

## **Edmonton Composite Assessment Review Board (CARB)**

**Citation: Peace Hills General Insurance Company, represented by MNP LLP v The City of Edmonton, 2014 ECARB 00766**

**Assessment Roll Number:** 3191855  
**Municipal Address:** 10709 Jasper Avenue NW  
**Assessment Year:** 2014  
**Assessment Type:** Annual New  
**Assessment Amount:** \$21,815,500

Between:

**Peace Hills General Insurance Company**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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### **DECISION OF**

**James Fleming, Presiding Officer**  
**Howard Worrell, Board Member**  
**Jack Jones, Board Member**

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#### **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] There were no preliminary matters raised.

#### **Background**

- [3] The property is a six storey office building with ground floor retail containing 73,158 square feet (sf) of space. The building was built in 1980, sits on 0.37 acres, and includes 75 underground parking stalls. The zoning for the property is JAMSC – Jasper Avenue Main Street Commercial Zone, and it is located in the G – Government sector of Downtown.
- [4] The property is 60% owner occupied and 40% leased to tenants. The quality is classed as BH (B – High) and the property is assessed based on the Income Approach to Value (IAV). The assessment under appeal is **\$21,815,500**.

#### **Issues**

- [5] The Complaint form listed a number of issues, but upon questioning at the hearing, the Complainant indicated they intended to argue the following issues.

1. Should the property have a split quality classification reflecting a BH classification for the owner occupied space, and a BL classification for the leased space in the building?

If the CARB agrees with a split classification, then the attributes (such as rental rates, vacancy shortfall etc.) should be amended to reflect the attributes used by the City for BL classification space.

2. In the alternative, is there sufficient evidence to support (whether or not the CARB accepts a split quality classification) the Complainant's argument that would estimate the difference in the finishing costs between the owner occupied space and the leased space, and deduct that from the value calculated using the BH attributes for all of the building space?
3. Does the Complainant's logic produce the best value for an assessed rental rate for the Bank?

[6] The Complainant alluded to an equity issue, but did not elaborate or argue that equity was not being observed.

### **Issue #1: Split Classification**

#### **Position of the Complainant**

[7] The Complainant agreed that the owner occupied space (38,594 sf – 60% of the office space) was of a BH quality, and therefore had no concerns with the attributes used to determine value for that space. Their concern was with the leased space in the building (25,486 sf - 40% of the office space), which they argued was inferior in quality and thus deserved a BL quality designation.

[8] They indicated that they had reviewed a number of office buildings, and were unable to identify other buildings which had a multiple quality designation, nor were they able to identify any buildings where, in their opinion, the quality difference among occupants was as significant. Thus, they felt that the subject property was unique in the marketplace in this respect and thus deserving of the split designation.

[9] Having given affect to the BL quality for the leased space, the Complainant highlighted a value of \$20,673,000 (Ex. C1, pg 21).

[10] As further support for their arguments, they pointed out that two tenants who signed leases in 2012 (admittedly not in the assessment year) had signed at rates of \$10.13 and \$12.00 per sf. These rates were significantly below even BL rates for the space, and thus justified in their opinion, that the office space was not BH quality (i.e. which was assessed at \$18.50 per sf).

[11] They also included a leasing brochure from Dec. 2012 which showed an asking rent of \$16.00 per sf, (Ex. C1, pg 31-32). This rental figure is identical to the BL quality assessed rent.

[12] Finally, the Complainant noted a chart (Ex. C1, pg 84), which compared the City assessed rates and vacancy rates for BH and BL classified space in 2013 & 2014 with actual rates observed in the subject. This chart showed that the subject property had lower rates and

higher vacancy than even the BL quality space. They suggested that this provided strong support that the leased space in the subject should not be classed as BH.

[13] The Complainant concluded by reiterating their request for a reduction to \$20,673,000.

### **Position of the Respondent**

[14] The Respondent indicated that there were no office buildings in Edmonton that received a split classification. They also offered that the Chancery Hall and TELUS Buildings likely had a wide variety of quality finishes, and yet these buildings had single classifications. They further noted that in their opinion, the quality of finish is a management decision (Ex. R1, pg 41).

[15] The Respondent continued that the subject has an excellent location on Jasper Avenue with a nearby LRT station. They also indicated that the majority of BL buildings do not have restaurants on the property and the majority do not have more than 30 underground parking stalls (75 in the subject). Lastly, they noted that no BL buildings have a Bank tenant (Ex. R1, pg 41). These factors as well as tours of the space convinced the City that a BH designation is warranted.

[16] With respect to the Complainant's argument that rental rates are lower in the subject than observed in BH classified buildings, the Respondent provided a chart showing lease rates in five Downtown BH office buildings. The Chart highlighted that there was a range of rents in all buildings, and particularly in the Government sector, the rents ranged from \$9.00 to 21.00 per sf in BH quality buildings. They reiterated that the rental rates and quality of finishes are a management decision.

[17] They concluded by asking for confirmation of the assessment

### **Decision**

[18] The CARB confirms the BH classification for the subject property.

### **Reasons for the Decision**

[19] The CARB reviewed the evidence and the argument relating to this issue.

[20] It is agreed between the parties that the owner occupied space is BH quality. The Complainant argues that the leased space is inferior and they assert this is proven primarily through the lease rates achieved (which are lower than assessed rents in BH quality space) and their argument that it is so. The CARB observes that there was little evidence from the Complainant to show the quality of the space (only two pictures in the leasing brochure).

[21] The Respondent provided a number of interior pictures of the leasable space which the CARB found to show a level of improvements which could be consistent with a reasonable quality tenancy. The fact that the space was not occupied would allow for an inference that a potential tenant might spend some money to improve the space further once in occupancy.

[22] The Complainant argued that the quality difference between the owner occupied and the leasable space was unique. The Respondent countered that two buildings had a similar dichotomy and both of these had a single quality designation. They also advised that no office buildings in Edmonton had a split designation, supporting the single designation for the subject.

[23] With the lack of evidence from the Complainant to substantiate the quality difference and insufficient evidence to prove that the building was entitled to a spilt designation, the CARB put more weight on the Respondent's evidence that;

a. The tenancy character of the subject was more compatible with a BH building (BH type tenants, BH type parking, and prominent location).

b. The fact that the Respondent showed that rental rates in "other" BH buildings reflected a range which incorporated the rents found in the subject (Ex. R1, pg. 43).

[24] As a result, both the assessed and actual rents in the subject have a similar range to other BH buildings.

[25] Accordingly, the CARB concludes that the building is accurately classified as a BH as noted above.

[26] Three other points need to be addressed at this juncture. The first is to recognize that in light of the decision that the building is correctly classified as BH, the attributes for the office space remain as calculated by the City, and there is no change to the office portion of the assessment.

[27] The second point concerns the magnitude of the change in the assessment had the Complainants position prevailed. The CARB took note of the Complainants argument that a change in the assessment would always be warranted (even if less than 5%) if the change resulted from correction of an error. Due to the ultimate decision not to grant the Complainant's request, it was not necessary to deal with this matter.

[28] The third point is to recognize that the City has the right to determine the regime under which they will calculate the assessment. This includes the right to classify the space. In this case, the CARB received insufficient evidence from the Complainant that a split classification would yield a more accurate value.

## **Issue#2 : Finishing Costs**

### **Position of the Complainant**

[29] The Complainant argued that an alternative method to recognize the quality difference would be to calculate the costs necessary to bring the leasable space up to the same quality as the owner occupied space, and then subtract those costs from the total assessment (calculated based on 100% of the building being classed as BH).

[30] The Complainant found a property where the Assessor's had applied this method (Ex. C1, pg. 23) and so they used the same \$62.00 per sf as a base finishing cost. They took 25% of this \$62.00 cost as a reasonable estimate of costs "already in place" in the leased space, and so multiplied the remaining 75% of the costs by the total amount of leasable space in the building (25,486 sf). This produced an amount of \$1,185,099, which when deducted from the valuation (which included credit for a change in the Bank rate) produced an assessment of \$20,371,000 (Ex. C1, pg 22).

[31] The Complainant argued that this was the method used by the Respondent in the building with unfinished space highlighted above (Ex. C1, pg 23), and so therefore it should be acceptable

in this situation. Accordingly, he was requesting that in the alternative, that the CARB reduce the assessment to \$20,371,000.

### **Position of the Respondent**

[32] The Respondent advised that the City only allowed a deduction for unfinished space when the entire unit is completely unfinished which they define to mean limited lighting, limited HVAC, no dividing walls, no ceiling finish, no cubicles..... (Ex R1, pg 42). In this case, they argue that the space in the subject is much more developed than that description. They point to the interior pictures included in their brief (Ex. R1 pgs 24 – 28) as evidence of the significant extent of the finish in the subject

[33] In addition, they pointed out that there was no evidence to support the use of the \$62.00 figure in terms of quality or nature of the finishing, and there was no evidence or theory to support the use of three quarters of the cost.

### **Decision**

[34] There is no basis for application of a reduction in value based on the cost of finishing for a portion of the space.

### **Reasons for the Decision**

[35] The argument of the Complainant is totally reliant on the facts of the treatment of the building asserted to be similar.

[36] The CARB accepts the information that the \$62.00 per sf is for completely unfinished space as shown by the City, and puts weight on the argument of the Respondent that the spaces are not similar in degree of completion. This is not mitigated by the application of a reduction in the costs to recognize the extent of finishing in the subject because the Complainant provided little evidence to support the use of a 25% reduction.

[37] It is also contrary to the argument of the Respondent that up to 75% of the finishing costs are mechanical in nature. There was little evidence on the costs incurred to date in the subject space or arguments equating the two “unfinished” areas. As a result the CARB had no ability to compare the two areas.

[38] Accordingly, because facts (concerning level of finishing) were not similar between the two buildings, the CARB puts little weight on the argument of the Complainant and so makes the decision noted above

### **Issue #3: Rate for the Bank**

#### **Position of the Complainant**

[39] The Complainant pointed out that there were two main floor restaurant tenants. One of the tenants paid \$17.00 per sf, and the other paid \$20.00 per sf. From their analysis, the only reason the Complainant could determine for the difference in rates was that the tenant at the lower rent did not have interior access to his business from the building, while the other tenant did have interior access.

[40] The Complainant then highlighted that the Bank also did not have any interior access to its space by the tenants in the building. They argued then that no access from the interior of the building was what justified a reduced rent.

[41] In the case of the restaurants this rental difference was \$3.00 per sf (or roughly 15%), and so using the same reasoning, the Bank should receive a \$4.00 per sf reduction (roughly 15%) from the assessed rate for Downtown Banks of \$28.00 per sf. Coincidentally, the Complainant noted that this was the “actual” Bank rent for their tenant, and so in their opinion this provided additional support for their position.

[42] The Complainant acknowledges that there is little evidence to support their argument, but they assert that it is a reasonable inference that the difference in the restaurant rents results from the interior access. Accordingly, they argue that it is reasonable to make a similar inference with respect to the Bank and thus to reduce the rent by a similar percentage in order to recognize the lack of interior access to the Bank.

[43] Their request is to reduce the rental rate on the Bank to 24.00 per sf.

### **Position of the Respondent**

[44] The Respondent provided a copy of Bank rent comparables (Ex. R1, pg. 44) which showed a median rent of \$29.00 per sf and an average rent of \$28.59 per sf. They indicated that this provided strong support for an assessed rent of \$28.00 per sf.

[45] They further argued that there was no evidence provided by the Complainant to support that the difference between the leased rate for the restaurants was in any way related to the issue of interior access. There was also no evidence from the Complainant to support a link between the rates of a Bank compared to a restaurant. Nor was there any support from the Complainant that a Bank would have a reduced rate based on lack of interior access.

[46] The City asserted, that they could not find any support for any of those arguments in their experience. Accordingly, they asked for confirmation of the assessed Bank rental rate of \$28.00.

### **Decision**

[47] The Bank rental rate is confirmed at \$28.00.

### **Reasons for the Decision**

[48] The Complainant offered little evidence beyond the facts of the subject property and that there was a relationship between interior access and rental rate. Further, the facts were dependent on an inference (with little support) to make the link.

[49] As well, the CARB put weight on the Bank comparable rates provided by the Respondent which supported the \$28.00 per sf assessed rent.

[50] Accordingly, the CARB found insufficient evidence to grant the request of the Complainant, and makes the decision above to confirm the Bank rate.

### **Summary**

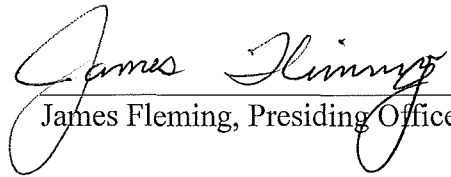
[51] The individual decisions on the three issues all support confirmation of the assessment at \$21,815,500

### **Dissenting Opinion**

There was no dissenting opinion.

Heard August 6, 2014.

Dated this 29<sup>th</sup> day of August, 2014, at the City of Edmonton, Alberta.

  
James Fleming, Presiding Officer

### **Appearances:**

Walid Melhem  
for the Complainant

Darren Davies, City of Edmonton, Assessor  
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

Complainant: C1      153 pages

Respondent: R1      78 pages