

Edmonton Composite Assessment Review Board

Citation: MNP LLP v The City of Edmonton, 2013 ECARB 00895

Assessment Roll Number: 3191855

Municipal Address: 10709 Jasper Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

MNP LLP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Petra Hagemann, Presiding Officer
Brian Carbol, Board Member
Brian Frost, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matters before them.

Preliminary Matters

[2] The Respondent stated that the Complainant had made a section 299 request for information under the *Municipal Government Act* (MGA). The Respondent asked the Complainant if the section 299 request would be an issue in the complaint. The Complainant advised that it would likely not be an issue, but reserved the option to reverse his position in the event that the Respondent's evidence caused it to become an issue during the hearing. The Respondent noted that a great deal of time and effort had been expended by the City in its preparation of the section 299 request which could result in a cost application. The Board was satisfied by the Complainant's position that the section 299 issue be tabled to allow the hearing to proceed.

[3] During presentation of the issues, the Complainant mentioned that Common Area Costs would be argued. The Respondent objected on the basis that Common Area Costs were not mentioned in the original Complaint and that they therefore could not be heard.

[4] The Board, in recess, determined that it was satisfied that the primary issue was the Building Classification, which in itself spawned various sub issues, one of which would be

Common Area Costs and that its exclusion from the complaint form would not constitute non-disclosure. The Board conveyed this to the parties.

Background

[5] The subject property is a 73,366 square foot (sq ft) office tower with 75 underground parking stalls known as the Peace Hills Insurance Building. It is located at 10709 Jasper Avenue, in the Downtown Financial sector. It was built in 1980. It is located on a 16,107 sq ft corner site. It comprises 64,288 sq ft of office space, 4,559 sq ft in two restaurants and a 4,519 sq ft bank. It was assessed using the income approach to value at \$16,769,000.

Issues

[6] The issues are as follows:

- 1) Is the amount of office space used in the assessment correct?
- 2) Are the assessed operating costs and amended office lease rates per sq ft based on the correct building subclass?
- 3) Is the lease rate for the bank space correct?

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 299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person’s property.

(1.1) For the purposes of subsection (1), “sufficient information” in respect of a person’s property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor’s possession or under the assessor’s control,
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and
- (c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

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] The assessment was too high based on the following grounds:

1) The office space size allocation is incorrect.

2) The assessment used too high a building classification in determining the typical income approach parameters.

3) The City failed to correctly recognize the appropriate lease rate for the bank tenant.

[9] In support of its position, the Complainant submitted a 192 pages disclosure document (Exhibit C-1).

Issue 1: The office space size allocation is incorrect.

[10] The current rent roll shows that the current net leasable area of the office space is 64,080 sq ft, not 64,288 sq ft as used in the assessment. Also, the total building size is 73,158 sq ft, not 72,366 sq ft as used in the assessment. The assessment details and the assessment itself should be amended to reflect these figures.

[11] To support this position, the Complainant provided a copy of the December 31, 2012 rent roll (Exhibit C-1, pages 49-51).

Issue 2: The assessment used too high a building classification in determining the typical income approach parameters.

[12] The Complainant explained that while being satisfied that the subject property is a class B building, its subclass designation of BH is questionable. The Complainant referred to a portion of the City of Edmonton Building Valuation Guide (Exhibit C-1, page 38) stating that subclass designation arrives from analysis of both qualitative and quantitative attributes. For qualitative attributes, the primary factor is finish, which is the same for both class BH and BL buildings. For quantitative attributes, the primary factor is the lease rate.

[13] The Complainant stated that the subject building lease rates were below those of a BH classified office building and were more in line with a BL classification. The Complainant provided copies of the City of Edmonton Downtown Valuation Rates (Exhibit C-1, page 19) as

well as the City of Edmonton typical rate ranges for building classifications in Downtown Edmonton for A, B and C classifications (Exhibit C-1, page 20).

[14] The Complainant stated that the primary tenant, Peace Hills Insurance, owns the building and sets its own rent arbitrarily. It is currently paying \$13 per sq ft.

[15] The Complainant provided correspondence from the building owner (Exhibit C-1, page 52) that indicated the Bank renewed its lease in August 2010 at \$24 per sq ft, an office tenant renewed in May 2012 at \$12 per sq ft (with parking concessions which reduced net effective rent to \$10.20 per sq ft), and a new lease was in place at \$13 per sq ft beginning August 2012 with the three prior months being rent free.

[16] It was the Complainant's position that these lease rates clearly put the rents for the subject property in the realm of class BL buildings as exhibited in the City of Edmonton's own guidelines. The assessment should therefore follow the City guidelines for BL class downtown office buildings, including lease rates and operating costs.

[17] The Complainant requested that the building classification be amended from BH to BL, and that the assessment be amended to reflect typical lease rates and vacancy shortfall rates for BL rather than BH class properties. The Complainant acknowledged that other valuation parameters were the same for both classes.

Issue 3: The City failed to correctly recognize the appropriate lease rate for the bank tenant.

[18] The Respondent submits that the entrance to the bank in the subject property opens only to Jasper Avenue and is the only bank in downtown Edmonton that does not also have direct access to the interior of the building. The Complainant advised that, as confirmed in the City data (Exhibit C-1, page 20), all bank spaces in downtown buildings are assessed utilizing a rental rate of \$27 per sq ft, and that because the subject bank lacked interior access, its rate should be lower.

[19] Of the two restaurant tenants in the subject building (paying \$17 and \$20 per sq ft), one had interior access and therefore paid an additional \$3.00. The Complainant concluded that since the bank within the subject property is the only bank in downtown Edmonton located in a high rise building without direct interior access, the assessment should allocate a corresponding reduction to typical lease rates.

[20] The Complainant suggested that the typical lease rate for the bank space is \$24 per sq ft.

[21] As a result of the suggested changes, the Complainant asked that the Board to reduce the assessment on the subject property from \$16,769,000 to \$14,938,500. Calculations are in Exhibit C-1, page 57.

Position of the Respondent

[22] The Respondent submits that the current assessment is both fair and equitable. To support its position, the Respondent presented Exhibit R-1 (92 pages), Exhibit R-2 (212 pages), and Exhibit R-3 (6 pages).

Issue 1: The office space size as submitted by the Complainant will be utilized for the 2014 assessment.

[23] The Respondent noted the change as requested by the Complainant, and agreed that the correct size was as submitted by the building owner in its rent roll. The Respondent stated that the requested size would be utilized for the 2014 assessment. The Respondent noted that previous rent rolls reflected the sizes used in the current assessment.

Issue 2: The assessed operating costs and amended office lease rates reflect subclass BH properties.

[24] The Respondent stated that although lease rates were the primary driver determining building classification, they were not the sole determinant.

[25] The Respondent provided photos of the subject interior, which the Respondent stated exhibited very high quality finishes, befitting a BH designation (Exhibit R-1, pages 4-15). The Respondent also provided photos of a typical BL building's improvements (Exhibit R-1, pages 17-20), and claimed that a higher level of finish would result in a higher price if the property was sold.

[26] The Respondent stated the subject property has had a BH designation for a number of years.

[27] The Respondent addressed recent lease rates for new and renewed leases for the subject property, and noted that they were within the range for BH class buildings throughout downtown Edmonton (Exhibit R-1, page 46), where lease rates ranged from \$9.40 to \$18.06 per sq ft, reflecting a median of \$14.92 per sq ft and an average of \$14.66 per sq ft.

[28] The Respondent further noted that Typical Valuation rates for a Class BH building, as used in the 2013 assessment, are \$15 per sq ft for the office space (Exhibit R-1, page 45).

[29] In support of typical building operating costs of \$13.50 per sq ft as used in the assessment, comparable costs were provided for all class BH office buildings. Information from 19 properties (of the 40 property inventory) reflected operating costs between \$8.77 and \$15.71 per sq ft, with a median of \$13.65 per sq ft and an average of \$13.41 per sq ft.

[30] The Respondent's position is that the building quality is superior to class BL properties, which is further supported by leases in the subject property which are within the range of leases in class BH properties.

Issue 3: The lease rate for the bank tenant is within the range for banks located in downtown Edmonton office buildings.

[31] The Respondent provided data (Exhibit R-1, pages 49-51) on lease rates for both office building and shopping centre domiciled banks, the latter to better exhibit the effect of the age of the lease rates for the bank property. Downtown office building domiciled banks reflected a range of \$24 to \$35 per sq ft, while retail locations ranged between \$28 per sq ft for those built before 2001 and \$35 per sq ft for those newer than 2002. The Respondent concluded that the typical lease rate for bank space for the subject property, with an effective date built of 1979, was \$27 per sq ft.

[32] The Respondent provided equity comparables for 31 downtown class BH office buildings (Exhibit R-1, page 52), all of which were assessed using the typical lease rates and operating costs used in the assessment of the subject property.

Decision

[33] It is the Board's decision to reduce the 2013 assessment from \$16,769,000 to \$16,730,500.

Reasons for the Decision

[34] The Board considered the positions of both parties on an issue by issue basis, with its reasons and conclusions as follows:

Issue 1: Is the amount of office space used in the assessment correct?

[35] The Board is satisfied with both parties' position that the building size should be reduced. The Board was not satisfied with the Respondent's position that the size would be amended for the 2014 assessment year as the information is current and should apply to the current assessment.

Issue 2: Are the assessed operating costs and amended office lease rates based on the correct building subclass?

[36] The Board was sympathetic to the Complainant's position that the current lease renewals and new leases are below class BH typical rents. However, the Board was not satisfied with the Complainant's position that rents are the sole determinant in building classification. The Board noted that the Complainant did not provide any comparable data other than a few subject property leases to confirm that the subject did not fit the BH classification.

[37] The Board considered the Respondent's evidence and concluded that its BH classification was both well founded and supported by the evidence at hand. The Board was convinced by the Respondent's photographs that the subject property is superior to BL buildings from a quality standpoint. The Board was also convinced by the Respondent's evidence that the subject building leases and operating costs fell within the range of leases and operating costs of other class BH buildings in the City.

[38] Based on the above reasons, the Board is satisfied that the correct building subclass for the subject property is a BH classification

Issue 3: Is the lease rate for the Bank space correct?

[39] The Board considered the Complainant's position that the subject building lease rates for the restaurant space exhibited a \$3 per sq ft differential because one did not have direct interior building access. The Board was not satisfied by the Complainant's position that this was a correct analogy.

[40] The Board considered the Respondent's evidence that included an analysis of other leases for banks and was satisfied that the lease rate used in the assessment is correct.

[41] The Board concluded that the Complainant failed to provide sufficient evidence to convince the Board that the City was incorrect in its assessment of the subject property other than the size amendment agreed to by both parties. Based on the Board's calculations, the office space size amendment would result in the office space assessment being reduced from \$11,889,324 to \$11,850,784, and the overall assessment from \$16,789,000 to \$16,730,500.

Dissenting Opinion

[42] There was no dissenting opinion.

Heard commencing July 15, 2013.

Dated this 24th day of July, 2013, at the City of Edmonton, Alberta.

A handwritten signature in dark ink, appearing to read 'Petra Hagemann', with a long, sweeping horizontal line extending to the right.

Petra Hagemann, Presiding Officer

Appearances:

Walid Melhem, MNP LLP
for the Complainant

Tania Smith
Vasily Kim
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.