

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2012 ECARB 2259

Assessment Roll Number: 3245958
Municipal Address: 10056 109 Street NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc for Luxor Land Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Warren Garten, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the Board. In addition, the Board members indicated that they had no conflict of interest in this matter.

Background

[2] The subject property, known as Associated Engineering Plaza, is a highrise office building located at 10056 109 Street NW. It is classified as a B High (BH) building in the Government district. The building has 155,831 square feet (sf) of office space and 8,822sf of retail space.

[3] The parties agreed that the correct number of number of stalls is 172 underground stalls and 4 surface stalls; therefore, this is no longer an issue.

Issue(s)

[4] 1. Is the subject property assessment correct?

[5] (a) What is the correct rental rate for the office space?

[6] (b) What is the correct rental rate for the restaurant?

[7] (c) What is the correct office vacancy rate?

[8] (d) What is the correct capitalization rate?

Legislation

[9] The *Municipal Government Act* reads:

Municipal Government Act, RSA 2000, c M-26

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.

Position of the Complainant

[10] The Complainant filed this complaint on the basis that the subject assessment of \$33,350,500 is incorrect because incorrect parameters were used to prepare the assessment. The Complainant is challenging the rental rates for the office and restaurant space, the vacancy rate and the capitalization rate. The Complainant did not accept the Respondent’s recommendation to reduce the assessment to \$31,891, 500.

1. Is the subject property assessment correct?

(a) What is the correct rental rate for the office space?

[11] The Complainant stated that the subject is assessed using a \$14.00/sf rental rate for the office component of the property. The Complainant argued that the rental rate should be reduced to \$13.00/sf. In support of this argument, the Complainant provided the subject’s rent roll for December 2011 which shows leases ranging from \$5.50/sf to \$26.80/sf. However, there is no recent leasing in the subject property. The Complainant also provided two lease comparables for \$14.00/sf and \$10.08/sf that commenced in April 2011 and July 2011 respectively. The Complainant concluded by stating that a review of leasing in competitive buildings supports the requested rate of \$13.00/sf.

(b) What is the correct rental rate for the restaurant?

[12] The Complainant stated that the subject is assessed using a \$20.25/sf rental rate for the restaurant space. The Complainant argued that a rental rate of \$17.25/sf should be used to value the restaurant. The Complainant reference the subject rent roll which shows that the restaurant

lease is \$13.00/sf. However, since this is a dated lease from 2002, the Complainant relied on a comparable lease for a restaurant located nearby in the Baker Center which is at \$17.20/sf with a term from October 2009 to September 2019. Consequently, the Complainant requested an assessed rental rate of \$17.25/sf for the subject restaurant.

(c) What is the correct office vacancy rate?

The vacancy rate applied to the office component is 8% and the Complainant requested that the rate be increased to 15%. The Complainant argued that the subject property suffers from atypical vacancy. The Complainant referenced the rent roll to show that floors 8 and 10 comprising 28,428sf are vacant. This represents 18.25% of the total office area.

(d) What is the correct capitalization rate?

The subject property assessment was prepared using a capitalization rate of 7%. The Complainant argued that recent sales between January 1, 2009 and July 31, 2011 support an increased capitalization rate of 7.5%. The Complainant relied on the published capitalization rates for the following four transactions:

- HSBC sold December 2010 with a rate of 6.12%,
- Canadian Western Bank Place sold November 2010 with a rate of 6.98%,
- 103 Street Building sold April 2010 with a rate of 7.58%,
- and Atco Centre sold January 2009 with a rate of 7.41%.

The Complainant noted that the above properties are superior to the subject because they are Class A buildings and the subject is a Class B building. Typically in the marketplace, an inferior building would be considered to have more risk associated with it and would garner a higher capitalization rate.

In conclusion, the Complainant requested the Board to reduce the assessment to \$24,664,000 based on the changes to the parameters.

Rebuttal

In rebuttal, the Complainant stated that recent leasing activity in closely located office buildings supports the requested \$13.00/sf rental rate, comparable office building transactions support a 7.5% capitalization rate and the vacancy rate has not been adequately recognized.

Position of the Respondent

[13] The Respondent made a recommendation to reduce the subject assessment to \$31,891,500 which corrects the number of parking stalls and also reduces the market rental rate for the restaurant to \$15.00/sf.

1. Is the subject property assessment correct?

(a) What is the correct rental rate for the office space?

The Respondent submitted that the office space was assessed using a typical market rent of \$14.00/sf. The rental rate is supported by forty-eight downtown rental rates for BH buildings that have a median rental rate of \$14.42/sf and an average rental rate of \$14.74. Further, the average rental rate of these comparables for the last six months is \$15.93/sf.

(b) What is the correct rental rate for the restaurant?

The Respondent conducted a review of commercial rental units (CRUs) and found that in general the rates in B class downtown office buildings have been overstated in some cases and rates in A class downtown office buildings have been understated in some cases. As such, the Respondent is including in the recommendation for decrease an adjustment to the CRU restaurant space from \$20.25/sf to \$15.00/sf. It is noted that the Respondent did not provide any rental rate comparables for the restaurant space.

(c) What is the correct office vacancy rate?

The Respondent stated that the assessed vacancy rate is applied to all office properties in the same manner and is a typical rate derived from a review of the actual vacancy rates for properties in this inventory. Similar to market rental rates, typical market vacancy rates are more appropriate for use in assessment than actual rates.

The Respondent does recognize and adjust for properties with chronic vacancy problems, but only when they have exhibited a vacancy rate of above 10% for three years. As of July 1, 2011, the subject property had a vacancy rate above 10% for office space for two consecutive years based on the RFI's.

The Respondent presented a chart with vacancy rates for thirty-nine B class buildings that shows an average vacancy rate of 7.6% which supports the use of an 8% vacancy rate.

(d) What is the correct capitalization rate?

The Respondent stated that the capitalization rate proposed by the Complainant is supported by four sales and the capitalization rates as reported by the Network. The Respondent's position is that third party documents should not be directly relied upon to determine valuation rates because the capitalization rates are not adjusted for time, market rates or long term leases.

The Respondent analyzed the Complainant's four sales and the adjusted capitalization rates support the assessed capitalization rate of 7%.

- HSBC sold December 2010 with an adjusted rate of 6.41%,
- Canadian Western Bank Place sold November 2010 with an adjusted rate of 6.10%,
- 103 Street Building sold April 2010 with an adjusted rate of 6.34%,
- and Atco Centre sold January 2009 with an adjusted rate of 6.79%.

In conclusion, the Respondent requested the Board to reduce the subject assessment to the recommended amount of \$31,350,500.

Interim Decision

[14] The Respondent is requested to recalculate the subject assessment based on the highrise office summary on page 9 Exhibit R-1 using the agreed number of parking stalls and a rental rate of \$17.25 per square foot for the restaurant space.

Reasons for the Decision

[15] In determining whether the subject assessment is correct the Board reviewed the evidence and argument of the parties as follows.

With respect to the office rental rate issue, the Board finds the best evidence of typical rental rates to be the forty-eight rental rates of office space in downtown BH buildings presented by the Respondent. The average rental rate is \$14.74/sf which supports the assessed rental rate of \$14.00/sf. The Complainant presented two comparable lease rates, one of which supported the assessed rent of \$14.00/sf. The remaining lease comparable presented by the Complainant is not sufficient evidence to convince the Board that the office rental rate is incorrect.

With regard to the restaurant rental rate issue, the Board finds the best evidence of a typical rental rate to be provided by the Complainant. The Complainant provided a lease comparable from a nearby restaurant in a similar office building that leased for \$17.20/sf. The Respondent did not provide any comparables. The decision of the Board is to reduce the lease rate to the requested \$17.25/sf.

Respecting the office vacancy rate issue, the Board confirms the use of a typical vacancy rate of 8% because the subject property does not meet the criteria for chronic vacancy. The office portion of the subject property has had a vacancy rate of over 10% for only two years and not the three years that is typical of chronic vacancy.

In respect of the capitalization rate issue, the Board finds that the assessed capitalization rate of 7% is correct. The Board agrees with the Respondent that capitalization rates should be derived from typical income and should be adjusted to the valuation date. The problem with using the capitalization rates published by a third party is that it is not known how the capitalization was derived.

For the above reasons, the Respondent is requested to recalculate the subject assessment. After the parties have agreed on the recalculated assessment, the Board will finalize the assessment. It is not necessary for the parties to attend a continuation of the hearing.

Respondent's disclosure October 5, 2012

Complainant's disclosure October 12, 2012

Decision

The Respondent provided

Heard commencing August 20, 2012.

Dated this 19th day of September, 2012, at the City of Edmonton, Alberta.

Warren Garten, Presiding Officer

Appearances:

Greg Jobagy, Colliers International Realty Advisors Inc
Stephen Cook, Colliers International Realty Advisors Inc
for the Complainant

Brennen Tipton, City of Edmonton
Cameron Ashmore, City of Edmonton
James Cumming, City of Edmonton
for the Respondent