

Edmonton Composite Assessment Review Board

Citation: Christl Bergstrom v The City of Edmonton, 2014 ECARB 00292

Assessment Roll Number: 8227209

Municipal Address: 9616 82 AVENUE NW

Assessment Year: 2014

Assessment Type: Annual New

Assessment Amount: \$896,500

Between:

Christl Bergstrom

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

John Noonan, Presiding Officer

Martha Miller, Board Member

Taras Luciw, Board Member

Preliminary Matters

[1] The Respondent presented a recommendation to reduce the assessment to \$695,000. The lower assessment recognized a lower lease rate for the main floor, \$24 versus \$31 originally applied. The assessment department decided on reflection that the north side of Whyte Avenue should be assessed at the same rates as the south side in this sector. The original assessment placed the subject property and others in a different market area with concomitant higher rates, the Strathcona neighbourhood.

[2] The parties requested that the Board carry forward evidence where applicable from the case heard immediately previous, roll number 8223059, which dealt with a property across the avenue and involved the same parties.

Background

[3] The subject property is a two-story building on the north side of Whyte Avenue near the Mill Creek Ravine. The main floor is used as an architect's office space and the upper development is an apartment, all constructed in 2004. The City calculates the main floor area at 1482 square feet (sq.ft.) and the upper area at 1423 sq.ft. The 2014 assessment was prepared using the capitalized income approach. The value attributed to the second floor apartment space is not at issue.

Issues

[4] The Board heard evidence and argument on two issues:

1. Does the assessed lease rate used by the City, \$31 or \$24, over-estimate the revenue potential of the subject?
2. Is the main floor size over-stated?

Position of the Complainant

[5] The Complainant's case was presented orally by the owner, Chrystl Bergstrom and her husband, David Murray. They refer to the building as the Bergstrom Block. The main floor area is rented to Mr. Murray for use as an architect's office and the couple reside in the upper apartment. They agree that they have a nice building, that the value attributed to the apartment is within the realm of reason, but believe that a \$24 main floor lease rate as applied in the recommended assessment is unrealistic.

Lease rate

[6] The Bergstrom Block has as neighbours some sub-standard buildings – a convenience store with broken windows and persistent vacancy, a liquor store in a poor quality building and a low end apartment next door. The commercial appeal of this part of Whyte Avenue near the Mill Creek Ravine is further disadvantaged by the condition of the sidewalks and the removal of trees from the avenue's centre median.

[7] Mr. Murray is active in the area's commercial revitalization efforts and canvassed a number of nearby property owners to ascertain their assessed lease rates and what their properties actually achieved. He found a disparate range of assessed lease rates, from \$13.50 to \$21.50 per sq.ft., yet was unable to find any buildings generating greater than \$15 per sq.ft. A common theme was that property owners felt compelled to keep their rental rates low in order to keep their space occupied. In contrast, the City was employing in the mass assessment process aggressive estimates of what properties in the area near Mill Creek Ravine could achieve. Ms. Bergstrom expressed frustration with this process, urging that the City should employ more assessors to allow greater appreciation of neighbourhood realities like the subject's.

Main Floor Area

[8] Mr. Murray designed the building and provided the Board main and second floor plans, also included in the respondent's evidence. The gross building main floor area was identified as 1560 sq.ft. with 1258 sq.ft. of rental area. The main floor has a 92 sq.ft. mechanical room vestibule, necessary for both floors, and so 46 sq.ft. is attributed to each. This results in 1304 sq.ft. for the main floor; in contrast, the assessment uses a main floor area of 1482 sq.ft. The second floor area is identified at 1582 sq.ft., including the stairwell area allowing access from the main while the assessment uses 1423 sq.ft.

Position of the Respondent

[9] The Respondent's evidence package contained the City's Mass Appraisal Brief which amongst other things described how similar properties are grouped together and assessed with parameters typical of the group. For the 2014 assessment, all retail properties had been valued using the income approach. The assessment department had determined that the typical rental area of retail properties was 95% of the main floor area, and so applied that calculation in finding the leasable area, the difference attributed to parts of a building that would not be expected to generate revenue, for instance, utility rooms. In the subject case, the 1560 sq.ft. building was

estimated to contain 1482 sq.ft. of leasable area. Market area maps placed the subject property in its broader commercial market area, and it's more particular study area number 183, Whyte Avenue between 70 and 97 Streets.

[10] A table of comparable rents was presented, all drawn from building(s) with an effective year built of 1976. The rents ranged from \$14-\$20 per sq.ft., with an average and median of \$17. Another table of was presented to show equitable rents had been applied to spaces like the subject, in the 1000-3000 sq.ft. range. For older buildings with effective age from 1946-1972, four properties had been assessed at a rental rate of \$16.50 per sq.ft. A 1982 building had a rental rate of \$18.75 and a 1985 building was assessed at a rate of \$19.50. The subject is newer, dating to 2004, and a typical rate of \$24 per sq.ft. had been applied in the recommended assessment. In response to a question, the Respondent advised that there was no difference in lease rates for office space and retail main floor area.

Decision

[11] The Board reduces the 2014 assessment to \$643,500.

Reasons for the Decision

[12] The subject property does not have an arm's length lease. As well, the subject has few peers, if any, in the immediate area due to its relatively recent construction. These factors make it difficult to compare the subject to other properties and demonstrate whether the assessment is correct or not. In the course of the hearing, reference was made to the assessed rates, actual lease rates, or both regarding a number of properties in the immediate neighbourhood including Earth's General Store, Mill Creek Picture Framing, Scona Cycle, GB Building and Certified Radio. Missing from the Complainant's presentation was information that would have been helpful to the Board such as lease dates, the areas under lease, and some form of verification from these property owners that the information was accurate. Reference was also made to asking lease rates at other properties further west along Whyte Avenue, but again, it would have been more informative to have hard details describing what was for lease, the ages of these premises, and listing brochures if available. The Complainant is reminded that for assessment purposes the relevant valuation date is July 1: should an assessment complaint be filed next year, the parties would be addressing the value as of July 1, 2014.


[13] The Respondent's evidence on lease rates was far from overwhelming, also hampered by a lack of good comparables. However, the Board was not convinced that the Complainant's evidence outweighed that of the Respondent, and so declined to alter the assessment on the basis of lease rate attributed to the main floor area.

[14] The Board has little doubt that the method of using 95% of main floor area as the typical leasable area of commercial properties works well for the majority of properties. Here, however, the Board was shown that application of the typical would overstate the true income potential of this property. When the Board sees such a situation, a site specific adjustment is justified. Given the building's floor plan, the Complainant's argument is accepted: 1304 sq.ft. is a better representation of assessable area than 95% of gross building area. The Board recalculated the assessment using this revised main floor area and the standard deductions for vacancy and

structural allowance, leaving in place the second floor values, to determine a net operating income of \$48,260 which when capitalized at 7.5% resulted in a reduced assessment (rounded) of \$643,500.

Heard May 29, 2014.

Dated this 23rd day of June, 2014, at the City of Edmonton, Alberta.



John Noonan, Presiding Officer

Appearances:

David Murray
Christl Bergstrom
for the Complainant

Chris Rumsey
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

Complaint form and attachment

R-1 Respondent’s Submission - 55 pages