Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00977

Assessment Roll Number: 3574100
Municipal Address: 10199 101 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] During the hearing, the Respondent brought forth a preliminary matter objecting to page 11 of the Complainant's rebuttal. The Respondent stated that the matter under question was new material and the matter did not comply with Matters Relating To Assessment Complaints Regulation (MRAC section: 9.3).

"Section: 9.3 states a composite assessment review board must not hear any evidence from a municipality relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor."

[4] The Respondent advised the Board that the Complainant did not provide the City of Edmonton with the information required under the Request for Information for the year 2012.

[5] The Complainant advised the Board that the mistake was due to the sale of the subject property and information was being sent to the incorrect address.

[6] The Board recessed, deliberated and rendered a decision to the parties. The decision was that page 11 of the rebuttal evidence of the Complainant would not be allowed. The Complainant then proceeded with the rebuttal evidence disregarding page 11.

Background

[7] The subject property is a six story office building located at 10199-101st street and constructed in 1994. The office building has a building size of 135,154 square feet and has a building classification of AL within the City's class A office buildings inventory. The assessment for 2013 is for $32,340,500.

Issue(s)

[8] What is the appropriate cap rate for the subject property?

[9] Is the subject property atypical?

Legislation

[10] **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

[11] The Complainant filed this complaint on the basis that the subject property assessment of $32,340,500 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package containing 32 pages to the Board (Exhibit C-1) and Rebuttal, containing 41 pages (Exhibit C-2).

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

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

b) the subject property has been assessed inequitably based on the Assessment to Sale Ratio (ASR) of the sales comparables.

c) is the subject property atypical, unique and does not fit well within the mass appraisal model for downtown office buildings?

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

[13] The Complainant detailed six sales comparables (Exhibit C-1, page 8) 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%.

[14] 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.

[15] 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.

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

[16] The Complainant included eight sales comparables (Exhibit C-2, page 6) utilized by the Respondent which sold between November 2010 and February 2012 whose ASR averaged 0.95%.

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

[18] 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, was AL. The comparable properties were all in proximity to the downtown financial district.

[19] 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.

[20] The Complainant advised the Board that these properties, including Cecil Place had an average ASR of .95% and this is not equitable for the subject property (Exhibit C-2, page 6).

<u>Is the subject property sufficiently atypical and unique to question the validity of the mass appraisal model?</u>

[21] The Complainant advised the Board that the subject property had a unique floor plan when compared to similar buildings in Edmonton. Thus, the u-shaped floor plan creates a significant issue when leasing space to prospective tenants in that it creates a need to have a majority of the space occupied with a single tenant due to the issues of divisibility.

[22] The current situation of 46% vacant space is indicative of less desirability for this space, despite it being in a prime downtown location.

[23] The Complainant advised the Board that based on the additional risk resulting from the unique floor plan of the subject property, an increase of 0.50% to the capitalization rate must be made to account for this income stream risk (Exhibit C-1, page 7).

Rebuttal of the Complainant

[24] The Complainant submitted evidence in rebuttal to the Respondent's submission (Exhibit C-2, 41 pages) to demonstrate that the submission presented by the Respondent does not support a decision to confirm the current assessment.

[25] The Complainant again detailed the seven sales comparables from Exhibit C-2, page 6, 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 is 0.95.

[26] The Complainant advised the Board that the most similar property to the subject property is Cecil Place, which is a three story building and not a high rise building and the ASR is 0.75% (Exhibit C-2 page 6).

[27] The Complainant provided Composite Assessment Review Board (CARB) decisions to support the Complainant's regarding the preliminary issue and the 5% range of values (Exhibit C-2 pages 13-41).

[28] The Complainant requested the Board to reduce the 2013 assessment of $32,340,500 to $29,852,500 based on the associated income risk that must be accounted for in the capitalization rate.

Position of the Respondent

[29] In defending the current year's assessment, the Respondent submitted a 129 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.

[30] The Respondent presented a synopsis of the Downtown Valuation Guide, (Exhibit R-1, pages 97 – 116), specifically referring to page 100, Mass Appraisal; page 105, Downtown Office Districts; page 109, Typical Market Rent per Square Foot; and page 116, Summary.

[31] 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.

[32] 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.

[33] 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.

[34] 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 capitalization rate (cap rate) being too low when compared to cap rates from sales of recent properties:

[35] The Respondent presented evidence in the form of charts summarizing the Complainant's Cap rate analysis, (Exhibit R-1, page 41), the Respondent's own Downtown Cap Rate Analysis (Exhibit R-1, page 42), Downtown 2013 Valuation Rates (Exhibit R-1, page 52, and Downtown AL class Office Buildings (Exhibit R-1, page 53).

[36] 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%

[37] 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%.

[38] 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.

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

[39] 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.

[40] 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.

Is the subject property sufficiently atypical and unique to question the validity of the mass appraisal model?

[41] The Respondent noted the property was shown as fully occupied in 2011 and that Justice Canada vacated in September 2011. In the Respondent's opinion, because the building was full, its unique floor plan was not an issue.

[42] The Respondent requested the Board to confirm the 2013 assessment of $32,340,500.

Decision

[43] The decision of the Board is to reduce the 2013 assessment of $32,340,500 to $29,852,500.

Reasons for the Decision

[44] The Board is persuaded by the Complainant's argument that the subject property is atypical and unique and does not conform to the mass appraisal model for downtown office buildings. There was one tenant, not affiliated with the lead tenant, and that tenant vacated in September 2011. That the space has not been leased since then speaks to there being some issue as to demand for the type of space available in the subject property.

[45] The Board is not persuaded by the sales comparables of either the Complainant or the Respondent. The floor plan and the configuration of the subject property do not lend themselves well to the comparability of the other property sales.

[46] Although vacancy is not an issue, the Board notes that vacancy could well be exacerbated with the configuration of the building.

[47] The Board agrees with the Complainant that the cap rate for the subject property assessment should be increased by 0.50% over the typical class AL downtown office buildings due to the atypical floor plan and the overall uniqueness of the subject property.

[48] The Board weighed the evidence regarding the ASR and found that it was not appropriate given ASR was not identified as an issue in this hearing. Furthermore, there was no sales information on the subject property to allow the Board to determine the correctness of the ASR.

Dissenting Opinion

[49] There is no dissenting opinion.

Heard commencing September 24, 2013.
Dated this 4th day of October, 2013, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Amy Cheuk, Legal Counsel
Vasily Kim, Assessor
for the Respondent
Cameron Ashmore, 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.