

Edmonton Composite Assessment Review Board

Citation: AEC INTERNATIONAL v The City of Edmonton, 2013 ECARB 00745

Assessment Roll Number: 3024395

Municipal Address: 15107 123 AVENUE NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

AEC International

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Robert Mowbrey, Presiding Officer

Taras Luciw, Board Member

Jasbeer Singh, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. In addition, the Board members indicated no bias on this file.

[2] Witnesses giving testimony were either sworn in or affirmed, the choice being that of the individual.

[3] The Board members were advised that there were a number of issues brought forth by the Complainant. With the exception of the chronic vacancy rate, the other issues were dealt with or resolved between the two parties. The Complainant's documentation provided to the Board [Exhibits C-1, C-2 and C-3] contained extensive documentary evidence pertaining to resolved issues and not relevant to the issue before the Board.

Preliminary Matters

[4] During the hearing, the Respondent raised a preliminary issue. The Respondent objected to a portion of the Complainant's rebuttal package. The Respondent objected to Exhibit C-2 pages 120-140, as this is post facto evidence for the 2013 assessment. In addition;

- a. the Respondent alleged that this was not rebuttal to any of the Respondent's evidence. If indeed the information was valid, the information should have been included in the Complainant's original disclosure.

- b. The Respondent stated that the subject's 2013 assessment is based on the condition in 2012 while the proposed information pertained to 2013, and that was not available or relevant for the 2013 assessment to the City.

[5] The Complainant challenged the objection put forth by the Respondent and advised the Board on a number of authorities to support the Complainant's challenge to the Respondent's objection. The authorities are found in the preliminary issues documentation included in the Complainant's evidence package [Exhibit C-3, pages 92-148].

[6] The Complainant advised the Board that the legislation contemplated the use of sur-rebuttal evidence to be brought forth to the hearing [*Matters Relating to Assessment Complaints (MRAC) Regulation s.8 (2) (c)*].

"the Complainant must, at least 7 days before the hearing date, disclose to the Respondent and the Composite Assessment Review Board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the Complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the Respondent to respond to or rebut the evidence at the hearing."

[7] The Complainant stated the Respondent had the opportunity to rebut the Complainant's rebuttal evidence and chose not to do so.

[8] The Respondent stated the Complainant was trying to introduce new evidence and was attempting to split the case.

[9] The Presiding Officer advised the parties that the Board would review the evidence and render a decision the next morning, due to the number of pages that had to be reviewed.

[10] The Presiding Officer adjourned the hearing to the next day. After vacating the hearing room, the parties immediately returned and the Complainant agreed to withdraw pages 120-140 from the rebuttal document [Exhibit C-2] as objected to by the Respondent. The material was returned to the Complainant by the Board members.

[11] The Complainant advised the parties that the appeal did not hinge on the objected evidence and thus, the parties were ready to proceed and the hearing continued.

Background

[12] The subject property is a 15,464 square foot suburban office "B" class building located at 15107 123 Avenue NW, within the Park West Business Centre in the 149th Street district. The 2013 assessment is for \$2,393,000.

Issue(s)

[13] What is the appropriate vacancy rate for the subject property?

Legislation

[14] **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

[15] The Complainant filed this complaint on the basis that the subject’s property assessment of \$2,393,000 exceeds the best estimate of its market value. In support of this position, the Complainant presented the Board with a five hundred page evidence package that was marked as Exhibit C-1.

[16] Numerous issues were detailed as ‘grounds of complaint’ [Exhibit C-1, pages 233 to 236] but the Complainant stated that the issues were narrowed down to only the vacancy rate applied by the Respondent as being too low. Specifically, the Respondent applied a 9.5% vacancy rate [Exhibit C-1, page 34] while the Complainant believes that the vacancy rate should be increased to 15% [Exhibit C-1, page 234].

[17] The Complainant described the ‘typical market’ valuation factors used in the assessment model as being derived using methodologies and information that are sufficiently erroneous so as to result in values that are too inaccurate to be relied upon for the assessment of the subject property pursuant to the Municipal Government Act and its supporting regulations [Exhibit C-1, page 234]. The following matters that apply to the vacancy issue were listed as follows [Exhibit C-1, page 235]:

“b. the vacancy rate is calculated incorrectly as it does not properly reflect the market’s direct vacant office area divided by the total market office area;

c. the assessor’s mathematical calculation used to estimate market vacancy is incorrect and not supported by accepted appraisal methodology. Further to this, the final selection of the vacancy rate is an arbitrary number chosen by the assessor rather than a metric predicated by market information;

d. the market vacancy rate is understated as it excludes large volumes of vacant office area that compete for tenants with the subject property;

e. the market vacancy rate is understated because it includes office comparables that don’t belong in the calculation and excludes office comparables that do belong in the calculation;

f. the market vacancy rate is incorrect as it is not a reflection of the market vacancy as of July 1, 2012;

g. the applied vacancy rate is incorrect because it does not sufficiently adjust for the subject property's site-specific current and historical vacancy challenges."

[18] The Complainant described the subject property as suffering from above-market vacancy [Exhibit C-1, page 3] which is an on-going issue that negatively impacts the subject property's value. A vacancy analysis prepared by the Complainant [Exhibit C-1, page 12] shows the subject property having a 27.94% vacancy as at July, 2012.

[19] The Complainant included several third party office market reports that list available space for lease, lease rates and vacancy rates [Exhibit C-1, pages 106 to 122]. Following is an overview of reported vacancy rates for the 149th Street market area for 2Q 2012:

- Avison Young – 10.1%
- Cushman & Wakefield – 15.2%
- Colliers International – 10.02%

[20] To further support their position, the Complainant introduced a witness, Mr. Chad Boddez (the Witness) of Colliers International, the leasing agent for the subject property. Mr. Boddez has held the office listings for the subject since at least February of 2010 and is intimately familiar with the subject and the neighboring market [Exhibit C-1, page 124].

[21] The Witness described various marketing efforts that include contacting potential tenants, advertising on the website, signage and contacting other brokers in an attempt to lease additional space in the subject and in adjoining properties. The 149th street area was described as always being a challenge as development moved further west to the 178 and 184 street areas and attracted tenants to newer properties.

[22] The Complainant provided a copy of an Edmonton CARB decision (2012 ECARB 259) [Exhibit C-1, pages 489 to 500] wherein the vacancy rate was a sub-issue. The Complainant argued that the subject property was atypical due to its high vacancy rate. In this decision, the Board extracted information from the Complainant's internal reports and found that the property met the City's definition of "chronic vacancy" that is, over 10% vacancy in two consecutive years and an average of 10% vacancy over a three year period, and reduced the assessment [Exhibit C-1, pages 498 and 499].

Rebuttal

[23] The Complainant submitted a written summary of the rebuttal document [Exhibit C-2, pages 1 to 6] listing a total of forty nine points. The vacancy issue was addressed by the following comments:

"3. The Board has previously found that vacancy is germane (relevant to an order under review) when it comes to valuation and the valuation date is the date of concern.

5. The CARB has previously found that there is no clear definition of chronic vacancy and it seems to differ from year to year at the convenience of the assessor.

6. The CARB has previously altered assessed vacancy rates and overall office values in Edmonton through its own determination of what is fair, equitable and correct.
7. In Edmonton, last year chronic vacancy was a three year average vacancy in excess of 10% with two consecutive years of vacancy above 10%.
8. This year, the assessor is pressing to have the Board require three years of vacancy in excess of 10%.
9. Based upon July 1, 2010 – 2012; Parkwest Business Centre had an average vacancy of 18%. Its most recent two consecutive years' vacancy rates were 21.8% and 24.5%.
10. If you look to the assessment for direction, the three-year average vacancy in roll number 10012824 was 13.5%, roll number 3024411 was 25.9% and roll number 3024395 was 9.3%.
11. The vacancy concerns in the subject property are not getting better.
12. Based upon July 1, 2011 – 2013; Parkwest Business Centre had an average vacancy of 24.9%. Its three consecutive years' vacancy rates were 28.3%, 24.5%, 21.8%.
13. If you look to the assessment for direction, the three-year average vacancy in roll number 10012824 was 21.1%, roll number 3024411 was 33.2% and roll number 3024395 was 11.1%."

[24] The Rebuttal evidence included four Calgary CARB decisions and one Edmonton CARB decision [Exhibit C-2, pages 143 to 186].

[25] Calgary CARB 0913/2012-P [Exhibit C-2, pages 143 to 155], in addressing the vacancy issue, recalculated the vacancy information and found that the vacancy allowance for the subject (in that hearing) was incorrect and changed the vacancy rate from 11% to 15%.

[26] The Edmonton CARB decision, Board order 2012 ECARB 259 [Exhibit C-2, pages 164 to 175], also addressed the vacancy rate. The Complainant argued that the subject property is atypical due to its high vacancy rate. In this decision, the Board extracted information from the Complainant's internal reports and found that the property met the City's definition of "chronic vacancy", and reduced the assessment.

[27] In the Calgary CARB 1115/2012-P decision, the Board found "*that there is no clear definition of chronic vacancy and it seems to differ from year to year at the convenience of the Respondent. In order to maintain fair and equitable assessments, the Respondent needs to have a clear, written policy on how it deals with vacancy issues such as chronic vacancy. The Respondent needs to be clear whether vacancy is a condition or a valuation parameter. In so doing, the taxpayer will have a better understanding of how this situation is treated*" [Exhibit C-2, pages 176-179].

[28] The Complainant provided a 'revised suggestion of value' [Exhibit C-2, page 8] which applied a vacancy allowance of 15% to the potential gross income. This adjustment resulted in a value of \$2,086,645 which is the reduced assessment value requested by the Complainant.

Position of the Respondent

[29] In defending the current year's assessment, the Respondent presented a 139 page disclosure package to the Board marked as Exhibit R-1 that included an assessment brief and a Law and Legislation brief.

[30] The Respondent advised the Board regarding mass appraisal and stated that mass appraisal is a methodology for valuing individual properties which involves the following process:

- a. Properties are stratified into groups of comparable properties.
- b. Common property attributes are identified for the properties in each group.
- c. A uniform valuation model is calibrated for each group using market information incorporating the property attributes [Exhibit R-1, page 111].

[31] The Respondent presented maps and a photograph of the subject property to the Board [Exhibit R-1, pages 5-8].

[32] The Respondent advised the Board how the subject property was assessed for the current year [Exhibit R-1, page 9].

[33] The Respondent advised the Board regarding the vacancy related issues raised by the Complainant and the Respondent's responses to the same [Exhibit R-1, pages 11-14].

- a. Issue: The vacancy rate applied to the office space is too low. The vacancy rate for all office space in the subject property should be increased to 15%.

Response: There is no indication of chronic vacancy as this year is the first year they have had a vacancy issue.

- b. Issue: The current assessment does not sufficiently account for the subject property's long term vacancy. The subject property has a clear concern relating to both market and site specific vacancy. At the time of review, the subject vacancy was 27.94%.

Response: The subject property had 0% vacancy from 2010 to 2012 assessment years. 2013 assessment year is the first year the property has had a vacancy in 4 years. This does not indicate a chronic vacancy problem or a problem with leasing out the building.

- c. Issue: The Complainant suggests the 149th street district has a weak office market.

Response: The Complainant has provided no evidence to suggest that 149th street district is weak in the office market.

- d. Issue: The applied vacancy rate is incorrect because it does not sufficiently adjust for the subject property's site specific current and historical vacancy challenges.

Response: The subject property had 0% vacancy for the last 3 years and this is the first year out of 4 years that the subject property has vacancy.

[34] The Respondent advised the Board regarding the Complainant's complaint form and the potential issues [Exhibit R-1 pages 15-22].

[35] The Respondent advised the Board that the Complainant did not provide any response to the request for information (RFI) for the 2011 assessment year.

[36] The Respondent advised the Board regarding the vacancy allowance as it applies to the model and is as follows [Exhibit R-1, page 28]:

- a. "The valuation model in the assessment is based on a typical level of vacancy. Any chronic vacancy on an individual property is then stabilized to reflect the 3 year vacancy that is site specific. Those properties not affected by chronic vacancy are given the standard vacancy allowance.
- b. The income valuation to value recognizes that rental properties may have a temporary loss of revenue as leases expire and new tenants are found. It is a recognized practice that tenants may require short term concession to help complete the longer term tenancy of the property. The model recognizes that a typical rate covers the vacancies of 10% or less.
- c. When long term vacancy greater than 10% is experienced for at least 3 continuous years an allowance reflecting the stabilized vacancy is applied.
- d. In addition to the forgiveness of the lease revenue an allowance is also considered to reflect the cost of operation for items that are normally collected from the tenant. The cost of insurance, property taxes, utilities are some of the common area costs that the owner must absorb when a property is vacant.
- e. The assessment model is built reflecting these principles."

[37] The Respondent presented a chart detailing the City of Edmonton's study of suburban "B" office buildings in Edmonton. The weighted average of the 154 accounts in the study was 9.11% [Exhibit R-1 page 30].

[38] The Respondent advised the Board that roll # 3024395 had 0% vacancy as of April 17th, 2009, 0% vacancy as of April 19th, 2010 and 23.85% December 31st, 2011 [Exhibit R-1 page 31].

[39] The Respondent presented an equity chart detailing the assessments on suburban 149th street "B" class office buildings. With the exception of 2 properties, all the remaining properties were given a 9.5% vacancy allowance on the office portion of the property [Exhibit R-1 page 67]. The exceptions reflected the chronic-vacancy situations in accordance with the City's policy. The subject property was assessed at \$154.76 per square foot and given a market value of \$2,393,000.

[40] During cross-examination by the Complainant, the Respondent advised the Board of the following:

- a. There are a number of different vacancy rates reflected in the City's vacancy rate study on suburban office "B" buildings [Exhibit R-1, pages 29-30].
- b. There are 149th street office buildings that have vacancy rates that are higher than 9.5%.
- c. Respecting only the 149th street "B" buildings, the simple average is 11.14%. The weighted average was not calculated.
- d. One of the Park West buildings (#5, in the same complex as the subject), was given a 15% vacancy allowance based on the owner's response to the City's Request for Information (RFI).

[41] During summary, the Respondent stated that the Board should refer to Exhibit R-1, page 31 and the Complainant's Exhibit C-2, page 40, in that, both charts show the subject property has a temporary vacancy of 27%. The Respondent reiterated that a 6 month blip on vacancy is not chronic.

[42] Further, the Respondent referred the Board to the City of Edmonton's assessment policy respecting chronic vacancy [Exhibit R-1 page 28] and reiterated that the subject assessment was based on the City's assessment policy regarding vacancy.

[43] In addition, the Respondent advised the Board that one of the Board orders cited by the Complainant supported the Complainant's contention about chronic vacancy. However, the Respondent pointed out that at the time of the hearing, Calgary did not have a policy governing chronic vacancy. Edmonton, on the other hand, does have a policy regarding chronic vacancy and the same was applied for the subject assessment.

[44] The Respondent advised the Board that the issue is not the typical vacancy rate in the 149th street district, but is the subject property abnormal or exceptional regarding the property's vacancy rate. The Respondent's position is that the subject property did not suffer from chronic, abnormal or exceptional vacancy for the 2013 assessment.

[45] The Respondent requested the Board to confirm the 2013 assessment of \$2,393,000.

Decision

[46] The decision of the Board is to confirm the 2013 assessment of \$2,393,000.

Reasons for the Decision

[47] The Board agrees with the Respondent that the vacancy issue with the subject property does not meet the definition of "chronic vacancy" according to the City of Edmonton's policy on vacancy allowance. The policy clearly states, when a long term vacancy of greater than 10% is experienced for at least 3 years an allowance reflecting the stabilized vacancy is applied.

[48] The Board was persuaded by the Respondent's equity analysis on suburban 149th street "B" class office buildings. With the exception of two properties, all the remainder were given a 9.5% vacancy allowance for the 2013 assessment year. In addition, all the properties were valued at \$154.76 per square foot.

[49] The Board notes that the vacancy schedules provided by both parties indicated 0% vacancy on July 1, 2010 and 0% vacancy on July 1, 2011. The vacancy regarding the subject property was 27.9% on July 1st, 2012, which is short term in nature. The Board notes that the vacancy allowance could certainly go to chronic vacancy if the vacancy continues for a period of time. Circumstances and time will adjust for the vacancy issue sometime in the future, if the vacancy persists.

[50] The Board reviewed the City of Edmonton's vacancy study regarding class "B" office buildings and noted the weighted average was 9.11%. The City then allowed 9.5% vacancy allowance for all class "B" office buildings in Edmonton.

[51] The Board notes that the Complainant appears to recognize the City of Edmonton's policy regarding "chronic" vacancy, as evident from the Complainant's e-mail of 31st July 2013, to the City assessor, that says:

"We are able to recognize that the vacancy concerns only hit a three year chronic threshold this year for one of the three roll numbers. The City of Edmonton has applied 15% to that roll number. Next year two of the three roll numbers would qualify as "chronic" as per the City's definition."

[52] The Calgary Board order cited in support of the Complainant's 'chronic vacancy' position was clearly based on a lack of policy or definition of the issue in that jurisdiction, at the time of that hearing. However, the City of Edmonton has provided evidence of a clear policy on this issue and its application was demonstrated by the fact that one of the three roll numbers associated with the subject complex did get the desired 15% vacancy rate, in accordance with this policy.

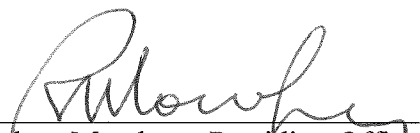
[53] The Board put little weight on the third-party documents provided by both the Complainant and the Respondent. While the third-party documents included vacancy allowances in the 149th Street district, this information supported the 9.5% vacancy allowance applied to the properties in the 149th Street district. However, no third-party document supported the 'chronic' vacancy issue.

Dissenting Opinion

[54] There was no dissenting opinion.

Heard commencing August 12, 2013.

Dated this 21st day of August, 2013, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

Brock Ryan, AEC

Chad Boddez, Colliers International
for the Complainant

Cameron Ashmore, City of Edmonton Law Branch
Darren Davies, 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.