EDMONTON
Assessment Review Board

10019 103 Avenue, Edmonton, AB T5J 0G9
Ph: 780-496-5026
Email: assessmentreviewboard@edmonton.ca

NOTICE OF DECISION NO. 0098 64/12

Michael Uhryn, MNP LLP
300, 622 5 Avenue SW
Calgary, AB T2P 0M6

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 June 25, 2012, respecting a complaint for:

Roll Number	**Municipal Address**	**Legal Description**	**Assessed Value**	**Assessment Type**	**Assessment Notice for:**
9992577	15333 CASTLE DOWNS ROAD NW	Plan: 0125164 Block: 52 Lot: 1A	$23,226,500	Annual New	2012

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.

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cc: LAKESIDE LANDING EDMONTON SHOPPING CENTER INC

Edmonton Composite Assessment Review Board

Citation: Lakeside Holdings Edmonton Shopping Center Inc. v The City of Edmonton,

ECARB 452

Assessment Roll Number: 9992577
Municipal Address: 15333 CASTLE DOWNS RD NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Lakeside Holdings Edmonton Shopping Center Inc
Represented by Michael Uhryn, MNP LLP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Don Marchand, Presiding Officer
George Zaharia, Board Member
Howard Worrell, Board Member

Preliminary Matters

[1] The parties indicated they had no objection to the composition of the Board. In addition, the Board members indicated they had no bias on this file.

[2] There were no preliminary matters.

[3] All the witnesses were sworn in.

Background

[4] The subject property, known as Lakeside Landing Edmonton Shopping Centre, is a "neighbourhood shopping centre" comprised of eight buildings with 106,094 square feet of leasable space. The property is located at 15333 Castle Downs Road NW in northwest Edmonton. The subject property is situated on an 8.14 acre site.

[5] The subject property was valued on the income approach resulting in a 2012 assessment of $23,226,500. The direct capitalization methodology within the Income Approach is the valuation approach was used by the Parties to argue against and in support of the assessment.

Issue(s)

[6] Is the total leasable space correct?

[7] Is the tenant space correctly categorized, that is CRU space versus office space?

[8] Is the $7.00 per square foot vacancy shortfall allowance used by the Respondent appropriate?

[9] Has the proper percentage been used in determining the tax-exempt leasable space which is used by the Edmonton Public Library? This matter was resolved by the Respondent agreeing that the tax exempt percentage should be 11.879%.

Legislation

[10] The Municipal Government Act reads:

***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.

[11] The CARB gave consideration to the meaning of market value and to the requirements of an assessment made pursuant its market value.

s 1(1) in this Act,

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 289(2) Each assessment must reflect

a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

b) the valuation and other standards set out in the regulations for that property.

[12] The valuation standard as set out within

Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

s 2 An assessment of property based on market value

a) must be prepared using mass appraisal,

b) must be an estimate of the value of the fee simple estate in the property, and

c) must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[13] The Complainant submitted a brief outlining his position that

a. the leasable space of the subject property had been overstated,

b. the space had been improperly categorized as to type of use, and

c. the correct vacancy shortfall allowance had not been applied to office space.

[14] One of the grounds identified on the complaint form raised the issue of tax-exemption for one of the tenants in the Shopping Centre (Exhibit C-1, page 13). This matter was resolved when the Respondent made a recommendation to increase the exemption from 10.667% to 11.879% based on a reduced total leasable space (Exhibit R-2, revised evidence of R-1, page 63).

[15] The Complainant did not agree with the total leasable space as assigned by the Respondent, stating that the leasable space was 103,460 square feet compared to the 106,094 square feet as applied by the Respondent, a reduction of 2,634 square feet. Specifically, the Complainant suggested changes to six leasable categories as follows:

Premises Type	Requested Area	Currently Assessed Area	Difference
CRU < 1,000	2,814	3,636	822
CRU 1,001 to 3,000	8,286	12,858	4,572
CRU 3,001 to 5,000	7,415	7,284	-131
CRU 5001 to 10,000	0	5,590	5,590
CRU Other	0	2,765	2,765
Office Space	21,012	10,028	-10,984
		Total Difference	2,634

The Complainant suggested that the difference in space was as a result of utility/meter room space being included in leasable space, while it was the position of the Complainant that this space should not be assessable (5 a. of Conclusion of the Testimonial Evidence Summary).

[16] The Complainant argued that some of the CRU space as identified by the Respondent was improperly categorized and should in fact be office space. After making adjustments, the 10,028 square feet of office space as shown by the Respondent was increased to 21,012 square feet (Exhibit C-1, page 15). It was the position of the Complainant that if space within the shopping centre was used as an office, then it should be assessed as an office.

In response to a question by the Respondent as to what evidence the Complainant had that the space he was deeming as "office" was in fact office space, the Complainant stated that the "client" had told him so.

[17] In proposing a revised proforma, the Complainant suggested that the "vacancy shortfall" as identified by the Respondent (referred to as the Office Operating Expense by the

Complainant), should be $13.95 per square foot rather than the $7.00 applied by the Respondent. On page 41 of C-1, the Complainant broke down the 2012 operating budget expenses into "retail" and "office", and then into two categories: 1) property taxes, and 2) operating costs. For the "office", the Complainant showed that the property tax component was $3.96 per square foot and the operating cost component was $9.99 per square foot for a total of $13.95 per square foot.

[18] The Complainant argued that no mezzanine space is listed in the rent roll as per Exhibit C-1, page 39, so the mezzanine space as shown by the Respondent in the proforma as per Exhibit C-1, page 18 should be reduced to "0", and therefore there would be no $1 lease rate.

[19] The Complainant agreed that the income approach was the most relevant methodology to be applied for assessing the subject property (3 e. of Assessment Parameters/Methodology of the Testimonial Evidence Summary).

[20] The Complainant requested that the Board reduce the 2012 assessment of the subject property from $23,226,500 to $21,815,000. The revised proforma resulting in this reduced amount is detailed on Exhibit C-1, page 37 and includes the reduced total leasable space of 103,460 square feet and an increased "operating cost allowance" of $13.95 per square foot.

<u>Position of the Respondent</u>

[21] The Respondent submitted Exhibit R-2 that included four pages numbered 63, 64, 65, and 66 to replace those same numbered pages in Exhibit R-1. The explanation for the change was that the Respondent used a smaller total leasable space of 106,094 in Exhibit R-2 versus 118,151 square feet in Exhibit R-1 that resulted in a slightly higher percentage of tax exempt space of 11.879% rather than 10.667%.

[22] The Respondent stated that the subject property has a total of 106,094 square feet of leasable space broken down into commercial retail units, restaurants, and office space. "Each unit is classified according to the use it was designed for; not necessarily by the tenant in the unit. Typically units designed for commercial retail use have better exposure and lease at a higher rate than office spaces which are not as dependent on exposure" (exhibit R-1, page 29).

[23] In response to a question regarding utility space, the Respondent advised that utility space does not factor into the value as it is part of the gross space.

[24] From the photos of the interior of Sobey's food store (R- 1, pages 10 and 11), the Responded stated that there was mezzanine space. It was categorized as CRU – Other, amounting to 2,765 square feet, and was assessed at the market rent of $1.00 per square foot. The Respondent stated that all similar mezzanine space was assessed at the nominal rate of $1.00 per square foot.

[25] In distinguishing between office space and CRU space, it is the position of the Respondent that office space is typically on the second floor while CRU space is typically on the ground floor for easy traffic accessibility. Accordingly, the second floor space as identified on page 30 of Exhibit R-1 amounts to 10,028 square feet, as per the proforma.

[26] In establishing a rate for vacancy shortfall, the Respondent used typical operating expenses experienced by similar properties. To support the $7.00 per square foot rate, the Respondent divided the total expenses as provided by the property owner on page 47 of R-1 of $857,884.38 by the total leasable space of 106,094 square feet that resulted in an amount of

$8.08 per square foot. The Respondent views vacant space as "dark space" recognizing that there is a cost for this space but that is a lesser cost than space which is leased and fully operational.

[27] The Respondent provided seven Neighbourhood Shopping Centres as comparables showing that the subject property was assessed the same $7.00 per square foot "office vacancy shortfall" as all the seven comparables (Exhibit R-1, page 50).

[28] The Respondent requested the Board to confirm the 2012 assessment of the subject property at $23,226,500.

Decision

[29] The Board accepted the Respondent's recommendation to increase the tax-exempt portion from 10.667% to 11.879%. This recommendation had also been accepted by the Complainant.

[30] The decision of the Board is to confirm the 2012 assessment of the subject property at $23,226,500.

Reasons for the Decision

[31] With regards to the tax-exempt portion, the Board accepted the Respondent's explanation that by reducing the overall leasable space of the subject that the tax-exempt portion for the library space was increased.

[32] The Board accepted the Respondent's explanation of how CRU and office space is categorized and did not accept the Complainant's reallocation of CRU space to office space. In particular, the Board placed little weight on the Complainant's argument that the affected space should be categorized as office space because the client had told him so.

[33] The Board placed little weight on the Complainant's position that because the rent roll did not identify any mezzanine space, that the 2,765 square feet of space should be reduced to "0". The photographs provided by the Respondent supported the position that there was mezzanine space, which had been assigned a lease rate of $1 per square foot, consistent with the rate applied to like space in similar comparable properties.

[34] The Board was not persuaded by the Complainant's argument that the difference in net leasable space of 2,634 square feet was as a result of utility/meter room space. In fact, the difference resulted in the elimination of 2,765 square feet of mezzanine space and the slight increase in CRU space in the 3,001 to 5,000 square feet category.

[35] The Board placed little weight on the Complainant's calculation of a rate for "vacancy shortfall". In fact there appeared to be some confusion as to what "vacancy shortfall" was. The Complainant provided no evidence as to how the $13.95 per square foot "operating cost allowance" was determined.

[36] The Board placed greater weight on the Respondent's evidence that relied on an income/expense statement provided by the property owner that showed a total 2010 annual expense amount of $857,884.38 and when divided by the 106,094 square feet of leasable space, resulted in a cost of $8.08 per square foot. As well, the Board accepted the Respondent's explanation that "vacancy shortfall" was the rate applied to vacant space that would still cost the

property owner something to maintain, but the cost would be lesser than space that was occupied and fully operational.

[37] The Board was persuaded that the 2012 assessment of $23,226,500 of the subject property was fair and equitable.

Dated this 16th day of July, 2012, at the City of Edmonton, Alberta.

Don Marchand, Presiding Officer

Appearances:

Michael Uhryn, MNP LLP
for the Complainant
Alana Hempel, Assessor
Cam Ashmore, Legal Counsel
Moreen Skarsen, Assessor
for the Respondent
Mark Sandul, Assessor, observer