ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 141/10

Seven Oaks Properties Ltd.
#200, 10187-104 Street NW
Edmonton, AB T5J 0Z9

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on August 16, 2010 respecting a complaint for:

Roll Number 3073400	**Municipal Address** 10187 104 Street	**Legal Description** Plan: NB1 Block:3 Lot: 168
Assessed Value 1,999,500	**Assessment Type** Annual New	**Assessment Notice for:** 2010

Before:

Jack Schmidt Presiding Officer
Jack Jones, Board Member
Dale Doan, Board Member

Board Officer: Alison Mazoff

Persons Appearing: Complainant
George Akers, Lawyer
Chelsea Tkachuk, Student at Law

Persons Appearing: Respondent
Kevin Smyl, Assessor, City of Edmonton
Cam Ashmore, Lawyer, City of Edmonton

PRELIMINARY MATTERS

The Respondent requested that all witnesses take the oath. The Complainant agreed. Neither party raised any objection to the composition of the Board. No concerns of bias were raised.

BACKGROUND

The McKenny Building is a historical site that was built in 1912; it is a three storey building with full basement and 13,900 square feet of office space. In addition, there are 4,600 square feet of storage space. It was used as a warehouse, serviced with a manually operated freight elevator (which is no longer in service) at the rear and a six-stall parking lot. The building is obsolete in function and design and is unable to compete in the office-warehouse market. As a result, it is in transition and has been converted into an office building. The assessment was completed by use of the income approach to value method. There is no live issue with respect to the method for determining market value for assessment purposes.

ISSUES

1. Is the assessment fair and equitable compared to similar properties?

2. Is the assessment correct based on the downtown district subclass classification of “CH” office building?

   a) Is the subject’s lease rate applied in the income approach fairly stated at $13.00 per square foot?

   b) Does the capitalization rate at 8% as applied in the income approach fairly reflect the market rates for the subject property?

   c) Does vacancy rate at 10% fairly reflect typical vacancy rates for the subject property?

LEGISLATION

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

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.

POSITION OF THE COMPLAINANT

The Complainant presented evidence, C1, and arguments, for the Board’s review and consideration. The Complainant took the position that the assessment was not fair or equitable and that the office classification was incorrect, specifically that the assessment was excessive. The Complainant’s position is set out in detail on P.12 and 13 of exhibit C1. In particular it was argued that given the age, size, lack of parking, lack of elevator, lack of handicap access, the heritage designation and the tenant mix, a capitalization rate in the area of 11% would be more reasonable to reflect the negative attributes of the property. With respect to the office lease rate, in January of 2010 some 4600 square feet of space was leased at a net rate of $8.50. This was for main floor space. There were no new tenants as of July 2009. All the tenants have remained the same since 2004 and as of December 31, 2009, approximate 35% of the leased space remained vacant.

The leases in place since 2004 were transacted on a month-to-month basis and were reported to the assessor as such as well all vacant space was reported as requested to the assessor. Three comparable property assessments were provided showing assessment decreases of 15% to 20% from the previous year’s assessment, whereas the subject property has a 70% assessment increase. To render the assessment fair and equitable it was argued that the assessment should be reduced by approximately 20% lower than the previous year’s assessment.

The final assessment value should be $936,000. It was acknowledged in summation that this value may be somewhat low.

POSITION OF THE RESPONDENT

The Respondent presented evidence, R1, and argument for the Board’s review and consideration. The Respondent took the position that the assessment was fair and equitable and that the building classification is correct. The assessment has been completed according to all provisions of the Municipal Government Act. During his review, the Respondent conceded that an assessment adjustment should be made for the lack of a proper elevator. In consideration, it was requested that the Board reduce the final assessed value to $1,718,000.

The Respondent provided an equity chart (R1, p.16) illustrating that all downtown CH class office buildings are assessed using the same parameters (lease rate, vacancy rate and capitalization rate). He also submitted comparables for downtown CL classifications illustrating that the same parameters were used. The rates used were supported by third party data, (R1 p. 84-124). In particular, 2nd quarter 2009 capitalization rate survey showed that B quality buildings have a rate of 7.50%-8.25%. No capitalization rate information for C quality office buildings was provided, however, an 8% capitalization rate was determined as being fair.

The high vacancy rate as reported by third party data is the result of two buildings being totally vacant. (R1, P.125). For purposes of assessment the typical vacancy rate of 10% was determined as a result of property manager’s reports being supplied. With the land value at $1,191,000, the Respondent argued that setting the property assessment at an amount that is worth less than the land value would be incorrect.

Based on the property manager’s reports as requested by the City, a lease rate of $13.00 per square foot was developed, notwithstanding that third party lease reports show second quarter 2009 rate at $18.00-$20.00 per square foot. The month to month lease rates as reported by the complainants were not considered typical for the CH type of office space and therefore, were not used in determining the subject’s lease rates. The Respondent argued, with respect to the 2010 lease as provided by the Complainant, that it was transacted after the assessment year and is post-facto information. This information was not available when the assessment was completed and therefore cannot be used in making a decision regarding market value in this case.

FINDINGS

1) The property assessment was not prepared in a fair and equitable manner.
2) The property assessment is not correct.

DECISION

In this case, the Board finds that the building is atypical, and as a result, the Board changes the sub classification from CH to CL, and the factors applied to CL will apply to this assessment. Based on the reasons below and the findings above, the Board reduces the 2010 assessment from $1,999,500 to $ 1,463,500.

REASONS FOR THE DECISION

The Respondent proposed that the cost of the inoperative elevator should be removed for the final amended values. The Complainant argued that the elevator should be shown as a reduction in the lease rate rather than mixing the cost approach to value with the income approach. The Board agrees with both parties that the lack of a proper elevator would negatively affect market value. The question remains: how should it be measured? Both parties agreed that the capitalize income method of determining market value is the proper method in this case. Thus, the Board adopts this assertion

The Board accepts the Complainant's compelling argument respecting the issue of the inoperable elevator. Further, the Complainant's submission that that the encumbering factors associated with the subject property are considered, the market would anticipate a higher "risk" rate has merit.

The Respondent could not provide evidence to show a capitalization rate for "C" type office space, however he provided second quarter 2009 information for "B" downtown office space, ranging from 7.50% to 8.25%. A capitalization rate at 8.0% was supplied to all "CH" and "CL" type downtown office space for purposes of capitalized net income.

In the absence of evidence to show a higher capitalization rate which was applied to similar type property, the Board accepts the 8.0% capitalization rate as established by the Respondent since this rate was equally applied to both the CH and CL class properties.

The Complainant submitted that the ongoing vacancy rate for the subject type property is much higher than 10% and should be adjusted to reflect the 35%, which the subject property was experiencing as of the assessment date. The Respondent countered that the vacancy rates are determined based on property manager reports as submitted on an annual basis. These reports show that the typical vacancy rate for "CH" type office space at 10% and "CL" type office space at 15%. The Board is satisfied that the property manager's reports are the best indicator of vacancy rates and are accepted as being reasonable.

The Complainant took the position that the best indicator of the market value lease rate is the 2010 lease transaction for a five year term at $8.50 per square foot. To the converse, the Respondent held to the position that reported leases provided by property managers show rates at $13.00 per square foot for "CH" type office space and $10.00 for "CL" type office space. The Board agrees with the Respondent that the 2010 lease is post-facto and therefore no weight is given to the 2010 lease transaction. The lease rates reported by property managers are accepted as being typical and therefore the $13.00 rates and $10.00 rates for the corresponding "CH" and "CL" are applicable.

The Complainant submitted that the downtown office "CH" subclass for the subject property as determined by the assessor was not fairly determined. The Respondent held the position that this property is most similar to typical "CH" subclass citing fourteen comparable properties assessed in the "CH" category.

The Board accepts that mass appraisal is used to determine the assessment in a fair and equitable manner; the Board also accepts that typical market conditions are a requirement of mass appraisal and that similar properties are compared in the final estimate of market value. In this case, the subject property has a number of encumbrances that negatively affect its value.

These conditions should be measured when they affect market value. The question is: How are they to be measured? There is a heritage site designation attached to the property that limits its potential redevelopment and is also a deterrent for potential purchasers. The property has been leased on a month-to-month basis for the past six years lacks handicap access, has insufficient onsite parking and that vacant space has been a problem. The respondent offered that month-to-month leases are not typical and therefore not considered in the assessment determination.

No evidence was presented showing that the Respondent's comparable properties are similar in relation to all of the conditions affecting the subject property. The fact that month-to-month leases are not typical could lead one to conclude that this property cannot be compared to the typical "CH" class office space. When regard is given to its evidence, argument, and the facts which came forward, the Board is satisfied that the best estimate of the market value for assessment purposes should be based on the downtown office sub-class "CL" as determined by the assessor.

The assessment is therefore based on a $10.00 lease rate per square foot for the office space with a vacancy rate of 15% capitalized at 8.0%. By adding the storage space as shown on the Respondent's pro-forma together with applying the same calculating factors used, the final assessment value is set at $1,463,500.

DISSENTING OPINIONS AND REASONS

There were no dissenting opinions or reasons.

Dated this 25th day of August, 2010, at the City of Edmonton, in the Province of Alberta.

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Presiding Officer

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, R.S.A. 2000, c.M-26.

CC: Municipal Government Board