Edmonton Composite Assessment Review Board

Citation: Milbanke Properties Limited, as represented by MNP LLP v The City of Edmonton, 2014 ECARB 00760

Assessment Roll Number:	1413202
Municipal Address:	11050 156 S treet NW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amount:	$6,360,500

Between:

Milbanke Properties Limited, as represented by MNP LLP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Jerry Krysa, Presiding Officer
Brian Frost, Board Member
Martha Miller, Board Member

Procedural Matters

[1] In response to queries from the Presiding Officer, the parties did not object to the composition of the Board and the Board members indicated that they have no bias in respect of the matter.

Background

[2] The subject property is a 103,890 square foot parcel of land located at the intersection of 156 Street and 111 Avenue. The parcel was improved in 1977 with a 56,185 square foot two-storey retail/office structure comprised of 26,624 square feet of leasable main floor retail area and 22,216 square feet of leasable upper floor office and storage area.

[3] The total assessment of $6,360,500 was determined by the income approach to value.

Issue

[4] What is the market value of the subject property as of the July 01, 2013 valuation date?

Position of the Complainant

[5] The Complainant argues that the subject's assessment is greater than the market value of the property as indicated by the income approach to value, and by the October 12, 2012 sale of the subject property. The Complainant requests an assessment of $4,850,000.

[6] In respect of the income approach to value, the Complainant argues that the Respondent has overestimated the typical market rent rates applied to the subject's main floor area, and has underestimated the operating costs in calculating the assessment. The Complainant also argues that the Respondent has understated the upper floor leasable area by 719 square feet, and has underestimated the typical vacancy rate at 5%; however, the Complainant submits that in light of an anticipated vacancy rate allowance concession from the Respondent, further arguments in that regard are abandoned. The Complainant further argues that the condition of the property is below average and the Respondent's 7.5% capitalization rate is too low.

[7] A summary of the Complainant's requested income approach parameters was provided on page 38 of exhibit C1, as set out below:

Assessment Stratum	Assessed Market Rent per square foot	MNP Requested Market Rent per square foot
CRULESS	$14.50	$13.00
CRUMED	$13.50	$12.00
CRUMEG	$10.75	$8.00
CRU: Restaurant	$14.50	$14.00
Operating Costs per square foot	$8.00	$11.50
Capitalization Rate	7.5%	8.0%

[8] In support of the requested market rents and operating costs above, the Complainant provided the subject's rent roll with tenant names redacted, and a rental rate analysis by space type exhibiting average contract rent rates per square foot, as follows:

Assessment Stratum	Assessed	MNP Requested	Rental Rate Analysis
CRULESS	$14.50	$13.00	$10.00
CRUMED	$13.50	$12.00	$10.03
CRUMEG	$10.75	$8.00	$13.66
CRU: Restaurant	$14.50	$14.00	$14.00
Operating Costs per square foot	$8.00	$11.50	$9.85 and $6.57

[9] The Complainant provided an income approach valuation at page 20 of exhibit C1, founded on the requested rental rates and operating costs noted above, with a 10% vacancy rate. The Complainant also revised the upper floor leasable area to 22,935 square feet. Although the Complainant requested an 8.0% capitalization rate, the Complainant's calculation employs the Respondent's 7.5% capitalization rate, resulting in a market value conclusion of $4,890,000, after a -$250,000 influence adjustment.

[10] Notwithstanding its income approach to value conclusion, the Complainant argues that the October 12, 2012 sale of the subject property for $4,850,000 is the best indication of its market value. The Complainant submits that the property transferred in a valid, arms-length transaction and any leases set to expire would have been known by the vendor and purchaser at the time of transfer.

[11] To substantiate the sale particulars, the Complainant provided a third party sale data sheet from "Commercial Edge", as well as Land Titles Office documentation in respect of the sale and corporate searches of the parties to the sale.

[12] The Complainant also provided an appraisal report prepared by Altus Group Ltd. effective May 1, 2012, some 5 months prior to the sale date, setting out an estimate of value of $4,900,000.

[13] In cross examination the Complainant conceded that its requested market rent rates were founded on the subject's contract rents; however, it argued that those rates are appropriate as they are "typical" for the subject property. The Complainant also conceded that there was no basis for its operating cost request of "no less than $11.50 per square foot" as the subject's operating costs did not exceed $9.85 per square foot, and there was no further operating cost evidence in its submission. Further, the Complainant accepted the Respondent's 7.5% capitalization rate, and acknowledged that it was unaware of the rationale for the -$250,000 influence adjustment in its own income approach value conclusion.

[14] In respect of the appraisal evidence, the Complainant conceded that the subject's current leases were generally at the low end of the range of typical market rent rates, and this would suggest a potential upside in rent rates.

[15] In response to questions from the Board, the Complainant acknowledged that its principal evidence is the sale of the subject property, and conceded that less weight should be applied to its income approach valuation.

Position of the Respondent

[16] The Respondent concedes that the assessment is incorrect in respect of the subject's vacancy allowance and the main floor commercial retail unit area designated as CRUMEG. The Respondent recommends that the Board reduce the assessment to $5,951,000, reflecting an increase in the stabilized vacancy allowance applicable to the upper floor office area from 5% to 15%, and a reclassification of the commercial retail unit area designated as CRUMEG at a market rent rate of $10.75 per square foot, to CRUMAX at a market rent rate of $11.75 per square foot.

[17] The Respondent argues that the recommended assessment fairly reflects the market value of the subject property as of the July 01, 2013 valuation date.

[18] In support of the recommended assessment, the Respondent provided samples of comparable per square foot rents for each of the subject's stratified main floor commercial retail unit components, to demonstrate that the subject's assessed rents were consistent with typical market rents in market area 120, where the subject property is located.

Stratum	Sample Leases	Median Rent Rate	Average Rent Rate	Assessed Rent Rate
CRULESS	6	$15.00	$15.01	$14.50
CRUMED	17	$14.00	$13.76	$13.50
CRUMAX	4	$11.91	$12.58	$11.75
RESTAV	5	$15.00	$14.93	$14.50

[19] In support of the subject's operating cost allowance, the Respondent provided a sample of the operating costs associated with 31 leases in market area 120, exhibiting median and average operating costs of $9.85 and $9.80 per square foot, respectively. The Respondent submits that the median and average operating costs of $9.85 and $9.80 per square foot are reflective of operating costs of buildings with typical vacancy rates, and the assessed $8.00 per square foot allowance is reasonable as it would reflect the operating costs of vacant "dark" space. The Respondent further submits that the $8.00 per square foot operating cost allowance has been equitably applied to all similar and competing properties.

[20] In response to the Complainant's submissions, the Respondent argues that the Complainant has apparently abandoned many of the issues and grounds set out on the complaint form and in the Complainant's disclosure, and has provided no compelling evidence in support of its income approach valuation. The Respondent further argues that the Complainant presented no evidence to support its argument in respect of the physical condition of the property, and no market evidence in respect of its requested market rent rates, operating costs, vacancy rate and capitalization rate, and that the only "market" evidence before the Board is that of the Respondent.

[21] With respect to the Complainant's appraisal evidence, the Respondent argues that the appraisal should be afforded little to no weight as it was prepared for the purpose of securing financing, and reflects the leased fee estate of the property and not the fee simple estate as required by legislation for the preparation of an assessment. The Respondent further argues that the effective date of valuation in the appraisal was May 1, 2012; some 14 months prior to the legislated July 1, 2013 valuation date of the assessment. The Respondent submits that notwithstanding the irrelevant value conclusion, the appraisal does confirm the average condition of the subject property, and further, that the subject's contract rents (employed by the Complainant in its income approach) are at the low end of the range, and have upside potential.

[22] With respect to the sale of the subject property, the Respondent acknowledges the sale is a valid, arms-length transaction. However, the Respondent argues that in this instance, the sale price is not the best indicator of the subject's market value for assessment purposes, as the property transferred 8 ½ months prior to the legislated July 1, 2013 valuation date for this assessment. Moreover, although the transfer date is set out as October 12, 2012, the sale price was agreed upon on March 16, 2012; some 15 ½ months before the valuation date. In support of the arguments, the Respondent provided a copy of the Complainant's Sales Validation Questionnaire response dated December 13, 2012, indicating the particulars of the sale agreement and transaction.

[23] The Respondent further argues that the sale price is not the best indicator of the subject's market value for assessment purposes because, at the time of the sale and when the sale price was agreed upon, the property was encumbered with several dated leases at rent rates below market rents; therefore, the sale price would reflect only the leased fee estate of the property and not the fee simple estate as required by legislation. The Respondent submits that as a result of recent leasing activity within the subject property, the property is no longer the same as it was at the time of the sale. In support of this position the Respondent provided two of the subject property's rent rolls, dated October 1, 2012, immediately prior to the property transfer and April 1, 2013, approximately 5 ½ months after the sale, to demonstrate that the subject's monthly rental income has increased from $30,617 to $34,181 since the sale as a result of new leases and lease renewals.

Legislation

[24] The Board considered the following legislation to be relevant to this matter:

The *Municipal Government Act,* RSA 2000, c M-26

> **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.

Matters Relating to Assessment and Taxation Regulation, AR 220/2004

> **s.2** An assessment of property based on market value
> **(a)** must be prepared using mass appraisal,
> **(b)** must be an estimate of the value of the fee simple estate in the property, and
> **(c)** must reflect typical market conditions for properties similar to that property.
>
> **s.3** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Decision

[25] The Board accepts the recommendation of the Respondent. The assessment is revised from: $6,360,500 to: $5,951,000.

Reasons for the Decision

[26] The Board was persuaded by the Respondent's amended income approach valuation of the subject property, which was well supported with market evidence of typical rents and operating costs from the market area of the subject property. Although the Complainant raised issue with the Respondent's market rent rate and operating cost evidence, the Complainant provided no market evidence to refute that of the Respondent.

[27] The Board applied little weight to the Complainant's income approach to value conclusion as there was no market evidence provided in support of the Complainant's requested market rent rates, vacancy rate, operating cost allowance or capitalization rate. Further, the Complainant could not provide any explanation of the -$250,000 influence adjustment, or the variance between the requested rent rate of $8.00 per square foot, and the $13.66 per square foot rent rate conclusion for the CRUMEG stratum in the Complainant's rental rate analysis. The Board also notes the Complainant conceded that in light of numerous deficiencies, less weight should be applied to its income approach to value conclusion.

[28] The Board also applied little weight to the Complainant's appraisal evidence as it reflects an effective date of valuation approximately 14 months prior to the legislated July 1, 2013 valuation date and specifically sets out, "The property rights appraised are those of the "leased fee" ownership of the land", at page 9 of the document. As such, the valuation fails to meet the legislated criteria for an assessment set out in both s.2 and s.3 of *Matters Relating to Assessment and Taxation Regulation,* AR 220/2004.

[29] Although the Board accepts that a sale of a subject property close to the valuation date is often the best evidence of its market value, in this instance the Board finds that the Respondent's income approach valuation based on current market rents, is the best evidence of the subject's market value. The Board notes that the sale transpired 8 ½ months prior to the valuation date and no market evidence was provided to illustrate that the retail / office market was unchanged between the sale date and the July 1, 2013 valuation date. In this instance the sale is even less compelling evidence of the subject's July 1, 2013 market value as a result of the approximate seven month delay between the date the sale price was agreed upon and the transfer date. The Board was further persuaded by the Respondent's rent roll evidence that exhibited new and renewal lease activity at market rent rates higher than the existing leases within the subject property. The Board notes that this evidence corroborates the appraiser's opinion that the subject's contract rents were at the low end of the range and had upside potential in early 2012, and finds this to be compelling evidence of leasehold interests in the property that would not have been transferred in the October 12, 2012 sale of the subject property. For reasons analogous to those in respect of the Complainant's appraisal evidence, the Board finds that the sale of the subject property fails to meet the legislated criteria for an assessment set out in both s.2 and s.3 of *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004.

Heard July 10, 2014.

Dated this 07th day of August, 2014, at the City of Edmonton, Alberta.

J. Krysa

Jerry Krysa, Presiding Officer

Appendix

Appearances
Walid Melhem, MNP LLP, for the Complainant
Alana Hempel, AMAA, for the Respondent
Steve Lutes, Counsel, for the Respondent

Exhibits
C1 – Complainant's Disclosure – 186 pages
R1 – Respondent's Disclosure – 94 pages

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.