

Edmonton Composite Assessment Review Board

Citation: 10190-104 Street Inc., as represented by Matthew Pierson, DuCharme, McMillen & Associates Canada Ltd v The City of Edmonton, 2014 ECARB 00271

Assessment Roll Number: 10013655
Municipal Address: 10190 104 Street NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$5,221,500

Between:

**10190-104 Street Inc., as represented by
Matthew Pierson, DuCharme, McMillen & Associates Canada Ltd**
Complainant
and

The City of Edmonton, Assessment and Taxation Branch
Respondent

**DECISION OF
Larry Loven, Presiding Officer
Dale Doan, Board Member
Taras Luciw, Board Member**

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

[2] The parties requested that argument and evidence be carried forward from Roll No. 3165289, located at 10310 – 102 Avenue, where applicable.

Preliminary Matters

[3] At the outset of the hearing, and upon the Respondent's request, the parties were sworn in.

Background

[4] The subject property consists of a single three storey office building on assessment roll number 10013655, known as the Metals Building, located at 10190 104 Street. The subject property is a former warehouse building converted into office and restaurant space. The building is assessed as subclass BB high-rise office, for a final market value of \$5,221,500.

Issues

- a) Is the classification of the subject building correct?
- b) Is the office lease rate of the subject building correct?
- c) Is the vacancy rate of the subject building correct?

Position of the Complainant

[5] The Complainant submitted a 32 page document, Exhibit C-1 (“C-1”), containing a summary of testimonial evidence, assessment details, current assessments, subject photographs, subject leasing and market comparables, net rentable area, and proposed assessment. C-1 also contains information from the Allied REIT website, outlining the attributes of “Class I [“Industrial”] office space”.

[6] The Complainant submitted the high-rise office 2014 assessment *pro forma* the subject property (C-1, p. 14). This shows 11,506 square feet of office space assessed at a market rent of \$18.50 per square foot, and 4,808 square feet of office below assessed at \$11.00 per square foot. The subject also has 5,767 square feet of restaurant space assessed at \$19.75 per square foot and 500 square feet of storage space assessed at \$4.00 per square foot. A 5% vacancy rate has been applied to the subject, along with 2% for structural expenses, and a vacancy shortfall of \$14.50 per square foot. The subject is capitalized at 6.50%, resulting in a 2014 assessment of \$5,221,500.

[7] The Complainant provided a photograph showing the exterior of the building located on the subject property (C-1, p. 32).

[8] The Complainant provided the subject’s rent roll, dated January 27, 2014 (C-1, p. 19). The Complainant directed the Board to the 1,645 square foot lease for suite #310 and the 3,754 square foot lease for suite #320, both at \$15.00 per square foot. The Complainant also provided the rent rolls for the neighbouring property, containing two similar former warehouse buildings known as the Boardwalk building and the Revillon Building (the “Neighbouring Property”) (C-1, pp. 22-27).

[9] The Complainant submitted a table containing nine recent leases from the Neighbouring Property, commencing between May 1, 2012 and October 1, 2013. Lease rates ranged from \$13.00 to \$18.79 per square foot. The mean of these lease rates was \$15.63 per square foot, and the median \$16.00 per square foot. The Complainant argued that these lease rates supported a reduction of the office portion of subject property to \$15.00 per square foot. The Complainant further provided two recent leases from the subject property, commencing April 1, 2012 and November 1, 2013, both at \$15.00 per square foot. Combining the two tables the Complainant showed the mean and the median of all 11 leases to be \$15.44 and \$15.00 per square foot, respectively, and stated that these recent leases supported their requested rate of \$15.00 per square foot (C-1, pp. 28-29).

[10] The Complainant next argued the Respondent erred in the assessed vacancy rate for the subject property. The Complainant argued the space assessed as office space below has been vacant since March 1, 2012 and is still vacant as of May 1, 2014. Based on this the Complainant requested the vacancy rate for this space be increased from 5% to 20%.

[11] Based on the office space at the requested \$15.00 per square foot, the Complainant determined a net operating income of 341,376. Then, by applying the requested vacancy rate of 20% for office space below only, operating costs of \$15.00 per square foot, the non-recoverable cost of 2% and a capitalization rate of 6.5%, the Complainant determined a value of \$4,364,287 for the subject property (C-1, p. 29).

[12] The Complainant provided information from the Allied REIT website describing the characteristics of Class I office properties and outlining its acquisition criteria for these types of properties. The Complainant argued that this supported the re-classification of the subject property to Class I (C-1, pp. 31-32).

[13] In response to the Respondent's disclosure, the Complainant submitted into evidence a 167 page rebuttal, Exhibit C-2 ("C-2").

[14] The Complainant provided a table of the quantitative and qualitative attributes of the subject property, highlighting the effective year built as 1914, gross leasable area as 22,237 square feet with lease rates of \$15.00 per square foot. The Complainant stated the subject has offsite parking, no view, no LRT access and no pedway access (C-2, p. 4).

[15] C-2 also contained several decisions, namely: Calgary CARB 70517/P-2013, Calgary CARB 70162P-2013; MGB 140/01 regarding 1999 Calgary office rental rate supporting a rental of \$14.00 per square foot (C-2, pp. 37-43); *Mountain View (County) v. Alberta (Municipal Government Board)*, [2000] A.J. No. 1042, 2000 ABQB594 [*Mountain View*], regarding the value of similar property (C-2, pp. 51-52); MGB 145/07; *Bentall Retail Services Inc. et al. v. Assessor of Area 09 – Vancouver*, 2006 BCSC 495 [*Bentall*]; MGB DL 055/11; Calgary ARB 0789-2010-P; Calgary CARB 70160/P-2013; and MGB Board Order 140/01.

[16] In summary, the Complainant argued that the property should be assessed at \$4,364,287 for a variety of reasons. Firstly, the subject property is a turn of the century downtown warehouse that is typical of Class I, not BB. Secondly, the impact of the office below vacancy. Finally, the Complainant argued that a rental rate of \$15.00 per square foot should be applied. The Complainant also cited: MGB 140/01 (C-2, p. 43) regarding derivation of market rentals from range of attributes of the property; *Mountain View* para. 14, 21, 25 and 29 (C-2, pp. 50-52) regarding mass appraisal; and *Bentall* (C-2, pp. 92-115) regarding a range of values.

Position of the Respondent

[17] The Respondent submitted a brief, Exhibit R-1("R-1") containing 75 pages. The document contained a testimonial statement, 2014 downtown office brief, aerial photographs and maps, pictures, *pro formas*, complaint issues, request for information, valuations rates, fairness and equity charts, board orders and a 2014 law brief.

[18] The Respondent referred the Board to its mass appraisal procedures (R-1, p. 4) and its chart of qualitative and quantitative attributes used in determining the classification of downtown office properties (R-1, p. 9).

[19] The Respondent pointed the Board to the section of its 2014 Downtown Assessment Brief regarding Chronic Vacancy:

When a demonstrated vacancy greater than 10% is experienced for at least 3 consecutive years immediately preceding the valuation date, an allowance reflecting the stabilized chronic vacancy may be applied on a per building basis. (R-1, p. 17).

[20] The Respondent next referred the Board to maps showing the location of the subject property in the downtown sector (R-1, pp. 20-22) and photographs of the subject property (R-1, pp. 23-24).

[21] The Respondent provided a table of the 2014 downtown valuations rates of each subclass of building. This table showed that office space in class BB properties located in the Financial sector ("F") are assessed at \$18.50 per square foot (R-1, p. 25).

[22] The Respondent provided the *pro forma* for the subject property, showing the building on the subject property assessed as high-rise office building, Subclass BB, showing: 11,506 square feet of office space assessed at \$18.50 per square foot, 4,808 square feet of office below space assessed at \$11.00 per square foot, 5,767 square feet of restaurant space assessed at \$19.75 per square foot, and 500 square feet of storage space assessed at \$4.00 per square foot. The building was assessed at a vacancy rate of 5%, structural expenses of 2% and a vacancy shortfall of \$14.50 per square foot, for a 2014 market value of \$5,221,500 (R-1, p. 25).

[23] The Respondent provided a table of the 2014 downtown valuations rates, showing the valuation for Subclass BB properties located in sector F, were assessed at \$18.50 per square foot for office space (R-1, p. 26).

[24] The Respondent provided the requests for information for the subject property, dated March 20, 2013 (R-1, p. 35).

[25] The Respondent submitted a table containing 81 Subclass BH office leases in the Financial ("F") and Government ("G") downtown sectors, ranging in effective date from January 1, 2012 to April 1, 2013. 38 of these were new leases and 43 are renewals, and they ranged in net rent from \$12.00 to \$20.00 per square foot. The Respondent then applied a time adjustment factor ranging from 1.0460 to 1.2151 to the lease rates, and determined a time adjusted rent rate ranging from \$13.41 per square foot tot \$25.65 per square foot. The average time adjusted lease rate was given to be \$18.98 per square foot, and the median \$18.57 per square foot. The Respondent also showed the net rent for the last 6 months averaged \$18.52 per square foot, with a median of \$19.00 per square foot. Based on the information, the Respondent applied a rate of \$18.50 per square foot to the subject property's office space (R-1, pp. 36-37). The Respondent excluded 4 valid leases that it deemed atypical.

[26] The Respondent provided a table containing the 11 lease comparables submitted by the Complainant. The Respondent indicated that only three of these leases were used in the rental rate study, of the remainder were three were considered to be post facto, four not included in the 2013 RFI received and one an old lease (R-1, p. 38).

[27] The Respondent submitted a 2014 vacancy study for downtown Class B properties showing vacancy rates ranging from 0.00% to 23.07%. These vacancy rates were shown to have a weighted average of 2.73% (R-1, p. 39).

[28] The Respondent provided a 2014 fairness and equity chart for downtown Class BB . The Chart contained four Class BB buildings (including the subject property) showing all four assessed at the same factors as the subject property and all assessed at \$253.82 per square foot.

[29] The Respondent submitted a sale of the subject property, dated August 10, 2011, showing a sale price of \$5,700,000, an adjusted sale price of \$5,374,918 and a time adjusted (1.078720) sale price of \$5,798,029 (R-1, p. 41).

[30] The Respondent submitted copies of Board Orders, MGB 038/06 and DL 046/05 in regards to building classification and typical rental rates. .

[31] The Respondent stated that it was impossible for the subject property to be classified as a Class I property, as downtown office buildings are assessed in subclasses ranging from AAA to CL and it does not have a Class I. Furthermore, converted warehouse buildings, such as the subject property, are categorized within the Respondent's system based upon how their attributes compare to other downtown properties.

[32] The Respondent summarized their position as follows: the class of the subject property is correctly assessed as BB, and not Class I as claimed by the Complainant; the office rental rate applied is within the time adjusted range. Further, the sale of the subject property supports the assessed value and does not support the 20% vacancy request. Regarding the assessment generally, the Respondent stated that assessments are based on the fee simple value of the property, not the leased fee value; that *Bentall*, para 98 (C-2, p. 108) supports the 'correctness' of a range of values; and MGB 145/07 (C-2, pp. 83-84) supports the assessed classification system.

Decision

[33] It is the decision of the Board to confirm the 2014 assessment of the subject property at \$5,221,500.

Reasons for the Decision

[34] The issues in this appeal are the rental rate applied to the subject's office space, the classification of the subject and the below office vacancy rate. The Board heard no argument or evidence regarding the assessed vacancy rate of 5%, structural expenses of 2% and office and retail vacancy shortfalls of \$14.50 per square foot, and the capitalization rate of 6.50%.

[35] The Board finds the requested vacancy of 20% for lower office portion, based on two years vacancy, to not meet the minimum criteria of three years of chronic vacancy as defined by the Respondent.

[36] The Board finds some merit in the Complainant's argument regarding the creation of a Class I, and the attributes of the subject property may typify this proposed class; however, the Board accepts the Respondent's statement that such a class does not exist, and that former downtown warehouse buildings changed to office use are assessed with the attributes of downtown office subclasses.

[37] The Board heard little argument or evidence to support a time adjustment factor, ranging from 18.9% for lease with an effective date of January 1, 2012 to 4.6% for a lease with an effective date of April 1, 2013, used by the Respondent to determine an assessed lease rate of \$18.50 per square foot for class BH located in downtown districts F and G. The Board's examination of the 81 leases given by the Respondent in its 2014 rental rate study, without the application of time adjustment factors applied by the Respondent, support a rental rate in the range of \$16.30 to \$16.00 per square foot, based on the average and median values, respectively.

Similarly, the average and median of the last six month's rental rates give \$16.76 and \$16.75 per square foot respectively. Therefore, the Board was unable to place weight on the assessed office rate of \$18.50 per square foot as determined by the Respondent, and resultingly on its fairness and equity chart with respect to the assessed office rate.

[38] Based on its consideration of the above reasons, the Board finds the non-(time)adjusted office lease rates provided by the Respondent, support an office rate of \$16.00 per square foot; however, the sale of the subject property at \$5,700,000 in August 10, 2011 most strongly supports its 2014 assessment of \$5,221,500.

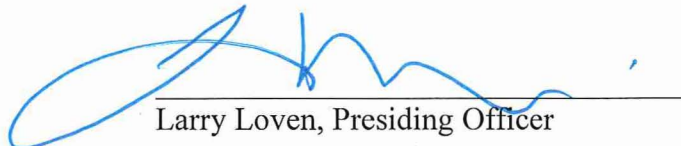
[39] In summary, the Board concludes the subject property was fairly and equitably assessed at \$5,221,500.

Dissenting Opinion

[40] None.

Heard June 3, 2014.

Dated this 4th day of July, 2014, at the City of Edmonton, Alberta.



Larry Loven, Presiding Officer

Appearances:

Adam Farley

Chris Hartley

for the Complainant

Cameron Ashmore

Darren Davies, City of Edmonton, 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.

Appendix

Legislation

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.

Exhibits

C1 – Complainant Disclosure – 32

C2 – Complainant Rebuttal – 167

R1 – Respondent Disclosure – 74 pages