comparable buildings were detailed. The dates of the leases ranged from February 2010 to September 2010 and the average rate ranged from \$12.50 to \$16.80 per square foot.
9. In considering an appropriate market office lease rate for the subject property the Complainant compared the recent leasing in the subject with comparable buildings noted above and a lease rate of \$16 per square foot triple net was concluded.

On the issue of the vacancy rate:

10. The Complainant stated that the actual vacancy on July 1, 2010 was 15.3% but for the purpose of the valuation analysis the vacant space was assumed to be absorbed. The vacancy levels in the second quarter of 2010 reported by two brokerage firms and a real estate data firm ranged from 5.4% to 8.6% while the overall financial district vacancy ranged from 7.2% to 7.9%. Financial area class B buildings which would include the subject ranged from 5.2% to 8.9%. A third brokerage firm reported only third quarter 2010 figures that were 7.9%, 7.5%, and 6.5% respectively.
11. Considering the July 1, 2010 vacancy and projected absorption plus local market conditions, the Complainant considered a 7% vacancy allowance as reasonable.

On the issue of the capitalization rate:

12. A summary of five comparable sales (C-1, page 51) that occurred between January 2007 and April 2010 reflected stabilized capitalization rates ranging from 6.54% to 7.67%. To achieve a stabilized capitalization rate at July 1, 2010 the Complainant applied a time adjustment factor calculated from quarterly market capitalization rates published by two real estate brokerages and a database company (C-1, page 54). One brokerage reported on downtown class A buildings, the other brokerage on downtown class B buildings while the database company reported on high rise office buildings. The time adjustment factor was calculated as a monthly factor of .04 basis points, and then applied to the stabilized capitalization rates resulting in a range of 7.7% to 8.42%.
13. The Complainant considered the tenancies, rates, vacancies, and ages of the five comparable sales and, after comparing them to the subject, concluded a capitalization rate of 8.875%.

POSITION OF THE RESPONDENT

On the issue of the assessed office rental rate:

14. The Respondent submitted evidence showing that comparable BH properties in the downtown area are assessed at between \$13 and \$23 per square foot. Accordingly the subject, assessed at \$18 per square foot, is within that range and is assessed the same as other BH buildings in the downtown area.
15. The fact that the subject does not have onsite parking has already been taken into account and it does not affect lease rates. Furthermore alternate parking is arranged and charged for in some cases. The Respondent pointed out that the subject has other advantages such as direct access to the LRT and the downtown pedway system.

On the issue of the vacancy rate:

16. The Respondent submitted evidence including a table of 26 BH downtown properties showing vacancy rates ranging from 0% to 40.76%. The average was 5.9% which supports the 6% vacancy rate used by the Respondent.

On the issue of the capitalization rate:

17. The Respondent submitted evidence including a table of 31 BH downtown properties showing capitalization rates of 8%. Third party documentation from Colliers International also indicated that downtown Edmonton B buildings have capitalization rates between 7.5% and 8%.

DECISION

18. The complaint is allowed in part and the assessment is reduced to \$20,967,500 to recognize the joint recommendation of the parties with respect to the adjustment in assessable size.

REASONS FOR THE DECISION

On the issue of the assessed office rental rate:

19. The Complainant provided 12 Rental Rate Comparables all from downtown (C1 pg. 36) which they represented came from comparable buildings. The average rates ranged from \$12.50 per sq. ft. to \$16.80 per square foot (sq. ft.) The Complainant indicated that this supported a rate of \$14.00 to \$15.00 per sq. ft. for the comparables, but given recent leasing in the subject, they felt that \$16.00 per sq. ft. should be considered a stabilized rate.
20. The Respondent provided 52 Rental Rate Comparables from Jan. 2009 to Jul. 2010 (R1 pg. 63). These comparables included 13 from the subject property which showed an average rent of \$19.08 per sq. ft. and a median of \$20.00 per sq. ft. for the subject. In addition, the Respondent noted that leases signed in the subject property in the 6 months preceding the valuation date exhibited an average of \$19.06 per sq. ft and a median of \$19.00 per sq. ft., all of which are greater than the assessed rental rate value.
21. The CARB considered the evidence and the argument. Through questioning, it emerged that at least 2 of the complainants comparables were in a lower class than the subject, and through questioning and through the evidence of the Respondent, it was noted that “only” some of the qualifying leases were used by the Complainant to support a rental rate. While this in and of itself, would lead the CARB to put lesser weight on the Complainant’s comparables, the large number of comparables introduced by the Respondent (52) and the fact that 13 of them were from the subject property at an average rent in excess of the assessed rates for the property, convinces the CARB that an assessed rate of \$18.00 per sq. ft. is reasonable for the subject.
22. The CARB considered the argument about the role of parking in determining the proper assessed rates. The CARB concluded that because the subject was obtaining rental rates in excess of the assessed rates, parking did not appear to be a “live” issue with respect to assessed rental rates.
23. The Complainant and the Respondent both raised the matter of Fee Simple versus a Leased Fee Estate. The issue concerned which is the most appropriate method of looking at the property. The CARB notes that “fee simple” is the standard for assessment in Alberta, and as such is the process properly applied in this matter.

On the issue of the vacancy rate:

24. The Complainant reviewed 3rd party studies from 3 credible Firms for the second quarter of 2010 (C1 pg. 32). The rates for the whole Downtown sector varied from 5.4% to 8.6%. The Financial Class B rates were from 5.2% to 8.9%. The Complainant also pointed out the subject had a 15.3% Vacancy as of the valuation date. Given this information, the Complainant rendered an opinion that a 7% Vacancy Rate would be reasonable.
25. The Respondent provided a list of 26 BH Buildings in the Downtown Core (R1 pg. 64) which highlighted that the average vacancy was 5.94% and the median was 2.12%. In addition, they also completed an analysis removing the outliers from the study (10 with vacancy of 0.00% and 3 with vacancy greater than 15%) which resulted in an average of 5.89% and a median of 5.49%.
26. The CARB considered the evidence and argument. In the case of the Complainant, the reliance on 3rd party data sources was problematic. Various assessment tribunals have expressed limited confidence in 3rd party studies because of the use for which they were prepared (generally marketing) and more particularly because of the nature of the Disclaimers used in the studies (see C1 Appendix B, CBRE for instance). Generally 3rd party studies can help as support for detailed analysis. This CARB is also reluctant to depend on information from these sources for the same reasons. Further, the CARB is concerned at the wide variances found by different firms apparently documenting the same situation (i.e. Financial Class B – a spread of 3.7%). For these two reasons, the CARB puts lesser weight on this information. The CARB recognizes the high level of existing vacancy in the subject, but notes there were no representations that this vacancy was chronic.
27. The CARB puts more weight on the evidence of the Respondent which provided detailed information on actual vacancies on the valuation date, which supported the Respondents vacancy rate of 6%. Accordingly the CARB confirms the Vacancy Rate at 6%.

On the issue of the capitalization rate:

28. The Complainant analyzed 5 sales which took place between Jan. 2007 and April 2010. The Complainant made the point that in developing a capitalization rate, it is important to assess the quality of the tenants, as a high quality tenant on a long term lease is a more desirable tenant than a number of small businesses on short term leases such as was the case in the subject. They made the point that all 5 of the comparables being analyzed have much stronger tenancies than the subject. This would argue that the subject should have a “higher” capitalization rate than the subject due to quality of the income stream.
29. The next step in the process was to recognize the time adjustment impact on the capitalization rate. The Complainant relied on 3rd party studies to establish the level of capitalization rate (cap rate), and then used these studies to construct a time adjustment calculation (.04% per month) (C1, pg. 54). This resulted in a range of time adjusted cap rates from 7.70% to 8.42% (C1 pg. 55). They then applied the same logic as the “first” paragraph in this section and rendered an opinion that the cap rate for the subject should be 8.875%.

30. The Respondent provided a cap rate analysis of 10 downtown office building sales from Sept. 2007 to Apr. 2010. The Respondent's process differed from the Complainant's. The Respondent used typical valuation date parameters and time adjusted sales prices to calculate a cap rate as of the valuation date.
31. The CARB acknowledges that it is difficult to determine an exact cap rate in the future, for a sale that took place up to 3 years ago. The CARB reviewed the methods used by the parties. In the case of the Complainant, the reliance on 3rd party data sources was problematic. As previously noted, various assessment tribunals have expressed limited confidence in 3rd party studies because of the use for which they were prepared (generally marketing) and more particularly because of the nature of the Disclaimers used in the studies (see C1 Appendix B, CBRE for instance). Generally 3rd party studies can help as support for detailed analysis. This CARB is also reluctant to depend on information from these sources for the same reasons. The CARB also noted that the studies all focused on different quality buildings from Class A to City wide, and this further limited the confidence in these studies to accurately represent the subject property's attributes.
32. With respect to the Respondent's method, while it too makes a number of calculations, the basis of the major adjustments (i.e. the time adjustment of sales prices) is a well understood process in the "assessment" community, and usually has good data support. The CARB also notes that 7 of the 10 sales required "minimal" time adjustments (less than 3%). Additionally, the CARB took note of the fact that the City study included all of the Complainant's comparables (noting also that three of the Complainant's comparables were Class A as opposed to Class B for the subject).
33. In the final analysis, because of the limited weight placed on 3rd party evidence, and the analysis put forward by the Respondent, the CARB confirms a cap rate for the subject of 8%.
34. The CARB observes that the Complainant's agent is an AACI (Accredited Appraiser, Canadian Institute), and as such is used to rendering opinions on value. While the CARB respects the credentials of the agent, the Respondent pointed out (and the Complainant agreed) that the Complainant was not appearing as an Appraiser (or as an expert witness) but rather as a Consultant, and so little weight should be placed on the Complainant's submission of an "Appraisal". The CARB observes that this should apply throughout the "consideration" of this entire hearing. In the case of this particular issue, the CARB notes that the Complainant indicates "the writer is of the opinion that a capitalization rate of 8.75% to 9.00% is appropriate" (C1 pg 57), and there does not appear to be any evidence, beyond the agent's opinion, to support the magnitude of the difference between the cap rate of the comparables and that of the subject.

SUMMARY

35. The Complainant raised 3 issues. After hearing all the argument and evaluating the evidence the CARB found that the assessed rental rate should be \$18.00 per sq. ft., the assessed vacancy rate should be 6%, and the assessed capitalization rate should be 8%. Applying these attributes to the revised areas as agreed to by the parties', results in the assessed value as outlined above.

DISSENTING OPINION AND REASONS

36. There was no dissenting opinion.

Dated this 11th day of April, 2012, at the City of Edmonton, in the Province of Alberta.

James Fleming, Presiding Officer

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: Glen Cowan and Associates