Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00927

Assessment Roll Number:	3574456
Municipal Address:	10019 102 Avenue NW
Assessment Year:	2013
Assessment Type:	Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
George Zaharia, Presiding Officer
Brian Hetherington, Board Member
Dale Doan, 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 matter before them.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a 16-storey office building located at 10019 102 Avenue NW in the downtown financial district of Edmonton. Since the property is used as a toll equipment building by Telus, the Respondent has designated 156,974 square feet as "not finished office space" in that it houses telecommunication equipment. This space is subject to a $77 per square foot reduction in the assessment of the property. The building comprises 311,159 square feet of office space, 2,793 square feet of CRU space, and 26,705 square feet of storage space for a total of 340,657 square feet. There is neither underground nor surface parking space. The building was constructed in 1979, and is classed as a BL building.

[4] The subject property was valued on the income approach, resulting in a 2013 assessment of $39,753,500.

Issue(s)

[5] Is the assessment of the subject property too high as a result of the 6.5% capitalization rate utilized by the Respondent in arriving at the 2013 assessment?

[6] Is the 156,974 square feet of "not finished office space" attributed to the subject property by the Respondent sufficient, or should the amount be increased to 185,000 square feet?

Legislation

[7] **The *Municipal Government Act*, 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.

Position of the Complainant

[8] In support of its position that the 2013 assessment of the subject property was excessive, the Complainant presented a 24-page brief (Exhibit C-1). The Complainant argued that the capitalization rate (cap rate) of 6.5% utilized by the Respondent in arriving at the 2013 assessment was too low, and that based on a review of cap rates of sales of comparable properties, the cap rate should be 7.5%. The Complainant also argued that the amount of space designated by the Respondent as "dark space" should be increased from 156,974 to 185,000 square feet.

[9] The Complainant provided a two-year assessment history of the subject property that showed the 2013 assessment was 6.4% greater than the 2012 assessment, adding that the reason for the increase is unknown (Exhibit C-1, page 3).

[10] The Complainant advised the Board that the building had been constructed in 1979 for the purpose of housing large computerized telephone toll equipment. Progress in computerization had led to much smaller equipment being required, and consequently the need for less space. Based on the owner's measurements, 185,000 square feet of the space was still used for housing equipment, while the Respondent had assigned only 156,000 square feet for this purpose. By applying the Respondent's $77 per square foot reduction in the assessment in recognition of this "dark space" to the affected space as per the owner's measurements, the assessment would be reduced by $14,245,000 rather than the $12,087,000 calculated by the Respondent (Exhibit C-1, page 8).

[11] The Complainant advised the Board that the subject property does not have many windows as typically seen in other class B office buildings, adding that the building would require significant retrofitting to enable it to compete with typical office buildings. The Complainant provided exterior pictures of three other office buildings to demonstrate how the subject property lacked the amount of windows present in the other buildings (Exhibit C-1, pages 9 to 11).

[12] The Complainant submitted sales of six comparable properties that sold between January 13, 2009 and December 16, 2011 for cap rates that ranged from 5.85% to 7.58%, resulting in an average cap rate of 6.86%. All of the sales comparables were "class A" buildings while the subject is a "class BL" building. It was the position of the Complainant that since sales of comparable properties in the market place resulted in an average cap rate of 6.86% for "class A" buildings, the cap rate for the subject property which is an inferior "class BL" building should be increased from the current 6.5% to 7.5%, since the cap rate for class B buildings would be typically higher than the cap rate for class A buildings (Exhibit C-1, page 13).

[13] The Complainant took no issue with all the other parameters used by the Respondent in calculating the assessment such as rental rates, vacancy rates, structural expenses, and vacancy shortfalls, resulting in a Net Operating Income (NOI) of $3,369,660. This was confirmed by the proposed assessment prepared by the Complainant, using all the Respondent's other parameters, to arrive at the requested reduced assessment of $30,683,500 (Exhibit C-1, page 14).

[14] The Complainant advised the Board that he had requested Doug Urichuk, the building's Operations Manager, to determine how much space was used for telecommunications equipment. He presented an email (Exhibit C-1, page 17), wherein Mr. Urichuk advised that he had "very unscientificly (sic)" estimated the square footage. This showed that a total of 130,280 square feet of space between the basement and the 11th floor was used for technical equipment, while floors 13-16 were used for generators, electrical distribution and HVAC equipment, amounting to an additional 55,000 square feet. By adding these two numbers, the result supported the request to increase the space eligible for the $77 per square foot reduction to the revised 185,000 square feet.

[15] Under cross-examination, the Complainant acknowledged that the measurements presented by Mr. Urichuk were not BOMA certified.

[16] In the 23-page Rebuttal document (Exhibit C-2), the Complainant reproduced the City's measurements of each floor and identified what space was allocated for Actual Telecom use and what was allocated for Actual Office use. This chart showed that 177,852 square feet was used for telecom purposes, and 162,810 square feet was applied to office use. Since the space allocated to Telecom use was less the 185,000 originally stated, the Complainant revised his request for a reduction in the assessment due to the "unfinished office space" from 185,000 to 177,852 square feet, or from $14,245,000 to $13,694,500 (Exhibit C-2, page 6).

[17] In the rebuttal document, the Complainant further questioned the appropriateness of the sales comparables submitted by the Respondent in defense of its cap rate. Six of the sales were part of portfolio sales, and one sale was a three-storey low-rise building with a Sobeys supermarket on the ground level. The last sale was of the Stantec Technology Tower, which had not been used by the Complainant in his cap rate study, since this property is not in the downtown market area as is the subject, and all the other comparables submitted by the Complainant. (Exhibit C-2, pages 7 to 10)

[18] The Complainant stated that the Stantec sale was the only sale submitted by the Respondent that was not a portfolio sale and in his words "*represents a clean valid sale between two unrelated parties, without the necessity of separating other interests*". The sale occurred in October, 2011 for $49,250,000 which is 8.5% less than the 2013 assessment of $53,842,000, suggesting that the Stantec Tower is over-assessed (Exhibit C-2, page 10).

[19] Additionally, the Complainant argued that the 6.56% adjusted cap rate of the Stantec Tower sale as shown by the Respondent for a building that is classed as "A" is proof that the 6.5% cap rate applied to the subject property, that is a "class BL" building, is too low and should be raised to the requested 7.5%.

[20] In closing, the Complainant stated that the criticism of the Network reports was unfair and suggested that portfolio sales be used with "caution". The Complainant requested the Board reduce the 2013 assessment from $39,753,500 to $31,234,000 (revised), based on increasing the cap rate from 6.5% o 7.5%, and increasing the "dark space" from 156,974 square feet to 177,852 square feet.

Position of the Respondent

[21] The Respondent stated that the 2013 assessment of the subject property was fair and equitable. To support its position, the Respondent presented the Board with a 93-page brief (Exhibit R-1), requesting confirmation of the assessment of the subject property at $39,753,500.

[22] In the Respondent's Summary of the Complainant's issues, the Respondent:

a) Included a chart of the measurements of the subject property, showing the net rentable area of each floor as 24,332.65 square feet for a total rentable area of 340,657 square feet. The Respondent indicated that the building efficiency, which is a ratio of the net rentable area divided by the gross building area, was calculated at 81%, compared to the median of 85% and the average of 88% for downtown office properties (Exhibit R-1, page 20). This information was supported by a chart that included fifteen class BL downtown office buildings (Exhibit R-1, page 50);

b) Commented on the Complainant's submission to increase the square footage of space used for telecommunications equipment to 185,000 square feet, stating that the Complainant did not present any reliable evidence (such as floor plans, professionally prepared floor measurements) to support his claims for an additional space allowance (Exhibit R-1, page 21). The Respondent argued that BOMA certified measurements are required, rather than estimates prepared by the owner's employee;

c) Responded to the Complainant's position that the cap rate for the subject property should be increased from 6.5% to 7.5% by providing an explanation as to how an Overall Capitalization Rate (OCR) is calculated (Exhibit R-1, pages 21 and 22):

    1) The Overall Capitalization Rate (OCR) is a byproduct of the equation used in the income approach: Market Value (MV) = NOI divided by the OCR;

    2) The Respondent is legislated to produce assessments using mass appraisal, meaning that typical income parameters are developed for various districts and subclasses. The income parameters include lease rates, operating expenses, vacancy rates, and

structural allowances. The resulting typical NOI, when divided by the sale price of a property, results in the typical OCR.

3) The cap rate study conducted by the Respondent demonstrated that there is a clear hierarchy of OCR associated with office classes. In general the lower class building warrants a higher cap rate. From its cap rate study, the Respondent has determined that:

- Classes BL, BH and BB were assessed at an OCR of 6.5%
- Classes AL and AH were assessed at an OCR of 6.0%
- Classes AA and AAA were assessed at an OCR of 5.5%.

d) Informed the Board that the 2013 assessment had been reduced by the amount of $12,087,000 as a result of the space occupied by the telecommunications equipment.

[23] The Respondent provided copies of the Request for Information (RFI's) submitted by the Building owner for 2004, 2005, 2007 and 2008, all showing a total rentable area of 393,848 square feet, compared to the Respondent's applied total rentable area of 340,657 square feet. The 2012 RFI reported rentable area of only 2,793 square feet, prompting the Respondent to rely upon the earlier RFI's that showed rentable area of 393,848 square feet (Exhibit R-1, pages 25 to 34).

[24] The Respondent submitted sales of eight comparables, three AA class buildings and five A class buildings (Exhibit R-1, page 35). The sales occurred between April 16, 2010 and February 10, 2012. The median cap rate of the three AA class buildings was 5.37%, while the median cap rate of the five A class buildings was 6.02%. The Respondent argued that the resulting averages supported the 5.5% OCR applied to class AA buildings, the 6.0% OCR applied to class A buildings, and the 6.5% OCR applied to class B buildings, consistent with the previous year's OCR hierarchy which had a 0.5% differential between classes.

[25] The Respondent provided a chart of the comparison of actual Colliers OCR versus typical City's OCR (Exhibit R-1, page 37). The City's median OCR for class AA buildings using typical values was 5.37% compared to the Complainant's 6.66% median OCR using values at the time of sale. The City's median OCR for class A buildings using typical values was 6.02% compared to the Complainant's 6.98% median OCR using actual values.

[26] The Respondent submitted a chart of Downtown 2013 Valuation Rates showing that class AA buildings were assessed using a cap rate of 5.5%, class A buildings were assessed using a cap rate of 6.0%, and class B buildings were assessed using a cap rate of 6.5%, demonstrating that all similar properties in the downtown market area were equitably assessed (Exhibit R-1, page 48).

[27] The Respondent submitted a chart of Downtown BL Class Office Buildings (Exhibit R-1, page 49) showing that all properties, except one, were assessed using the same typical values to arrive at an assessment of $159.84 per square foot. The one exception was granted a higher vacancy rates due to a chronic vacancy problem. The Respondent stated that once typicals are established, then all similar properties are assessed the same.

[28] In summation, the Respondent raised the issue of onus and whether or not the Complainant had met the burden of proof. As well, The Respondent referred the Board to Exhibit R-1, page 91 that addressed the issue of "year by year percentage increases". The Respondent explained that there were no reliable class B building sales to develop an OCR and therefore looked to the previous year's hierarchy to establish the current year's OCR. It was the position of the Respondent that a "portfolio sale does not equal bad". What is required, is to do research – do due diligence to ensure the validity and value of the properties sold. In reference to the sale of the Stantec Technology Tower that the Complainant had considered as the best evidence that the cap rate of the subject was too low, the Respondent stated that one sale does not make a market.

[29] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at $39,753,500.

Decision

[30] The decision of the Board is to confirm the 2013 assessment of the subject property at $39,753,500.

[31] The Board also confirms the 156,974 square feet of "not finished office space" as designated by the Respondent which reduces the assessment by $77 per square foot, or a total of $12,087,000. This reduction is incorporated into the $39,753,500 assessment.

Reasons for the Decision

[32] The Board did not accept the Respondent's contention that the Complainant had not met onus. The Complainant had submitted a cap rate study that included sales of six similar properties in support of his position that the cap rate applied to the subject property in determining the 2013 assessment was too low. It became incumbent upon the Board to analyze the information to determine whether the information justified a change to the cap rate, and hence a reduced assessment. Based on the decision of the Board, the information provided by the Complainant did not persuade the Board that a change in the cap rate was warranted.

[33] The Board was not persuaded to place any weight on the Complainant's position that the 2013 assessment was 6.4% higher than the 2012 assessment, suggesting that the 2013 assessment was too high. The Board concurs with the information provided by the Respondent that was included in Exhibit R-1 wherein it was written in an MGB decision that "….*respective Boards have held that each year's assessment is independent of the previous assessments, and the mere fact of a large percentage increase without more evidence, is not enough information to draw a conclusion that an assessment is too high.*"

[34] The Board was surprised that the Complainant sought the acceptance of the "very unscientificly (sic) estimated" floor measurements prepared by an employee, purportedly illustrating the space used for telecommunications equipment and the space allocated for office use. The Board placed no weight on these measurements since the services of an accredited BOMA representative were not used. These measurements were to justify the increase in the amount of space that would be subject to the $77 per square foot reduction in assessment for "not finished office space". The totals as calculated by the employee were at variance with the Respondent's totals, which had been used in the assessment.

[35] Since the Complainant agreed with all the typical values applied by the Respondent, save the cap rate, the only other issue that had to be addressed was whether the 6.5% cap rate utilized by the Respondent was too low, and as requested by the Complainant, be increased to 7.5%. The Board placed less weight on the evidence and argument put forward by the Complainant for the following reasons:

a) In preparing his cap rate study, the Complainant relied on the cap rates as determined by the Network using the actual values at the time of sale, January 2009 to December 2011, of the six properties used in the study, rather than using typical values as mandated by The *Matters Relating to Assessment and Taxation Regulation (MRAT)*, Alta Reg 220/2004.

b) The Network documents clearly show that the vacancy rates are not a typical value, ranging from 0% to 4.9%, contrary to the requirements of mass appraisal.

c) It is unknown what streams of income were included, and what expenses were considered in arriving at the NOI as shown by the Network.

d) Provincial regulations mandate properties must be assessed by the mass appraisal method. MRAT, s. 2, reads:

   An assessment of property based on market value

   (a) Must be prepared using mass appraisal,

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

   (c) Must reflect typical market conditions for the properties similar to that property.

[36] The Board placed greater weight on the evidence and argument presented by the Respondent for the following reasons:

a) In arriving at the cap rate used by the Respondent to determine the assessed value of the subject property, the Board accepted the Respondent's explanation that typical values were determined from Requests for Information (RFI) sent out to property owners. These typical values were then used for all similar properties as mandated by MRAT.

b) Although the class of buildings used by the Respondent in its cap rate study were class A and class AA buildings, not class BL as is the subject property, the Board accepted the Respondent's explanation of the "hierarchy" between classes of buildings resulting in a 0.5% differential between building classes. This differential was accepted by the Complainant as evidenced by the Complainant when he argued that the sale of Stantec Tower, which is a class A building, resulted in a cap rate of 6.56% and therefore supported his request to increase the cap rate for the subject property from 6.5% to 7.5% because it was a class BL building.

c) The Respondent was able to demonstrate that the Network reported actual values, not typical values as mandated by MRAT. The reported vacancy rates varied from 0% to 4.9%, rather than a typical value that the Respondent must use, which for the 2013 assessment year was 9.5% for office space and 5.0% for retail space.

[37] The Respondent provided evidence that all the properties similar to the subject were assessed in the same manner, utilizing typical values, as mandated by MRAT.

[38] The Board was persuaded that the 2013 assessment of the subject property at $39,753,500 was fair and equitable.

Dissenting Opinion

[39] There was no dissenting opinion.

Heard on August 19, 2013.

Dated this 13th day of September, 2013, at the City of Edmonton, Alberta.

George Zaharia, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Tanya 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.