Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00931

Assessment Roll Number: 3127255
Municipal Address: 10025 106 Street 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] The Respondent advised the Board that it had included in its disclosure a recommendation to increase the tax exempt portion of the subject property. However, this issue had not been raised by the Complainant on the original complaint form. In light of a verbal decision that had been delivered by another Board during the previous week, not allowing a similar request, in that it was deemed a new issue not identified on the complaint form, the Respondent raised the issue as a preliminary matter. Since written reasons for this decision had not yet been issued, it was suggested that the reason for this decision was as a result of s. 9(1) of the *Matters Relating to Assessment Complaints Regulation* (MRAC), Alta Reg 310/2009 that states: "*A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*"

[3] The Complainant's position was that he saw no reason that the Respondent's recommendation could not be enacted.

[4] In light of the fact that the Complainant did not object to this matter, and the Respondent was still putting forward the recommendation, the Board ruled that the issue could be included as

a normal part of the Respondent's presentation, and would be dealt with by the Board in its final deliberations.

Background

[5] The subject property, known as the Baker Centre, is a high rise office building located at 10025 106 Street NW in the financial district of the downtown market area of Edmonton. The building comprises 111,383 square feet of office space, 25,095 square feet of CRU space, and 16,072 square feet of storage space for a total of 152,553 square feet. The building was constructed in 1969, and is classed as a BH building.

[6] The subject property was valued on the income approach resulting in a 2013 assessment of $30,468,000.

Issue(s)

[7] 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?

Legislation

[8] **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

[9] In support of its position that the 2013 assessment of the subject property was excessive, the Complainant presented a 26-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 7.0%.

[10] The Complainant provided a two-year assessment history of the subject property that showed the 2013 assessment was 2.9% lower than the 2012 assessment, stating that the primary cause for the decrease in assessment was the substantial drop in the parking rate, although the rental rate had been increased and the cap rate had been decreased (Exhibit C-1, page 2).

[11] The Complainant submitted that the subject property had been purchased by the current owner on August 23, 2011 for the amount of $32,020,000 (Exhibit C-1, page 3).

[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 B" 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 B" building should be increased from the current 6.5% to 7.0%, since the cap rate for class B buildings would be typically higher than the cap rate for class A buildings (Exhibit C-1, page 6).

[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 $1,980,429. 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 $29,291,500 (Exhibit C-1, page 7).

[14] The Complainant submitted a rebuttal, questioning 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 5 to 8).

[15] 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.

[16] 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 B" building, is too low and should be raised to the requested 7.0%.

[17] In summation, the Complainant argued that the Respondent had not provided sales comparables of class B buildings to support its 6.5% cap rate applied to the subject. He also argued that the Stantec Tower sale, with a 6.56% cap rate of a class A building, was the best evidence that the 6.5% cap rate applied to the subject, which is a class B building, is too low.

[18] 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 $30,468,000 to $29,291,500, based on increasing the cap rate to 7.0%.

Position of the Respondent

[19] The Respondent stated that the 2013 assessment of the subject was fair and equitable. To support its position, the Respondent presented a 115-page assessment brief (Exhibit R-1) that included the law and legislation brief. The Respondent also presented an August 16, 2013 CARB decision that addressed the appropriateness of a recent sale price of a property being used as the market value of that property for assessment purposes (Exhibit R-2).

[20] In response to the Complainant's position that the cap rate for the subject property should be increased from 6.5% to 7.0%, the Respondent provided an explanation how an Overall Capitalization Rate (OCR) is calculated (Exhibit R-1, pages 23 and 24):

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

b) 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.

c) 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 class B buildings were assessed using a 6.5% OCR; class A buildings were assessed using a 6.0% OCR, and class AA and AAA buildings were assessed using a 5.5% OCR.

[21] The Respondent submitted sales of eight comparables, three AA class buildings and five A class buildings (Exhibit R-1, page 26). 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.

[22] The Respondent provided a chart of the comparison of actual Colliers OCR versus typical City's OCR (Exhibit R-1, page 36). 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.

[23] 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 39).

[24] The Respondent submitted a chart of Downtown BH Class Office Buildings (Exhibit R-1, page 40) showing that all properties, except two, were assessed using the same typical values to arrive at an assessment of $184.94 per square foot. The two exceptions were granted 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.

[25] In support of using portfolio sales, the Respondent provided a quote from the Alberta Recording and Reporting Guide which stated: "*If a multiple parcel sale is included, the sale price must be apportioned to each parcel. Apportionment adjustments should only be made where information about each sale price apportionment is available or can be derived.* " (Exhibit R-1, page 41) Specific to the subject property, the Respondent submitted a Land Titles Transfer of Land and an Affidavit re Value of Land confirming that the value of the sales transaction of the subject property was $32,020,000 (Exhibit R-1, pages 45 and 46).

[26] The Respondent submitted a copy of a sales validation questionnaire that had been completed by the owner of the subject property. Two of the eighteen questions addressed the issue of the value of the property at the time of the August 23, 2011 sale. In response to what was the total sale price, the owner responded $32,020,000. In response to the question whether an appraisal had been made on the property, the answer was yes and the appraisal done in April, 2011 indicated a value of $34,020,000 (Exhibit R-1, pages 42 and 43).

[27] The Respondent submitted information addressing mass appraisal which is a methodology for valuing individual properties using typical values for groups of comparable properties (Exhibit R-1, page 87). One of the typical values is the current economic or market rent which is used to form the basis of the valuation as opposed to actual rents, because actual rents reflect historical revenues derived from leases negotiated before the valuation date (Exhibit R-1, page 91).

[28] The Respondent submitted a CARB decision dated July 9, 2013 wherein the Board found that the Complainant's cap rates, as published by the Network, were those as derived from the actual NOI at the time of sale, and therefore should not be used for assessment purposes (Exhibit R-1, page 85).

[29] In support of the position that consideration be given to the sale of the subject property, the Respondent submitted a CARB decision dated August 16, 2013 that referenced an Alberta Queen's Bench Decision (*697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512) where "*the court found that the Municipal Government Board erred when it failed to rely on the evidence of value provided by the recent sale of the subject property*". The court's decision in 697604 referenced *Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.* (1984) 47 O.R. (2d) 766 (Ont. H.C.J. Div. Ct). This decision went on to state that "*I think that generally speaking the recent sale price, if available as was the case, is in law and, in common sense, the most realistic and most reliable*" (Exhibit R-2, pages 8 and 9).

[30] The Respondent also provided the rationale for the recommendation to increase the tax exemption status of the subject property from 7.384% to 8.864%. The Respondent submitted a written reason on page 54 of Exhibit R-1, stating that in response to a November 8, 2011 CARB decision, "*The City of Edmonton is now reviewing all exemption calculations to ensure that a consistent methodology is applied. The revised methodology of calculating the percent exempt uses actual area leased by the entity over the area used to assess the property.*"

[31] In summation, the Respondent raised the issue of onus and whether or not the Complainant had met the burden of proof. 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.

[32] In conclusion, the Respondent requested that the Board confirm the 2013 assessment of the subject property at $30,468,000. As well, the Respondent requested the Board to increase the tax exempt status from 7.384% to 8.864%.

Decision

[33] The decision of the Board is to confirm the 2013 assessment of the subject property at $30,468,000.

[34] The Board also accepted the Respondent's recommendation to increase the tax exemption of the subject property from 7.384% to 8.864%.

Reasons for the Decision

[35] 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.

[36] Since the Complainant agreed with all the typical values applied by the Respondent, save the cap rate, the only 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 7.0%. 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.

[37] 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 B 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 7.0% because it was a class B 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.

[38] 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.

[39] Although the Respondent did not use the sale of the subject property which occurred ten months prior to valuation date of July 1, 2012, there was compelling evidence through land titles

transfer documents and sale validation questionnaires that in the opinion of the owner, the subject property was worth $32,020,00, $1,552,000 more than the assessed value of $30,468,000.

[40] The Board was persuaded that the 2013 assessment of the subject property at $30,468,000 was fair and equitable.

[41] With regards to the percentage tax exempt issue, the Board accepted the Respondent's recommendation to increase the percentage of tax exemption for the following reasons:

a) The increase in the percentage of the tax exemption portion of the subject property has no impact on its assessment, and therefore does not have any effect on the complaint issue which was the "assessment amount".

b) The rationale for the previous Board's decision appears to be based on s. 9(1) of MRAC. This Board concurs that in order to allow the Respondent to know the case against it, the Complainant must identify on the complaint form, all the issues that it wishes to raise. However, it is the position of this Board that the assessed person or a taxpayer is the party that commences the complaint and is therefore required to raise all issues that it wishes to address in its disclosure. This is confirmed by s. 460 of the *Municipal Government Act* (MGA), R.S.A. 2000 Chapter M-26 that states:

> *(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.*
>
> *(2) A complaint must be in the form prescribed in the regulations and must be accompanied with a fee set out by the council under section 481(1), if any.*
>
> *(3) A complaint must be made only by an assessed person or a taxpayer.*

c) It is the position of this Board that s. 305(5) of the MGA grants the Respondent the authority to make a change or correction to the assessment roll even when a complaint has been made with respect to an assessed property, under certain conditions. This section states: *"If a complaint has been made under section 460 or 488 about an assessed property, the assessor must not correct or change the assessment roll in respect of that property* ***until a decision of an assessment review board or the Municipal Government Board, as the case may be, has been rendered or the complaint has been withdrawn.***" A decision has now been rendered by the CARB with respect to the issue identified on the complaint form, and this Board is only accepting the recommendation made by the Respondent to address a problem decided upon by a CARB in 2011.

d) Even if this Board was not asked to accept a recommendation by the Respondent, the Respondent has the authority pursuant to s. 305(5) to change or correct the assessment roll, now that the decision of the Board has been rendered with respect to the original complaint.

e) It is now incumbent upon the Respondent, to advise the property owner of the correction pursuant to MGA s. 305(1) (b) that states "*on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*"

f) The Complainant did not object to the Respondent's recommendation even though he had not raised the matter in box 10 of the complaint form.

Dissenting Opinion

[42] There was no dissenting opinion.

Heard August 19, 2013.

Dated this 9th 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.