

Edmonton Composite Assessment Review Board

Citation: Northland Properties Corporation, as represented by Altus Group v The City of Edmonton, 2014 ECARB 00576

Assessment Roll Number: 9961688
Municipal Address: 10235 - 101 Street NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$24,579,000

Between:

**Northland Properties Corporation,
as represented by Altus Group**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Steven Kashuba, Presiding Officer
Brian Frost, Board Member
Darryl Menzak, 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.

Evidentiary Issue

[2] During the hearing, the Complainant raised an objection to a representative of the Respondent, Mr. Dmytruk, answering questions. Up to that point in the hearing, Mr. Dmytruk had not given any evidence but was responding to a question the Complainant directed to the Respondent's representative and main witness, Mr. Abubakar. The basis for the Complainant's objection was that Mr. Abubakar should answer questions on his own evidence and not rely on any input or assistance from an observer.

[3] The Board considered the Complainant's objection, and held that since Mr. Dmytruk's purpose for attending the hearing was not fully clarified at the outset of the hearing and since it was the understanding of the Board that he would attend the hearing as an observer, he would not be allowed to provide evidence or attempt to clarify any evidence presented by Mr. Abubakar. Further, Mr. Dmytruk would not be permitted to add to the Respondent's summary or argument.

Background

[4] The subject property is a Class A Full Service Hotel located at 10235 – 101 Street in Edmonton's downtown area and familiarly known as the Sutton Place Hotel. Built in 1977, the property is owned by Northland Properties Corporation, contains 313 rooms, numerous meeting, banquet, and conference rooms, a restaurant, and a gift shop. The hotel is connected by an indoor pedway to five office towers and a number of upscale stores and services in the adjoining shopping center. The current assessment is \$24,579,000.

[5] The conference rooms and a stairwell located on the property are assessed on a separate roll number from the bulk of the Sutton Place Hotel. The 2014 assessment for these separate rolls are \$2,542,000 for the conference rooms and \$120,500 for the stairwell. Some of the figures presented by the parties at the hearing incorporated all three roll numbers.

Issues

[6] Does the income stream of the subject property support the assessment?

[7] Do sales of comparable properties support the assessment?

Position of the Complainant

[8] In support of their request for a reduction in the assessment amount from \$24,579,000 to \$18,576,000, the Complainant presented an Appellant Disclosure and Witness Report of the Property Owner (Exhibit C-1, consisting of 39 pages).

[9] Although the subject property was purchased in June of 2011 for \$33,875,000, no time-adjustment factor was necessary to bring its market value up to the valuation date of July 1, 2013.

[10] The Complainant recognizes that the City of Edmonton assesses full service hotels on the basis of a particular hotel's income stream by using the actual stabilized income and the actual stabilized expenses. The income is weighted based on 70% of the previous year's gross revenues, 20% of the revenue two years' previous, and 10% of the revenue three years' previous.

[11] In this particular case, the Complainant expressed a concern with the City's use of typical revenues and expenses for the subject property. It is their position that the income stream for the subject property deviates considerably from the norm and that this factor should be taken into consideration when determining its assessment value.

[12] It is the Complainant's submission that the expenses should be stabilized at 70% and 30% for the two previous years, compared to the typical ratios in the market and, if necessary, adjusted if the actual expenses fall outside of the plus or minus 10% range.

[13] Specifically, the Complainant took issue with the Respondent's *pro forma* as presented in Exhibit C-1, page 16. It is their opinion that the City's characterization of the subject's income stream, based upon financial typicals in the hotel industry, exceeds the actual income stream of the subject property. In particular, the Respondent failed to recognize that the restaurant portion of the hotel's operation had recently undergone extensive renovations. This situation had a very direct and negative impact upon the hotel's income stream. As well, no consideration was given to franchise fees. This, in particular, had a considerable impact upon the income stream. As a

result, the City's calculation of the Net Operating Income was over-inflated, resulting in the computation of an incorrect assessment value.

[14] In response to a question of the Board, the Complainant expressed no concern with the City's use of a capitalization rate of 9%. However, in response to a question from the Respondent about franchise fees, the Complainant conceded that no direct written evidence about this matter was provided to the Respondent.

[15] When considering the income and expenses for the subject property, the Complainant pointed out that the restaurant was not fully operational during 2012 and a part of 2013. This particular factor had a direct impact upon the income and expense stream for these two particular years of operation. The Complainant included the restaurant's previous income in their *pro forma*.

[16] By correctly applying the actual stabilized income for the subject and including the franchise fees, a net operating income of \$1,902,556 is attained. By applying a capitalization rate of 9%, to the correct net operating income of \$1,902,556, a market value for the subject property is derived. To this value is added an adjustment for ancillary value as listed in the *pro forma*, Exhibit C-3, for an assessment of \$18,576,000 (Exhibit C-1, page 19).

[17] The Complainant presented three sales comparables, which occurred in the downtown area of Edmonton (Exhibit C-1, page 20). Sale #1, the Westin Edmonton sold for \$86,200,000. Although it is a *post facto* sale in that it occurred on September 27, 2013, after the valuation date of July 1, 2013, it is useful for trending purposes. In this regard, its assessment to sales ratio is 72%. Sale #2, the Courtyard by Marriot, sold on March 10, 2011, for \$25,261,600, and is currently assessed at 71% of this value. Sale #3, the Chateau Lacombe Crowne Plaza sold on two occasions: August 10, 2010 for \$47,800,000 and as a court-ordered sale on May 8, 2013 for \$26,000,000.

[18] These three sales comparables result in an average assessment to sales ratio of 63%. The Respondent's ASR ratio for the sale of the subject property of \$33,875,000 to the assessment value of \$24,579,000 reflects an ASR value of 83%. However, by correctly applying the average ASR of 63% to the sales value of \$33,875,000, the indicated assessment value of the subject property should be \$18,616,500.

[19] By way of conclusion, it is the position of the Complainant that both the actual income of the subject property and the three sales comparables support a reduction in the assessment amount from \$24,579,000 to \$18,600,000 (Exhibit C-1, page 21).

[20] As for the Respondent's sales comparables, the Complainant stated that the Board cannot rely on those two sales comparables which occurred outside the downtown core of the City. Further, the Respondent failed to include the Edmonton Chateau Lacombe Crowne Plaza in their sales analyses.

[21] Finally, and as reflected in Exhibit C-2, page 7, the Complainant's Rebuttal document, the Board should recognize that the assessment value of the subject includes adjustments for furniture, fixtures, and equipment, ancillary value, and the value that is assessed on separate roll numbers. However, in order to arrive at the correct assessment value for the subject property, the ancillary value and the value that is assessed on separate roll numbers should be removed. When these values are removed, the resultant calculation would confirm that the assessment is too high and should be reduced to \$18,959,500.

Position of the Respondent

[22] In support of the current assessment of \$24,579,000, the Respondent presented Exhibit R-1, consisting of 44 pages.

[23] The subject property is identified as being a full service hotel in Edmonton's downtown district.

[24] In preparing the assessment, the Respondent requires from the Complainant complete financial statements with schedules of all expenses from the preceding three years. Financial statements are analyzed, and actual revenues from each hotel property are stabilized over the three preceding years with the following weighting: 70% for 2012, 20% for 2011, and 10% for 2010.

[25] However, the Respondent submitted that the Complainant had not responded to Requests for Information (RFIs) for at least two of the previous three years. As a result of this omission, the Respondent was compelled to use typical revenues and expenses obtained from full service hotels in the downtown area of the City in determining the revenue stream for the subject property.

[26] The *pro forma* for the subject property (Exhibit R-1, page 17) presents the typical revenues, departmental expenses, undistributed operating expenses, insurance costs, management, and taxes, less the income attributable to furniture, fixtures and equipment and intangibles and business component. The resultant net operating income of \$2,442,799 is divided by a capitalization rate of 9% to attain a market value of \$27,142,208. To this value is added an ancillary value of \$99,307 for a total market value for the subject property of \$27,241,500, rounded. By subtracting the other two roll numbers, 4298477 and 4298469, a value of \$24,579,000 is achieved (Exhibit R-1, page 17).

[27] In response to a question raised by the Complainant, the Respondent submitted that no evidence of franchise fees was provided by the Complainant. As a result, the Respondent made no adjustment for franchise fees in their *pro forma*.

[28] To support the assessment, the Respondent presented five sales comparables, one of which was the sale of the subject property (Exhibit R-1, page 26). The first two sales comparables occurred in the downtown area of the City (it is noted that these two sales comparables were also selected by the Complainant). Sales comparables numbers 4 and 5 occurred on Stony Plain Road and on 50th Street, respectively.

[29] The five sales comparables reflect an assessment to sales ratio ranging from 92 to 102% with an average ASR of 95%. According to the Respondent, these ASRs fall within the provincially legislated tolerance limits.

[30] Since the Respondent, pursuant to their RFI, received only a partial financial report from the previous owner of the property for 2011, it was necessary for the Respondent to use typical financial data for full service hotels in the downtown core.

[31] In reflecting on the Complainant's sales comparisons, the Respondent observed that the Complainant failed to include the amounts for furniture, fixtures, and equipment (FF&E) when determining the net operating income and the resultant market values. As a result, the Complainant's computed ASRs were in the 65% range, considerably less than the ASRs of the

Respondent, which are in the 95% range. The Respondent added FF&E to the assessment to calculate their ASRs, which accounted for the difference. According to the Respondent, the Complainant's omission resulted in an assessed value of \$59,424, rather than \$108,227 per room.

[32] Further, it was the opinion of the Respondent that the Edmonton Chateau Lacombe Crowne Plaza should not have been used by the Complainant as a comparable sale. It first sold in 2010 and later in 2013 as a result of a court order. The hotel required \$3,500,000 in upgrades, including an amount of \$2,878,765 for immediate repairs. As well, the hotel reflected an occupancy rate of 50%, and was rated as being only in fair condition.

[33] By way of conclusion, the Respondent stated that the Complainant failed to comply with s. 295(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 [*MGA*] which requires a person to provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if the property is to be assessed. Since the Complainant did not meet the requirements of the *MGA*, they should not have been permitted to challenge the assessment.

[34] However, in this regard and in response to a question from the Board, the Respondent noted that their defense of the complaint was based upon sales and equity comparables and not on s. 295 of the legislation.

[35] As a result of the foregoing evidence, it is the request of the Respondent that the assessment of the subject property be confirmed.

Decision

[36] It is the decision of the Board to confirm the assessment of the subject property for 2014 at \$24,579,000.

Reasons for the Decision

The RFI

[37] The Board accepts that the Complainant did not comply with the City's RFI pursuant to s.295(1) of the *MGA*. The Board accepts the Respondent's evidence that it is standard procedure to request income information from owners of this class of property, and that in this instance, it was done. The Board further accepts that it was necessary for the Complainant to provide complete financial statements with schedules of all revenues and expenses from the preceding three years information to the Respondent each year. The Board accepts the Respondent's evidence that the Complainant did not respond with complete disclosure.

[38] As a result of this failure, the Respondent was forced to make use of typical expenses for full service hotels in the downtown area of the City and apply these to the subject property. Even though these hotels are usually assessed using stabilized actual figures, this was not possible for the subject property. The Board is satisfied that the Respondent was only able to use the financial data provided by the Complainant for 2011, that financial data for 2010 and 2012 was not provided (Exhibit R-1, page 27). The financial data provided was supplemented with financial typicals for full service hotels in the downtown core in order to determine the assessment of the subject property.

[39] The Board notes that the legislative scheme is such that a Complainant is not entitled to rely upon information not disclosed to the City in the RFI process. As such, the Respondent's use of typical information is acceptable in these circumstances. The Board is not prepared to consider altering the assessment based upon information that should have been disclosed by the Complainant but was not.

[40] The Board rejects the Complainant's argument that it was unfair for the Respondent to bring up s. 295 of the *MGA* at the end of the hearing, when it could have been addressed earlier. The Board finds that the Complainant had adequate notice to respond to this issue in that the Respondent's evidence package which stated that an RFI had not been responded to, and that it was very important for this type of property that the Respondent have this information to determine the correct assessment.

The Respondent's Application of Typical Figures

[41] The Board notes that the Respondent, in their *pro forma*, as presented in Exhibit R-1, page 17, used typical revenues and expenses in order to determine the net operating income. In this regard, the Board is satisfied that the Respondent was compelled to use typicals because the Complainant failed to fulfill the requirements under *MGA* s. 295.

[42] In addition, the Respondent was not able to confirm in their *pro forma* that franchise fees were in effect for the subject property. As a result, franchise fees were not included.

[43] The Board is satisfied that the Respondent correctly used typicals for full service hotels in the downtown sector of the City and applied them to the subject property.

[44] As a result, the Board places considerable weight on the Respondent's *pro forma* which correctly determines the net operating income and applies a capitalization of 9% to arrive at the 2014 assessment amount of \$24,579,000.

The Complainant's Sales Comparables

[45] The Board places considerable weight on the two comparable sales the parties have in common.

[46] When calculating the sales value for each room within the two acceptable comparable sales, the Westin Edmonton and the Courtyard Edmonton, the Board accepts that the assessment of the subject property also reflects the range of market values for each hotel room in the downtown area of the City. The Westin Edmonton sold in 2013 for \$207,211 per room, while the Courtyard Edmonton sold for \$142,725 per room, with an average of \$174,968 per room between them. The subject property sold in 2011 for \$108,227 per room. The Complainant's request for an assessment of \$59,424 per room is significantly lower than what downtown hotels are selling for.

[47] The Board notes that the Complainant's sales comparable, the Edmonton Chateau Lacombe Crowne Plaza, sold in 2010 for \$47,800,000, or \$155,700 per room. However, the Board places little weight on the 2013 sale of the Edmonton Chateau Lacombe Crowne Plaza because it was a court ordered sale which reflected recent occupancy rates in the 50% range and required upgrades of \$3,500,000.

Equity

[48] The Board notes that the Complainant provided an equity analysis derived from the three sales comparables provided. The Complainant's ASRs fail to include the FF&E values, and as a result are significantly lower than the Respondent's ASRs. The Board notes that the subject property is assessed at 102% of its 2011 sale price. This ratio falls well within the mandated assessment requirements.

Conclusion


[49] Having considered the evidence provided by both parties, the Board accepts that the equity and the sales comparables provided by both parties support the assessment. As a result, the Board concludes that the current assessment is correct and equitable and should not be disturbed.

Dissenting Opinion

[55] There is no dissenting opinion.

Heard June 27, 2014.

Dated this 16 day of July, 2014, at the City of Edmonton, Alberta.


Steven Kashuba, Presiding Officer

Appearances:

John Trelford
for the Complainant

Abdi Abubakar
Steve Lutes
Tim Dmytruk
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.

s. 295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.

(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.

The *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009, states:

s 9(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

The *Matters Relating to Assessment and Taxation Regulation*, Alta. Reg. 220/2004, states:

s 10(3) For any stratum of the property type described in the following table, the quality standards set out in the table must be met in the preparation of assessments:

Property Type	Median Assessment Ratio	Coefficient of Dispersion
Property containing 1, 2 or 3 dwelling units	0.950 - 1.050	0 - 15.0
All other property	0.950 - 1.050	0 - 20.0

Exhibits

C1 – Complainant Disclosure – 39 pages

C2 – Complainant Rebuttal – 11 pages

C3 – Complainant Chart – 1 page

R1 – Respondent Disclosure – 44 pages

R2 – Respondent Disclosure – 1 page

R3 – Respondent Legislation – 2 pages