

Edmonton Composite Assessment Review Board

Citation: AEC INTERNATIONAL INC. v The City of Edmonton, 2012 ECARB 0250

Assessment Roll Number: 3044203

Municipal Address: 10040 102 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

AEC INTERNATIONAL INC.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Hatem Naboulsi, Presiding Officer
Taras Luciw, Board Member
Tom Eapen, Board Member

Preliminary Matters

[1] The parties to the hearing did not raise any objection to the composition of the Board. The members of the Board did not indicate any bias with respect to this matter.

Background

[2] The subject is known as Central Car Park. It is a multi-storey parkade comprised of 114,584 square feet, of which 113,664 square feet is parkade and the remaining 920 square feet is retail space. There are 277 parking spaces above ground and the remaining 142 stalls are underground and heated. It is located on 102 Street south of Jasper Avenue and on the west side of 102 Street. The subject is a standalone structure that appears to be atypical of downtown parkades. The 2012 assessment of \$10,729,500 was prepared based on the income approach.

Issue(s)

[3] Is the assessment for the subject property too high?

Legislation

[4] 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.

[5] The Matters Relating to Assessment and Taxation Regulation, reads:

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

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.

Position of the Complainant

[6] The Complainant provided a written submission, entered as exhibit C-1, that contained the issue and detailed the Complainant’s position. The issue the Complainant raised was that the amount of the assessment was erroneous.

[7] The Complainant advised the Board that each assessment matter is to be treated by the Board as a hearing *de novo*.

[8] The Complainant described the approach employed by the assessor as incorrect as the model employs monthly reserved rates of \$275 and \$200 per stall for underground and aboveground stalls respectively and did not employ a vacancy rate to account for loss of income due to regular occupancy rates being well below 100%. Additionally, the model used a 40% expense ratio applied to gross potential income while the subject actually has an expense ratio of 59% to 68% applied to the effective gross income (C-1, page 1).

[9] The Complainant included a 2 year, stabilized financial analysis for the subject property to December 31, 2011 (C-1, page 49) that reflected Net Operating Income of \$281,933 as

compared to the Respondent's Assessed Net Operating Income of \$680,040 based on potential gross income of \$1,133,400 (C-1, page 2).

[10] The Complainant contended that the decrease in the cap rate from 7.50% in 2011 to 6.50% in 2012 was completely arbitrary (C-1, page 3) and was based on a cap rate study of office buildings with parkades. This erroneous application of an assessment model to the subject property resulted in a value that is incorrect.

[11] The Complainant's evidence included a Cap Rate Report from Colliers International as at Q2, 2010 and Q2, 2011 (C-1, pages 86 to 93) wherein cap rates of "A" class buildings moved from 7.00% - 7.50% to 6.50% to 7.00% while cap rates of "B" class buildings moved from 7.50% - 8.00% to 7.00% - 7.50%. The survey showed that the cap rates varied only slightly.

[12] The Complainant indicated that the CARB decision for the subject property for 2011 reduced the assessment and requested the Board to consider that decision.

[13] The Complainant's evidence included several Composite Assessment Review Board and Court of Queen's Bench decisions in support of their position.

[14] The Complainant concluded by requesting that the Board reduce the assessment to \$4,295,000 which was calculated by using a 7.0% cap rate and the actual net operating income for the subject in the amount of \$281,933.

Position of the Respondent

[15] The Respondent provided written evidence in support of the 2012 assessment, entered as exhibit R-1.

[16] The Respondent's evidence included a study of parkade underground parking rates that averaged \$275.83 per month with a median of \$277.50 and surface parking rates that averaged \$214.17 per month with a median of \$200.00. For the purpose of assessment, the Respondent utilized the rates of \$275.00 per month (underground) and \$200.00 per month (above ground) as typical monthly parking rates (R-1, page 45).

[17] The Respondent provided results of a downtown parkade expense study of 7 parkades that reflected an average expense ratio of 37.63% and a median expense ratio of 34.67% (R-1, page 47). During questioning by the Complainant, the Respondent stated that a base expense ratio of 35% is used, to which a 5% vacancy factor is added, to generate a typical expense ratio of 40% that is applied to downtown parkades (R-1, page 48).

[18] The Respondent also included a downtown office cap rate study from the sales of 6 class AL and AH high rise properties between August 2008 - December 2010. Four of the 6 properties had underground parkades while 2 were connected to parkades. The median of the cap rates equaled 6.38% that was rounded to 6.50% and applied to the 2012 assessment (R-1, page 37).

[19] The Respondent also provided equity comparables of 9 downtown parkades, whose assessment was based on typical rents of \$275.00 per month for underground and \$200.00 per month for above ground stalls, typical expense ratio of 40.00% and a 2012 cap rate of 6.50%. The Board notes that 3 of the 9 parkades, like the subject, are not connected to buildings or to the

pedway system. Their assessments range from \$9,274,500 to \$12,450,000 and compare to the subject at \$10,729,500 (R-1, page 48).

[20] The Respondent noted that subject property sold in 2008. A sales analysis sheet of the 2008 sale was submitted by the Respondent showing the \$15,000,000 sales price and time adjusted to July 1, 2011 in the amount of \$12,838,500 which supports the 2012 assessment of \$10,729,500 (R-1, page 36).

[21] The Respondent stated that the Board was not bound by the previous Board's decision and should not place any weight on it.

[22] The Respondent's evidence included several Municipal Government Board and Court of Queen's Bench decisions in support of their position.

[23] The Respondent concluded by requesting that the Board confirm the 2012 assessment in the amount of \$10,729,500.

Decision

[24] The decision of the Board is to confirm the 2012 assessment in the amount of \$10,729,500.

Reasons for the Decision

[25] The Board accepted the Respondent's position that it is legislated to prepare assessments according to Mass Appraisal methodology wherein typical rental rates are more appropriately used than the actual rents in place.

[26] The Board is satisfied that the assessor has followed the steps recommended by the Office Building Valuation Guide – June 1998, by collecting and analyzing the appropriate data of comparable properties to produce a market value. (R-1, page 73).

[27] The *Matters Relating to Assessment and Taxation Regulation AR 220/2004* requires that assessments based on the valuation standard of market value must reflect typical market conditions for similar property. The Board accepted the Respondent's evidence of typical market rents as best reflecting the market (R-1, page 48) as the Respondent is legislated to utilize Mass Appraisal, which in turn applies typical market rates, typical vacancy rates, typical operational costs and typical capitalization rates for all downtown, suburban and freestanding parkade structures (R-1, page 11).

[28] The Board was not persuaded by the Complainant's evidence as it was all based on actual operating results from the subject and not typical. Furthermore, the Complainant failed to prove that a 7.0% cap rate was appropriate for the subject and did not provide any evidence to support it.

[29] The Board finds that the sale of the subject property on July 17, 2008 in the amount of \$15,000,000 and time adjusted to the valuation date of July 1, 2011 for \$12,838,500 supports the assessment.

[30] The Board noted that the Respondent's and the Complainant's evidence consisted of third party information from Colliers International. The Board finds third party information inconclusive evidence for many reasons, in particular, the market data used to construct the reports was not in evidence, without which the CARB cannot determine the reliability of these reports.

[31] The Board notes that a common issue argued by complainants is that the percentage increase on their property is excessive and far exceeds the increase of prior years or of other properties that are being assessed. Since real estate market conditions are fluctuating as the market shifts which results in changes to the assessments of properties, there has been a correlating increase in the occurrence of this argument from complainants. Both the Municipal Government Board and the Assessment Review Board have dealt with this argument on numerous occasions. In each case the respective Boards have held that each year's assessment is independent of previous assessments, and the mere fact of a large percentage increase without more evidence, is not enough information to draw the conclusion that an assessment is too high.

[32] The Board notes that every hearing is a hearing *de novo*.

Dissenting Opinion

[33] There was no dissenting opinion.

Heard commencing November 5, 2012.

Dated this 16th day of November, 2012, at the City of Edmonton, Alberta.

Hatem Naboulsi, Presiding Officer

Appearances:

Brock Ryan, AEC International
for the Complainant

Darren Davies, Assessor
Steve Lutes, Legal Counsel
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.