

Edmonton Composite Assessment Review Board

**Citation: Luxor Land Ltd as represented by Colliers International Realty Advisors Inc v
The City of Edmonton, 2014 ECARB 00501**

Assessment Roll Number: 3043403
Municipal Address: 10279 Jasper Avenue NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$4,005,000

Between:

Luxor Land Ltd as represented by Colliers International Realty Advisors Inc
Complainant
and

The City of Edmonton, Assessment and Taxation Branch
Respondent

DECISION OF
Harold Williams, Presiding Officer
John Braim, Board Member
Lillian Lundgren, Board Member

Procedural Matters

[1] The parties did not indicate any objection to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is classified by the City as a retail plaza and is located at 10279 Jasper Avenue NW within the Downtown area. The property consists of a retail and restaurant main floor with a rentable area of 6219 square feet, second floor office space with a rentable area of 7739 square feet and a basement with a rentable area of 6457 square feet. The property was valued by the City using the Income approach resulting in a 2014 assessment of \$4,005,000.

Issues

[4] Is the 2014 assessment of the subject property fair and equitable when considering:

- a) the rental rates applied?
- b) the income capitalization rate applied?

- c) the vacancy allowances applied?

Position of the Complainant

[5] The Complainant provided the Board with evidentiary documents Exhibit C-1 and C-2. Exhibit C-1 shows a lease rate analysis for properties that the Complainant contends are similar to the subject property, capitalization rates for properties that the Complainant points out are superior and newer in comparison to the subject property, and a chart of recent sales of what the Complainant contends are similar retail properties to the subject. Exhibit C-1 also contains a vacancy rate trend over time for similar properties within the area, and a chart with corrected rental areas for the subject property as well as revised rental rates and a revised income capitalization rate proposed by the Complainant.

[6] The Complainant's Rebuttal Exhibit C-2, has a rent roll for December 2012 which the Complainant argued showed a significant amount of main floor space vacant at that time. The Complainant argued that such vacancy shows rental issues with the property and therefore diminishes the value of the property.

[7] The Complainant argued that the information in Exhibit C-1, shows that rather than the per square foot rental rates of \$28, \$26, and \$22.75 assessed by the City for the subject property main floor, more appropriate rates are \$24, \$22, and \$20 respectively.

[8] The Complainant argued that the information in Exhibit C-1 demonstrates that a more appropriate income capitalization rate to apply to the subject property is 7% rather than the 6.5% applied by the City therefore recognizing greater than normal vacancy issues and increased investor risk.

[9] The Complainant argued that the information shown in Exhibit C-1 indicates that a vacancy rate for the upper area of the subject property should be 10% as opposed to the 5% applied by the City.

[10] The Complainant also argued that the information in the rebuttal document demonstrates an actual 2012 vacancy rate of 19 % for part of the main floor area of the subject property rather than 0% as contended by the City.

[11] Finally the Complainant referred to the chart in Exhibit C-1 containing revised rental areas, revised rental rates and a revised capitalization rate which resulted in a revised assessment of \$2,755,500.

[12] The Complainant asked the Board to reduce the 2014 assessment of the subject property from \$4,005,000 to \$2,755,500.

Position of the Respondent

[13] The Respondent provided the Board with evidentiary document Exhibit R-1. It contains a response summary and conclusions in relation to the assessment comparables for the subject property and shows a three year vacancy analysis for the subject property where the upper floor vacancy rate was listed at over 45% for 2011 through 2013.

[14] Considering the vacancy analysis the Respondent did recommend the basement area vacancy allowance remain at 20%, the main floor area vacancy allowance be changed from 15% to 5%, and the upper floor area vacancy allowance be changed from 5% to 20%.

[15] In regard to property vacancy the Respondent did explain that the City uses a vacancy rate allowance range across similar properties of 0% to 30% and that this approach is an internal City policy.

[16] Exhibit C1 also contains a revised income Pro Forma taking into account revised rental areas for the subject property and revised vacancy allowances. It has excerpts from Alberta Regulation 220/2004, *The Matters Relating to Assessment and Taxation* (MRAT) which directs the assessor in property valuation procedures, provides market value definition, and provides assessment quality standards to be adhered to.

[17] The Respondent provided rent roll and income information for the subject property from 2010 through 2013 and the City's rent roll analysis for that period; information on rental values for properties similar to the subject; comments regarding the Complainant's lease rate comparables; listings of sales of properties that the Respondent described as similar to the subject property; the Respondent's comments in relation to the Complainant's sales comparisons; listing of assessments for properties that the Respondent described as similar to the subject property and a copy of a Collier's International document containing information on income capitalization rates for Canadian cities for 2013.

[18] The Respondent also provided copies of previous Municipal Government Board Orders 038/06 and 054/10 and argued that these orders demonstrate that the assessor must use typical rental rates and not property specific rates in valuing property for assessment purposes and that classifying similar properties into groups is also necessary and appropriate for assessment procedures.

[19] The Respondent provided information regarding the City's general retail property assessment procedures and the City's Law and Legislation brief that the City adheres to in carrying out property assessment.

[20] In consideration of the above information the Respondent argued that the City had followed proper regulatory procedures in carrying out the assessment for the subject property and for properties similar to the subject. The Respondent also argued that the rental and income information for the subject property as well as rental comparisons of similar properties supported the assessed per square foot rental rate values of the main floor of \$28, \$26, and \$22.75 respectively. The Respondent further argued that the sales of similar properties and the assessment equity information on similar properties also supported the assessment value.

[21] In commenting on the rental comparisons and property sales comparisons provided by the Complainant, the Respondent argued that these were not reliable comparisons because the properties are not all similarly located, are different use properties and some of the information contains asking prices for leases rather than signed lease information.

[22] The Respondent also argued that the 7% income capitalization rate requested by the Complainant was not backed up by an actual market study or by any expert testimony.

[23] Finally the Respondent asked the Board to revise the 2014 assessment of the subject property to \$3,991,000 to recognize corrected rental square footage areas only.

Decision

[24] The Decision of the Board is to reduce the 2014 assessment of the subject property from \$4,005,000 to \$3,878,500.

Reasons for the Decision

[25] The Board reviewed the methodology used by the City to group and assess similar retail properties as explained by the Respondent. The Board agrees with the methods used by the City and agrees that such method and quality measures adhere to Alberta Regulation 220/2004, MRAT.

[26] The Board reviewed the property rental rate and property sales comparisons provided by both parties and found that there were enough differences in location, size, age, and speculative rental rates that comparisons from both parties could be questioned.

[27] In terms of the applied capitalization the Board found that the Respondent's comparables listed in Exhibit R-1 were supportive of the capitalization rate used for the 2014 assessment of the subject property.

[28] The Board reviewed the Complainant's contention that the vacancy issues with the subject property, particularly the second floor, made the subject different from similar properties in the retail group and required specific adjustment in vacancy rate, and capitalization rate.

[29] In this case the Board was not convinced that the subject property was so different as to warrant separate adjustment from the retail plaza group of properties. However the Board did note what appears to be a significant vacancy issue with the upper floor as demonstrated by the Respondent's vacancy chart in Exhibit R-1 and as argued by the Complainant.

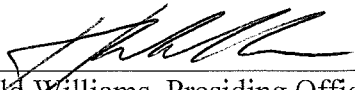
[30] However the Board's decision is to reduce the 2014 assessment of the subject property to \$3,878,500 to account for the change in rental area as agreed by the parties and to also reflect a 30% vacancy allowance for the upper floor rather than the 5% allowance that was originally applied. The Board found that although the subject property may not be atypical in terms of its property classification for assessment purposes, the evidence indicated a greater than normal vacancy issue for the property.

Dissenting Opinion

[31] There is none.

Heard June 25, 2014

Dated this 18th day of July, 2014, at the City of Edmonton, Alberta.


Harold Williams, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Alana Hempel
Tracy Ryan
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 - 78 Pages

Complainant’s Rebuttal, C2 – 9 Pages

Respondent’s Brief, R1 – 126 Pages