

Edmonton Composite Assessment Review Board

Citation: Fairtax Realty Advocates Inc. v The City of Edmonton, 2013 ECARB 01251

Assessment Roll Number: 7800477

Municipal Address: 6020 104 Street NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Fairtax Realty Advocates Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
George Zaharia, Presiding Officer
Martha Miller, Board Member
Mary Sheldon, Board Member

Procedural Matters

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

Preliminary Matters

[2] The Board delayed the commencement of the hearing for fifteen minutes since the Complainant was not present. The hearing then proceeded after it had been confirmed that: 1) no postponement request had been received, and 2) notification of the hearing had been mailed out in-time and to the correct address.

Background

[3] The subject property, known as the EMC2 Building, is a three-storey office building located at 6020 104 Street NW in the SSA district of Edmonton. The building comprises 28,520 square feet of office space, and has sixty-two underground parking stalls and eighteen surface parking stalls. The building was constructed in 1980, with an effective age of 1986, and is classed as an "A" building.

[4] The subject property was valued on the income approach resulting in a 2013 assessment of \$7,234,500.

Issue(s)

[5] Is the subject property properly classed as an "A" building or should the class be changed to "B" with the corresponding parameters?

Legislation

[6] 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.

[7] The *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004 (MRAT) reads:

s 2 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[8] In support of its position that the 2013 assessment of the subject property was excessive, the Complainant submitted a 64-page brief (Exhibit C-1), stating that the building was classed incorrectly as “A” and should be “B”, and that deferred maintenance supported an increase in the assigned capitalization rate (cap rate) from 6.75% to 7.0%.

[9] The Complainant argued in its written submission that the classification of the building by the Respondent as “A” did not recognize the age and physical condition of the building and therefore should be classed as a “B” building, with all the related typical parameters.

[10] The Complainant submitted further written argument that due to the age of the building, issues related to post-tension construction plus required elevator updates, the cap rate of the property should be increased from 6.75% to 7.0%. The Complainant relied on third party reports to argue for an increase in the cap rate (Exhibit C-1, pages 10/64 and 13/64).

[11] The Complainant relied on third party reports to argue for an increase in the vacancy rate from the assigned 6.5% to 9.5%. Two Avison Young reports showed office vacancy for Edmonton south side at 11.4% (Exhibit C-1, pages 16/64 and 17/64), while a Colliers International report showed a vacancy rate for south side suburban office space as being 12.11% (Exhibit C-1, page 21/64).

[12] The Complainant submitted a consulting engineer's report that addressed the issue of "post-tensioning". The consulting engineer (Read Jones Christoffersen) spoke to performing inspections of the post-tensioning system in the subject property on August 31, 2012 resulting in the following recommendation: *"It is recommended that re-inspection of the existing strand sample be performed again in two years' time (2014), and periodically (every two years, minimum) thereafter, depending on the ongoing results of inspections."* (Exhibit C-1, pages 22/64 to 24/64).

[13] The Complainant submitted a Service Proposal and Contract from ThyssenKrupp Elevator (Canada) Limited, and a Condition Assessment Report from KJA Consultants Inc. addressing the issue of elevator updates as further support for an increase in the cap rate to 7.0%.

[14] In conclusion, the Complainant requested the Board to reduce the assessment of the subject property from \$7,234,500 to \$6,000,000.

Position of the Respondent

[15] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support its position, the Respondent presented a 74 page assessment brief (Exhibit R-1) that included a law and legislation brief.

[16] In response to the Complainant's position that the vacancy rate should be increased from 6.5% to 9.5%, the Respondent provided evidence of the actual vacancy in the subject for the years 2010, 2011 and 2012. Although the Respondent had applied a typical vacancy rate of 6.5% to the subject, the actual vacancy rate was 0% (Exhibit R-1, page 17). In support of the 6.5% typical vacancy rate applied, the Respondent included a Vacancy Rate Study of suburban class "A" properties for all districts in the city that resulted in a weighted average vacancy rate of 6.24%, slightly lower than the applied 6.5% vacancy rate.

[17] The Respondent stated that third party reports should not be considered reliable due to lack of consistency in the information used to develop values. To support this position, the Respondent included a chart of City Information compared to two major companies often relied upon by the Complainants. The Respondent highlighted that for SSA suburban properties, the City had included one hundred and twenty properties, while Colliers International had based its information upon sixty-one properties. Additionally, where the City information was based upon 4,209,114 square feet of assessable space, Colliers International based its information upon 3,350,506 square feet, and Avison Young based its information upon 3,176,988 square feet of space (Exhibit R-1, page 28).

[18] In response to the Complainant's position that the age and condition of the property should be reflected in the assessment, the Respondent submitted that a 2% structural allowance is deducted from all properties in recognition of the need for constant maintenance (Exhibit R-1, page 17 and 18). In the opinion of the Respondent, the structural allowance applied is adequate to account for any maintenance costs.

[19] In response to the Complainant's position that the rental rate applied to the subject property should be decreased from \$17.00 to \$15.00 per square foot, the Respondent explained that it performs a rental rate study on an annual basis to determine the typical rental rate for a given district. The Respondent included a chart of Suburban Rental rates for SSA "A" properties that showed a range of time-adjusted lease rates from \$10.50 to \$21.30 per square foot, resulting in an average of \$16.96 and a median of \$17.34 per square foot (Exhibit R-1, page 23). Based on

this study, it was determined that the typical lease rate would be \$17.00 per square foot for class A buildings in the SSA District (Exhibit R-1, page 17). The Respondent pointed out that the actual rent being achieved by the Complainant as at July 1, 2012 was \$18.00 per square foot, \$1.00 more than the typical rate of \$17.00 applied to the subject (Exhibit R-1, page 20).

[20] The Respondent submitted a chart of 2013 Suburban Valuation Rates showing that class "A" buildings in the SSA District were all assessed using a rental rate of \$17.00 per square foot and a vacancy rate of 6.5%, demonstrating that all similar properties in the SSA District were equitably assessed (Exhibit R-1, page 22).

[21] The Respondent submitted a chart of SSA "A" Class Office Buildings (Exhibit R-1, page 27) showing that all properties, except one, were assessed using the same typical values to arrive at an assessment of \$218.25 per square foot. The one exception was granted a higher vacancy rate due to a chronic vacancy problem. The Respondent stated that once typicals are established, then all similar properties are assessed the same.

[22] The Respondent submitted information addressing mass appraisal which is a methodology for valuing individual properties using typical values for groups of comparable properties (Exhibit R-1, page 46). One of the typical values is the current economic or market rent which is used to form the basis of the valuation as opposed to actual rents, because actual rents reflect historical revenues derived from leases negotiated before the valuation date (Exhibit R-1, page 50).

[23] In summation, the Respondent raised the issue of onus and whether or not the Complainant had met the burden of proof. The Respondent pointed out that the Complainant had not provided any equity or market comparables to support a change in the assessment. As well, the Complainant had not provided any evidence to support a change in class of the subject building from "A" to "B".

[24] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at \$7,234,500.

Decision

[25] The decision of the Board is to confirm the 2013 assessment of the subject property at \$7,234,500.

Reasons for the Decision

[26] The Board placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

- a) In requesting that the classification of the subject building be changed from "A" to "B", the Complainant had provided a general statement addressing the age and condition of the building, arguing that a change was appropriate due to its age, post-tensioning concerns and required elevator updates. However, letters provided by the Complainant from professional companies with respect to post-tensioning and elevator updates did not support the Complainant's concerns. With regards to "post-tensioning, the professional engineer wrote that "*Monitoring of the building has continued from 1996*" and that "*It is recommended that re-inspection of the existing strand sample be performed again in two years' time (2014), and periodically (every two years, minimum) thereafter, depending on*

the ongoing results of inspections.” There was no suggestion that there was a need for immediate remedial action. The position of the professional with regards to the elevator was that” *Generally speaking, the original equipment is in good condition. However, there are ongoing industry safety and operational improvements for elevators, which should be considered to achieve the maximum safety and operating efficiency of the system.*” Again, there was no indication of major concerns, rather suggesting a planned approach to maintenance.

- b) In requesting a change in the classification, the Complainant sought a change in the typical values assigned the subject property in arriving at the 2013 assessment. However, there was no evidence to suggest 1) that the subject could not achieve the typical rent applied to the property, 2) that the vacancy rate was higher than the typical rate assigned, and 3) that the cap rate applied to the subject was too low. In fact, to the contrary, the subject property was achieving \$18.00 per square foot at the date of valuation, \$1.00 per square foot more than the assigned typical rent of \$17.00; and the subject enjoyed full occupancy from 2010 to 2012, encompassing the valuation date, providing no support to increase the applied typical vacancy rate from 6.5% to 9.5%. With regards to the cap rate, the Complainant provided no sales comparables supporting a change in the cap rate from 6.75% to 7.0%, only relying upon the condition of the property and perceived problems.
- c) The Complainant relied upon third party reports to argue for a higher cap rate and a higher vacancy rate. The Board concurred with the position of the Respondent that third party reports should not be considered reliable due to lack of consistency in the information used to develop values.

[27] The Board placed greater weight on the evidence and argument presented by the Respondent for the following reasons:

- a) The Respondent supported the 6.5% typical vacancy rate by completing a survey of suburban class “A” properties for all districts in the city that resulted in a weighted average vacancy rate of 6.24%, slightly lower than the applied 6.5% vacancy rate.
- b) The Respondent supported the typical \$17.00 per square foot rental rate by explaining that it performs a rental rate study on an annual basis to determine the typical rental rate for a given district. Based on the study, the Respondent demonstrated that the resulting average of \$16.96 and median of \$17.34 per square foot supported the typical lease rate of \$17.00 per square foot for class “A” buildings in the SSA District.
- c) The Board accepted the Respondent’s position that in providing a 2% structural allowance, recognition was given to property owners that there is a need for constant maintenance of properties. Therefore, just the fact that there are actual or perceived issues with the structure of a property does not, in itself, justify a change in the cap rate.
- d) The Respondent addressed the issue of mass appraisal, and the Board concurs that the Respondent is bound by Provincial regulations that mandate properties must be assessed by the mass appraisal method. MRAT s. 2, reads:

An assessment of property based on market value

(a) Must be prepared using mass appraisal,

(b) Must be an estimate of the value of fee simple estate in the property, and

(c) Must reflect typical market conditions for the properties similar to that property.

[28] The Respondent provided evidence that all the properties similar to the subject were assessed in the same manner, utilizing typical values, as mandated by MRAT.

[29] The Respondent demonstrated why third party reports should not be considered reliable due to lack of consistency in the information used to develop values. The Respondent provided evidence that two reports relied upon by Complainants, reported less properties in a given district, or reported less space than was recorded by the Respondent for individual districts, in arriving at their conclusions.

[30] The Board was persuaded that the 2013 assessment of the subject property at \$7,234,500 was fair and equitable.

Dissenting Opinion

[31] There was no dissenting opinion.

Heard August 30, 2013.

Dated this 23rd day of September, 2013, at the City of Edmonton, Alberta.



George Zaharia, Presiding Officer

Appearances:

Did not appear
for the Complainant

Tanya 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.