

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2014 ECARB 00455

Assessment Roll Number: 10033010
Municipal Address: 10572 105 STREET NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$2,608,500

Between:

709995 Alberta Ltd represented by Colliers International Realty Advisors Inc
Complainant

and

The City of Edmonton, Assessment and Taxation Branch
Respondent

DECISION OF
Lynn Patrick, Presiding Officer
John Braim, Board Member
Randy Townsend, 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.

Preliminary Matters

[2] The Respondent's solicitor requested that all parties be sworn/affirmed in before the hearing commenced.

Background

[3] The subject property is a one storey office building, 10,868 sq. ft. in size, and with an effective year built of 1980. It sits on a 0.687 acre parcel of land located at 10572 – 105 St, just north of the core downtown Market Area (MA), as defined by the Respondent, and east of the 124th St MA. The Respondent has deemed the location to be better represented by comparison to properties in the 124th St MA than to the downtown MA.

[4] The subject property has been assessed by the Respondent using the Income Approach to value, which is generally the method preferred by the Respondent for office buildings.

Issues

[5] Is the subject property properly assessed using the Income Approach?

Position of the Complainant

[6] The Complainant's submission included a summary of the improvements to the parcel, photos of the building and an aerial photo and site map of the location of the property.

[7] Of key note, the Complainant pointed out to the Board, is the fact that the subject property does not have any parking. This, according to the Complainant, is atypical for office buildings. It is the Complainant's contention that the subject does not fit the City's "typical" office model and should not be compared with dissimilar offices to derive an assessment.

[8] The Complainant indicated three typical valuation methodologies used in valuing commercial property and identified the Income Approach as the most appropriate method for the subject, as did the Respondent. A copy of the original assessment using the Income Approach was provided.

[9] The Respondent, in producing the assessment, used a lease rate of \$18.50 per sq. ft. as the typical rental rate for offices in the 124th St MA. It is the Complainant's contention that a more appropriate rate for the subject property would be \$16.00 per sq. ft. To support this, the Complainant provided six comparable office buildings with leases signed between January 2013 and June 2013 and lease rates ranging from \$12.00 to \$17.00, with an average of \$14.50. All but one is for a five year term. Photos of the comparable offices were provided. The leases were from the 124th St MA, as well as one from the downtown MA (Sun Life Place at 101 Ave and 99 St).

[10] It is also the Complainant's contention that the Respondent has applied an incorrect Vacancy Rate to the subject property. Whereas the Respondent has used a 5.00% "typical" vacancy rate in the 124th St MA, it is the contention of the Complainant that a more appropriate vacancy allowance for the subject should be 15%. To support this, the Complainant presented three reports from different commercial-industrial reporting agencies (Colliers International, Avison Young and Cushman and Wakefield). The vacancy rates indicated in the 124th St MA, as of Quarter 2 2013, are 20.6%, 21.2% and 18.2% respectively. The Complainant stated that since the subject is an outlier from both the 124th St MA and the downtown MA a reasonable vacancy rate would be 15% for the subject.

[11] Revising the pro-forma used by the Respondent using a rental rate of \$16.00 and a vacancy rate of 15% produces an assessment of \$1,723,000. This, in the Complainant's opinion, is a much fairer assessment for the subject.

[12] The Complainant continued by presenting seven comparables of office buildings that had been sold between June 2010 and June 2013. The Complainant used the Respondents Time Adjustment (TA) chart to bring all sale prices to July 2013. The range of TA sale prices range from \$131.59 to \$183.87 per sq. ft. The subject is at \$240.02 per sq. ft.

[13] Using the Direct Sales method, the Complainant has proposed a value of \$155.00 per sq. ft., or \$1,684,500, as a fair value when grossed up.

[14] The Complainant's final method of determining a fair assessment for the subject was the Equity Approach. Five comparables were provided using the 2014 assessments. The average assessment per sq. ft. of the comparables is \$147.75 as compared to the subject at \$240.02. Based on this comparison, the Complainant is of the opinion that a valuation of \$158.00 per sq. ft. or \$1,717,000 is appropriate.

[15] In summary, the Complainant presented the Board with three valuations using three different methods of determining value of a property: Income Approach - \$1,723,000; Direct Sales Approach - \$1,684,500; Equity Comparable - \$1,717,000. All three values are extremely tight indicating that the current assessment is out of line and support a reduction.

[16] The Complainant requested the Board adjust the 2014 assessment to \$1,723,000.

Position of the Respondent

[17] The Respondent submission included a copy of the subject pro-forma, used to determine the 2014 assessment.

[18] The Respondent provided five comparables used in their 2014 Rental Rate Study indicating TA Net Rents of \$14.51 to \$23.08 with an average rent of \$19.21 and a median of \$18.81. The Respondent used \$18.50 as typical.

[19] The Respondent lists eighteen properties in the 124th St MA used in the City's Vacancy Rate study. Three properties show vacancy rates of 8.21%, 8.01% and 7.92% respectively. The other fifteen properties indicate 0% vacancy.

[20] The Respondent submitted that three of the Complainant's comparables are retail properties and are not part of the office inventory; four of the comparables are lower classes than the subject property and one of the comparables is in a different district. Therefore, these are not comparable to the subject property.

[21] A Suburban Class A Office CAP rate analysis was included but since the CAP rate is not in question this was really just for information purposes.

[22] In the Respondent's opinion none of the comparables are equitable with the subject property. Further to the equity issue the Respondent provided the Board with nineteen equity comparables in the 124th St MA. All are at \$18.50 per sq. ft. rental and all but one have a 5% vacancy rate applied.

[23] To support any legal arguments about using typical rent and vacancy^y rates the Respondent provide the Board with three MGB board orders to support their position.

[24] In summation, the Respondent stated that the City must look to the market for estimates of value plus they must apply 'typical' rates, not individual rates. The City has used comparables in the same district, sub-district, typical vacancy rates in the area and typical rent rates to determine the assessment of the subject. The Complainant has used no similar properties to support the argument that the assessment of the subject is too high. The Respondent requests the Board confirm the 2014 assessment at \$2,608,500.

Decision

[25] To reduce the 2014 assessed value of the subject property to \$1,723,000 from \$2,608,500.

Reasons for the Decision

[26] The Board agrees with the Respondent that, in order to determine an assessment, the legislation requires the municipality to turn to the market to derive value. However, what information is used and how it is used is critical. The Board finds that the Respondent, by designating that only information from the 124th St MA is to be used, has assumed information that is not supported by fact. The fact is, the subject property is not in the 124th St MA, nor is it in the downtown MA. The City has no defined MA for the location of the subject, which leads the Board to the conclusion that the subject should be considered an outlier to the Office category.

[27] The Board has concern for the fact that the subject has no off street parking. For an office building parking is an important amenity. The Board is aware that the Respondent has made an adjustment of \$154,000 under the heading "Other Value" on the pro-forma but the Board is of the opinion, after hearing the Complainant's arguments, that this is an insufficient adjustment to a significant part of the value of a commercial property.

[28] The Board has placed significant weight on the Complainant's income approach comparables since the lease information is very close to the valuation date of July 2013. All of the comparables are office buildings in relative close proximity to the subject, but not all within the 124th St MA. In fact, one of the comparables (Sun Life Building) is a high-rise office tower in the downtown core and recently had a lease signed at \$15.00 per sq. ft. Another comparable was the West Chambers Building on Stony Plain Road, which contains the offices of one of the largest law firms in Edmonton. This lease was signed in June 2013 for \$17.00, which is still considerably lower than the rental rate used by the Respondent. A property very near the subject (106 Ave and 109 St) had a lease signed in April 2013 at \$14.00 per sq. ft.

[29] The Respondent did provide five comparables with rents ranging from \$14.00 to \$22.00 per sq. ft. but the Board has no way of verifying where these properties are located or any other details about the properties as the City states that there are FOIP issues with releasing this information. Without knowing something about the Respondent's comparables the Board cannot adequately determine the comparability to the subject property.

[30] The Board has concerns with the Respondent's vacancy study of the 124th St MA. The Respondent indicates that only three office buildings out of eighteen offices in this MA have any vacancy. The Board asked the Respondent to confirm that this is what their analysis concluded and the reply was yes. This works out to be an average vacancy rate of 1.34%. The Respondent, however, has used 5% as typical for this MA. The vacancy rates indicated by the Respondent, whether one uses the average of 1.34% or 5% for the 124th St MA, flies in the face of the indicated vacancy rate in this MA (average of 20% vacancy) determined by three reputable marketing companies whose business is analyzing rental and vacancy rates both in Edmonton and nationally. The Complainant's request of a 15% vacancy is, in the Board's opinion, reasonable for the subject property, which is not in the 124th St MA.

[31] The Board is quite aware that the largest majority of office buildings in the City are valued using the Income Approach. The Complainant has also used this as their primary

valuation method. The Board has no concern about the valuation method used. However, in addition to using the Income Approach, the Board finds compelling evidence with the Complainant's Direct Sales comparables. The average of seven comparables is \$151.75 per sq. ft., time-adjusted. The subject is assessed at \$240.02 per sq. ft. The Respondent's comparable #5, at 108 St and 105 Ave, is only a few blocks from the subject. It is three storey office building assessed at \$156.77 for a well constructed concrete office building with a better location than the subject. The Board is of the opinion that this comparable and the subject have many similarities and thus should have similar valuations.

[32] The Board also found useful the Complainant's equity comparables. The Complainant provided the locations, photos and other details about the buildings to show to the Board that these five comparables have an average assessment of \$147.75 per sq. ft as compared to the subject at \$240.02 per sq. ft. The Respondent's equity comparables are identified by address and MA. The Board did not find this particularly helpful due to the fact that a common assessment per sq. ft. of \$254.21 has been applied.

[33] In conclusion, the Board finds the Complainant's use of the three valuation techniques to present their case and the fact that all three values are very similar far more compelling than the evidence presented by the Respondent. As a result, the Board finds the assessment to be in excess of its market value.

Dissenting Opinion

[34] There was no dissenting opinion.

Heard June 9, 2014.

Dated this 2nd day of July, 2014, at the City of Edmonton, Alberta.



Lynn Patrick, Presiding Officer

Appearances:

James Phelan, Colliers International Realty Advisors Inc
Stephen Cook, Colliers International Realty Advisors Inc
for the Complainant

Amy Cheuk, Legal Counsel
James Cumming, Assessor
Joel Schmaus, 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

Complainant’s Brief, C1 – 53 pages

Respondent’s Brief, R1 – 109 pages