

Edmonton Composite Assessment Review Board

Citation: AEC INTERNATIONAL INC. v The City of Edmonton, 2012 ECARB 0252

Assessment Roll Number: 10090037 and 9994035

Municipal Address: 4212 97 STREET NW and
9618 42 AVENUE 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.

[2] At the request of the Respondent, the witnesses giving evidence and or testimony were either sworn in or affirmed, the choice being that of the individual.

[3] Due to the close proximity, shared market, common ownership and general similarity of the two subject office properties, and with the issues of rental rates, vacancy rates and operating costs being common to both files before the Board, both parties agreed to carry forward all evidence, arguments and cross examination during the hearing on Roll # 10090037 (the first file to be heard), to Roll # 9994035. The Complainant's evidence for both properties was contained in exhibit C-1 and the Rebuttal was contained in exhibit C-2.

Background

[4] The first subject property (Roll # 10090037) is a two storey sub-class 'B' office building known as Greystone Business Park. The property was constructed in 1981 and is located at 4212 97 Street, in the Southside district. The subject property has a total office leasable area of 104,037 square feet and the 2012 assessment is \$20,160,000. The assessment was prepared on the income approach.

[5] The second subject property (Roll # 9994035) is a three-storey sub-class 'B' office building known as the Whitemud Business Park. The property was constructed in 1980 and is located at 9618 42 Avenue, in the South Side office district. The subject property has a total office leasable area of 87,603 square feet and the 2012 assessment is \$19,508,000. The assessment was prepared on the income approach.

Issue(s)

- [6] What are the appropriate office and retail rental rates for the subject properties?
- [7] What are the appropriate vacancy rates for the subject properties?
- [8] What are the appropriate operating costs (shortfalls) for the subject properties?

Legislation

- [9] 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.

- [10] 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

[11] The Complainant submitted a written submission, entered as exhibit C-1, that contained the issues and detailed the Complainant's position for both properties. The issues the Complainant raised were the rental rates for office and retail space, the vacancy rate and the vacant space operating cost shortfall.

[12] The Complainant described the valuation factors used to generate the current assessments as being inaccurate and resulted in an indication of value that is incorrect and higher than the best estimate of the subject properties' values as of the valuation date July 1, 2011 (C-1, page1).

[13] The Complainant's evidence included third party information on the sales of 13 comparable properties (C-1, pages 123 to 135) that support the request for a reduced assessment. Only 3 of the comparables are located on the south side. The properties ranged from 7,000 square feet (sf) to 146,865 sf and their prices ranged from \$31.47 psf to \$179.69 psf but were not time adjusted to the valuation date.

[14] The Complainant's evidence included several CARB and QB decisions in support of their position.

[15] During summation, the Complainant criticized the Respondent's sale comparables for being smaller than the subject and in different locations including the west end and downtown thereby being less comparable and requested the Board not to give any weight to the comparables.

[16] The Complainant advised the Board that each assessment matter is to be treated by the Board as a hearing *de novo* and that the evidence before the Board establishes the Complainant's *prima facie* case.

Greystone Business Park, Roll # 10090037

[17] The rental rate of \$16.00 per square foot (psf) for office space used in the assessment (C-1, pages 64, 65, 66 and 67) was described as being too high and should be no more than \$15.00 psf (C-1, page 121). The Complainant detailed 8 new and renewal leases in the subject property from November 2010 to June 2011 that had a median rate of \$15.25 psf. From this, a \$15.00 psf rate was concluded (C-1, page 74). The parking rate applied by the Respondent was not in dispute.

[18] The Complainant submitted that the actual vacancy in the subject was 8.61% as at valuation day (C-1, page 80) and requested a rate of 13.50% (C-1, page 121). In support of the vacancy request of 13.50%, the Complainant presented 2 third party market reports. A report from Colliers International for the Southside market area contained 61 buildings with a total inventory of 3,347,327 square feet. For Quarter 4, 2010, (C-1, page 82) the report indicated a vacancy rate of 18.24% and for Quarter 2, for the same market area and 61 buildings but with 3,358,373 square feet, reflected a 13.49% vacancy rate (C-1, page 92). The second report, from CBRE, for Quarter 4, 2011 for the Southside market area with an inventory of 3,307,409 square feet, reflected a vacancy rate of 14.1% (C-1, page 94).

[19] The Complainant stated that while \$13.00 psf was used in the assessment for the vacant space shortfall, a rate of \$14.00 psf was more appropriate. The increased rate was based on 7 new leases wherein the Common Area Maintenance and Tax for 4 leases were at a rate of \$14.40 psf and 3 were at a rate of \$13.78 psf (C-1, page 74).

Whitemud Business Park, Roll # 9994035

[20] The rental rate of \$16.00 per square foot (psf) for office space used in the assessment (C-1 pages 38, 39 and 40) was described as being too high and should be no more than \$15.00 psf (C-1, page 119). The Complainant detailed 8 new and renewal leases in the subject property from November 2010 to June 2011 that had a median rate of \$15.25 psf. From this, a \$15.00 psf rate was concluded (C-1, page 74).

[21] The assessment reflected 4,477 square feet of retail space (C-1, page 39) at market rent of \$17.00 psf. The Complainant was unaware as to where the Respondent obtained information for 4,477 square feet of retail space and stated that there is no distinction between office and retail in the subject property. The space described as retail should be assessed at \$15.00 psf, the same as the office space.

[22] The subject property also contains 15,239 square feet of warehouse space, assessed at \$5.75 psf, and is not in dispute.

[23] The Complainant submitted that the actual vacancy in the subject was 15.82% as at valuation day (C-1, page 78) and requested a rate of 13.50% (C-1, page 121). In support of the vacancy request of 13.50%, the Complainant presented 2 third party market reports. A report from Colliers International for the Southside market area contained 61 buildings with a total inventory of 3,347,327 square feet. For Quarter 4, 2010, (C-1, page 82) the report indicated a vacancy rate of 18.24% and for Quarter 2, for the same market area and 61 buildings but with 3,358,373 square feet, reflected a 13.49% vacancy rate (C-1, page 92). The second report, from CBRE, for Quarter 4, 2011 for the Southside market area with an inventory of 3,307,409 square feet, reflected a vacancy rate of 14.1% (C-1, page 94).

[24] The Complainant stated that while \$13.00 psf was used in the assessment for the vacant space shortfall, a rate of \$14.00 psf was more appropriate. The increased rate was based on 7 new leases wherein the Common Area Maintenance and Tax for 4 leases were at a rate of \$14.40 psf and 3 were at a rate of \$13.78 psf (C-1, page 74).

[25] The Complainant indicated that the Respondent calculated market vacancy incorrectly by using the average rather than the weighted average.

[26] The Complainant also indicated that the comparable rents for "B" class properties in the Southside market provided by the Respondent did not contain the size of the properties, their address or their age.

Rebuttal

[27] The Complainant submitted that the assessor rejected the most relevant lease rates from the subject properties in relation to the valuation date because the ARFI only included leases signed up to April 2011.

[28] The Complainant acknowledged that the assessor is bound to complete the assessment as at valuation date, July 1, 2011 but the assessor willfully neglected indications of typical rental levels within the subject from May 1 to July 1, 2011 which is a violation of MRAT Part 1, section 3, *“Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year”*.

[29] The Complainant concluded that the assessor has failed to recognize that the economies of scale present in the Edmonton marketplace and their impact on the value of office buildings that are as large as the subject and has demonstrably neglected the valuation date, the physical characteristics, the state and condition of the subject properties and the market standard in the derivation of the current assessment. The Complainant requested the Board to reduce the 2012 assessment of Greystone Business Park from \$20,160,000 to \$16,100,000 and of Whitemud Business Park from \$19,508,000 to \$15,870,000 (C-2, page 28).

Position of the Respondent

[30] The Respondent provided written evidence in support of the 2012 assessment for both properties, Greystone Business Park, (R-1) and Whitemud Business Park (R-2).

[31] The Respondent's evidence included several CARB, MGB and QB decisions in support of their position.

Greystone Business Park

[32] The Respondent based the assessment on a rental rate of \$16.00 concluded from a survey of suburban “B” class buildings located on the Southside and time adjusted to July 1, 2011. The median time adjusted rate was \$16.63 psf while the median for the last 6 months prior to valuation date was \$17.00 psf (R-1, page 26). New and renewal leases in the subject property from January 2010 to June 2011 that were time adjusted with a median rate of \$17.00 while the median for the last 6 months prior to valuation date was \$18.00.

[33] The Respondent described the vacancy allowance in the valuation model as based on a typical level of vacancy and bad debt allowance. The Respondent calculated the actual vacancy rate as 5.90%, stabilized over 3 years, 2009, 2010 and 2011, but used 7.00%, typical for the market area, which the Respondent used for all “B” class properties in the market area. A city wide study of “B” class buildings indicated a vacancy of 6% (R-1, page 33 and 34).

[34] The Respondent included a definition of “Vacant Space Shortfall” (R-1, page 117) as the cost of carrying vacant space. Though the space is vacant, there are still costs associated with the space that the owner must pay, such as heating, property taxes, security, etc.

[35] In R-1, page 36, the Respondent provided the result of a study of 141 leases that reflected an average of \$11.67 psf as the operating costs for vacant space. The median rate was \$12.20 and the Respondent used \$13.00, the same rate used in 2011.

Whitemud Business Park

[36] The Respondent based the assessment on a rental rate of \$16.00 concluded from a survey of suburban “B” class buildings located on the Southside and time adjusted to July 1, 2011. The

median time adjusted rate was \$16.63 psf while the median for the last 6 months prior to valuation date was \$17.00 psf (R-2, page 23). New and renewal leases in the subject property from January 2010 to June 2011 that were time adjusted with a median rate of \$16.08 while the median for the last 6 months prior to valuation date was \$16.00.

[37] The Respondent described the vacancy allowance in the valuation model as based on a typical level of vacancy and bad debt allowance. The Respondent calculated the actual vacancy rate as 6.72%, stabilized over 3 years, 2008, 2009 and 2011, but used 7.00%, typical for the market area. (2010 did not have a percentage as the Respondent did not receive an RFI for that year.) A city wide study of "B" class buildings indicated a vacancy of 6% (R-2, page 30 and 31).

[38] The Respondent included a definition of "Vacant Space Shortfall" (R-2, page 113) as the cost of carrying vacant space. Though the space is vacant, there are still costs associated with the space that the owner must pay, such as heating, property taxes, security, etc.

[39] In R-2, page 32, the Respondent provided the result of a study of 141 leases that reflected an average of \$11.67 psf as the operating costs for vacant space. The median rate was \$12.20 and the Respondent used \$13.00, the same rate as in 2011.

[40] The Respondent advised the Board that the assessments were prepared according to Mass Appraisal methodology wherein properties are stratified into groups of comparable properties, common property attributes are identified in each group and a uniform valuation model is calibrated for each group using market information incorporating the property attributes.

[41] The Respondent provided 12 sale comparables, 5 of which were located on the south side, and their sale prices were time adjusted to the valuation date of July 1, 2011 (R-1, pages 45 to 56).

[42] The Respondent indicated that leases received by the Respondent by April, 2011 via the RFI were time adjusted to the valuation date of July 1, 2011 (R-1, page 26).

[43] In reviewing the new and renewal lease rates provided by the Complainant (C-1, page 74) the Respondent found that a lease renewal for \$18.00 psf was not included but a month to month lease in the amount of \$5.67 was included.

[44] The Respondent noted that the Complainant did not adjust comparable sales for attributes like storage and warehouse space nor were the sale prices time adjusted to the valuation date (C-1, page 123 to 135).

[45] The Respondent stated that the Complainant's third party reports from Colliers International and CBRE did not contain any information such as age, building size, building class or location for the properties used in the reports nor were the lease rates time adjusted to the valuation date.

[46] The Respondent noted that there was no mention of Economies of Scale in the Complainant's original submission (C-1) but allowed it to be argued by the Complainant during rebuttal.

[47] The Respondent concluded by requesting that the Board confirm the 2012 assessments in the amount of \$20,160,000 for the Greystone Business Park and \$19,508,000 for the Whitemud Business Park.

Decision

[48] The decision of the Board is to confirm the 2012 assessments in the amount of \$20,160,000 for the Greystone Business Park and \$19,508,000 for the Whitemud Business Park.

Reasons for the Decision

[49] 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.

[50] 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 establish a building class to produce an appropriate market value that treats similar properties in a fair and consistent manner (C-2, page 22 and 23) and met MRAT Part 1, section 3, "*Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year*".

[51] The Board agreed with the Complainant that the utilization of lease information up to April 1, 2011 does not reflect the current market conditions in Edmonton as at July 1, 2011. However, the Board was satisfied that the assessor has complied with the MGA by time adjusting the information collected through the RFI from the south side area from April 1, 2011 to July 1, 2011 (R-1, page 26).

[52] The Board is of the opinion that every hearing is a hearing *de novo*. The Complainant created a *prima facie* case however the Board was not convinced that the actual information from the subject property represented a fair and correct market value.

[53] The Board found the Respondent's rental information obtained from the RFI on 19 suburban south side class "B" properties (R-1, page 26) more reflective of the market than the Complainant's selected actual lease rates from the subject properties because the Respondent's time adjusted rental rates (average \$16.10) represented typical market rents.

[54] The Board placed greater weight on the Respondent's vacancy study (R-1, pages 33 and 34) which concluded a 6% average and the 3 year stabilized vacancy for the subject properties which reflected a 5.90% vacancy for the Greystone Business Park (R-1, page 30) and 6.72% for the Whitemud Business Park (R-1, page 27) although the Respondent applied a 7% vacancy to the assessment.

[55] The Board satisfied itself further by selecting only the class "B" buildings in the south side market area from the Respondent's vacancy study (R-1, page 34) and calculating their average vacancy. The 30 properties, including 1 with 100% vacancy, averaged 7.2% vacancy and, after eliminating the 100% vacant property, the remaining 29 properties reflected a vacancy of 3.9% which supports the vacancy rate utilized by the Respondent.

[56] The Board did not place any weight on the Complainant's vacancy evidence. The Complainant requested a vacancy rate adjustment to 13.50% based on actual vacancy of 8.61%

in the Greystone property (C-1 page 80), actual vacancy of 15.82% in the Whitemud property (C-1, page 78), and the third party information from Colliers which reported vacancy of 18.24% in Q4, 2010 (C-1, page 82), 13.49% in Q2, 2011 (C-1, page 92) and from CBRE 14.1% in Q4 of 2011 (C-1, page 94) in the south side market area. The third party information included all building classes and did not distinguish between A, B or C buildings.

[57] The Board noted that the Complainant's evidence consisted of third party information on vacancy rates in office buildings located in the south side market area. 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.

[58] The Board found the Respondent's study of 141 leases that reflected an average of \$11.67 psf, and a median of \$12.20 psf, as the operating costs for vacant space (R-2, page 32) more compelling than the Complainant's evidence. The Complainant's request for a \$14.00 rate was based on new leases in the subject property whose common area maintenance and taxes (operating costs) were \$14.40 psf and \$13.78 psf (C-1, page 74). The Respondent's used \$13.00 for the assessment, the same rate as used in 2011.

Dissenting Opinion

[59] There was no dissenting opinion.

Heard commencing November 6, 2012.

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

Hatem Naboulsi, Presiding Officer

Appearances:

Brock Ryan, AEC International Inc.
for the Complainant

Cam Ashmore, Legal Counsel
Darren Davies, Assessor
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.