

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00665

Assessment Roll Number: 10101699
Municipal Address: 13151 146 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

George Zaharia, Presiding Officer

Lillian Lundgren, Board Member

Darryl Menzak, Board Member

Procedural Matters

[1] The parties indicated they had no objection to the composition of the Board. In addition, the Board members indicated they had no bias on this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a 2-storey, subclass A, office building located at 13151 – 146 Street NW in the 149 Street District. Built in 2005, the building is 40,132 square feet in size and situated on a 114,502 square feet lot. After taking into consideration parking requirements, there is resulting excess land in the amount of 66,701 square feet. There are 55 underground parking stalls and 171 surface parking stalls.

[4] The subject property was valued using the income approach, resulting in a 2013 assessment of \$9,767,000.

Issue(s)

[5] The issues are as follows:

- i) Is the \$17 per square foot typical market rent applied to the subject property too high, considering 1) a May 2012 lease in the subject property at \$13.50 per square foot, and recent leases in comparable properties, and 2) a \$16 per square foot typical market rent applied to a comparable property?
- ii) Is the 6.5% vacancy rate applied to the subject property too low, compared to 1) vacancy rates determined by industry analysts averaging 11.3%, and 2) a typical vacancy rate of 9.5% applied to a comparable property?

Legislation

[6] The *Municipal Government Act*, RSA 2000, c M-26, reads:

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.

Position of the Complainant

[7] In support of its position that the 2013 assessment of the subject was excessive, the Complainant presented a 36-page brief to the Board (Exhibit C-1). The Complainant submitted that the current year’s assessment of the subject property represented a 10% increase over the previous year (Exhibit C-1, page 3).

[8] The Complainant submitted that the Respondent had used the income approach in valuing the subject for assessment purposes and that the Complainant had no issue with this method of valuation. The Complainant also stated that there was no issue with the excess land value of \$426,000. However, the Complainant took issue with the \$17 per square foot typical market rent, and the 6.5% typical vacancy rate used by the Respondent to arrive at the 2013 assessment for the subject.

[9] The Complainant argued that based on a current rent in the subject property, as well as comparable properties ranging from \$11.10 to \$14.00 per square foot, the \$17 per square foot rent applied to the subject is too high. He also submitted information derived from studies completed by industry analysts that showed office rental rates for 149 Street District properties to range from \$13.50 to \$16 per square foot. The Complainant submitted an equity comparable (11120-178 Street) that had been assessed using a \$16 per square foot rental rate. Based on the

foregoing evidence, the Complainant requested that the rent applied to the subject property be reduced from \$17 to \$16 per square foot (Exhibit C-1, page 10).

[10] In support of its position that the vacancy rate of 6.5% applied to the subject property was too low, the Complainant submitted vacancy rates determined by industry analysts ranging from 9.5% to 13.9% for 149 Street District properties, and submitted an equity vacancy rate of 9.5% applied to another property in the same district. The Complainant requested that the vacancy rate for the subject property be increased from 6.5% to 9.5% (Exhibit C-1, page 11).

[11] The Complainant requested the Board reduce the 2013 assessment of the subject property from \$9,767,000 to \$8,692,000.

Position of the Respondent

[12] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support its position, the Respondent presented to the Board a 74-page assessment brief (Exhibit R-1) and a 51-page law and legislation brief (Exhibit R-2).

[13] In the assessment brief, the Respondent included responses to the Complainant's concerns regarding rental rates and vacancy rates.

- a) The Respondent advised the Board that for the purposes of mass appraisal, typical rental rates, not actual rents in place, are used to determine the assessed value of a property at the valuation date. The Respondent argued that the one lease rate submitted by the Complainant of \$13.50 per square foot could not be verified, and that regardless, it was below typical. The Respondent found the comparable rental rates submitted by the Complainant problematic in that one comparable was a neighbourhood shopping centre subclass, another was a B subclass, and the third, although an A subclass property, was located in a different market district. Additionally, rental rates provided by third party sources should not be directly relied upon. In MGB Board Order 054/10, the Board held that since "the market data used to construct the reports was not in evidence... the MGB cannot determine the reliability or applicability of these reports to the subject property." (Exhibit R-1, page 41)
- b) In terms of the vacancy rate, the Respondent acknowledged that the Complainant requested an increase in the vacancy rate based upon one equity comparable, and third party sources. The one equity comparable was a different subclass from the subject, and third party information should not be relied upon based on the reasoning stated in the previous paragraph (Exhibit R-1, page 11).

[14] The Respondent advised that the subject property had been sold January 2012 for a sale price of \$9,200,000. The "Commercial Sales Validation Coversheet" showed the 2012 assessment as being \$8,876,500, and that the property was part of a portfolio sale that included 9 properties that sold for a total of \$108,000,000 (Exhibit R-1, page 18). Although part of a portfolio sale, it was the opinion of the Respondent that the sale of the subject was a proper indication of value.

[15] The Respondent submitted a "Suburban Rental Rates 149 Street 'A' Rents" that included two lease rates, one being in the subject property. The Respondent suggested that greater weight should be placed on the lease rate from a comparable property that showed a time-adjusted net

rent of \$16.92 per square foot (Exhibit R-1, page 14). In response to a question from the Board, the Respondent acknowledged that only one rental rate drove the \$17 per square foot typical rate.

[16] The Respondent submitted a Vacancy Study of Suburban “A” subclass buildings that resulted in a 6.58% weighted average vacancy rate. The Board was advised that there was limited information from the RFIs necessitating the Respondent to rely upon vacancy rates from all the city districts.

[17] The Respondent submitted a chart showing the rates applied to all suburban 149 Street “A” class office buildings. The chart confirmed that the \$17 per square foot rental rate and the 6.5% vacancy rate that had been applied to the subject property were also applied to all the other similar properties in the district (Exhibit R-1, page 16).

[18] In argument, the Respondent stated that the Complainant has the onus of proving that the assessment is incorrect and referred the Board to s. 467(3) of the Municipal Government Act, which states the following:

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.

[19] The Respondent concluded by requesting that the Board confirm the 2013 assessment of the subject at \$9,767,000.

Decision

[20] The decision of the Board is to confirm the 2013 assessment of the subject property at \$9,767,000.

Reasons for the Decision

[21] The Board placed less weight on the Complainant’s evidence because rental information was presented from subclass properties different from the “A” subclass of the subject property, and from properties in districts other than the 149 Street District where the subject is located. As well, the Board concurred with the Respondent’s position, and a decision of the MGB, that questioned the reliability of third party information without knowing the basis from which the conclusions were derived.

[22] Although the Complainant identified a rental rate of \$13.50 per square foot for a five year lease commencing May 1, 2012 in the subject property, in support of his position to reduce the applied rental rate from \$17 to \$16 per square foot, there were other leases that supported the \$17 per square foot rate. One such lease that commenced September 1, 2012, two months post facto, was at a rental rate of \$19 per square foot. Another lease that commenced October 1, 2010 had a rental rate of \$21 per square foot. Although these rental rates are site specific, they do support

the typical rental rate of \$17 per square foot applied by the Respondent to the subject property and to all other similar properties in the district.

[23] The Board placed greater weight on the vacancy information submitted by the Respondent because it was derived from RFIs from suburban "A" subclass buildings as is the subject. The one equity comparable submitted by the Complainant was from a "B" subclass building, and vacancy rate information submitted by the Complainant was taken from third party sources, which the Board questions its reliability. It is interesting to note that from the rent roll supplied by the Complainant for the subject property as at April 1, 2012, the vacancy in the subject property was 4.24%.

[24] Although the sale of the subject property was part of a portfolio sale, the Board notes that the sale price of \$9,200,000 exceeded the 2012 assessment of \$8,876,500 as well as the Complainant's requested assessment of \$8,692,000.

[25] The Respondent demonstrated that the rental rate and the vacancy rate applied to the subject were the same as the rates applied to all other similar properties in the district.

[26] The Board is persuaded that the 2013 assessment of the subject property at \$9,767,000 is fair and equitable.

Dissenting Opinion

[27] There was no dissenting opinion.

Heard commencing June 25th, 2013.

Dated this 11th day of July, 2013, at the City of Edmonton, Alberta.



George Zaharia, Presiding Officer

Appearances:

Greg Jobagy, Colliers International Realty Advisors Inc
Stephen Cook, Colliers International Realty Advisors Inc
for the Complainant

James Cumming, City of Edmonton
Tania Smith, City of Edmonton
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.