

Edmonton Composite Assessment Review Board

Citation: MNP LLP v The City of Edmonton, 2013 ECARB 00896

Assessment Roll Number: 3595535

Municipal Address: 10123 99 Street 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] 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] 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 indicated willingness to withdraw the issue, but should it arise during the hearing, then it would be dealt with at that time.

[3] During questioning of the Respondent's evidence, the Complainant asked why the lease rate for Unit #400 in the subject property had been excluded in the information provided by the City as per the Complainant's section 299 request.

[4] The Respondent indicated that they had complied with the Complainant's request as per section 299 of the MGA. Unit #400 had been excluded from the 2013 lease rate study because its operating cost was atypical. The information provided by the City in the section 299 request was listed in R-2, page 23. The Respondent noted that the Complainant had opportunity to question the information received prior to the hearing, but had not done so.

[5] Due to the exclusion of Unit #400, the Complainant called into question the reliability of all the information contained in the Respondent's evidence, and requested a postponement of the hearing to consult with counsel.

[6] The Board called a recess to deliberate on the postponement request.

The Board's decision regarding the postponement request:

[7] Under section 299 of the MGA, an assessor must comply with any request from assessed persons to supply sufficient information to show how that person's property was assessed.

[8] The Board refers to the letter dated April 16, 2013 (R-2, page 23), the City's response to the Complainant's section 299 request. It states that "What we are required to provide you with under Section 299 is the following", and bullet 4 goes on to say "data from the subject properties that was used in determining rental, vacancy, and op cost rates for valuation." The Board is of the opinion that the Respondent complied with the request.

[9] However, section 9(4) of *Matters Relating to Assessment Complaint Regulation* states that "A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant." Since the Respondent had not provided the Complainant with information regarding Unit #400, the Board is willing to strike out the evidence regarding that unit.

[10] The Board also notes that since the City had not used this evidence when preparing its assessment, the exclusion is prejudicial to neither the Complainant nor the Respondent.

[11] The Board finds that a postponement is not necessary, and therefore the decision is to proceed with the hearing.

Background

[12] The subject property is known as the Sun Life Building. It was built in 1977, and is located at 10123 - 99 Street in the downtown financial district of the City of Edmonton. It is a corner lot that is situated on a 31,512 square foot (sq ft) parcel of land. The total area of the building is 277,179 sq ft and comprises 272,238 sq ft of Office, 766 sq ft of CRU (under 1000 sq ft), 1,203 sq ft of CRU (1,000 – 3,000 sq ft), 1,885 sq ft of CRU Restaurant and 1,807 sq ft of Storage space. It is assessed as a sub class "AL" building. Based on the income approach, it is valued at \$69,989,500.

Issue(s)

[13] The issues are as follows:

- 1) Is the office lease rate at \$16.50/sq ft too high?
- 2) Is the office vacancy rate at 7.5% too low?

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 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.

[15] The *Matters Relating to Assessment Complaints Regulation* (MRAC), AR 310/2009, reads:

S 9(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant

[16] The *Matters Relating to Assessment Complaints and Taxation Regulation* (MRAT), AR 220/2004, reads:

s 2(c) An assessment of property based on market value must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[17] The Complainant outlined numerous issues in their brief (C-1), and advised the Board that the parties had come to an agreement on most issues, including the rate for tax exempt space. The only two outstanding issues were the office lease rate which should be reduced from \$16.50/sq ft to \$15.00/sq ft, and the percentage of office vacancy which should be increased from 7.5% to 12.5%.

Issue 1: An office lease rate of \$16.50/sq ft is excessive.

[18] The Complainant directed the Board to a list of some of the actual office leases in place in the subject building as of the July 1, 2012 valuation date (C-1, page 47). These relatively current leases ranged in start date from January 2011 to March 2012, with ending dates from May 2013 to February 2017. They ranged from \$11.00/sq ft to \$16.00/sq ft, with an average of \$14.50/sq ft and a median of \$15.00/sq ft. The Complainant noted that the leases closest to the valuation date were lowest at \$11.00/sq ft, indicating a declining trend.

[19] Several complete rent rolls of varying dates (C-1, pages 50-135) were included, showing that an office lease rate of \$16.50/sq ft was excessive.

Issue 2: The City's 7.5% vacancy rate is too low.

[20] The Complainant submitted a chart (C-1, page 18) which showed that the downtown office vacancy rate of 7.5% was applied to all "A" buildings by the City. However, the Complainant submitted their own analysis of several "A" class buildings, including the subject, in the downtown area (C-1, page 136). Based on these 14 buildings, the study revealed that the average actual vacancy was 11.87%, and that the typical vacancy rate of 7.5% applied to "A" buildings is too low.

[21] The Complainant submitted the historical vacancy rate in the subject building from July 2010 to December 2012, illustrating that the vacancy had increased from 7.56% to 15.66%, and that an office vacancy allowance of 12.5% would be more appropriate (C-1, page 137).

[22] The Complainant recalculated a hypothetical assessment of the subject using the requested office rent of \$15.00/sq ft and the office vacancy rate of 12.5% (C-1, page 140), arriving at a new value of \$56,628,000. The Complainant requested that the Board reduce the assessment to this amount.

Position of the Respondent

[23] The Respondent submitted two briefs (R-1 and R-2) in defence of the subject property's assessment.

Issue 1: The office lease rate of \$16.50/sq ft is correct.

[24] The Respondent included the reconstructed rent rolls of the subject for 2010, 2011 and 2012 as per the annual Request for Information (RFI) submitted by the owner (R-1, pages 55-60). The net office rent for both 2011 and 2012 was reported at \$16.00/sq ft, indicating the rent as applied in the assessment is correct. The City confirmed that they had used all the leases from

the subject in their analysis as per the RFI. The exception was Unit #400, leased by Climate Change Central, which was excluded because its operating costs were atypical.

[25] The Respondent advised that the subject assessed as subclass "AL" in the financial district is based on "typical" market rent. The median time adjusted rental rate of all "AL" downtown buildings is \$16.60/sq ft, with an average of \$16.63/sq ft. The median and average of the last 6 months prior to valuation date is, respectively, \$18.00/sq ft and \$15.33/sq ft (R-1, page 61). The City chose the median rate of \$16.50/sq ft to establish the typical market rate as of valuation date (R-1, page 21).

[26] The Respondent explained that assessments are to be prepared in accordance with section 2(c) of MRAT, which requires as standard procedure that assessments are to be based on typical market factors, rather than the actual factors relating to a specific property.

[27] The Respondent noted that none of the lease rates in the subject used by the Complainant had been time adjusted to July 1, 2012 (R-1, page 64).

Issue 2: The 7.5% office vacancy rate is correct.

[28] The Respondent submitted a chart of 2013 downtown valuation rates (R-1, page 63) showing 7.5% office vacancy for all "A" buildings in both the downtown and financial districts. Their main source of data is the RFI. Of the 35 "A" class properties in the downtown, after eliminating buildings with zero vacancy and those with chronic vacancy of over 20%, 13 properties were used to determine a weighted average and consequently a typical vacancy rate of 7.5% (R-1, pg 63-65).

[29] The Respondent included the actual office vacancy rates (2009-2012) for the subject as per the RFI received. The rates are 5.19%, 7.7%, 18.84% and 14.48% respectively. The Respondent advised that if vacancy rates exceed 10% for three consecutive years, the building would be deemed to have chronic vacancy and an adjustment would be made the following year. That may become a consideration for the 2014 assessment for the subject, based on the current year's RFI report.

[30] The Respondent requested the Board confirm the assessment of the subject property.

Decision

[31] The decision of the Board is to confirm the 2013 assessment at \$69,989,500.

Reasons for the Decision

Issue 1: The office lease rate of \$16.50/sq ft is correct.

[32] The Board placed little weight on the Complainant's evidence regarding their lease rate request. Although the eight lease rates commencing within six months of valuation date indicate a lower rent than the \$16.50/sq ft applied by the Respondent, the average rental rates for the subject building could not be determined as the rent rolls provided for 2010-2012 were of varying dates, making comparability difficult.

[33] The Board is in agreement with MGB order 038/06, which the Respondent included in their evidence (R-1, page 128). The order states that "For the purposes of mass appraisal typical

market rent should be utilized as opposed to actual contractual rent due to the many various factors that influence the agreement to lease property between a lessor and a lessee, some of which may not be related to the realty at all”.

[34] The Board was persuaded by the Respondent’s lease rate study determining typical lease rates for “AL” buildings, and finds that the lease rate of \$16.50/sq ft is correct.

Issue 2: The 7.5% vacancy rate is correct.

[35] The Board placed little weight on the Complainant’s office vacancy evidence. The “A” class vacancy study provided by the Complainant lacked an effective date, thus providing little value.

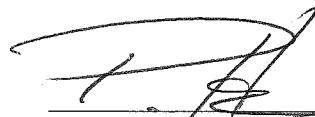
[36] Although the Board recognizes the high vacancy illustrated by the subject’s historical vacancy rates (C-1, page 137), it also notes that the dates provided were not consistent from year to year, making it difficult to draw accurate comparisons. The Board notes that should a high vacancy persist, the Respondent would categorize the subject as chronically vacant and make the appropriate adjustment in the following year’s assessment.

[37] The Board is aware that mass appraisal dictates that typical rates should be applied to office vacancy and is persuaded by the evidence provided by the Respondent, which supports a typical office vacancy rate of 7.5%.

[38] The Board finds that the 2013 assessment of the subject at \$69,989,500 is correct.

Heard commencing July 16th, 2013.

Dated this 14th day of August, 2013, at the City of Edmonton, Alberta.



Petra Hagemann, Presiding Officer

Appearances:

Walid Melhem
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.