Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00976

Assessment Roll Number:	10005504
Municipal Address:	10130 112 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
Robert Mowbrey, Presiding Officer
Brian Frost, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. The members of the Board stated they did not have any bias in respect of this matter.

[2] The parties presenting evidence in the hearing were either sworn in or affirmed, the choice being up to the individual.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property is two seven story office buildings joined by common entry. It is located at 10130-112th Street NW. The office buildings were constructed in 1978 and have 189,304 square feet of office space. The 2013 assessment is for $53,842,000.

Issues

[5] A. Should the sale of the subject property, prior to the valuation date, support a reduction in the current assessment?

B. What is the appropriate capitalization rate for the subject property?

C. What is the appropriate assessment to sales ratio [ASR] for the subject property?

Legislation

[6] 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

[7] The Complainant filed this complaint on the basis that the subject property assessment of $53,842,000 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package containing 34 pages to the Board (Exhibit C-1) and Rebuttal, containing 30 pages (Exhibit C-2).

[8] The Complainant stated that the issues being addressed are as follows:

a) the subject property is over-assessed based on the sale price of the subject property;

b) the capitalization rate (cap rate) is too low when compared to cap rates from sales of recent properties;

c) the subject property has been assessed inequitably based on the Assessment to Sale Ratio (ASR).

On the issue of the subject property being over-assessed based on the sale price:

[9] The Complainant stated that the subject property sold in October, 2011 for $49,250,000. This value is 8.5% less than the current 2013 assessment of $53,842,000.

[10] The Complainant described the best evidence of the current market value of a property as being the valid transaction of the subject property at or near the valuation date of July 1, 2012. Based on the sale price, the Complainant requested a new 2013 assessment of $49,250,000.

On the issue of the cap rate being too low when compared to cap rates from sales of recent properties:

[11] The Complainant detailed six sales comparables (Exhibit C-1, page 10) which sold between January 1, 2009 and July 1, 2012 whose cap rate ranged from 5.85% to 7.58% and averaged 6.86% as compared to the subject property at 6.00%.

[12] The sales comparables were described by the Complainant as superior to the subject in classification being AA and AH with the exception of Enbridge Tower which, like the subject, is AL. The comparable properties are all in proximity to the downtown financial district while the subject was described as being in the government district.

[13] The Complainant submitted that, based on the recent transactions of downtown office buildings, 6.50% is the most appropriate cap rate for the subject property.

On the issue of the subject property has been assessed inequitably based on the Assessment to Sale Ratio (ASR:

[14] The Complainant included seven sales comparables (Exhibit C-1, page 9) utilized by the Respondent which sold between November 2010 and February 2012 whose ASR averaged 0.94% as compared to the subject property at 1.09% which the Complainant described as not equitable.

[15] The Complainant noted that although the sales were from November 2010 to February 2012, the City deemed that no time-adjustments were necessary.

[16] The sales comparables were described by the Complainant as superior to the subject in classification being AA and AH with the exception of Enbridge Tower which, like the subject, is AL. The comparable properties are all in proximity to the downtown financial district. During the hearing the Complainant noted that the subject is actually located in the suburban 124 street sector.

[17] The Complainant stated that, even allowing for the removal of Cecil Place which is not comparable to other high-rise office buildings, an average ASR of 0.98% still results, which supports the requested ASR of 1.00%.

Rebuttal of the Complainant

[18] The Complainant submitted evidence in rebuttal to the Respondent's submission (Exhibit C-2, 30 pages) to demonstrate that the submission presented by the Respondent does not support a decision to confirm the current assessment.

[19] The Complainant again detailed the seven sales comparables from Exhibit C-2, page 9, and included a corrected 2013 assessment for the HSBC Building. The original assessment, $87,012,500, was reduced to $83,735,500 as per agreement between the City of Edmonton and the Complainant. This lowered the ASR for the HSBC Building from 1.04 to 1.00. The overall average ASR of all properties decreased from 0.94 to 0.93.

[20] The Complainant described the sale of the subject as the best evidence of market value and requested a new 2013 assessment in the amount of $49,250,000. The ASR approach, based on the comparables, supports the requested 1.00 ASR or $49,250,000 as does the requested appropriate change to the cap rate from 6.00% to 6.50%.

Position of the Respondent

[21] In defending the current years assessment, the Respondent submitted a 123 page brief (Exhibit R-1) and a 22 page sur-rebuttal (Exhibit R-2) in support of the argument that the 2013 assessment is fair and equitable.

[22] The Respondent presented a synopsis of the Downtown Valuation Guide, (Exhibit R-1, pages 91 – 110), specifically referring to page 94, Mass Appraisal; page 99, Downtown Office Districts; page 103, Typical Market Rent per Square Foot; and page 110, Summary.

[23] The Respondent noted that under Mass Appraisal properties are stratified into groups of comparable properties, common property attributes are identified for the property in each group and a uniform valuation model is calibrated for each group using market information incorporating the property attributes.

[24] As to Downtown Office Districts, the Respondent noted that there are properties classified as downtown properties even though they are physically located outside the boundaries of the government and financial districts.

[25] The Respondent, in reference to Typical Market Rent per Square Foot, noted that the rent currently prevailing in the open market for properties comparable to the subject property is the typical market rent, adding that in many cases actual rents reflect historical revenues from leases negotiated before the valuation date.

[26] In summary, the Respondent stated downtown office properties are assessed using the Income Approach to value, the resulting assessments were tested and that they meet Provincial Quality Standards under MRAT AR220/2004. Further, the Respondent stated the assessment models, the process utilized and the results are submitted to the Assessment Services Branch of Municipal Affairs for audit and that the City of Edmonton has met all governing legislation including regulations and quality standards.

On the issue of the subject property being over-assessed based on the sale price:

[27] The Respondent acknowledged that the subject property sold for $49,250,000 in October 2011. The Respondent added that after review of the sale it was noted that the contract rents in place limited rental income for a further eight years, until December 2019. The Respondent stated that because legislation (MRAT 2(b)) requires that assessment must be based on fee simple estate, the sales data must be adjusted to account for lost income for the remainder of the

lease term. The present value of the lost income for the remaining eight years of the lease was calculated to be $2,112,096 (Exhibit R-1, page 38) which when added to the sale price resulted in a time adjusted sale price of $51,362,096 (Exhibit R-1, page 37).

[28] The Respondent stated that under MRAT, because the time adjusted sale price was within 5% of the assessment, it would not be proper for the Board to reduce the assessment on the strength of the sale of the subject property. The Respondent as well addressed its Law and Legislation Brief (Exhibit R-1, pages 111 – 123) and specifically page 115, (page 17 of the Brief), wherein it was noted that both the ARB and the MGB have ruled that it would not alter an assessment if the changed assessment were within 5% of the assessment.

[29] In Sur-rebuttal, the Respondent referred to *KBK No 197 Ventures Ltd. v. British Columbia (Assessor of area #09-Vancouver Sea to Sky Region)* at para. 92-94 which addressed the issue of altering assessments within a 5% value. The case law confirmed that while there were exceptions, summaries of the vast majority of 27 previous Board decisions suggest an approximate range of plus or minus 5% of the assessed value as being an acceptable range of value.

<u>On the issue of the capitalization rate (cap rate) being too low when compared to cap rates from sales of recent properties:</u>

[30] The Respondent presented evidence in the form of charts summarizing the Complainant's Cap rate analysis, (Exhibit R-1, page 27), the Respondent's own Downtown Cap Rate Analysis (Exhibit R-1, page 28), Downtown 2013 Valuation Rates (Exhibit R-1, page 39, and Downtown AL class Office Buildings (Exhibit R-1, page 40).

[31] The Respondent restructured the Complainant's Cap Rate Comparables to account for adjusted sale price, (for lease adjustment etc.) and adjusted Net Operating Income (NOI), (to reflect typical lease rates). The six comparable sales reflected cap rates of from 5.08% to 6.02%. The six comparable sales averaged 5.59% and reflected a median of 5.63%

[32] The Respondent's Downtown Cap Rate analysis documented three sales of AA office buildings in the financial district and five AL and AH buildings in the government district. The range was 4.13% to 5.63% and 5.62% to 7.43% respectively and the medians were 5.37% and 6.02%.

[33] To demonstrate equity, the Respondent, with its Downtown Valuation rates and Downtown AL Class Office Building charts, showed that a 6.00% cap rate was used for all Class AL downtown office building assessments.

<u>On the issue of the subject property being assessed inequitably based on the Assessment to Sale Ratio (ASR):</u>

[34] The Respondent stated that for an ASR analysis to be meaningful, the ASR must be calculated for each property in the analysis, not just a chosen few. The Respondent added that just because an average ASR of several sales is not 1.00, it doesn't mean the assessments are incorrect or inequitable, it just means the assessments do not precisely match the sale prices.

[35] The Respondent added that ASR is used by the Government of Alberta to measure the quality standards for the statistical testing of assessments, and that the City of Edmonton has met those standards.

[36] The Respondent requested that the Board confirm the 2013 assessment of $53,842,000.

Decision

[37] The decision of the Board is to reduce the 2013 assessment of $53,842,000 to $51,362,000.

Reasons for the Decision

[38] The Board believes the best indicator of market value is the sale of the subject property itself close to the valuation date. The Board was persuaded by the sale of the subject property for $49,250,000 in October 2011. The City of Edmonton deemed that no time adjustments were necessary.

[39] However, the Board took note of the International Association of Assessing Officers that provides general guidelines about when adjustments would have to be considered. The sale price of a property encumbered by a long-term lease of at least three years should be adjusted if the contract rent differs significantly from market rent. The sale price should be adjusted by the difference between the present worth of the two income streams.

[40] It is a requirement on any sale of an income producing property to consider whether the sale requires an adjustment from the leased fee value to the value of the fee simple property. Failing to consider such an adjustment would mean that the requirement to value properties at the fee simple valuation is being ignored.

[41] With the presence of long term signed leases with lease rates well below market value, the subject property sale price is reflective of the leased fee estate. The Board notes, however, that the assessment for the subject property must be based on fee simple estate and not the leased fee estate. Accordingly, the Board notes that the City did calculate the variance between the market rents and the contract rents in arriving at their assessment amount. Thus, the amount of $2,112,000 was added to the sale price of $49,250,000 to give an adjusted sale price of $51,362,000.

[42] The Board is not persuaded by the Respondent's assertion that the 2013 assessment be confirmed due to the fact that an approximate range of plus or minus 5% of the assessed value as being within an acceptable range of actual value. The Board notes that there are some exceptions to this case law and the Board considers this appeal to be one of these exceptions. The Board finds that 5% leeway either way on an assessment is a guideline only and is not intended to restrict the ability of the Board to reduce the assessment in a fair and reasonable manner.

[43] The Board is not persuaded by the Complainant's argument regarding a 6.50% capitalization rate for the subject property as opposed to the assessed 6.00% capitalization rate. The Complainant utilized third party documentation to support his argument on the capitalization rate. The Board is of the opinion that third party documentation is difficult to evaluate as it is unclear what parameters were used in establishing the cap rates.

[44] The Board is persuaded by the Respondent's analysis of the Complainant's cap rates. Both the average adjusted cap rate of 5.59% and the median adjusted cap rate of 5.63% support the assessment cap rate of 6.00%.

[45] The Board notes that the City has assessed all downtown AH office buildings with a 6.00% capitalization rate for 2013.

[46] When the subject property is viewed alongside the other assessed properties among the downtown office buildings, the Board is satisfied that 6.00% is the correct capitalization rate for 2013.

[47] The Board weighed the evidence regarding the assessment sales ratio [ASR] and found that it was not sufficiently compelling to alter the recommended adjusted 2013 assessment.

Dissenting Opinion

[48] There was no dissenting opinion.

Heard commencing September 23, 2013.
Dated this 1st day of October, 2013, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Cameron Ashmore, Legal Counsel
Vasily Kim, Assessor
Mary-Alice Nagy, observing
Amy Cheuk, Legal Counsel
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.