Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00982

Assessment Roll Number: 10087396
Municipal Address: 10818 JAS PER AVE 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 an eleven storey office building located at 10818 – Jasper Avenue NW in the Downtown Government Sector. The office building was originally built in 1961, but was stripped to the superstructure and fully rebuilt to current standards, opening in 2009. Its effective year built is recorded as 1991. The building comprises 233,170 sq ft, 214,689 of which is office space. It is a class AA building. The 2013 assessment is $80,381,500.

Issues

[5] A. What is the appropriate lease rate for the subject property?

B. What is the appropriate capitalization rate 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 $80,381,500 was inequitable and in excess of market value. In support of this position, the Complainant submitted an evidence package containing 35 pages to the Board (Exhibit C-1) and Rebuttal, containing 35 pages (Exhibit C-2).

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

a) the lease rate used in the assessment is too high when compared to the lease rates currently being obtained in the subject property as well as the lease rates being obtained in similar properties;

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

On the issue of the subject property being over-assessed based on the lease rate:

[9] The Complainant stated that at the valuation date, nearly 50,000 sq ft of space was not only vacant within the subject property but was fully undeveloped and that leasing would require significant expenditure before occupancy by a new tenant. Floors 5 – 11 had been previously leased to Government tenants at rental rates that included capped operating costs. The only

leasing that took place near the valuation date was for 6,917 sq ft of space at $18.00 per sq ft (Exhibit C-1, page 10).

[10] The Complainant stated that Manulife Place, which the Complainant described as the widely acclaimed best property in Edmonton, is assessed utilizing a lease rate of $21.00 per sq ft, suggesting that the subject property, a "lesser" building, should be more rightly assessed using a lease rate of $18.00 to $19.00 per sq ft.

[11] The Complainant provided data on two leases for Manulife Place space which indicated they had leased at $20.00 per sq ft.

[12] The Complainant stated the lease rate for the subject property should be $19.00 per sq ft.

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

[13] The Complainant detailed six sales comparables (Exhibit C-1, page 12) which sold between January 1, 2009 and December 2011 whose cap rate ranged from 5.85% to 7.58% and averaged 6.86% as compared to the subject property at 5.50%.

[14] The Complainant submitted that, based on the recent transactions of downtown office buildings, 6.00% is the most appropriate cap rate for the subject property.

[15] As additional evidence, the Complainant included eight sales comparables (Exhibit C-1, page 11) utilized by the Respondent which sold between November 2010 and February 2012 whose Assessment to Sale Ration (ASR) averaged 0.96% which the Complainant described as not equitable.

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

[17] The sales comparables were described by the Complainant as equal to the subject in classification being AA and AH with the exception of Enbridge Tower which was AL. The comparable properties were with one exception all in proximity to the downtown financial district. The Complainant was unable to find assessment data for one comparable (The Bell Tower) so it was not included in the average.

Rebuttal of the Complainant

[18] The Complainant submitted evidence in rebuttal to the Respondent's submission (Exhibit C-2, 35 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 0.96 to 0.95. Again, the Bell Tower was not used in the ASR averaging.

[20] The Complainant stated all comparable sales were similar to the subject property with the one exception (The Enbridge Tower) and that all but one was in the financial district. The Complainant stated that the average ASR was 0.95 which was not equitable.

[21] The Complainant addressed the lease rate appropriate for the subject property, in particular the expenditure that would be required to bring the currently raw vacant space into leasable condition for a new tenant. The Complainant provided net effective rent calculations that showed that tenant improvement allowance and/or free rent have a significant effect on the income to the landlord, in some cases halving the income.

[22] The Complainant requested a reduction in the 2013 assessment to $61,543,500.

Position of the Respondent

[23] In defending the current years assessment, the Respondent submitted a 121 page brief (Exhibit R-1) and a 91 page sur-rebuttal (Exhibit R-2) in support of the argument that the 2013 assessment is fair and equitable.

[24] The Respondent presented a synopsis of the Downtown Valuation Guide, (Exhibit R-1, pages 89 – 108), specifically referring to page 92, Mass Appraisal; page 97, Downtown Office Districts; page 101, Typical Market Rent per Square Foot; and page 108, Summary.

[25] 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.

[26] 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.

[27] 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.

[28] 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.

[29] The Respondent stated that office properties are stratified into sub classifications (Exhibit R-1, page 153) which in themselves are supplied with typical rent, vacancy, operating costs and cap rates. They are determined annually, using data obtained from returned Requests for Information, (RFI) as supplied by building owners and/or managers. The subject property is classified as AA and the typical lease rate for AA is $21.00 per sq ft. A table of Downtown valuation rates, including lease rates was provided (Exhibit R-1, page 43).

On the issue of the subject property being over-assessed based on the lease rate:

[30] The Respondent provided a rent roll obtained with the Request for Information (RFI) that, in addition to the lease referenced by the Complainant, a new retail lease on the main floor, at $35.00 per sq ft, and two renewals of office space, at $27.00 per sq ft, had been negotiated in late 2011 (Exhibit R-2, page 25).

[31] The Respondent further noted that the weighted average lease rate in the subject property is $22.50 per sq ft. The Respondent stated that at the time of the November 2012 inspection, there was no vacancy in the subject property.

[32] The Respondent provided a list of Downtown rental rates for new leases and renewals in AA class office buildings during 2011 and 2012 (Exhibit R-2, page 44). They ranged from $12.00 to $27.45 per sq ft, averaged $20.34 per sq ft and reflected a median of $20.00 per sq ft. Time adjusted, the average and median were $21.33 per sq ft and $21.05 per sq ft.

[33] To demonstrate equity, the Respondent provided charts for all downtown AA class office buildings, indicating the parameters under which each was assessed (Exhibit R-1, page 45). Class AA office buildings were all assessed at a typical lease rate of $21.00 per sq ft.

[34] In Sur-rebuttal, the Respondent provided information regarding the assessment of the Bell Tower, (which the Complainant stated was unavailable).

[35] The Respondent's sur-rebuttal also contained a portion of the Valuation Guide (Exhibit R-2, pages 90 & 91) as it related to office building's leasehold improvement allowances, in particular noting that the valuation procedure is based on net effective rent for finished space and that it incorporates the value of leasehold improvements. In other words, tenant improvements hold a value to the building owner and their cost should not be deducted from the lease rate. The Respondent agreed that while there may be an argument for tenant inducements to be considered, because of the scope of information provided in the RFI, there has been insufficient data to address tenant inducement rates.

[36] The Respondent referred to MGB BO 048/03 (Exhibit R-2, pages 37 – 52), specifically at page 31, wherein it concluded that tenant improvements must not be deducted in order to calculate typical assessable market rental rate and that they do add value to the tenant and therefore to the fee simple estate..

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

[37] The Respondent expanded on the cap rate argument with charts summarizing the Complainant's Cap rate analysis, (Exhibit R-1, page 32), the Respondent's own Downtown Cap Rate Analysis (Exhibit R-1, page 33), Downtown 2013 Valuation Rates (Exhibit R-1, page 43, and Downtown AA class Office Buildings (Exhibit R-1, page 45).

[38] 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%

[39] The Respondent's Downtown Cap Rate analysis documented three sales of three 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%.

[40] To demonstrate equity, the Respondent, with its Downtown Valuation rates and Downtown AA Class Office Building charts, showed that a 5.50% cap rate was used for all Class AL downtown office building assessments.

[41] In response to the Complainant's argument regarding ASR, 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.

[42] 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.

[43] The Respondent requested that the Board confirm the 2013 assessment of $80,381,500.

Decision

[44] The decision of the Board is to confirm the 2013 assessment of $80,381,500.

Reasons for the Decision

[45] The Board considered the Complainant's argument regarding a $21.00 per sq ft least rate. The Complainant based argument on one lease at $18.00 per sq ft within the subject property and two leases for $20.00 per sq ft in Manulife Place.

[46] The Board reviewed the Complainant's position regarding net effective rent. On review of the Respondent's evidence (MGB BO 048/03) and Office Building Valuation Guide, the Board is convinced that the Respondent dealt with the tenant improvement allowance correctly.

[47] The Board noted the Respondent's evidence of three other leases in the subject property, (two of which were renewals), the Respondent's Downtown rental rate study (72 leases including the aforementioned subject property leases) and the equity chart and is persuaded that the lease rate for the subject property of $21.00 per sq ft was fair and equitable.

[48] The Board is not persuaded by the Complainant's argument regarding a 6.00% capitalization rate for the subject property as opposed to the assessed 5.50% capitalization rate. The Complainant utilized third party documentation to support his argument on the capitalization rate. The Board accepted the Respondent's argument that third party documentation is difficult to evaluate as it is unclear what parameters were used in establishing the cap rates and in particular, that the third party documents are reflective of leased fee and not fee simple as is required in mass appraisal.

[49] The Board considered 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 5.50%. The Board was further persuaded by the Respondent's AA class cap rates average of 5.37 that the Respondent is correct in using a 5.50% cap rate for the subject property assessment.

[50] 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

[51] There was no dissenting opinion.

Heard commencing September 23, 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
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.