

Edmonton Composite Assessment Review Board

**Citation: Colliers International Realty Advisors Inc. for Treit Holdings 11 Corporation v
The City of Edmonton, 2014 ECARB 00575**

Assessment Roll Number: 1007475
Municipal Address: 17604 Stony Plain Road NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$25,382,500

Between:

Colliers International Realty Advisors Inc. for Treit Holdings 11 Corporation
Complainant
and

The City of Edmonton, Assessment and Taxation Branch
Respondent

DECISION OF
Jerry Krysa, Presiding Officer
Mary Sheldon, Board Member
Randy Townsend, Board Member

Procedural Matters

[1] In response to queries from the Presiding Officer, the parties indicated they did not object to the composition of the Board, and the Board members confirmed that they had no bias with respect to this matter.

Background

[2] The subject property is a 2.77 acre parcel of land improved with a six storey, full-service hotel and surface parking for approximately 170 vehicles. The improvement, known as the Hilton Garden Inn, was constructed in 2003 and is comprised of 160 guestrooms, food and beverage facilities, meeting facilities, a business centre, an indoor pool and an exercise room. The property was purchased by the Complainant on August 7, 2012.

[3] The assessment has been prepared by means of the income approach to value.

Issue

[4] What franchise fee expense (if any) should be deducted from the subject's net operating income prior to capitalization?

Position of the Complainant

[5] The Complainant is in agreement with the income approach to value employed by the Respondent, and agrees that the subject is a typical hotel property that should be assessed within typical income and expense ranges.

[6] The Complainant argues that notwithstanding the typical expenses appropriately deducted from the subject's revenues, the Respondent has failed to account for any franchise fee expenses in the calculation of the subject's net operating income.

[7] In support of the argument, the Complainant provided a copy of the subject's "Profit and Loss Summary as at December 31, 2013" dated April 24, 2014, to demonstrate that the subject incurred total franchise fee expenses of \$377,349 in 2013, reflecting approximately 4.5% of the subject's total 2013 revenues. The document also exhibits a franchise fee expense ratio of 4.4% in 2012, for the approximate five month period the hotel was operated by the purchaser.

[8] The Complainant also provided several Alberta Tourism market reports in support of the indicated average occupancy rates, average daily rates, and average unit prices for Edmonton hotel sales for the period 2007 to 2012.

[9] In cross examination, the Complainant conceded that the financial document in exhibit C1 represents the full calendar year 2013; however, the Complainant argues that the document is a valid consideration as the data includes the six month period immediately preceding the legislated valuation date as well as a portion of the previous year (2012).

[10] In response to the Respondent's submissions, the Complainant argues that the 2012 sale of the subject property is immaterial as the total sale price includes a non-assessable business enterprise component of indefinite value. The Complainant further argues that the allocation of value by Gettel, is at best, unsupported opinion evidence as Gettel was not involved in the transaction and further, is not available to be cross examined at the hearing. The Complainant submits that the business enterprise value component is significant as the purchaser allocated the entire sale amount to the business enterprise value in the response to the Respondent's sale validation questionnaire.

[11] The Complainant further argues that there is no evidence to quantify the Respondent's rooms departmental expense and marketing expense adjustments, nor any evidence that a request for information in respect of the hotel's financial data was made by the Respondent pursuant to s.295 of the *Municipal Government Act*.

[12] The Complainant requests an assessment of \$21,410,500, founded on the Respondent's estimated revenues and expenses, with an additional expense deduction of \$377,349, representing the subject's actual 2013 franchise fee expense.

Position of the Respondent

[13] The Respondent argues that the Complainant has not met its onus to establish that the assessment is inappropriate, as the Complainant's franchise fee evidence is drawn from financial statements that include data subsequent to the July 1, 2013 valuation date. The Respondent further argues that the Complainant's entire 2013 financial statement is irrelevant, as the municipality's 2014 hotel assessments have been prepared on the basis of an analysis of financial data from 2010, 2011 and 2012. With respect to the 2012 data included in the Complainant's

2013 financial statement, the Respondent submits that the data is incomplete and insufficient from which to prepare an assessment.

[14] The Respondent argues that the subject is the best suburban full service hotel in the municipality, noting the nearby Fantasyland Hotel is classified as a “resort” hotel. In support of the position, the Respondent provided copies of the subject’s website materials including the subject’s advertised average room rates ranging from \$120.58 to \$213.96 per room and several interior and exterior photographs of the subject property.

[15] The Respondent maintains that the current and prior owners of the subject property failed to provide any 2010, 2011 or 2012 financial data, therefore revenues and expenses were estimated for the property based on typical hotel operating characteristics, with the exception of a franchise fee expense deduction which was intentionally excluded from the calculation. In lieu of a franchise fee expense deduction, the Respondent submits that the expense categories of “Rooms” and “Marketing and Guest Entertainment” were adjusted a little bit.

[16] The Respondent submits that for all hotel properties where financial information is provided to the Respondent by the owner, the full amount of the actual franchise fee expense is deducted from the revenues. The Respondent further submits that had the previous owner provided the Respondent with the actual amount of the franchise fee expenses in 2010 to 2012, the stabilized actual expense would have been deducted from the Respondent’s estimated revenues.

[17] The Respondent argues that notwithstanding the subject’s income approach calculation, the 2012 sale of the subject property for \$31,000,000 is the best indicator of its market value and illustrates that the Complainant’s requested assessment is unrealistic.

[18] As evidence of the sale, the Respondent provided two, third party market reports (The Network and Anderson Data Online) and the Complainant’s response to the Respondent’s sales validation questionnaire, illustrating that the property transferred for a total sale price of \$31,000,000. The Respondent further provided an email from Nathan Gettel, Manager of The Network (a real estate market data service), advising that the \$31,000,000 total purchase price was allocated as follows:

Real Estate	\$27,500,000
Goodwill and Chattels	\$ 3,500,000

[19] The Respondent also provided a Calgary Herald website article, “Hotel Investment in Alberta Sees Strong Hike in 2013”, and two pages of a Colliers Hotel Investment Report as support for its position that the Calgary and Canadian hotel market was strong during 2013.

[20] In cross examination the Respondent conceded that the assessed estimated revenues and expenses were inaccurate, and indicated that it was unable to recall the extent of any adjustments made to the “Rooms” and “Marketing and Guest Entertainment” expense categories.

Decision

[21] The Board finds that franchise fees are a legitimate business expense in a branded hotel. The Board further finds that the subject’s franchise fee expense is \$377,349, as set out in the Complainant’s evidence. The assessment is revised to \$21,410,500.

Reasons for the Decision

[22] The Board was persuaded by the Respondent's testimonial evidence that where the amount of franchise fee expenses are provided to the Respondent, that amount is always deducted in the assessment calculation of a hotel; and further, that the subject's actual franchise fee expense would have been deducted in the subject's assessment calculation had the Respondent been provided with that information prior to preparing the assessment.

[23] In this instance, although the Respondent recognizes the subject property as the best performing full service hotel in the municipality, the Respondent made no deduction of the subject's franchise fee expenses associated with that superior performance, even though the subject is clearly branded with a Hilton franchise. The Board put little weight on the Respondent's assertion that in lieu of a franchise fee expense deduction, the expense categories Rooms, and Marketing and Guest Entertainment were adjusted "a little bit", as the Respondent was unable to specify the extent of any adjustments made and there was no evidence to demonstrate what "typical" expense ratios would be for these expense categories.

[24] The Board notes that the subject's actual 2013 franchise fee expense of \$377,349 represents approximately 4.5% of the Respondent's estimated total assessed revenues, which is consistent with the 4.5% expense ratio evident in the Complainant's 2013 profit and loss statement and also approximates the 4.4% expense ratio evident in the prior (partial) year.

[25] The Board rejects the Respondent's assertion that the Complainant's 2013 financial data is irrelevant to the assessment because the Respondent relied on only 2010 to 2012 financial data in its analysis. The Board notes that there is no legislation preventing the Respondent from considering financial data from the first six months of the assessment year; data which some may consider to be the most relevant to a July 1 valuation date.

[26] The Board accepts the Respondent's position that a recent sale of a property is often the best evidence of its market value. However, in this instance the Board applies little weight to the sale of the subject property as it includes both an assessable real estate component and non-assessable assets, and there is no compelling evidence as to the allocation of value of each component.

[27] The Respondent's evidence exhibits a range of values for the non-assessable components included in the sale from \$3,500,000 to \$31,000,000. The Board applies little weight to Gettel's \$3,500,000 allocation, as there was no evidence that Gettel had any involvement in the transaction or that he has any personal firsthand knowledge of the transaction. Further, there was no explanation of how Gettel's allocation was determined and the witness was not in attendance to provide direct evidence, and be subject to cross examination.

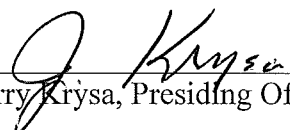
[28] The Board also applies little weight to the purchaser's \$31,000,000 allocation in the Respondent's sales validation questionnaire, as it fails to allocate any value to the real estate component. The Board notes that there was no evidence that the Respondent requested clarification in respect of the \$31,000,000 business enterprise value set out by the Complainant in response to the Respondent's sales validation questionnaire, nor any evidence that a request for financial operating information was made to either of the owners of the subject property.

[29] Whereas there is insufficient evidence to enable the Board to establish the market value of the assessable real estate excluding the non-assessable assets, (furniture, fixtures and equipment, chattels, intangibles, and business enterprise value) included in the sale price, the Board finds that the sale of the subject property is of little value in reconciling the market value of the assessable real estate.

[30] Although both parties provided third party market reports and or newspaper articles in respect of the state of hotel markets in Edmonton, Calgary, Alberta and Canada, as the subject's occupancy rate and average daily rate were not at issue, the Board found this evidence of little value in deciding the matter. The Board notes that the Complainant did not challenge the Respondent's assessed total revenues of \$8,579,071 (which apparently represent the subject's stabilized revenues from 2010 to 2012) even though they exceed the subject's actual 2013 revenues of \$8,399,621 as exhibited in the Complainant's evidence.

Heard June 13, 2014.

Dated this 10th day of July, 2014, at the City of Edmonton, Alberta.


Jerry Krysa, Presiding Officer

Appearances

For the Complainant: Stephen Cook, Colliers International Realty Advisors Inc.

For the Respondent: Abdi Abubakar; Tim Dmytruk; Amy Cheuk (Counsel)

Exhibits

C-1 Complainant's Brief (47 pages)

R-1 Respondent's Brief (52 pages)

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.