ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
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NOTICE OF DECISION NO. 0098 54/11

Hudson's Bay Company
c/o Wilson Laycraft
1601 333 - 11 Avenue
Calgary, AB T2R 1L9

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 July 26, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10002003	9704 19 Avenue NW	Plan: 0226204 Block: 7 Lot: 6	$28,654,500	Annual New	2011

Before:
John Noonan, Presiding Officer
Brian Frost, Board Member
Lillian Lundgren, Board Member

Board Officer:
Annet Adetunji

Persons Appearing on behalf of Complainant:
Patrick Leclair, Director, Real Estate Taxes, Hudson's Bay Company
Gilbert Ludwig, Barrister & Solicitor, Wilson Laycraft

Persons Appearing on behalf of Respondent:
Chris Hodgson, Assessor, City of Edmonton
Steve Lutes, Barrister & Solicitor, City of Edmonton

PRELIMINARY MATTERS

Upon questioning by the Presiding Officer the parties before the board indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

BACKGROUND

The subject roll number comprises a range of CRU spaces totaling 114,086 sq.ft., part of the South Edmonton Common power centre. Of that total, 73,326 sq.ft. of space is classified as junior anchor space, occupied by two tenants, one of which is Home Outfitters. Under complaint is the $18 per sq.ft. market rent applied to part of the junior anchor space, the other parameters of the capitalized income approach to value not at issue.

ISSUE

What is the correct rental rate that should be used for property assessment purposes for the 40,539 sq.ft. of space occupied by Home Outfitters?

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 $18 per sq.ft. lease rate applied to the Home Outfitters space is too high, an increase over the rate used the previous year and which increase the Respondent has failed to justify. The Complainant's request was for a $14 rental rate, based on a national range of $13-$16 per sq.ft., the subject sales per sq.ft. indicate a rent level of $13-$14, and the original face rent was $14 per sq.ft.

In the course of the hearing, the Complainant changed the requested lease rate. The 2010 Local Assessment Review Board decided a market lease rate for the Home Outfitters space of $15.63 per sq.ft. for business tax assessment purposes, a reasonable rate that ought to be used for this year's property assessment.

Rents for anchor and junior anchor tenants have been stable or declining over the last 4-5 years. There is a relationship between the sales per sq.ft. a retailer expects to generate and the rent that the retailer would be prepared to pay. Oral evidence was given that sales at this Home Outfitters location had been in decline since 2005, and are now at a level that would not justify an $18 lease rate if Home Outfitters were signing a new lease. The retail landscape had become more competitive with the recent arrival of several US-based retailers, and the lingering effects of the 2008 recession, all of which has contributed to a flat or declining market, both locally and extending at least to Western Canada. Consequently, there was no reason for the Respondent to increase the market lease rate from the $15.63 decided last year.

Lease abstracts for the subject and three other Home Outfitters Edmonton stores were presented, though one of these comparables was out-of-the-ordinary, the downtown location in an enclosed mall which had since been vacated. The remaining stores were leased in 2001-2002 and were now paying stepped-up rates of $16, $15.75, and the subject's $15.25. After giving effect to tenant inducements/allowances, the respective net rents were $15.09, $14.42 and $13.95. A list of Edmonton HBC stores showed the three suburban Home Outfitters had all been accorded $20 per sq.ft. tenant allowances on lease signature, and for determining net rent it was common practice to amortize the inducement over the term of the lease, resulting in the net rates shown. Several court/MGB decisions were highlighted in support of the concept that face rents should be adjusted to account for tenant inducements.

In rebuttal commentary, the Complainant noted the Respondent's lease comparables were all drawn from recently constructed 2008 and newer properties, showed a declining rate trend, and supported the argument that $15.63 was an appropriate rate for an older property in a similar location. It was further noted that the equity comparables, the other two Home Outfitters locations, were under complaint.

POSITION OF THE RESPONDENT

In support of the $18 lease rate, the Respondent introduced five lease comparables of junior anchor spaces ranging from 20,000 to 52,000 sq.ft. at South Edmonton Common, dating from December 2008 to January 2010. The lease rates ranged from $18 to $24.75, and averaged $21.53 with a median of $23. The Respondent identified the best comparable as a nearby 32,971 sq.ft. similarly used space that leased for $18.42 commencing Jan.1, 2010. A list of the three Edmonton Home Outfitters stores showed that all were assessed at a lease rate of $18, showing assessment equity.

In determining a market typical lease rate, the Respondent does not adjust for tenant inducements as a lack of information precludes establishing a typical inducement. Apart from the inducements enjoyed by the HBC in their Edmonton operations, there is a lack of market evidence from the Complainant to show what a typical tenant inducement is. However, if one were to adjust face rents for tenant inducements as suggested by the Complainant, then a cap rate adjustment would also be required. Making a change to one of the inputs in the capitalized income approach necessitates changes to other inputs. The 7.5% cap rate not at issue here would require change if the market typical rent rate were changed.

The 2010 LARB decision of $15.63 was for business tax assessment purposes and has no applicability to the market rent determined for this year's property assessment. The assessors responsible for business and property assessments did not necessarily use the same data, and in any event, a year-over-year increase is insufficient reason to challenge an assessment, ground thoroughly covered in numerous MGB and ARB decisions.

DECISION

The CARB found the $18 typical market lease rate appropriate for the subject space and confirms the assessment of $28,654,500.

REASONS FOR THE DECISION

The best evidence before the CARB was the lease information drawn from other junior anchor space at the same development, South Edmonton Common. Although the Complainant stressed these leases were from newer premises and that an older property would command less, the CARB is not convinced there would be a substantial market difference, either in lease rate or sale price, for very similar properties which differed in age by some seven or eight years. The leasing information from the Complainant was historical, and though the rents now paid by Home Outfitters at all their Edmonton locations are stepped-up, these are rates that were negotiated in the 2001-2002 timeframe. The Respondent's leasing information was fresher and a better reflection of market conditions at July 1, 2010, the valuation date.

Tenant inducements or allowances, terms that were used interchangeably at the hearing, can and do have an impact on potential gross income, the starting point of a capped income valuation. Here, the cap rate was not at issue and so there was no exploration of how that cap rate was derived. However, the Respondent's point was well taken: if one analyzed sales using actual, typical, or allowance-adjusted rents, if other factors remained the same, three different cap rates would be produced. The point became moot because the Complainant did not argue for the use of the actual net effective rent, but rather the rate that had been decided by last year's LARB for business tax purposes.

The CARB was indisposed to adopt the value found last year, that decision reached on different evidence for a business assessment complaint. The evidence presented at this hearing persuaded the Board that the market typical $18 rate per sq.ft. was justified.

Dated this 28th day of July 2011, at the City of Edmonton, in the Province of Alberta.

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

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cc: Riokim Holdings (Alberta) Ltd.