

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2014 ECARB 00508

Assessment Roll Number: 10035737
Municipal Address: 12803 140 AVENUE NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$19,071,500

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Shannon Boyer, Presiding Officer

Brian Frost, Board Member

Darryl Menzak, Board Member

Procedural Matters

- [1] Upon questioning by the Presiding Officer the parties stated they did not object to the Board's composition. The Board members declared they did not have bias with respect to this file.

Preliminary Matters

- [2] The Complainant's request for an exemption from levies for two tenants pursuant to sections 362(1) and 375 of the *Municipal Government Act*, RSA 2000, c M-26, was withdrawn at the start of the hearing.

Background

- [3] The subject, known as the Palisades Square, is a shopping centre located at 12803 - 140 avenue NW. It is comprised of 5 single story concrete block buildings, constructed over a period of 18 years, commencing in 1989. It has 53,543 square feet of leasable area on a 5.14 acre lot. The lot shape is unusual, and could be described as two irregular rectangles, off set, and joined at the SE corner of one, and the NW corner of the other. The subject is accessed via 2 driveways from 140 Ave, to the north of the subject, and 2 driveways on 127 street, to the east of the subject. The surrounding parcels are fully developed retail and include a Safeway to the south of the subject. Customers can gain access to the subject by travelling through the parking lot owned by Safeway. The 2014 assessment is \$19,071,500.

Issues

- [4] Is the subject correctly classified as a Power Centre? If not, what is the correct classification and resulting appropriate assessment?

Position of the Complainant

- [5] The Complainant presented written and oral argument in support of its appeal that the 2014 assessment is too high, and cited the following reasons:
- [6] The subject is incorrectly classified as a Power Centre and should be properly classified as a Neighborhood Shopping Centre (NSC). The City of Edmonton's 2014 Assessment Brief - Shopping Centres: Neighborhood, Power and Box, defines a Power Centre as having three attributes: one or more anchor or junior anchor tenants; exterior exposure; and exterior access. Anchor is defined as a primary or secondary tenant with 50,000 square feet of gross leasable area (GLA); it is often a national tenant; and it attracts clientele. Junior Anchor is based on a size of 10,000-20,000 square feet of GLA and is greater than 20,000 square feet.
- [7] The subject has no anchor tenants and in support, the Complainant produced a list of tenants and GLA in square feet (SF). It was argued that while the Canadian Bank of Commerce and Safeway Liquor stores are national brands, they are not junior anchors as they are of insufficient size and do not attract clientele. None of the tenants has GLA within the definition of Power Centre, with the smallest tenant having a GLA of 817 (SF) and the largest tenant, a local orthodontic clinic, having a GLA of 7,240 (SF). The Bank and the Safeway Liquor Store have GLA of 5,618 (SF) and 3,836 (SF) respectively. The subject lacks a national clientele drawing tenant of sufficient size to fall within the definition of Power Centre.
- [8] The Complainant cautioned the Board that a shadow anchor is not the same as an anchor tenant because it is not proven that the presence of a shadow anchor benefits the adjacent shopping centre. In this case, the majority of the subject property is located to the north of the Safeway. The subject does not enjoy direct access to Safeway. Most of the tenants' frontage is not exposed to Safeway customers. Safeway customers cannot see the subject's store fronts. The Complainant argued that a positive effect from the adjacent Safeway is not proven.
- [9] The Complainant informed the Board that the majority of tenants had poor exposure to the surrounding streets and no exposure to busy 137 Avenue. The buildings are situated along the property lines, facing inward toward a central parking lot. In support, photographs were produced to show that most of the tenants face away from the busy streets, towards each other. Most tenants do not have frontage exposure to the streets or, to what might be argued, shadow anchors. Tenants must rely on expensive pylon signage for exposure and the existing pylon signage is insufficient. Photographs were produced showing the superior signage displayed prominently on facades by tenants of other Power Centres along 137 Avenue. In each of those cases, the storefronts face 137 Avenue. The Complainant argued that the subject's exterior exposure was insufficient to fall within the definition of Power Centre.

[10] The odd shape of the lot and its position on the north side of the block result in “unattainable access” from 137 Avenue, an arterial roadway. There are two points of access from 140 Avenue, a non arterial roadway to the north. There are two from 127 Street; however, one access point is inferior as customers are required to drive behind buildings to access the parking lot. In support, the Complainant produced a number of aerial photographs comparing the quality of the subject’s access points with the access points of neighboring and other Power Centres. 18485 Stony Plain, for example has 8 access points from all four surrounding roads. On questioning, the Complainant conceded that while there is indirect access from the Safeway parking lot that directly accesses 137 Avenue, such access is circuitous and could be cut off anytime at the whim of the neighboring property, isolating the subject from 137 Avenue completely. The Complainant argued that exterior access is insufficient for the subject to fall within the definition of Power Centre.

[11] The 2014 assessment is not equitable for the reason that shopping centres similar to the subject, are classified as NSCs. The Complainant reminded the Board of the guiding principles of fair and equitable assessment: the Complainant has a right to a correct assessment that is a reasonable estimate of value and the right to an assessment that resembles that of similar and competing properties. In support, the Complainant quoted Vancouver v. Bramalea Ltd and T. Eaton Company, BCCA, 1990. In further support, documentation and photographs were produced to show examples of Power Centres with emphasis on their size, access, exposure and anchor tenants. Additional documentation and photographs were produced to show examples of inconsistencies in classification, whereby NSCs met the definition of Power Centre. Example 1, showed that property, TRN 9995725, sandwiched in the 137 Avenue. Power Centre strip, was considered to be an NSC. This example was later challenged by the Respondent as being in error.

[12] Example 2, 15303 Castle Downs Road has a Sobeys and a Brewster’s Restaurant with direct access to 153 Avenue and is classified as a NSC. Example 3, 9499 – 137 Avenue, known as Northgate Centre, has a Walmart, Sport Mart, Safeway and a Future Shop with direct access to 97 Street and 135 and 137 Avenues. It is classified as an NSC. Example 4, 9304 – 137 Avenue, known as North Town Centre, has direct access to 93 and 97 Streets and 137 Avenue and is classified as an NSC. The final example, 100/500 Manning Crossing has a Safeway on 500 Manning Crossing and direct access to Manning Drive and 137 Avenue. It too, is classified as an NSC. Based on these comparable properties, the subject is inconsistently assessed as a Power Centre and this is inequitable.

[13] The proposed assessment is \$13,554,000. This figure is based on an equity comparable, Empire Park, located at 10377-51 Avenue, which the Complainant believed to be classified as a NSC in the shopping centre inventory. Empire Park shares many similarities with the subject including tenant type, number of buildings and age. Using data from the City of Edmonton Annual Realty Assessment Details 2014 Sheet for Empire Park, the Complainant prepared a proposed assessment.

[14] In further support of its case, two Board decisions were submitted: MGB 068/04 and ECARB 00644. In MGB 068/04, the Board followed the principles contained in Bramalea, that a tax payer has the right to either a correct assessment or an equitable assessment, which ever provides the least burden to the taxpayer. In ECARB 00644, the Complainant drew a parallel between the property under appeal, 4211-106 Street, and the

subject, pointing out that both have no access from the major roadway, poor exposure, and a shadow anchor that does not benefit the properties. In ECARB 00644 the Board found that the anchor tenant did not provide much benefit to the property and that the capitalization rate (CAP rate) should be lowered to reflect the risk factors such as age, location, exposure and accessibility.

- [15] Upon hearing the Respondent's evidence that the Complainant's comparable, Empire Park, was assessed as Retail Inventory, the Complainant pointed out that the City of Edmonton Annual Realty Assessment Details 2014 sheet refers to Empire Park as a shopping centre and as a NSC.
- [16] In closing, the Complainant reminded the Board that the Respondent did not enter evidence regarding the appropriate CAP rates, vacancy rates and rental rates for properties classified as NSCs.

Position of the Respondent

- [17] It is the Respondent's position that the 2014 assessment of \$19,071,500 is correct and should be confirmed. In support, the Respondent presented a written brief and oral argument.
- [18] The subject is assessed on an income approach to value. It is in the shopping centre inventory located in study area North3, and it is classified as a Power Centre.
- [19] Within the subject's study area, the CAP rate, vacancy rate and rental rates for properties classified as NSCs and as Power Centres, are the same for the 2014 assessment year. Whether the subject is classified as a NSC or as a Power Centre, the 2014 assessment will be the same.
- [20] The definition of a Power Centre in the 2014 Shopping Centre Brief, states that a Power Centre can be developed on one or many legal addresses and roll numbers. An example of this is South Edmonton Common which is comprised of 38 tax rolls. The Respondent considers the strip of shopping centres located from 126 Street to 140 Street along 137 Avenue as a grouping of Power Centres. There is a mix of anchors, junior anchors, banks, groupings of stores, restaurants and other tenants covering many blocks. The anchors and the mix of tenants create a synergistic effect, attracting clientele that benefits all the properties along the strip, including the subject. The strip of shopping centres along 137 Avenue is a shopping destination.
- [21] The Respondent considers Safeway to be a shadow anchor for the subject, attracting clientele to the subject property.
- [22] The subject's tenants are sufficiently exposed to the roadways and other Power Centres via sight lines through the parking lots; with store front signs and with pylon signage. It is not reasonable to expect that the subject's tenants will be visible from each anchor within the strip of Power Centres or from all surrounding streets.
- [23] There is good access to the subject from 140 Avenue and 127 Street and from 137 Avenue through the Safeway parking. The Respondent argued that it was not a circuitous route from 137 Avenue to the subject and that it is unlikely that Safeway will barricade its property, thereby cutting off access to the subject from 137 Avenue.

[24] The characteristics of a NSC are that it provides for the day to day living needs of the immediate neighborhood and is typically comprised of a grocery store; convenience stores, such as drugs and foods; and personal services, such as dry cleaning and hair salons. To summarize the Respondent's position, the subject's location, sandwiched in a strip of Power Centres, its tenant mix, and the proximity of the shadow anchors, qualifies it as a Power Centre, not a NSC.

[25] The Complainant's equity comparable, Empire Park, is part of the Retail Inventory and is assessed as retail. It may have some similar types of tenants in common with the subject, however, the subject is in a superior location, located between other Power Centres along a strip of Power Centres. The assessment is based on different data than was used to assess the subject. The Respondent challenged the Complainant's proposed assessment calculations, including use of the most favorable rental rates within a possible range of rental rates.

[26] In support of its argument to affirm the assessment, the Respondent submitted a chart of 6 sales comparables. The best sales comparable was number 4, the subject itself, which sold September 1, 2012 with a time adjusted price of \$19,533,044. The other sales ranged in dates from June 13, 2011 to November 27, 2012 and the CAP rates ranged from 4.88% to 6.27%, with the subject at 6.35%.

[27] The Respondent provided a chart of 32 equity comparables located in study areas North 3 and 4 and all are classified as Power Centres. All comparables received a CAP rate of 6.5%, a vacancy rate of 2.5%, and similar rental rates. The subject's assessed CAP rate is 6.5%, the vacancy rate 2.5% and it exhibits the lowest rental rates in the chart due to its age.

[28] The subject's rent roll was submitted to show that the actual rents attained by the subject are the same or higher than the rents used to prepare the 2014 assessment.

[29] In summary, the Respondent urged the Board to uphold the 2014 assessment on the basis that the subject is a Power Centre; it is located within a strip of Power Centres; it enjoys the synergistic effect of being located in the a major shopping district; it enjoys the benefits of the shadow tenant Safeway; and it has reasonable exposure and access. The subject is distinguished from the Complainant's comparables on the basis that it is located within the heart of a strip of Power Centres whereas the comparables are isolated from other Power Centres and operate as NSCs. Finally, it is artificial to pluck the subject out of a strip of Power Centres and classify it as an NSC as this would result in an inequity for neighboring similar properties.

Decision

[30] The Board confirms the 2014 assessment in the amount of \$19,071,500.

Reasons for the Decision

[31] The Board studied the City 2014 Shopping Centre Brief and the Complainant's arguments and evidence. The Board concludes that the paragraph that gives rise to definition of Power Centre should be read in its entirety. The definition of Power Centre

includes the phrase: this type of centre can be developed on one or many legal addresses and roll numbers.

[32] The Board was persuaded by the Respondent's argument and evidence that the strip of Power Centres from 126 to 140 streets along 137 Avenue, forms one large Power Centre. The great number of shopping centres and the variety of tenants creates a shopping destination and draws clientele to the anchors, banks, restaurants, and other tenants across the strip. As a shopping centre in the midst of the large Power Centre, the subject enjoys more exposure to clientele than it might if it was in an isolated location.

[33] The Board finds that the Safeway acts as a shadow anchor for the subject. The positive effect may well be amplified because the Safeway Liquore Store is a tenant in the subject property.

[34] Based on the photographs and maps from both parties, the Board concludes that it is reasonable for clientele to perceive that the subject and neighboring properties as one large shopping centre. The Board is satisfied that the subject enjoys the benefits of being part of a shopping destination.

[35] The Board concludes that it is artificial to suggest that the positive effect of the Power Centre strip stops at the subject's property lines because the subject is older, or the buildings were not designed to maximize exposure to 137 Avenue, or that it does not have direct access onto 137 Avenue.

[36] The Board does not accept the Complainant's argument that the subject is distinct from the other the other Power Centres along the strip and should be reclassified because it does not fall within the Power Centre definition of exposure and access. On the Board's reading of the definition paragraph, exposure is not defined as exposure of each tenant to each anchor and to each roadway. Likewise, access is not described as access to the busiest road in the vicinity. The buildings on the eastern side of the subject were designed for the store fronts to face towards the centre of the lot, and there is visibility of those tenants from the subject's parking lot and the north end Safeway parking lot, which merge into one large parking lot. The Board notes that several of the subject's tenants even share pylon signage with Safeway along 137 Avenue. The Board finds that access to the subject is direct and uninterrupted from 140 Avenue and from 127 Street and that customers entering from 137 Avenue are not unreasonably deterred by obstacles.

[37] The Board distinguishes all of the Complainant's NSC comparables on the grounds that each is not located adjacent to other Power Centres, but rather serve the needs of their community. Some of the comparables had large grocery stores, but were classified as NSCs. According to the Shopping Centre Brief, the Respondent has the discretion to classify large grocery stores as NSC or an anchor in a Power Centre.

[38] The Complainant based its proposed assessment on their equity comparable, Empire Park. It is unfortunate that the City of Edmonton Annual Realty Assessment Details 2014 Sheet uses terminology such as "neighbourhood plaza shopping centre" and "neighbourhood shopping centre". Confusing as it is for those analyzing shopping centre inventory, that is the terminology also used by those studying the Retail inventory. The Board notes that the format of the forms does differ between the different inventories.

[39] Because the data for the proposed assessment is based on data from a retail property in a different inventory and a great distance from the subject, the Complainant has failed to persuade the Board that the proposed assessment is appropriate.

[40] The Board finds that the subject is correctly classified as a Power Centre.

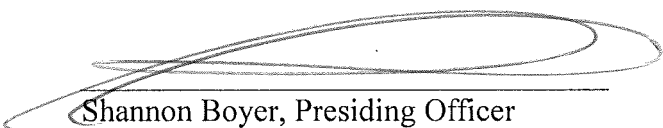
[41] The Board is satisfied that the 2014 assessment is appropriate. The Board noted the subject's adjusted sale price and actual incomes. The Board was persuaded by the Respondent's 32 equity comparables, that the subject is assessed equitably as compared to properties of a similar type in a similar location.

Dissenting Opinion

[42] There was no dissenting opinion.

Heard June 11, 2014.

Dated this 25 day of JUNE, 2014, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

James Phelan

Stephen Cook

for the Complainant

Devon Chew

Steve Lutes

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

1. Complainant’s Brief, C-1, 74 pages
2. Assessor for Area 9 (Vancouver) vs. Bramalea, C-2, 15 pages
3. Heritage Building Plaza Inc. vs. The City of Edmonton, Board Order: MGB 068/04, C-3, 12 pages
4. Colliers vs. The City of Edmonton, ECARB 00644, C-4, 6 pages
5. Respondent’s Brief, R-1, 116 pages