



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
Phone: (780) 496-5026

NOTICE OF DECISION NO. 0098 04/12

HARDY HOLDINGS LTD
8318 - 156 STREET NW
EDMONTON, AB T5R 1Y4

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on May 2, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
1098771	18021 105 AVENUE NW	Plan: 8122563 Block: 2 Lot: 3	\$1,044,000	Annual New	2012

Before:

Steven Kashuba, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member

Board Officer: Karin Lauderdale

Persons Appearing on behalf of Complainant:

Neil Hardy, Hardy Holdings Ltd.

Persons Appearing on behalf of Respondent:

Joel Schmaus, Assessor, City of Edmonton

PRELIMINARY MATTERS

[1] At the request of both parties, all evidence in this hearing is to be taken under oath.

[2] In advance of moving to the merits of the complaint, the Complainant asked that the Board not accept the Respondent's disclosure package. It is their submission that the Respondent failed to disclose to the Complainant this disclosure package by the deadline date of April 17, 2012 (Exhibit C-1, 8 pages).

[3] However, in response to a question of the Board, the Complainant noted that this disclosure package was delivered to the Complainant on April 19, 2012. As a result, this left too little time through which the information contained in this document could be reviewed and a rebuttal prepared in advance of the hearing date, May 2, 2012.

[4] As to the question of the date upon which the evidentiary package was delivered to the Complainant, the Respondent admitted that due to technical difficulties encountered on April 17, 2012, it was not until April 19, 2012 that delivery of the package was made and confirmed.

[5] In cross examination, the Complainant did admit that they had sufficient time to prepare a rebuttal to the Respondent's submission and that additional time through which a more thorough rebuttal could be prepared was not at issue.

[6] The Board recessed to consider the Complainant's request. In reaching its decision to proceed with the hearing, the Board advances the following reasons:

- (a) Since the Complainant *does* have a rebuttal document which was presented to the Respondent in advance of the hearing and which is now available to the Board, and since the Complainant does not request additional time to examine the Respondent's evidence would indicate that the delay in the delivery of the Respondent's disclosure evidence to the Complainant by two days is not sufficient reason by which to reject its admissibility,
- (b) Further to this, the Board accepts that the Respondent did intend to send the evidentiary package on April 17, 2012; however, due to a computer problem a confirmation of delivery was not generated. The Board is satisfied that the package was delivered to the Complainant on April 19, 2012.
- (c) Having regard for the above two reasons, the Board is satisfied that the Complainant did have ample time to review the evidentiary document provided and to prepare a rebuttal. As a result, it is the opinion of the Board that with the decision to proceed to the merits of the complaint will not compromise the ability and necessity of conducting a fair hearing.

BACKGROUND

[7] The subject property is located in the Morin Industrial subdivision at 18021 – 105 Avenue NW on a lot size of 19,634 square feet and a warehouse area of 7,500 square feet. The site coverage is 38% and the warehouse contains a main floor office of 1,632 square feet. Built in 1993, the structure is in average condition. The current assessment is \$1,044,000.

ISSUE

[8] Does the income stream of the subject property support the assessment?

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

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.

Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009

s 8(2)(b) the respondent must, at least 14 days before the hearing date,

- (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing.

POSITION OF THE COMPLAINANT

[9] The actual net operating rental income of the subject warehouse is \$49,850 (Exhibit C-3, Page 2). This figure is derived from an income of \$79,500 from which is deducted the 2011 property taxes of \$19,174, insurance of \$5,091, vacancy and collection loss of 5%, management expenses of 3%, and structural repairs of 2% (Exhibit C-3, page 2).

[10] By applying a capitalization rate of 7% as derived from a memorandum sent to the Complainant from Jeff Sutherland of SCR Commercial Realty (Exhibit C-3, page 8) to a net operating income of \$49,850, a requested assessment value of \$712,143 is attained.

[11] In support of a typical vacancy rate of 5%, the Complainant presented 12 *For Lease Signs* in the immediate area of the subject property (Exhibit C-3, page 6) which reflect a relatively high vacancy rate for warehouses.

[12] The Complainant uses the Respondent's 2006 Pro Forma Expense Statement in which the assessment for 2007 was \$427,500 and which increased to \$1,044,000 in 2012, and then applies this amount in its Pro Forma income stream to arrive at a requested assessment amount for 2012.

[13] In response to a question of the Board, the Complainant admitted that the actual gross operating income was used for the subject property from which were deducted the taxes and insurance amounts, and then the industry *typicals* for a vacancy rate, management fees rate, and structural repairs rate were applied.

[14] Although the Complainant pointed out, and agreed with the Respondent's submission that sales comparables provide the best measure of the market value, they did not provide any sales comparables in their evidentiary package (Exhibit C-4, page 1). Further to this, in reflecting upon the Respondent's submission of seven 7 equity comparables to support the assessment, the Complainant was of the opinion that these were flawed (Exhibit C-4, pages 1 -3).

POSITION OF THE RESPONDENT

[15] In support of the assessment, the Respondent provided seven equity comparables (Exhibit R-1, page 23) which, in their view, exhibit characteristics similar to that of the subject property in terms of effective year built, main floor finished area, total square footage, and site coverage. In only one instance is the assessment per square foot lower than that of the subject property at \$139.20 per square foot. The remaining six equity comparables range in assessment value per square foot from \$142.52 to \$169.29. These equity comparables fully support the current assessment.

[16] The Respondent submitted that there are three approaches to market value, but that sales comparables are the preferred valuation method. In this regard, the Respondent noted that the Complainant did not provide any sales comparables nor did they submit any equity comparables.

[17] As for the Complainant's use of a 7% capitalization rate, the Respondent is of the opinion that this rate was not derived using specific commercial properties that exhibit characteristics similar to that of the subject property but rather an opinion of a realtor. Therefore, the value in using this statistic is brought into question.

[18] The capitalization rate used by the Complainant in their Pro Forma was neither derived using properties specifically comparable to the subject as required by the Appraisal Institute nor should the two non-allowable expenses of property tax and insurance be used in that formula.

[19] Further to this, the Respondent submitted that if one were to take the income of \$79,500 contained in the Complainant's Pro Forma (Exhibit C-3, page 2) and apply the triple net lease rate principle, the typical vacancy rate, the typical management fee rate, and the typical structural repairs rate, and a capitalization rate of 7%, one would arrive at a final market value within 5% of the current assessment value (Exhibit R-1, page 39). This test, in the opinion of the Respondent, fully supports the current assessment (Exhibit R-1, Section B, page 15, Market Value Within a Range).

[20] In summary, it is the position of the Respondent that the onus is upon the Complainant to prove that the current assessment is not correct. The Complainant has not met this challenge when they failed to provide sales or equity comparables which would bring into question the assessment. Further to this, the Pro Forma advanced by the Complainant is flawed because it does not adhere to the procedures ordinarily used when the net operating income is determined to which is applied an accepted capitalization rate derived from similar properties.

DECISION

[21] **It is the decision of the Board to confirm the assessment of the subject property for 2012 at \$1,044,000.**

REASONS FOR THE DECISION

[22] The Board places little weight upon the Complainant's Pro Forma which uses the actual income for the subject property from which is deducted the amount for current taxes and insurance. To this amount the Complainant applies a mixture of a typical vacancy rate, a typical management fee rate, and a typical structural repairs rate. This combination of disparate variables leads to the determination of an incorrect market value.

[23] Further to this, the Board notes that the Complainant failed to support, other than through a memo from a realtor, the use of a 7% capitalization rate.

[24] In this regard, the Board accepts the argument advanced by the Respondent that in cases where an income stream is used to determine market value, it must be done on the basis of a triple net lease rate, followed by the application of a typical vacancy, a typical management fee rate, and a typical structural repair rate. To mix the actual income from which is deducted the taxes and insurance costs with industry *typicals* leads to an incorrect market value.

[25] Although the Complainant presented several photographs to depict 12 vacancies in the neighborhood of the subject property, too little information was provided to add any great value to these through which a vacancy rate of 5% for the subject property could be supported.

[26] Other than a memo from a realtor, the Complainant's use of a capitalization rate of 7% is not supported.

[27] The Complainant did submit an *Extension and Amending Agreement* to their original lease agreement. However, without access to the original lease which might provide some guidance as regards any escalation clauses throughout its tenure, the value of this document is considerably diminished.

[28] Although the Complainant did present a rebuttal document in which each of the 7 equity comparables presented by the Respondent is critiqued, the Board notes that, in contrast, the Complainant did not present any equity comparables which would bring into question the correctness of the assessment.

[29] Since no documentation or written information was provided in support of the Complainant's allegation that the adjacent power line and a utility easement on the subject property would negatively impact its market value, the Board has little alternative but to place little weight upon this argument.

[30] The Board is persuaded by the Respondent's onus argument that the Complainant did not prove that the assessment of the subject property is incorrect.

[31] Based upon these reasons, the Board concludes that the current assessment is fair and correct and should not be disturbed.

DISSENTING OPINION AND REASONS

[32] There is no dissenting opinion.

Dated this 15th day of May, 2012, at the City of Edmonton, in the Province of Alberta.

Steven Kashuba, Presiding Officer

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.

cc: