

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00981

Assessment Roll Number: 1033166
Municipal Address: 10044 108 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
Robert Mowbrey, Presiding Officer
Brian Frost, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. The members of the Board stated they did not have any bias in respect of this matter.

[2] The parties presenting evidence in the hearing were either sworn in or affirmed, the choice being up to the individual.

Background

[3] The subject property is a twelve storey office building located at 10144 - 108th Street NW in the Downtown Government Sector. The office building was constructed in 1981, has 383,896 square feet of office space and is a class AL building. The 2013 assessment is \$97,370,500.

Issues

- [4] A. What is the appropriate lease rate for the subject property?
- B. What is the appropriate capitalization rate for the subject property?

Legislation

[5] 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

[6] The Complainant filed this complaint on the basis that the subject property assessment of \$97,370,500 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package containing 34 pages to the Board (Exhibit C-1) and Rebuttal, containing 31 pages (Exhibit C-2).

[7] The Complainant stated that the issues being addressed are as follows:

- a) the lease rate used in the assessment is too high when compared to the lease rates currently being obtained in the subject property as well as the lease rates being obtained in similar properties;
- b) the capitalization rate (cap rate) is too low when compared to cap rates from sales of recent properties.

On the issue of the subject property being over-assessed based on the lease rate:

[8] The Complainant stated that the most recent leasing activity for the subject property was two leases to Service Canada Call Centres , for 37,627 sq ft and 13,148 sq ft, which commenced July 1, 2011 (Exhibit C-1, page 7). The Complainant further noted there have been leases since, but they were post facto to the valuation date.

[9] The Complainant provided a table detailing leases in eight other downtown office buildings, three of which were Financial District Class AA buildings with one each of Class AH and AL. There were leases for three buildings in the Government District. The lease rates for the buildings in the Financial District ranged from \$16.00 to \$20.00 per sq ft and all leases were at \$15.00 per sq ft in the Government District. The subject property's assessment was based on \$16.50 per sq ft.

[10] The Complainant provided a table of four each of Downtown and Government District office building lease rates as applied in the assessment of those properties. The Financial District buildings were assessed using lease rates of from \$15.00 to \$20.50 per sq ft and the Government District leases were all assessed using a lease rate of \$15.00 per sq ft. One of the Government District buildings was classed AL while the other three were classed BH.

[11] The Complainant stated the subject property has been incorrectly classified as a Class AL building and that it should be more properly classified as a Class BH building given its age, location in the Government District and its general condition.

[12] The Complainant stated the lease rate for the subject property should be \$15.00 per sq ft.

[13] In cross examination, the Complainant stated the building sub classification was not an issue and that it was just the effect of the classification on the lease rate and cap rate used in the assessment.

On the issue of the cap rate being too low when compared to cap rates from sales of recent properties:

[14] The Complainant detailed six sales comparables (Exhibit C-1, page 10) which sold between January 1, 2009 and July 1, 2012 whose cap rate ranged from 5.85% to 7.58% and averaged 6.86% as compared to the subject property at 6.00%.

[15] The sales comparables were described by the Complainant as superior to the subject in classification being AA and AH with the exception of Enbridge Tower which, like the subject, is AL. The comparable properties were all in proximity to the downtown financial district while the subject was described as being in the government district.

[16] The Complainant submitted that, based on the recent transactions of downtown office buildings, 6.50% is the most appropriate cap rate for the subject property.

[17] As additional evidence, the Complainant included eight sales comparables (Exhibit C-1, page 11) utilized by the Respondent which sold between November 2010 and February 2012 whose Assessment to Sale Ratio (ASR) averaged 0.96% which the Complainant described as not equitable.

[18] The Complainant noted that although the sales were from November 2010 to February 2012, the City deemed that no time-adjustments were necessary.

[19] The sales comparables were described by the Complainant as superior to the subject in classification being AA and AH with the exception of Enbridge Tower which, like the subject, was AL. The comparable properties were, with one exception, all in proximity to the downtown financial district. The Complainant was unable to find assessment data for one comparable (The Bell Tower) so it was not included in the average.

Rebuttal of the Complainant

[20] The Complainant submitted evidence in rebuttal to the Respondent's submission (Exhibit C-2, 31 pages) to demonstrate that the submission presented by the Respondent does not support a decision to confirm the current assessment.

[21] The Complainant again detailed the seven sales comparables from Exhibit C-2, page 9, and included a corrected 2013 assessment for the HSBC Building. The original assessment, \$87,012,500, was reduced to \$83,735,500 as per agreement between the City of Edmonton and the Complainant. This lowered the ASR for the HSBC Building from 1.04 to 1.00. The overall average ASR of all properties decreased from 0.96 to 0.95. Again, the Bell Tower was not used in the ASR averaging.

[22] The Complainant stated all comparable sales were superior to the subject property with the one exception (The Enbridge Tower) and that all but one was in the superior financial district. The Complainant stated that the average ASR was 0.95 which was not equitable.

[23] The Complainant requested the Board to reduce the 2013 assessment to \$81,850,000.

Position of the Respondent

[24] In defending the current years assessment, the Respondent submitted a 123 page brief (Exhibit R-1) and a 22 page sur-rebuttal (Exhibit R-2) in support of the argument that the 2013 assessment is fair and equitable.

[25] The Respondent presented a synopsis of the Downtown Valuation Guide, (Exhibit R-1, pages 91 – 110), specifically referring to page 94, Mass Appraisal; page 99, Downtown Office Districts; page 103, Typical Market Rent per Square Foot; and page 110, Summary.

[26] The Respondent noted that under Mass Appraisal properties are stratified into groups of comparable properties, common property attributes are identified for the property in each group and a uniform valuation model is calibrated for each group using market information incorporating the property attributes.

[27] As to Downtown Office Districts, the Respondent noted that there are properties classified as downtown properties even though they are physically located outside the boundaries of the government and financial districts.

[28] The Respondent, in reference to Typical Market Rent per Square Foot, noted that the rent currently prevailing in the open market for properties comparable to the subject property is the typical market rent, adding that in many cases actual rents reflect historical revenues from leases negotiated before the valuation date.

[29] In summary, the Respondent stated downtown office properties are assessed using the Income Approach to value, the resulting assessments were tested and that they meet Provincial Quality Standards under MRAT AR220/2004. Further, the Respondent stated the assessment models, the process utilized and the results are submitted to the Assessment Services Branch of Municipal Affairs for audit and that the City of Edmonton has met all governing legislation including regulations and quality standards.

[30] The Respondent stated that office properties are stratified into sub classifications (Exhibit R-1, page 153) which in themselves are supplied with typical rent, vacancy, operating costs and cap rates. They are determined annually, using data obtained from returned Requests for Information, (RFI) as supplied by building owners and/or managers. The subject property is sub

classified as AL, (A Class low) and the typical lease rate for AL is \$16.50 per sq ft. A table of Downtown valuation rates, including lease rates was provided (Exhibit R-1, page 51).

[31] The Respondent took the position that both the least rate and cap rate issues were more correctly issues of building sub-classification, to wit the subject property is currently within the AL sub class while the Complainant is requesting change to the lease rate and cap rate that is applied to a sub class BH office building.

[32] In support of both building class and lease rate, the Respondent provided a copy of an Altus InSite listing for the subject property which shows the building as A class and reflects asking lease rates for vacant space of \$25.00 per sq ft (Exhibit R-1, page 57). As well, a Q2 2012 Skyline Review from Colliers International was provided which identified the subject property as being an A class building (Exhibit R-1, page 61).

[33] The Respondent provided photographs of the subject property, (Exhibit R-1, pages 5–7) as well as photographs of five other sub class AL buildings (Exhibit r-1, pages 67–76) demonstrating that the subject property is similar to other subclass AL office buildings in the financial and government districts.

On the issue of the subject property being over-assessed based on the lease rate:

[34] The Respondent expanded on the Typical Market Rent argument outlined in the preceding paragraphs. The Respondent emphasized that The City of Edmonton is legislated to utilize Mass Appraisal, which in turn applies typical market rents, typical vacancy rates, typical operating costs and typical capitalization rates for all downtown and suburban properties, (Exhibit R-1, page 19).

[35] The Respondent provided a rent roll obtained with the RFI that, in addition to renewal of the Service Canada leases at \$10.08 per sq ft, a lease of 37,607 sq ft had been negotiated with Alberta Health Services for \$24.00 per sq ft. The Respondent acknowledged that the lease commencement was Jan 1, 2013, and therefore post facto, however the Respondent noted it did indicate a trend.

[36] The Respondent provided a list of Downtown rental rates for new leases and renewals during 2011 and 2012. They ranged from \$11.00 to \$18.00 per sq ft, averaged \$15.85 per sq ft and reflected a median of \$16.38 per sq ft. Time adjusted, the average and median were \$16.47 per sq ft and \$16.60 per sq ft.

[37] To demonstrate equity, the Respondent provided charts for all downtown office buildings by sub class, indicating the parameters under which each was assessed (Exhibit R-1, pages 53–56). Subclass AL office buildings were all assessed at a typical lease rate of \$16.50 per sq ft.

[38] In Sur-rebuttal, the Respondent provided information regarding the assessment of the Bell Tower, (which the Complainant stated was unavailable). As well the Respondent provided case law, (KBK No 197 Ventures Ltd. v British Columbia (Assessor of area #09-Vancouver Sea to Sky Region)) referring to Bentall Retail Services v. British Columbia (Assessor of Area #09 – Vancouver) (Exhibit R-2, pages 21 & 22). The case law confirmed that while there were exceptions, summaries of the vast majority of 27 previous Board decisions suggest an approximate range of plus or minus 5% of the assessed value as being an acceptable range of value.

On the issue of the capitalization rate (cap rate) being too low when compared to cap rates from sales of recent properties:

[39] The Respondent expanded on the cap rate argument with charts summarizing the Complainant's Cap rate analysis, (Exhibit R-1, page 40), the Respondent's own Downtown Cap Rate Analysis (Exhibit R-1, page 41), Downtown 2013 Valuation Rates (Exhibit R-1, page 51, and Downtown AL class Office Buildings (Exhibit R-1, page 55).

[40] The Respondent restructured the Complainant's Cap Rate Comparables to account for adjusted sale price, (for lease adjustment etc.) and adjusted Net Operating Income (NOI), (to reflect typical lease rates). The six comparable sales reflected cap rates of from 5.08% to 6.02%. The six comparable sales averaged 5.59% and reflected a median of 5.63%

[41] The Respondent's Downtown Cap Rate analysis documented three sales of three AA office buildings in the financial district and five AL and AH buildings in the government district. The range was 4.13% to 5.63% and 5.62% to 7.43% respectively and the medians were 5.37% and 6.02%.

[42] To demonstrate equity, the Respondent, with its Downtown Valuation rates and Downtown AL Class Office Building charts, showed that a 6.00% cap rate was used for all Class AL downtown office building assessments.

[43] In response to the Complainant's argument regarding the ASR, the Respondent stated that for an ASR analysis to be meaningful, the ASR must be calculated for each property in the analysis, not just a chosen few. The Respondent added that just because an average ASR of several sales is not 1.00, it doesn't mean the assessments are incorrect or inequitable, it just means the assessments do not precisely match the sale prices.

[44] The Respondent added that ASR is used by the Government of Alberta to measure the quality standards for the statistical testing of assessments, and that the City of Edmonton has met those standards.

[45] The Respondent requested that the Board confirm the 2013 assessment of \$97,370,500.

Decision

[46] The decision of the Board is to confirm the 2013 assessment of \$97,370,500.

Reasons for the Decision

[47] The Board considered the Respondent's position that the issue was more one of the building sub class, wherein the Complainant's request aligned with assessment parameters consistent with a BH sub classification rather than the subject property's AL sub classification. The Board further considered the Respondent's position as part of the Respondent's overall argument as it relates to the issues of lease rate and cap rate that the Complainant has identified.

[48] The Board accepts the Respondent's argument that the building is correctly sub classified as AL, and that typical lease and cap rates of \$16.50 and 6.00% respectively should be used to be fair and equitable.

[49] The Board is not persuaded by the Complainant's argument regarding a \$15.00 least rate. The Complainant's argument was based on two renewals of lease within the subject property. The Board was however persuaded by the Respondent's evidence as to the inaccuracy of the Complainant's comparables. The lease comparables that were at \$15.00 per sq ft were subclass BH office buildings while another was in a condo building and was regarded atypical.

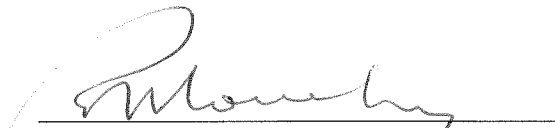
[50] The Board is not persuaded by the Complainant's argument regarding a 6.50% capitalization rate for the subject property as opposed to the assessed 6.00% capitalization rate. The Complainant utilized third party documentation to support the argument on the capitalization rate. The Board accepted the Respondent's argument that third party documentation is difficult to evaluate as it is unclear what parameters were used in establishing the cap rates and in particular, that the third party documents are reflective of leased fee and not fee simple as is required in mass appraisal.

[51] The Board is persuaded by the Respondent's analysis of the Complainant's cap rates. Both the average adjusted cap rate of 5.59% and the median adjusted cap rate of 5.63% support the assessment cap rate of 6.00%.

[52] The Board weighed the evidence regarding the assessment sales ratio [ASR] and found that it was not appropriate given ASR was not identified as an issue in this hearing. Furthermore, there was no sales information on the subject property to allow the Board to determine the correctness of the ASR.

Heard commencing September 23, 2013.

Dated this 4th day of October, 2013, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Cameron Ashmore, Legal Counsel
Vasily Kim, Assessor
Amy Cheuk, Legal Counsel
Mary-Alice Nagy, observing
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.