Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2014 ECARB 00457

Assessment Roll Number:	4265393
Municipal Address:	16011 116 AVENUE NW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amount:	$8,133,000

Between:

1486186 Alberta Ltd. represented by Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
John Braim, Board Member
Randy Townsend, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

Preliminary Matters

[2] At the commencement of the hearing the Respondent informed the Board that they had a recommendation to revise the assessment from $8,133,000 to $7,887,000. The reason for the recommendation was that the Respondent had omitted part of the vacancy shortfall in their original assessment calculation. The Complainant, whilst acknowledging the omission, stated that the recommendation had not addressed the real issues that would have resulted in a further reduction than the recommended amount. Consequently the recommendation was not acceptable to the Complainant and the Board directed the parties to proceed with the merit hearing.

Background

[3] The subject property comprises a two storey office building with a full basement that was constructed in 1980 in the Alberta Park Industrial neighbourhood in the north-west quadrant of the city. For assessment purposes the Respondent has classified the property as a sub-class B building within the Suburban Office Group of buildings. The building has a gross area of 49,393 sq ft consisting of 33,457 sq ft of main and upper floor space and 15,936 sq ft of basement space. There is surface parking for 115 vehicles.

Issues

[4] a) Is the assessed lease rate of $15.00/ sq ft representative of the market lease rate?
b) Is the assessed vacancy rate of 9% typical of the market vacancy rate?
c) Does the Direct Sales Comparison Approach indicate the assessment is high?
d) Does the Equity Approach indicate the assessment is high?
e) The parties agreed that the capitalization rate of 7% was not in dispute.

a) Is the assessed lease rate of $15.00/ sq ft representative of the market lease rate

Position of the Complainant

[5] The Complainant filed this complaint on noting that the assessment of the subject property had increased by 16.4% over the 2013 assessment. The Complainant demonstrated the 2013 assessment had also increased by 13% over the prior year and the 2012 assessment had increased by only 9.4% over the 2011 assessment. The Complainant stated that a 16.4% increase was unreasonable when the prior years' increase was high in relation to the 2012 increase.

[6] The Complainant provided a Lease Analysis comprising a chart of 6 lease transactions that indicated lease rates for comparative properties were typically $11.00/ sq ft to $13.50/ sq ft in the first half of 2013 and $11.00/ sq ft to $14.00/m sq ft during 2012, implying a slight downward trend in lease rates. The overall average rate for the 6 leases was $12.42/ sq ft all of which were substantially below the $15.00/ sq ft applied by the Respondent. The Complainant contended that a rate of $13.00/ sq ft was representative of the market at valuation date.

[7] The Complainant stated there was no contention with regard to the lease rate of the basement office space.

Position of the Respondent

[8] The Respondent provided a 2014 chart of Suburban Valuation Rates that were consistently applied to office properties and included the west end area (WEA), where the subject is located. The chart indicates a rate of $15.00/ sq ft for subclass 'B' office accommodation.

[9] A second chart was also presented, being an overview of the Complainant's sales chart with additional columns indicating the Complainant's sales were either not in the office inventory; they had no record of some of the leases; they were a different class of building to the subject; they were in a different district to the subject and they had information that there were leases in the comparable buildings that that were in excess of $15.00/ sq ft.

[10] The Respondent provided a Rental Rate Study in chart form for office rental activity in the WEA from 1 January, 2012 to 1 November 2012 showing new and renewal rates from $10.00/ sq ft to $16.00/ sq ft that were time adjusted to produce a net rent range of $11.91/ sq ft to $19.06/ sq ft. The average rent was $15.38/ sq ft and the median $15.55/ sq ft which supported the $15.00/ sq ft rate used in the assessment.

Decision

[11] The decision of the Board is to reduce the rental rate from $15.00/ sq ft to $13.00/ sq ft. for the subject main and second floor office space for the 2014 assessment.

Reasons for the Decision

[12] The Board was persuaded by the comparable leasing activity of the Complainant. The location, lease commencement dates and the actual lease rates were acceptable to the Board as they were all in the same district as the subject and three of the leases were substantially closer to valuation date than the Respondent's comparables. Though only two comparables were class 'B' offices, like the subject, the Board accepts that class 'A' offices require a downward adjustment and the class 'C' offices require an upward adjustment to make them comparable. The net result is that based on the comparables provided the lease rate is clearly closer to $13.00/ sq ft than $15.00/ sq ft.

[13] The Board was informed that the subject property was virtually surrounded by mainly larger, heavy industrial zoned properties and accepts the Complainant's position that leasing is negatively affected for a purely office property in such an environment. The subject property appears to be suffering from chronic vacancy and this is verified by the listing agreement, and subsequent extension, to lease from July 16, 2013 to January 2014. At valuation day the subject property had been actively marketed for a period of two years with no sign of a tenant. The Board concludes the lack of exposure to an arterial road and the negative impact of the adjoining industrial properties has a negative effect on the rental rate and/or the vacancy rate.

[14] The Board placed less weight on the evidence of the Respondent as the leases provided were older and, although time adjusted, there was no support data for the adjustments. The Board had no information that the comparable leases were in similar to the subject in terms of location, size, age and condition of the leases.

[15] The Board was also not persuaded by the critique of the Complainant's leases. In questioning, the Respondent agreed there was much subjectivity in categorizing office and warehouse/retail property where a mixture of two types was evident. The Board noted that the Respondent's references to leases above $15.00/ sq ft were not supported by dates and they did not supply lease information where the rates were below $15.00/ sq ft. The references to class "A" offices and class 'C' office were contra – indicative and tend to support the $13.00/ sq ft range.

[16] The Board also noted the Respondent confirmed two of the leases and had not received R.F.I.s on two of the Complainant's comparable leases. The Board was not convinced that two of the Complainant's lease properties should be in the industrial inventory based on the information supplied.

b) Is the assessed vacancy rate of 9% typical of the market vacancy rate?

Position of the Complainant

[17] The Complainant contended that the vacancy rate of 9% was low for the subject district and had never been close to this level since, at least, the second quarter of 2010 and in

conjunction with the vacancy shortfall translated into a loss in net operating income (NOI) for the subject property. The Complainant provided a summary of Historical Office Vacancy survey for the West End district that had been extracted from three third party sources, all of which were large multi-national/provincial commercial real estate specialists. The chart depicted the vacancy survey results for a four year period, 2010 – 2013 overall showing an average range of 10% to 13% for the two years 2011/2012. The three surveys indicated a range of 10.15% to 16.10% for the 1st July 2013 with an average of 12.68% and projecting an upward trend for the balance of 2013. Supporting data was provided for the graph.

[18] The graph demonstrated that the Respondent had utilized a constant vacancy rate of 9% for the four year period and this was not disputed by the Respondent.

[19] The Complainant stated the subject property had been suffering from chronic vacancy and this is verified by the listing agreement, and subsequent extension, to lease from July 16, 2013 to January 2014. At valuation day the subject property had been actively marketed for a period of two years with no sign of a tenant. The Board respects the Respondent's policy with regard to their definition of chronic, but the Board is aware that a large organization (ICBC) would not be in the property market with unleased space sitting vacant.

Position of the Respondent

[20] In defense of the assessment the Respondent provided a comprehensive office vacancy study for the seven principal suburban areas throughout the city. The Respondent contended that they were all class B offices like the subject and the vacancies ranged from 0% to 100% with a weighted average of 9.23% from 160 returns. The Respondent applied an assessment vacancy rate of 9% throughout the city based on the city wide survey.

Decision

[21] The decision of the Board is to increase the vacancy rate from 9% to 12% for the 2014 assessment.

Reasons for the Decision

[22] The Board was persuaded by the evidence of the Complainant wherein three independent surveys had been addressed with surveys specifically directed to the WEA district. All three surveys reported vacancy rates of between 7% and 20% for the 2 or 3 year period ending December 2012. The average ranged from above to slightly below the 12% mark for the first two quarters in 2013 with an average of 12.68%. In the past the Municipal Government Board (MGB) and the ARB have both been cautious with respect to third party reports as stated in MGB Board Order 054/10;

> "Third party reports are problematical for many reasons. In particular, the market data used to construct the reports was not in evidence, without which the MGB cannot determine the reliability of or applicability of these reports to the subject property".

[23] The Board accepts the principle of this philosophy in general but in the case of the subject property, not one, but three surveys were utilized in the analysis and all three had specifically broken down the city into its respective districts and all three clearly demonstrated that the rate for the WEA ranged from 10.15% to 16.10% with an average of 12.68%. The Board considers this average to be much more realistic for the subject district particularly as there were

three surveys, not just one, and each survey was specific to the area of the subject property. The Board considers this to be more meaningful than the application of a global figure for the city wide suburban districts as a whole.

c) Does the Direct Sales Comparison Approach indicate the assessment is high?

Position of the Complainant

[24] The Complainant provided a secondary approach to the overall assessment value in the form of a Direct Sales Approach. A chart of five comparative sales was supplied, three being in the WEA that were transacted between April 2011 and January 2013. The buildings had an average area of 38,385 sq ft and an average year of construction of 1978. The average time adjusted selling price was $128.58/ sq ft indicating the assessment at $155.98/ sq ft was high. The Complainant made a slight upward adjustment to the average sale price per unit to account for the smaller size of the average comparable and from this deduced a rate of $130.00/ sq ft would be a more reasonable assessment value.

Position of the Respondent

[25] The Respondent provided a critique of the Complainant's sales in the form of another chart with additional comments. Two of the Complainant's sales were stated to be in the retail or shopping inventory and as such were not comparable. The property on 124 Street was in a different district and as such was not comparable. The property on Stony Plain Road had sold twice prior to valuation day and the sale subsequent to the sale reported by the Complainant was at almost double the price of the first reported sale.

Decision

[26] The Board concludes the Complainant's Direct Sales Approach is a valid approach and indicates the assessment is high. At $6,849,500 it gives good support to the Income Approach to value.

Reasons for the Decision.

[27] The Board were persuaded by the Complainant's analysis and application for two reasons;

a. the Board is aware that the Direct Sales Approach is a valid approach to value and is frequently used by appraisers, assessors, realtors, etc. and the general public, and

b. the Board is aware that the Respondent often uses the Direct Sale Approach in defending the assessment of commercial and multi-family residential properties. The Board does, however, respect the right of the Respondent to choose what, in their opinion, is a suitable approach to value but, other than the critique of the Complainant's comparables, the Respondent did not provide a Market Approach (Direct Sales Approach) to value.

[28] The Board places little weight on the critique by the Respondent as upon questioning the Respondent stated there were some inconsistencies in categorizing properties where there was a

combination of offices with retail in the same project. In addition the vast differential in the two sales of 17220 Stony Plain Road was noted to be due to extensive renovations to the building and landscaping and the re-classification of the building from a 'B' class to an 'A' class as a result of the renovation. Furthermore the Board places little weight on the Respondent's argument that buildings in a different district are not comparable as the Respondent's frequently use buildings from different districts for comparison purposes.

[29] The Board noted the Respondent did not supply a Direct Sales Approach to value and as such placed little weight on the Respondent's Response comments that *"The City of Edmonton used the income approach for all commercial properties" (R-1, page 37).*

d) <u>Does the Equity Approach indicate the assessment is high?</u>

<u>Position of the Complainant</u>

[30] The Complainant provided an equity approach in the form of a chart of comparative properties. The four properties were located in the same WEA as the subject property and ranged in size from 24,197 sq ft to 75,142 sq ft. The buildings ranged in age from 1977 to 1989 and were assessed, on a unit basis, between $92.57/ sq ft and $137.38/ sq ft with an average of $120.73/ sq ft which indicated the subject assessment at $164.66/ sq ft was high. The average size at 44,826 sq ft and the average age at 1984 both suggest the average assessment should be adjusted down slightly as the subject is respectively, 49,393 sq ft and 1980 in age.

[31] The Complainant concluded from this analysis that the assessment should be reduced to $133.00/ sq ft which indicates an assessment value of $6,569,000.

<u>Position of the Respondent</u>

[32] The Respondent provided a chart of equity comparables comprising all sub-class 'B' buildings in the WEA. The chart demonstrated that all properties including the subject had been treated equitably with respect to lease rates, vacancy, cap rates and price allocation on a per square foot basis.

[33] The Respondent provided a critique of the Complainant's equity comparables again in chart form. The Respondent contended that equity comparable (EC) #1 was in the warehouse inventory; EC #2 was a class C property; EC #3 was in the neighbourhood shopping centre inventory and EC #4 when calculated correctly was assessed at $185.12/ sq ft as opposed to the Complainant's calculation of $137.38/ sq ft.

<u>Decision</u>

[34] The decision of the Board is that the Equity Approach, though not definitive, supports the hypothesis that the assessment is high.

<u>Reasons for the Decision.</u>

[35] The Board finds that, although equitable with other properties, the Respondent's analysis has failed to take into account the specifics of the subject property. The subject property is located on a non-arterial road and as such has very little exposure to either pedestrian or

meaningful vehicular traffic. The nature of the surrounding properties that are primarily of the heavier industrial type and combined with the lack of exposure factor means the subject property suffers a disadvantage when compared to almost all other properties included within the Respondent's analysis.

Reconciliation

[36] The Board finds, having addressed the four issues in dispute individually, that there is a preponderance of evidence that indicates the assessment is high. The Board was persuaded that the lease rate, the vacancy rate and the Market Approach to value, as presented by the Complainant, was convincing. Though less convincing, the Equity Approach does support the Income Approach.

[37] Therefore, the decision of the Board is to reduce the 2014 assessment from $8,133,000 to $6,538,500.

Heard June 10, 2014.

Dated this 8th day of July, 2014, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Stephen Cook, Colliers International Realty Advisors Inc
James Phelan, Colliers International Realty Advisors Inc
for the Complainant

Amy Cheuk, Legal Counsel
James Cumming, Assessor
Marsali Huolt, Assessor
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.

Appendix

Legislation

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.

Exhibits

Complainant's Brief, C1 – 52 pages
Respondent's Brief, R1 – 111 pages