ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 304/11

CVG
1200-10665 JASPER AVENUE
EDMONTON, AB T5J 3S9

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 October 5, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3090073	10665 Jasper Avenue NW	Plan: 8620900 Block: 6 Lot: 60B	$48,213,000	Annual New	2011

Before:

John Noonan, Presiding Officer
Howard Worrell, Board Member
Brian Hetherington, Board Member

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Peter Smith, CVG

Persons Appearing on behalf of Respondent:

Cam Ashmore, Law Branch, City of Edmonton
Tracy Ryan, Assessor, City of Edmonton

PRELIMINARY MATTERS

At the outset of the hearing, the parties indicated that the issue with regard to the portion of the property which is exempt from taxation would not be pursued, and related evidence was struck.

BACKGROUND

The property is an office tower known as First Edmonton Place, located at 10665 Jasper Avenue in the government district. The building comprises 210,942 square feet of office space and 12,295 square feet of main floor retail space for a total of approximately 223,237 sq. ft. In addition there are 188 underground parking spaces. The 2011 assessment was prepared by the capitalized income approach using market typical parameters for BH (Class B-high) office buildings, yielding an assessment of $48,213,000.

ISSUE(S)

The complaint form identified a number of reasons for complaint:

- the assessment was in excess of market value and inequitable to similar properties
- the estimated lease rates are greater than typical or market rents
- the building had been placed in the wrong sub-class
- the vacancy rate applied was too low
- the capitalization rate was too high
- the details and description of the property do not correctly reflect its actual physical and income-producing characteristics
- the percentage of exempt space is incorrect.

At the hearing, the CARB heard evidence and argument on the following:

1. Should the office rent rate be reduced from $18 per square foot to $12 to reflect 2010 leasing activity, or alternately, to apply the assessment typicals associated with Class C-high properties?

2. Should the vacancy allowance be increased from 6% to 9%?

LEGISLATION

***Municipal Government Act*, RSA 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 provided to the Board a 19-page brief that included an executive outline of the outstanding issues, an aerial map of the property, the details of nine recent 2010 leases drawn from the subject property, a net income proforma using the requested square foot value of $13 for the office space and a 9% vacancy allowance, City of Edmonton 2011 assessment details for the subject property, an updated June 30, 2010 rent roll that included calculations of vacant space, a Profit and Loss Statement for 2009 of the subject property and 3rd party leasing details for Class B buildings.

The Complainant stated that the property is classified as a BH building in the government district in the 2011 Assessment. The rates applied for this property in the 2011 assessment are $18.00 per square foot for the office area, $15.00 per square foot for the retail space and $20.00 per square for the restaurant. The 188 parking stalls are valued at $165.00/stall/month. The vacancy allowance was 6% for the office and 5% for the retail component; standard deductions of 2% for structural expense and $13.00 vacancy shortfall for office and retail were also allowed.

Vacancy

Evidence was provided by the Complainant to show the vacancy rate at various intervals from December 2006 to June 2010, starting at 12.9%, reaching 14.5% in June 2007, and at 9.41% just prior to valuation date, 2010. Considering this higher than normal vacancy history and that the subject property had exceeded the typical vacancy allowances for several years, it would seem appropriate that a 9% vacancy allowance should be applied to the subject for the 2011 assessment year.

Lease Rate

The Complainant provided a list of nine 2010 leases from the subject property in support of a reduction to the office lease rate in the 2011 assessment. These leases showed an average $11.99 per square foot value as opposed to the $18.00 per square foot rate applied in the 2011 assessment. This information was a better indicator of current market rents for the subject than the older leasing activity relied upon by the assessor. Accordingly, the office rate for the subject should be reduced to $12 per square foot or the property should be reclassified as a CH building. In the CH sub-class, the office lease rate was $13 and vacancy allowance 10%, much closer to the actual performance of the subject than the BH typicals.

Based upon the $13 office rate and a vacancy rate of 9%, the Complainant stated that the net income of the property in a reconstructed pro forma would be $2,697,280. The actual 2009 net operating income was $2,712,831. Capitalizing this income at the City's typical 8% rate, the market value estimate is $33,910,000.

In conclusion, based upon the foregoing information and analysis, the Complainant asked that the 2011 assessment be reduced from $48,213,000 to $34,000,000.

POSITION OF THE RESPONDENT

The Respondent provided a 162 page Assessment Brief (R-1) which contained a Law and Legislation Brief, photographs, maps, response to issues, City of Edmonton Assessment Details, Commercial Tenant Roll details, 3rd party office market reports, ARB and MGB Board Decisions.

Vacancy

As to the issue of the 9% vacancy allowance request by the Complainant, the Respondent provided third party information that showed Class "B" Buildings with office vacancy rates at 2.62%. This rate is lower than the average rate of 5.94% the City found for "BH" Class buildings and the 6% applied in the assessment.

Lease Rate

The Respondent confirmed the 2011 Assessment was prepared using the Mass Appraisal method (R-1, pg 3-12). The subject property is located in the Government Sector (west side of 105 Street south of 104 Avenue, east of the former CP railway and north of 97 Avenue). It is assessed with a similar valuation rate to 37 other Downtown "BH" Class Office Buildings. As further support to the Classification Type of the subject, the Respondent referred the Board to the Valuation of Office Properties that stated *"a building's class is influenced by local traditions and can vary across geographic areas, although standard determinants often include location, rent level, exterior and interior finishes, the technological level of the systems and market perceptions"* Class B type properties exhibit a wide range of uses, average rents, average quality finishes with adequate/average systems while Type C buildings usually reflect older/tired buildings, below average rents, below average finishes, semi-functional spaces and minimum systems.

The annual request for information (ARFI) response rent roll of the subject property dated March 18, 2010, vacancy report, parking detail form and the 2009 operating statement were provided to the Board. The Respondent pointed out that some of the rent roll information in the ARFI response of March 18 was different from that now provided in the Complainant's brief. The property owner bears the responsibility of providing an accurate ARFI statement, and should not now try to benefit from presenting different rental information to the CARB.

In developing the 2011 assessment typicals for the BH sub-class, the Respondent utilized five leases from the subject property as reported on the ARFI. These five leases commenced in April, May, November and December 2009, and January 2010. The rent rates ranged from $15 to $19.00 per square foot, with a median of $18, exactly the rate of the subject's assessment.

The Respondent requested the 2011 assessment of $48,213,000 be confirmed.

DECISION

The CARB reduces the assessment to $41,531,500.

REASONS FOR THE DECISION

Vacancy

The CARB notes a history of slightly elevated vacancy at the subject, but not so far from the B class average to justify a finding that the subject deserves atypical treatment.

Lease Rate

The CARB examined the lease details submitted by the parties and found, in isolation, support for the positions of both. Only one lease was common to both presentations, that being a January 2010 lease for Unit 550 at $15 per sq.ft. Beside this one overlap, the Respondent had used four 2009 leases from the subject and the Complainant presented another eight 2010 leases, two of which were dated August and December 2010.

The CARB understands why the Respondent sees the subject as a BH property: the five leases selected produce a median rent of $18 and, by the Board's calculation, a weighted average rent per sq.ft. of $17.92. On the basis of the information returned in the ARFI process, the Respondent's conclusions of sub-class and typical market rent appear reasonable.

The CARB spent considerable time and effort comparing the Complainant's June 30, 2010 rent roll, and the ARFI return submitted online March 18, 2010, especially in regard to all the 2010 leases:

- Suite 550 – as mentioned, utilized by both parties. Uncontroversial.
- Suite 580 – 1400 sq.ft. The June 30 rent roll shows a lease at $15 commencing June 1, 2010. This suite number does not appear on the ARFI, nor the list of vacancies. Quite simply, it is information the City didn't have, but is now before the Board.
- Suite 610 – the ARFI shows a one-year term lease expiring November 2010 at $19 and the Respondent used this lease in developing the BH typical. The rent roll, on the other hand, shows a new tenant leasing this space at $18.25 face rent commencing April 1, 2010, and net rent is $15.90 after tenant improvements. The CARB accepts this suite as generating a rent of $19. The 75 cent difference is non-material in the overall picture.
- Suite 780 – 4407 sq.ft. at $9. The ARFI showed this lease starting in 2006 and expiring October 2011. As an older lease with a year and a half to run, this would not have been germane to current assessment development. However, the rent roll shows this lease was renewed early, in June 2010 for a five-year term at the same, continued $9 rate. This again is information not supplied to the City, but now before the CARB. A significant amount of space is involved here, at a low rate, and there would be a market value implication as a result.
- Suite 840 – 845 sq.ft. The ARFI showed a $10.50 lease expiring January 2010. The June rent roll showed a 5-year renewal in February 2010 at $12. Again, information not supplied to the City, but relevant to the Board in showing current market activity.
- Suite 1200 – 1111 sq.ft. The March 18 ARFI showed a 5-year lease commencing May 2010 at $6.48 per sq.ft. This suite is occupied by the Complainant's agent, who suggests this rate is a clerical error as the true rent is $12 and the reported $6.50 was the rate for the previous term. The June 30 rent roll confirms the new $12 rate. Presumably, the assessor could have considered the erroneous $6.50 lease renewal information in establishing the market typical rate, but chose not to. As other information indicated far higher rates, it is understandable that $6.50 might have been seen as atypical, but

corrected information at $12 per sq.ft. is now before the CARB; it is both timely and relevant.

- Suite 1250 – 2520 sq.ft. The ARFI shows a lease expiring November 2010. The rent roll shows a lease term of December 2010 to October 2020. The CARB heard this was a lease extension at the same $10.50 rate as the previous 10-year lease. The CARB sees this December lease renewal as post facto to typical market conditions as of July 1, 2010. At best, it can be seen as a trend indicator.
- Suite 1270 – 985 sq.ft. The ARFI showed a February 2010-January 2013 lease at $9 per sq.ft. New information before the Board corrects the rate to $12.50 per sq.ft. As before, it would appear that a clerical error reported a low rate on the ARFI, but the CARB has been presented timely and relevant information regarding the subject's leasing performance.
- Suite 1300 – 2004 sq.ft. The ARFI shows a five-year lease expiring July 2010 and the rent roll shows a 5-year renewal coming into effect August 1, 2010 at the same $6 per sq.ft. rate. The CARB would ordinarily view this slightly post facto lease as a good indicator of leasing value. However, the very low rent rate, half or less than the rate agreed in other leases close to valuation date, raises questions as to whether other considerations were involved. The CARB sees this lease as an unexplained outlier, and accords it no weight.

From the above list, the CARB sees material leasing evidence from 8748 sq.ft. in the subject that for whatever reason was information not available, not disclosed, or not utilized by the Respondent. In addition, the Board found information on the ARFI and confirmed by the rent roll on a further 2 leases:

- Suite 845 – 1366 sq.ft. leased at $16 from July 2009 to 2014.
- Suite 1220 – 1619 sq.ft. leased at $12 from November 2009 through October 2012.

These additional leases bring the total to 11,733 sq.ft., and the CARB calculated a weighted average per square foot rent of $11.74. Combined with the 5 leases used by the Respondent, the CARB has the benefit of all the leasing activity in the subject from January 2009 through June 2010, the 18 month timeframe the assessment department deems relevant. The total area from all the leases is 26,129 sq.ft., about one-eighth of the total office space at the subject, and the weighted average is $15.14 per square foot.

From the Respondent's evidence of downtown valuation rates, the CARB observes the BL (B low) subclass with identical assessment parameters as the BH subclass, except for an office rate of $15 and vacancy shortfall allowance of $11 for both office and CRU space. The CRU rental rate for BL property is not mentioned.

The CARB heard that the subject has the benefit of immediate proximity to the LRT system, a Tim Horton's restaurant on site, and in all other respects a great similarity to a lengthy list of BH buildings downtown. In the Board's esteem, this may well be a B-high building in terms of amenities, but it is not generating the income associated with that subclass. The leasing history shows the subject enjoyed a window of prosperity in 2008 and some or all of 2009, but that this window was closing in late 2009 and was firmly shut by early 2010. By valuation date, July 1, 2010, the subject was not capable of achieving an $18 typical lease rate. Twelve leases spread over 18 months of good times and not-so-good, show this property performed very close to a B low standard, generating a weighted average $15.14 per square foot, and the assessment should reflect the income potential of the property as would the market. The CARB is not saying this property should forevermore be considered a B-low building, but as of July 1, 2010 the typical parameters associated with that subclass better fit the subject than the B-high or C subclasses advocated by the parties.

The CARB recalculated the income proforma employing a $15 lease rate and $11 vacancy shortfall allowance for office and CRU space. The potential gross income of $3,739,295 after a 6% vacancy allowance produces an effective gross income of $3,539,301. After a 2% structural allowance, $139, 227 office vacancy shortfall and $6,765 CRU shortfall, the net operating income becomes $3,332,523. Capitalized at 8%, the estimate of value is $41,531,500.

There were significant discrepancies between the June 30, 2010 rent roll presented to the CARB and the March 18, 2010 ARFI supplied to and utilized by the assessment branch. Some of the differences were related to leasing activity at the subject in this gap period, and unfortunately, some of the ARFI data was out of date or incorrectly reported. While this panel of the CARB took the time to try to reconcile conflicting information, complainants in general should not assume precisely the same effort by all panels at all future times. The CARB stresses the importance of supplying accurate data in the ARFI process, and recommends to property owners this task be assigned to competent and meticulous personnel.

Dated this 3rd day of November, 2011, at the City of Edmonton, in the Province of Alberta.

J. Noonan, 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, RSA 2000, c M-26.

cc: 954470 ALBERTA LTD