

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00984

Assessment Roll Number: 9954292
Municipal Address: 10216 124 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

Petra Hagemann, Presiding Officer

James Wall, Board Member

Randy Townsend, 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 advised the Board that the owner of the subject had not provided the assessment department with their Request for Information (RFI) as per *Municipal Government Act* (MGA) s 294 and s 295. They referred the Board to *Matters Relating to Assessment Complaints* (MRAC) s 9(3), which states: "A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided".

[3] The Respondent submitted their assessment brief (Exhibit R-1) referring to a letter dated Feb 10, 2012 (page 22) addressed to the owners, Plaza 124 Nominee Company, in Calgary, requesting updated information on the subject property by April 19, 2012 in order to prepare the 2013 assessment. This was followed by a reminder dated March 16, 2012.

[4] Since no RFI had been received by the City, the Respondent requested that the Board disallow the evidence of the rent roll of the subject which is included in the Complainant's brief (Exhibit C-1).

[5] The Complainant advised the Board that Plaza 124 had been sold to Dundee Realty Management Corp. located in Burlington, Ontario and that it had not received the letters sent to the original owners in Calgary. The e-mail, dated March 23, 2012, from Dundee Realty Company sent to the assessment department (Exhibit R-1, pg 28-30) requesting 2012 Property Assessment Notices not received due to the change of address suggested that they likely had not received the RFI in February and March either.

[6] The Complainant referred the Board to a decision from the Alberta Court of Appeal, dated June 17, 2008 between *Boardwalk REIT LLP v. the City of Edmonton* (Exhibit C-2). Although this decision referred to barring the entire appeal due to missing evidence in the RFI submitted by the property owner, the Complainant pointed the Board to some sections in the decision which in his opinion applied to the preliminary matter raised by the Respondent in this appeal. These were as follows:

- paragraph #100-102 refers to the “necessity” of the information requested, and
- paragraph #130 refers to “unreasonable failure to answer” requests for information.

The decision further suggests that the “aim of the penalty is compliance, not punishment”. It states that the penalty in s. 295(4) of the MGA would possibly be unfair and unreasonable.

[7] The Complainant also submitted the Calgary CARB decision 1632/2012-P (Exhibit C-3) in support of allowing the rent roll of the subject as evidence. This decision also referenced the Boardwalk case noting in paragraph #21 that the Respondent did not provide compelling evidence as to why and how the requested information was necessary for the preparation of this specific property’s assessment and that it was not sufficient to require this information in the development of the model for mass appraisal.

Decision on the Preliminary Matter:

[8] The decision of the Board is to allow the rent roll of the subject into evidence.

Reasons for the decision on the Preliminary Matter:

[9] The Board understands that two letters for RFIs were sent to the owner on record of the subject in February and March of 2012; however no evidence was heard that these had been received. The e-mail from Dundee Realty dated March 23 clearly indicated that there had been a change of ownership and address of the subject and that they had not received many of the notices of assessments for their properties. The Board is of the opinion that the Respondent, once in receipt of this e-mail, could have resubmitted their RFI as the Complainant would have had more than three weeks to comply prior to the deadline of April 19. No evidence was presented that the City had made that final request.

[10] The Board notes, after reviewing the Boardwalk case and the Calgary CARB decision, that the Respondent did not provide compelling evidence as to how or why the RFI was absolutely necessary to prepare the assessment of the subject, especially since it was not assessed individually but rather by the mass appraisal process.

[11] The Board is of the opinion that the Complainant did not deliberately withhold the RFI to mislead the City. RFIs had been provided in 2011 and previous years. It was a simple mistake due to the change of address and ownership of the subject.

[12] In the interest of fairness, the Board will allow the rent roll of the subject as it is important evidence in challenging the assessment.

Background

[13] The subject property, built in 1995, is an “AA” class hi-rise office building known as Plaza 124 located at 10316-124 Street. Its 152,804 square feet (sq. ft.) comprises mostly office space with a small amount of CRU space as well as 228 underground parking stalls. The subject is assessed on the income approach at \$44,353,500.

Issue(s)

[14] Does the assessment of the subject correctly represent market value?

- a. Should the \$20.00/sq. ft. of office lease rate be reduced to \$18.00?
- b. Should the vacancy rate of 5% be increased to 10%?

Legislation

[15] **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

a) Issue regarding office lease rate:

[16] The Complainant advised the Board that the subject property’s 2013 assessment had increased by 24.3% over the previous year. The successful appeal last year had reduced the 2012 assessment to \$35,689,000. The Complainant was aware that each year’s assessment is independent of the previous years. However, is of the opinion that this increase based on a higher office rent, a lower vacancy allowance and a decrease in the capitalization rate, resulted in an assessment far in excess of its market value.

[17] The Complainant presented seven current leases in the subject (Exhibit C-1, pg11) ranging in commencement date from June 2011 to August 2012. Their rental rates ranged from \$15.00/sq. ft. to \$19.00/sq. ft. and averaged \$16.50/sq. ft. One lease for 9,530 sq. ft., signed March 2012 for a ten year term, was for \$18.00/sq ft. The Complainant indicated that this rate of \$18.00 more correctly reflects the current market rent achievable in the subject.

[18] To further support the reduction of the office lease rate from \$20.00 to \$18.00/sq. ft., the Complainant submitted six leases in three comparable buildings (Exhibit C-1, pg 12). These leases range in start date from June 2009 to November 2011 and in rental rates from \$8.00 to \$15.00 with an average of \$13.42/sq. ft. In cross examination, the Complainant agreed that the \$8.00/sq. ft. lease in the West Chambers building should not be considered as it was an outlier. However, even by omitting this low lease rate, the remaining rates averaged \$14.50/sq. ft., significantly lower than the \$20.00 applied to the assessment of the subject.

[19] The Complainant noted that their requested lease rate of \$18.00/sq. ft. was higher than all of these comparable leases due to the fact that the subject is a newer building and can attract higher rents than typical "A" class office buildings.

[20] The Complainant submitted the rent roll of the subject for April 2012 and March 2013 (Exhibit C-1, pg 30-37) to illustrate that the lease rates in the subject are considerably lower than assessed.

[21] The Complainant referred to several third party reports. Avison Young for Q2, 2012 shows an average asking rate of \$15.50/sq. ft. for the 124th Street area and Colliers International (Exhibit C-1, pg 38-43) lists their top rate for 124th Street area for Q2 for new product at \$18.00/sq. ft. This, the Complainant suggested, is further support that the \$20.00/sq. ft. applied to the office rent in the subject is excessive.

b) Issue regarding vacancy rate:

[22] The Complainant advised the Board that the vacancy rate of 5% applied in the assessment is not appropriate for the area. The subject suffers a 12.4% vacancy rate and although not chronic to the building per se, is chronic and typical for the area.

[23] The Complainant advised that this is supported by the third party reports (Exhibit C-1, pg 17, 40-71). These reports show the overall vacancy rates in Edmonton for Q2 ranging from 13.3% to 20.7% with an average of 17.49% compared to subject's actual vacancy rate of 12.14% and the assessed rate of 5%. During questioning the Complainant agreed that the overall vacancy rates in these reports may include sublets and suggested the Board review the direct vacancy rates instead. These ranged from 9.1% to 18.6% with an average of 11.48%, still significantly higher than the assessed 5% of the subject.

[24] The Complainant referred the Board to CARB decision *Colliers v City of Edmonton 2012 CARB 2136* which reduced the assessment by raising the vacancy rate from 7% to 10%.

[25] The Complainant requested the Board reduce the office lease rate from \$20.00 to \$18.00/sq. ft. and increase the vacancy rate from 5% to 10%. This would result in a reduced assessment of \$36,466,500.

Position of the Respondent

[26] The Respondent submitted a brief (R-1) in defense of the assessment of the subject. The brief included photographs of the interior and exterior of the subject, the 2012 pro forma, comparable evidence in support of the assessed lease and vacancy rates as well as their law and legislation brief. The Respondent highlighted the legislated mass appraisal process focusing on using typical rather than actual rental and vacancy rates.

[27] The Respondent informed the Board that the subject is an AA class building in a superior location in the 124th Street area and is assessed similar to other AA buildings in this suburban district. The median time adjusted office rental rate in the 124th Street district is \$19.99, which was used to establish the typical market rate of \$20.00/sq. ft.

[28] The Respondent argued that the comparables used by the Complainant to challenge the rental rate are A and B class buildings with actual and not time adjusted rates.

[29] The Respondent further reminded the Board that third party reports are not reliable as it is unclear as to which parameters were used. This is evidenced by the varying rates reported by them for the same time period.

[30] The Respondent pointed to the 2013 suburban valuation rates (Exhibit R-1, pg 16) indicating that AA buildings in the 124th Street district were assessed at \$20.00/sq ft for office rent, whereas the A and B class comparables presented by the Complainant had a \$16.00 and \$13.00/sq. ft. rate applied to them respectively making them not comparable to the subject.

[31] To illustrate how the typical \$20.00/sq. ft. office lease rate was established, the Respondent submitted four 2011 leases in the 124th Street district. These range from \$15.44 to \$24.60/sq. ft. with a median of \$19.99.

[32] To support the vacancy rate, the Respondent submitted their vacancy rate study (Exhibit R-1, pg 20) for all 50 AA office buildings in suburban Edmonton. Seven properties had vacancies ranging from 3.46% to 47.9%; the remaining had 0% vacancy or was lacking data. Due to this large variance, the Respondent discarded three outliers and then calculated a weighted average of 4.73% which was the basis for the 5% typical vacancy rate.

[33] The Respondent submitted two properties, both AA buildings: the Manhattan Building located at 10345-105 St and the Le Marchand Mansion located at 11523-100 Ave, which are both assessed at \$20.00/sq. ft. office rent and 5% vacancy allowance showing equity with the subject.

[34] The Respondent requested the Board confirm the 2013 assessment of the subject at \$44,353,500.

Decision

[35] The decision of the Board is to reduce the 2013 assessment of the subject from \$44,353,500 to \$39,748,000.

Reasons for the Decision

a) Issue regarding office lease rate:

[36] The Board reviewed the seven current leases in the subject as presented by the Complainant. Although these rates were not time adjusted to valuation date, they suggest that the \$20.00/sq. ft. office lease may be excessive.

[37] On examination of the subject's rent roll, the Board noted that the leases at \$19.00 and \$22.00/sq. ft. date back to 2008, near the peak of the market and are not representative of the market at valuation date.

[38] The Board noted the lease dated March 2012, within 3 months of valuation date, and secured for a 10 year term at \$18.00/sq. ft., is a good indication of what is typical for the subject.

[39] The Board understands that the Complainant's comparable leases in West Chambers and Princeton Place, omitting the low outlier at \$8.00, average \$14.50/sq ft. Applying the \$4.00/sq ft difference between an A and AA building, as shown by the Respondent's suburban office lease rates for 124th Street district, to the \$14.50 sq ft of these comparables, results in a lease rate of \$18.50/sq ft. The Board was persuaded by this evidence that the \$20.00 lease rate is excessive and a rate of \$18.00/sq ft would be more appropriate.

[40] The Board reviewed the Respondent's equity comparables. The Manhattan Building located on 105th Street is 19 blocks east of the subject in the heart of the downtown. It is a much smaller building than the subject with an assessment of \$5,827,500 compared to the subject's assessment of \$44,353,500. The Le Marchand Mansion, although in closer proximity to the subject, is older, however, in a much superior location overlooking the river valley. The Board found it difficult to assess the similarities of these three buildings and therefore placed little weight on this evidence.

b) Issue regarding vacancy rate:

[41] The Board examined the vacancy study for AA suburban office buildings. Fifty buildings in six districts were analyzed. Fifteen did not submit RFIs; many showed 0% vacancy only seven buildings reported vacancy rates ranging from 3.14% to 47.9%. Even though the Respondent calculated a weighted average of 4.73% to arrive at the typical 5% vacancy rate applied to the assessments, the Board is of the opinion that due to the wide range, 5% is neither typical, realistic nor representative of these separate districts.

[42] The Board is aware that mass appraisal dictates assessments be based on typical rather than actual rates; however the evidence before the Board is that there is nothing typical about the AA building vacancy rates reported for the six districts analyzed by the City.

[43] The Board heard the Complainant explain about the chronic vacancy in the 124th Street area. Although much has been done to upgrade the area, vacancy has been and still is a problem. The third party reports from Colliers International, Cushman Wakefield and Avison Young show a range from 8% to 9.2% for direct vacancy for the entire City (Q2, 2012). However, for the same period the direct vacancy rates in the 124th Street district range from 9.1% to 18.2%. Reports for Q2, 2011 for the same district show a range from 13.1% to 18.2% indicating that the high vacancy rate for this district has been ongoing. The Board is of the opinion that since the

124th Street district suffers from higher vacancy than other districts in the City, an allowance for chronic vacancy should be applied to office building assessments in this area.

[44] In conclusion, the Board finds that an \$18.00/sq ft office lease rate and a 10% vacancy rate are appropriate for the subject. Applying these rates to the pro forma results in a revised assessment value of \$39,748,000.

Dissenting Opinion

[45] There was no dissenting opinion.

Heard commencing August 26, 2013.

Dated this 9th day of September 2013, at the City of Edmonton, Alberta.


Petra Hagemann, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Tanya Smith. Legal Counsel
Vasily Kim, Assessor
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.