

## Edmonton Composite Assessment Review Board

**Citation: CVG v The City of Edmonton, 2013 ECARB 00858**

**Assessment Roll Number:** 1075399  
**Municipal Address:** 9440 49 Street NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**CVG**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Petra Hagemann, Presiding Officer**  
**Mary Sheldon, Board Member**  
**Martha Miller, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

### **Preliminary Matters**

[2] At the outset of the hearing, the Respondent stated that although they had given proper disclosure to the Complainant, an administrative oversight resulted in late disclosure to the Assessment Review Board. The Respondent was aware that under section 9(2) of the *Matters Relating to Complaints Regulation* (MRAC), AR 310/2009, "A composite assessment review board *must not* hear any evidence that has not been disclosed in accordance with section 8". Section 8 sets out the disclosure requirements, which the Respondent did not meet in this case. However, the Respondent also noted that under section 10(3) of MRAC, the Board may exercise its discretion to abridge the disclosure deadlines so long as there is "written consent of the persons entitled to the evidence or other documents."

[3] In response, the Complainant stated that he had received the Respondent's disclosure with sufficient time to review its contents. In the interest of fair play, he expressed that he was willing to provide written consent to abridge the disclosure deadline. His consent would permit the Respondent to present their evidence on the hearing date.

[4] Based on the above, the Board determined that abridging the disclosure deadline would not be prejudicial to the parties, and thus, granted the Respondent's abridgement request.

## **Background**

[5] The subject property known as the Febtro Building is a multi-tenant office complex located in Eastgate Business Park at 9440- 49<sup>th</sup> Street. It comprises 25,153 square feet (sq ft), is classified as an EGA “B” building and is assessed on the income approach at \$4,052,000.

## **Issue(s)**

[6] An issue regarding the correct size of the subject had been outlined; however this had been resolved prior to the hearing. The only issue remaining was:

- Should the sub classification of the subject be changed from EGA “B” to reflect its lower quality?

## **Legislation**

[7] **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**

[8] At the outset of the hearing, the Complainant advised the Board that there was no longer an issue concerning the correct building size of the subject. The Complainant submitted that the rent rolls for the subject show a different size than that shown on the Request for Information (RFI) document sent to the City of Edmonton. The Complainant stated that he was prepared to accept the building size as shown on the RFI and as used by the Respondent in the assessment of the subject.

[9] The Complainant presented an assessment brief (Exhibit C-1) in support of the position that the subject was incorrectly classified by the municipality as a Class “B” building and that the resulting office lease rate was too high.

[10] The Complainant pointed out that the *pro forma* used by the municipality for the subject assessment applied an office lease rate of \$14/sq ft to the 25,153 sq ft of office space which resulted in a Net Operating Income (NOI) of \$283,640 (Exhibit C-1, page 9).

[11] The Complainant advised that the \$14/sq ft lease rate for office space being the typical rent used by the Respondent for Class "B" buildings is much higher than the actual rent generated in the subject; therefore in his opinion, the subject ought to be reclassified below a "B" class.

[12] The Complainant presented photographs (Exhibit C-1, page 10) and oral evidence stating that the finish and condition of the subject was more like a "C" class building. The Complainant stated further that only the portion of the subject devoted to the law offices was in a condition similar to a "B" building.

[13] Furthermore, the Complainant referenced a decision of the Municipal Government Board (Exhibit C-1, page 18) which stated that the leases in a property are good evidence in valuing a property for the purposes of assessment. In that regard, the Complainant presented a rent roll of the subject (Exhibit C-1, page 7). This document showed that leases in the subject, other than the owner's leases, ranged between \$7.50 and \$12.50/sq ft.

[14] The Complainant also pointed out that the actual average lease rate for 2012 for the subject was \$10.25/sq ft for the office space and that it would be appropriate to apply this lease rate to the subject instead of the \$14/sq ft for office space applied by the municipality.

[15] The Complainant also presented a chart of the suburban valuation rates which shows lease rates for the EGA district for class "C" buildings (Exhibit C-1, page 8) assessed at \$9/sq ft. The Complainant submitted that the subject should be classified somewhere between a "B" class and a "C" class building.

[16] The Complainant submitted that if the 2012 average lease rate for the subject of \$10.25/sq ft is applied to the area of the subject and the capitalization rate of 7% applied, the resulting value for the subject would be \$2,857,000 (Exhibit C-1, page 2).

[17] The Complainant requested that the Board reduce the 2013 assessment of the subject to \$2,800,000.

### **Position of the Respondent**

[18] The Respondent provided documentary and oral evidence (Exhibit R-1) to the Board in support of the 2013 assessment for the subject.

[19] The Respondent submitted original and revised proformas for the subject for 2013 (Exhibit R-1, pages 5 & 6) correcting the size from 25.153 to 25.917 sq ft which resulted in an increase in the 2013 assessment from \$4,052,000 to \$4,175,000.

[20] The Respondent recreated the rent roll of the subject (Exhibit R-1, page 15) for 2012 showing nine leases. The size of the leased spaces ranged from 1,574 to 6,851 and the rents ranged from \$7.01 to \$12.13/sq ft. The Respondent noted that the owner occupied the largest space of 6,851 sq ft (Exhibit R-1, pages 38-44). The Respondent advised the Board that the typical lease rate for a "B" class building is \$14.00/sq ft (Exhibit R-1, page 16).

[21] The Respondent provided examples of current leases from "B" buildings in the same area as the subject. These three time-adjusted leases, ranged from \$11.20 to \$14.69/sq ft with a median net rent of \$13.94/sq ft. The Respondent argued that this supports the \$14.00/sq ft lease rate applied to the subject. (Exhibit R-1, page 17-18).

[22] The Respondent stated that legislation mandates the assessment must be prepared based on mass appraisal applying typical rates for office rents, vacancy rates, operational costs and capitalization rates for all downtown and suburban office properties.

[23] The Respondent advised that for the purposes of the 2013 assessment, income producing properties, such as the subject, were valued based on their potential gross income (PGI) using typical market lease rates for their building sub class. The Respondent provided MGB Board Order 038/06 (Exhibit R-1, pages 45-53) in support of this position.

[24] The Respondent pointed out that the Complainant only presented evidence of leases in the subject and did not provide sales or equity comparables.

[25] The Respondent provided equity comparables for both class "B" and "C" class buildings (Exhibit R-1, pages 18-19). The eight equity comparables for "B" buildings, including the subject are assessed at a rate of \$161.09/sq ft and the "C" class comparables were assessed at \$79.96 and \$90.00/sq ft.

[26] The Respondent provided photos for both "B" and "C" buildings (Exhibit R-1, pages 21-37) which show a range of interior finishes.

[27] The Respondent stated the onus of proving the incorrectness of the assessment rests with the Complainant and suggested that there was insufficient evidence provided by the Complainant in order for the Board to change the classification of the building.

[28] In summary the Respondent advised the Board that the process of evaluating the subject and determining its market value is consistent with how the City values similar properties. The Respondent left it to the Board's discretion whether to confirm the original assessment of \$4,052,000 or to increase it to \$4,175,000 based on the corrected size.

### **Decision**

[29] The Board finds the subject is correctly classified as a "B" building and confirms the original 2013 assessment at \$4,052,000.

### **Reasons for the Decision**

[30] The Board reviewed the evidence provided by the Complainant which was primarily the rent roll of the subject. Unit 111 and 109 were not considered as they were occupied by the owner of the building. The relatively current leases considered were for unit #102 @\$11.00/sq ft and units #220 and #202 @\$11.75/sq ft. These three leases representing approximately 25% of the subject's size suggest that the assessment based on an office lease rate of \$14.00/sq ft may be excessive and that the sub classification of EGA "B" may not be appropriate.

[31] The Complainant made reference to the 2010 MGB decision on Roll #068244607 between Eau Claire Market Inc. and the City of Calgary, which states *"leases in the subject property are the best evidence for the assessment"*. The property in the Calgary appeal had an atypical land use designation which negatively affected its market value. This made it difficult to find comparable properties and the best evidence before that board was a lease in the subject. This Board finds that these two properties are dissimilar and therefore places little weight on this evidence.

[32] The Board understands that the Respondent is required to assess properties based on mass appraisal using typical lease rates rather than actual income generated by the property under appeal. The typical lease rate applied to "B" class buildings is \$14.00/sq ft. Although the request for information (RFI) for suburban rental rates for Eastgate area "B" office buildings resulted in only three current leases, one of which was located in the subject, the Board is satisfied in how the Respondent arrived at the \$14.00/sq ft lease rate by taking the median of the three time adjusted leases.

[33] The Board further understands that a classification is based not only on lease rates but also on other factors such as interior and exterior condition and finish, location and general appeal of the building all of which translates into marketability. It is also based on comparability to similar properties. The Board reviewed photos of the subject and other "B" and "C" buildings presented by the Respondent together with the equity comparables and finds that the "B" classification of the subject is appropriate.

[34] The Board was persuaded by the evidence provided by the Respondent and confirms the 2013 assessment of the subject at \$4,052,000.

### **Dissenting Opinion**

[35] There was no dissenting opinion.

Heard commencing August 14, 2013.

Dated this 4<sup>th</sup> day of September, 2013, at the City of Edmonton, Alberta.

  
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Petra Hagemann, Presiding Officer

### **Appearances:**

Peter Smith  
for the Complainant

James Cummings  
Tanya Smith  
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.*