Edmonton Composite Assessment Review Board

Citation: Telus Communications Inc v The City of Edmonton, 2014 ECARB 00679

Assessment Roll Number:	3106556
Municipal Address:	10405 104 AVENUE NW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amount:	$11,294,000

Between:

Telus Communications Inc. as represented by its designated agent Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Petra Hagemann, Presiding Officer
Brian Frost, Board Member
Martha Miller, 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.

Background

[2] The subject property is known as the Telus Communications building located at 10405-104 Avenue in the Financial District in the City of Edmonton. It was built in 1970 with a total building size of 74,835 square feet (sq ft) and is assessed as a BL class office building. There are 14 surface and 9 underground parking stalls.

Issues

[3] The Board considered the following issues:

a. Should the allocation of dark space in the subject property be increased to 66,099 sq ft?

b. Should the subject be reclassified as a 'Toll building' rather than a Class BL office building?

c. Should the rental rate for office space be reduced to $10.00/sq ft?

d. Should a typical operating cost of $13.50/ sq ft of office place be applied to an atypical office building such as the subject?

e. Should a 7% capitalization rate (cap rate) be applied?

Position of the Complainant

[4] The Complainant submitted a brief, rebuttal and testimonial evidence in support of their requested reduction of the 2014 assessment of the subject property.

[5] The Complainant stated that the assessment had increased by 53.2% since 2013 with no explanation given by the Respondent. Although he is aware that each year's assessment is independent, this significant increase was unrealistic.

[6] The Complainant advised the Board that the subject property should not be classified as a "class BL" office building as it is vastly inferior to typical "B" buildings. It is a "Toll Building" with very few windows, with highly specialized use and a large amount of dark space. Photos of typical office buildings were included to show the difference in the size of windows and the quality of interior lighting as compared to the subject. The Complainant stated the subject property would require significant retrofitting to allow it to compete with typical office buildings in the downtown market place.

[7] The Complainant reminded the Board that windows are an important factor in high-rise office towers as they not only let in natural light and enhance the view for owners and tenants, but also reduce the operating cost as less lighting fixtures are required and heating costs are reduced.

[8] The Complainant submitted five recent leases of superior downtown office buildings ranging from $15.00/sq ft to $18.00/sq ft with an average rent of $16.00/sq ft similar to the assessment of the office space in the subject. As the subject is not a typical office building, the $16.00/sq ft lease rate is excessive and should be reduced to $10.00/sq ft. The Complainant supported this with the City of Edmonton's definition of "Office Below" as per their 2014 assessment brief: *"Office space that exhibits less utility or desirability than typical office space because of lack of natural lighting or windows"*.

[9] The Complainant included a stacking plan outlining the four floors in the subject which have office, equipment storage, mechanical and retail space. Photos were provided to show the unusually high ceilings as well as the main entrance which are not common to typical office buildings.

[10] The Complainant provided a chart for Class A, B and C buildings in the downtown financial district showing operating costs for 2013. Only four out of 38 buildings in the downtown area have operating costs lower than $13.50/sq ft, two of these are class C. The average of the class B buildings was $14.84/ sq ft. This would suggest a $15.00/sq ft op cost would have been more appropriate for the subject building, rather than the $13.50/ sq ft. However as the subject is not a typical B class office building due to few windows and extremely high ceilings, the Complainant suggested the assessment should reflect an $18.00/sq ft operating cost.

[11] The Complainant submitted seven sales of office buildings in the downtown financial and government districts ranging from April 2010 to August 2012. All of these properties are

superior with building classes ranging from BH to AA and cap rates ranging from 5.85% to 7.58% with an average cap rate of 6.67%. The most comparable building is Compass Place (BH), located at 10050-112 Street with a cap rate of 6.77%. Since the subject is a BL class building and definitely not a typical one at that, the Complainant suggested that the 6.5% cap rate of the subject is incorrect and should be increased to 7%.

[12] The Complainant provided the Board with an Office Report for the second quarter of 2013 prepared by Avison Young. This illustrated the high vacancy in B class buildings. In a further report "Colliers Skyline Review for Q3, 2013" the subject property is not listed in the B class office building category as it was not considered an office building.

[13] In rebuttal, the Complainant referred the Board to five BL office building leases presented by the Respondent. These leases are from buildings in the financial district with effective dates ranging from September to November 2012. Their time adjusted net lease rates ranged from $11.62/sq ft to $17.17/sq ft, with a lower average than the assessment of the subject. This evidence further supports a reduction in the office lease rate of the subject.

[14] In summary, the Complainant described the subject as a bunker, certainly not a typical BL office building, but rather a telephone exchange building with only 14% office space. It does not have a proper front entrance, nor sufficient parking, windows are too small and significant retrofitting would be required to bring it up to a "typical" office building. The Complainant requested the Board reduce the 2014 assessment of the subject by applying a $10.00/sq ft office rent to only 8,736 sq ft of (below) office space, changing the storage space to 66,099 sq ft, the vacancy shortfall to $18.00/sq ft and the cap rate to 7.0% for a total reduced assessment of $5,527,000.

Position of the Respondent

[15] It is the position of the Respondent that the 2014 assessment of the subject property is both correct and equitable. The Respondent noted that all assessment is based on the mass appraisal process to determine market value. The three methods of assessment are the cost, sales comparison and income approaches. The subject was assessed as a multi-storey office building (225) using the income approach to value. Further, they are assessed on a fee simple basis, where typical lease, vacancy, expense and capitalization rates are utilized in determining a fair assessment

[16] The Respondent noted that the use of the subject as shown on the Assessment Notice is listed as 100% Telephone Exchange & Office (600) and assessed as a class BL office building using the income approach to value.

[17] The Respondent provided the Board with the 2014 Downtown Valuation Rate chart for office buildings. All BL class buildings in the financial district are assessed at $16.00/sq ft for office rent, $13.50/sq ft office and CRU vacancy shortfall and a cap rate of 6.5% indicating that the subject property is assessed equitably.

[18] The Respondent submitted pictures of three BL and two BH office buildings. These buildings either have very small windows similar to the subject or windows on only one or two sides of the building.

[19] The Respondent included the 2014 Rental Rate Study of downtown BL buildings from Jan 1, 2012 to May 1, 2013. Included were twelve office buildings in the financial and twenty

three buildings in the government district. The median time adjusted net rent was $16.26/sq ft and the median net rent for the last six months $17.28/sq ft. The rate used in the assessment was $16.00/sq ft.

[20] The Respondent provided the 2014 Operating Expense Study for downtown BL buildings ranging from $9.48 to $16.86 with a median of $13.45 supporting the $13.50/sq ft rate used in the assessment.

[21] To support their 6.50% cap rate used in the assessment, the Respondent included four sales of B class buildings with a sale date ranging from July 2010 to August 2012 reflecting a median adjusted cap rate of 6.50% and an adjusted weighted average cap rate of 6.72% supporting the 6.50% cap rate used in the assessment.

[22] To illustrate that the assessment of the subject is not only correct but also equitable, the Respondent provided fifteen class BL office buildings including the subject. All of these except the Birks Building which had 20% chronic vacancy applied, were assessed at $218.78/sq ft using the same office rent, operating costs, vacancy rate, structural allowance and cap rate.

[23] In response to the Complainant's evidence the Respondent had the following comments:

[24] The increase in the assessment has no relationship to last year's assessment as each year is independent. The Respondent noted that the Complainant is requesting a reduction of over 50%. This is unrealistic as it would drop the assessment below the 2013 value.

[25] The Complainant had provided no evidence to verify that the office space should be reduced and the dark space be increased to 66,099 sq ft. Although the Respondent had phoned the Complainant on two occasions to schedule an inspection and obtain a floor plan to verify the size, neither had occurred.

[26] The Complainant provided no evidence as to what constitutes a Toll building, how it differs from a typical BL office building and how its market value would be affected because of this. No evidence was provided to what degree smaller windows and higher ceiling heights affect the market value of a building or that the subject is in fact atypical.

[27] During questioning, the Respondent indicated that LUC 600 (Telephone Exchange & Office) and LUC 225 (Multi-Storey Office) are assessed the same. Since the subject property has office content, it is assessed as an office building.

[28] The Complainant's lease comparables are all superior buildings, their leases were not time adjusted and three of the five have inducements not reported on their RFIs. Regardless, there is no evidence as to how the Complainant arrived at a $10.00/sq ft lease rate.

[29] The Complainant's operating cost analysis is skewed. Comparable #1 shows an operating cost of $13.50 as per the RFI supplied by the owner. Only two are BL buildings whereas all others are superior and therefore not comparable to the subject property.

[30] The Complainant's cap rate study is derived from 3rd party information. The City is of the position that 3rd party documents should not be directly relied upon to determine valuation rates. As stated in MGB BO 054/10 "*Third party publications are problematic 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 or applicability of these reports to the*

subject property". It is important that all factors such as the net operating income, expenses and time adjustments, be calculated and estimated in the same way for the comparable properties as for the subject. As there is no evidence that the same parameters had been used by the Network, the Respondent requests the Board place little weight on this evidence.

[31] In summary the Respondent advised the Board that based on the evidence provided; the assessment of the subject is correct and equitable and therefore respectfully requests the Board confirm the 2014 assessment.

Decision

[32] The decision of the Board is to confirm the 2014 assessment of $11,294,000.

Reasons for the Decision

[33] The Board reviewed the issues raised and the evidence provided by the Complainant.

[34] Regarding whether or not the amount of dark space should be increased to 66,099 sq ft, the Board found no evidence to support the increase in dark space. The stacking plan was not sufficiently detailed and provided no square footage of office space nor were any floor plans included. The Board placed little weight on this evidence.

[35] On the matter of whether the subject should be assessed as a Toll Building rather than as a class BL office building, The Board was not provided with evidence by the Complainant that a Toll Building is assessed in a different manner than a BL office building.

[36] When considering whether a $10.00/sq ft lease rate should be applied to the office space, the Board examined the lease rates of superior buildings provided by the Complainant. It would appear that as the average rent of these buildings was $16.00/sq ft, the subject's lease rate should be lower, however, little detail was provided to support what the Complainant felt was the correct lease rate for their building class. The Board noted the Respondent's criticism of these lease rates and they were not challenged by the Complainant. The Complainant suggested a $10.00/sq ft would be more appropriate for the subject; however no supporting evidence was provided, merely a recommendation. The Board rejects the $10.00/sq ft lease rate.

[37] With respect to whether the operating cost should be increased from $13.50 to $18.00, only two of the twelve comparables provided by the Complainant are BL class buildings. The Melton building lists operating costs at $12.63/sq ft. 100 Street Place was shown as having operating costs of $15.22/sq ft, however the actual operating costs as provided by their Request For Information (RFI) to the assessor was less than $13.50/sq ft. The Board therefore places little weight on the Complainant's evidence to increase the operating costs to $18.00/sq ft.

[38] Finally, the Board considered whether a 7% cap rate should be applied as per the Complainant's request. The Board examined the Complainant's seven sales in support of their requested cap rate. All were higher classed buildings; however averaged a 6.67% cap rate similar to the subject's assessed rate of 6.5%. The most recent sale of Compass Place (Ironwood Professional Bldg.), classed as BH showed a cap rate of 6.77%. The Complainant noted there were no BL sales available and that this was the best comparable to the subject even though it is located in the government rather than the financial district.

[39] This caused the Board to question the correctness of the cap rate and carefully examine the evidence provided by the Respondent.

[40] The Board reviewed the Respondent's cap rate study for all downtown B buildings. This study comprised of four sales, 3 classed BH and one BB. The Ironwood Professional Building which both parties used in their evidence was included in the study. The cap rates ranged from 5.85% to 7.33% with a median of 6.5% and a weighted average of 6.72%. This provided the basis for the 6.5% cap rate used in the assessment. The Board accepts the Respondent's cap rate analysis.

[41] The Board understands that the properties in the above analysis are all somewhat superior to the subject property, however, it is satisfied there is equity in that all class B buildings in the downtown and financial district have been assessed using the same 6.5% cap rate, 5% office vacancy rate, 5% Commercial Retail Unit (CRU) vacancy rate and 2% structural. To allow for the variation in the assessment of the lower and higher B class properties (BL to BB), different values per sq ft were used for Office Rent, Office and CRU Vacancy Shortfall. The Board is satisfied that this is a fair method of achieving equity.

[42] The Board recognizes that the Ironwood Professional Building with the higher cap rate raises a question about the correctness of the subject's assessed cap rate. However the Board was not persuaded by this one sale alone to increase the subject's cap rate in the face of the remaining evidence that supports the assessment.

[43] In summary, the Board finds that the subject property's assessment is correct, fair and equitable and confirms the 2014 assessment at $11,294,000.

Dissenting Opinion

[44] There was no dissenting opinion.

Heard July 21, 2014.
Dated this 19th day of August, 2014, at the City of Edmonton, Alberta.

Petra Hagemann, Presiding Officer

Appearances:

James Phelan
Stephen Cook
for the Complainant

Darren Davies
Steve Lutes
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

Exhibit C-1 Complainant's Evidence – 81 pages
Exhibit C-2 Complainant's Rebuttal Evidence – 14 pages
Exhibit R-1 Respondent's Evidence – 131 pages
Exhibit R-2 Respondent's Surrebuttal Evidence – 3 pages