Edmonton Composite Assessment Review Board

Citation: MNP LLP v The City of Edmonton, 2013 ECARB 00898

Assessment Roll Number: 10084084
Municipal Address: 8615 51 Avenue NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

MNP LLP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Petra Hagemann, Presiding Officer
Brian Carbol, Board Member
Brian Frost, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matters before them.

Background

[2] The subject property known as Commerce South Office Park, located at 8657 - 51 Avenue, is a 574,708 square foot (sq ft) corner site. It consists of four office buildings and a 413 stalls open parkade. Originally there was a fifth building on site; however, Building A was lost to fire and is currently being reconstructed. Building B at 92,002 sq ft and Building C at 58,251 sq ft were built in 1986 and 1985 respectively. They are assessed as subclass A within the overall SSA classification for south side office buildings. Buildings D and E, built in 2008 comprising 74,752 and 65,546 sq ft respectively, share underground parking. They are assessed as AA office buildings. The subject property was assessed using the income approach to value.

Issue

[3] Have Buildings B and C been correctly assessed as subclass "A" office buildings?

Legislation

[4] The *Municipal Government Act* (MGA), RSA 2000, c M-26, reads:

> 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.

The *Matters Relating to Assessment Complaints and Taxation Regulation* (MRAT), AR 220/2004, reads:

> s 2(c) An assessment of property based on market value must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[5] The Complainant's position is that the assessment of the subject is excessive. The Respondent incorrectly assessed buildings B and C as "A" class office buildings when the evidence indicates that a "B" classification would have been more appropriate. This results in an excessive assessment for the entire four buildings complex. The Complainant pointed out that there are significant differences when applying typical lease rates of $17/sq ft for A class office buildings versus $15/sq ft for B class office buildings, vacancy rates of 6.5% for A versus 9.5% for B, operating costs of $13.50/sq ft for A versus $12/sq ft for B, and capitalization rates of 6.75% for A versus 7.00% for B. In support, a brief (C-1) comprising 101 pages was submitted.

[6] The Complainant stated there was no issue with respect to the assessment on the rest of the property, namely buildings D and E, and the parkade.

[7] The Complainant further indicated there had originally been an issue as to exemptions; however, the issue had been withdrawn by the time of the hearing.

[8] The Complainant submitted rent rolls of the subject (C-1, pages 13 to 42) dated December 2012, July 2012, July 2011 and August 2011 indicating that the lease rates were below those of an A class south side office building and were more in line with a B classification.

[9] A chart of recent leases ranging from Sept 2010 to December 2011 in building B and C (C-1, page 43) showed a range in lease rates from $10.00/sq ft to $20.00/sq ft with a median rate of $13.00/sq ft and a weighted average rate of $15.15/sq ft, further indicating that the assessed lease rate of $17.00/sq ft was excessive. The Complainant stated that 90% of the leases in

Buildings B and C have either renewed or been rented to new tenants in the past two years. The Complainant noted that only one lease at $20/sq ft was higher than the typical lease rates for A buildings and the rest were below the A level. Furthermore, the Complainant noted that lease rates have been declining over time.

[10] The Complainant stated that while Building C is leased to a single tenant, Building B is a mixed tenant building, with occupied space ranging from 220 sq ft to 29,000 sq ft, and lease rates ranging from $10/sq ft to $20/sq ft. The subject property's average lease rate over the past two years is representative of the typical lease rate used by the City of Edmonton in its assessment for B class south side office buildings.

[11] The Complainant concluded that the subject property should be reclassified to SSB and assessed using all the parameters that would apply to a SSB building, to wit, a $15/sq ft lease rate, a 9.5% vacancy rate, a $12sq ft operating cost allowance, and a 7.00% capitalization rate. This would result in a reduced assessment for Building B, from $23,708,000 to $19,373,000, and for Building C, from $12,713,000 to $10,121,600. The overall 2013 property assessment would thus be reduced from $76,811,500 to $69,885,000.

Position of the Respondent

[12] It is the Respondent's position that the subject property has been assessed fairly and equitably. In support, a brief (R-1) containing 135 pages was submitted as evidence.

[13] The Respondent stated that, in addition to lease rates, the type of interior finish contributed to quality of the building and the ability to maintain typical lease rates. Photographs (R-1, pages 4-33) were provided of the interior and exterior of the buildings, which in the Respondent's opinion illustrated a clearer picture of the high level of finish in all buildings in the development. The Respondent also provided a list of building permits issued to the subject property since early 2011 to exhibit the level of expenditures that were incurred toward upgrading the interior of the subject property (R-1, page 64).

[14] The Respondent presented insight into mass appraisal methodology by referencing the Mass Appraisal Brief (R-1, page 111), and explaining the use of typical market rent as opposed to actual rent when assessing properties.

[15] The Respondent provided a reconstruction of the rent roll of all four buildings (R-1, page 55), and discussed how the entire rent of the subject property should play a role in assessment calculations, noting that while typical market lease rates for buildings B and C may have been greater than actual lease rates, typical lease rates for buildings D and E were in fact less than the actual lease rates. The total combined actual income of all four buildings amounted to $5,404,872, and when compared to the combined typical assessed income of $5,184,879, shows clearly that the typical lease rates applied are correct. The Respondent suggested that it would be incorrect to isolate portions of the assessment in seeking a reduction without looking at the entire subject property's assessment.

[16] To further support their position, the Respondent supplied suburban lease rates for all subclass A buildings (R-1, page 5). These rates ranged from time adjusted leases of $10.50/sq ft to $21.30/sq ft, a median of $17.34/sq ft and an average of $16.95/sq ft. The Respondent noted that two of the subject property leases were included in the 22 comparables and exhibited both the lowest and the highest lease rates within the group.

[17] The Respondent included operating expense comparables (R-1, page 60) as well as vacancy rate comparables (R-1, page 61) to demonstrate that $13.00/sq ft and 6.5% is typical for operating expenses and vacancy rates in A class buildings.

[18] Equity comparables for both A and AA class office buildings (R-1, pages 62-63) were provided to further illustrate that the assessment parameters used are consistent and equitable.

[19] The Respondent concluded that the evidence proves that buildings A and B were assessed correctly as A class buildings, and as a result, asked the Board to confirm the 2013 assessment of the subject property at $76,811,500.

Decision

[20] The Board's decision is to confirm the 2013 assessment of $76,811,500.

Reasons for the Decision

[21] The Board considered the Complainant's position that the contract lease rates in Buildings B and C were more representative of a B rather than an A class building.

[22] The Board noted that the core of the Complainant's evidence relied on the subject building's actual rental rates. No third party evidence was included to strengthen the Complainant's argument that building B and C had been incorrectly classified as subclass A.

[23] The Board found no reference in the Complainant's evidence related to typical lease, vacancy and capitalization rates or operating costs for the subclasses being discussed. As a result, the Board was not convinced that a change of subclass is appropriate.

[24] The Board notes that although most leases in building B and C are below the assessed rate of $17.00/sq ft, two leases dated Sept 2010 were signed at $20.00/sq ft, indicating that the subject can command leases representative of an A class building.

[25] Furthermore, the Board noted that an excess of 75% of all four buildings is leased to one tenant. This tenant is leasing a small amount of space relative to the net leasable area of the entire complex for $10.00/sq ft and $13.00/sq ft in buildings B and C. It is reasonable to conclude that these low lease rates are suspect and may have been a concession to this major tenant, especially since their lease rates in buildings D and E are in excess of the typical rates, and several don't expire until 2014 and 2019. The Board, therefore, placed little weight on the evidence provided by the Complainant.

[26] The Board was most persuaded by the evidence provided by the Respondent. The photos showed that buildings B and C had been well maintained and upgraded, indicating that the subject is of a high quality.

[27] The Board recognizes that under section 2(c) of MRAT, mass appraisal "must reflect typical market conditions for properties similar to that property", as opposed to individual appraisal which reflects only the actual factors connected with that specific property.

[28] The Complainant did not persuade the Board that the assessment of the subject is not correct, fair or equitable, and thus confirms the 2013 assessment at $76,811,500.

Heard commencing July 17th, 2013.

Dated this 14th day of August, 2013, at the City of Edmonton, Alberta.

Petra Hagemann, Presiding Officer

Appearances:

Walid Melhem
for the Complainant

Tania Smith
Vasily Kim
for the Respondent

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.