

**NOTICE OF DECISION      NO. 0098 10/12**

Pitch Properties Ltd.  
5021 - 154 Street NW  
Edmonton, AB T6H 5P1

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 June 4, 2012, respecting a complaint for:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
4086021	9434 111 Avenue NW	Plan: RN43 Block: 27 Lot: 7; Plan: RN43 Block: 27 Lot: 8	\$976,000	Annual New	2012

*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.*

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cc:

## **Edmonton Composite Assessment Review Board**

**Citation: Pitch Properties Ltd. v The City of Edmonton, 2012 ECARB 249**

**Assessment Roll Number:** 4086021

**Municipal Address:** 9434 111 Avenue NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**Pitch Properties Ltd.**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Robert Mowbrey, Presiding Officer**  
**Taras Luciw, Board Member**  
**Tom Eapen, Board Member**

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### **Preliminary Matters**

[1] When asked by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members indicated they had no bias in the matter before them.

[2] During the hearing, when the Complainant presented the evidence, the Respondent objected, stating the Respondent had not seen the evidence previously and therefore the Complainant had not met the disclosure guidelines. The Board recessed, deliberated and rendered the decision to the parties. The Board advised the parties, since the evidence was not disclosed to the Respondent; the Board would not allow the evidence to be presented.

### **Background**

[3] The subject property is a two story retail unit, located at 9434 111 Avenue. The subject property was built in 1959 and the assessment is \$976,000.

### **Issue**

[4] Is the assessment of the subject property in excess of its market value?

## **Legislation**

[5] The Municipal Government Act reads:

### ***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.

s 295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.

S 295(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.

[6] The Matters Relating to Assessment Complaints Regulation reads:

### ***Matters Relating to Assessment Complaints Regulation, Alta. Reg. 310/2009***

s 9(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor

## **Position Of The Complainant**

[7] The Complainant filed this complaint on the basis that the subject property assessment of \$976,000 is in excess of market value. In support of this position, the Complainant advised the Board that the Complainant had purchased the subject property about 6 years ago for \$375,000. The Complainant indicated he would be lucky to get \$600,000 for the subject property today.

[8] In addition, the Complainant advised the Board that the subject property was located in one of the worst areas of Edmonton and there was little or no parking available. The Complainant stated that transients sleep, urinate, defecate and vomit in the doorways. The Complainant stated that rocks were thrown at the windows for entertainment.

[9] The Complainant had not been able to rent the majority of the upstairs for over 5 years and was subject to chronic vacancy issues.

[10] During summary, the Complainant admitted that he had come ill prepared and would be better prepared in the future.

[11] With the Complainant having the last word, the Complainant stated forcefully that the subject property was not worth \$976,000.

### **Position Of The Respondent**

[12] The Respondent explained that the subject assessment was prepared using the income approach. For the purpose of the 2012 annual assessment, viable income properties were valued based on their income potential using 2011 market net rental lease rates, not effective net lease rates. The Respondent noted that the income approach is the approach of choice, as it best reflects the typical actions of buyers and sellers when purchasing income-producing properties. Direct capitalization is the method of choice employed to value the majority of properties in the commercial inventory. This method involves capitalizing the derived net income by an overall rate determined from comparable market sales. (Exhibit R-1 page 6).

[13] The Respondent produced three actual rent comparables for retail units. The three retail units had an average of \$15.25 net rent per square foot and an average area of 2,227 square feet. (Exhibit R-1 page 24). The map showed that Comparable #1 was extremely close in proximity to the subject property. (Exhibit R-1 page 25).

[14] The Respondent also produced comparable equity rent for retail/office properties showing an average main floor rental rate of \$13.25 per square foot, an average upper office rental rate of \$6.58 per square foot and a capitalization rate of 8%. (Exhibit R-1 page 26).

[15] During cross examination, the Respondent advised the Board that up to 30% vacancy would be allowed if the property was subject to chronic vacancy. The Respondent considered chronic vacancy to mean vacancy in excess of 3 years.

[16] During summary, the Respondent advised the Board that the Complainant had not provided the City with information related to the request for information.

### **Decision**

[17] The decision of the Board is to confirm the 2012 assessment of \$976,000.

### **Reasons For The Decision**

[18] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board is satisfied that the Complainant did not provide sufficient and compelling evidence to enable the Board to form an opinion as to the incorrectness of the assessment.

[19] The Board notes the Complainant did not respond to the City's request for information (RFI) and thereby takes the chance of any appeal being denied at a preliminary hearing, due to not filing a RFI with the City. Further, according to section 9(3) of the *Matters Relating To Assessment Complainants Regulation*,

A composite review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

[20] The Board notes that if the Complainant had sent in the proper documentation to the City, citing chronic vacancy and the reasons thereto, the City would have something to work with and

the 2012 assessment might have been different. With little or no evidence from the Complainant, the Respondent has no alternative but to assess the subject property using the mass appraisal methodology.

**Dissenting Opinion**

[21] There is no dissenting opinion.

Heard commencing June 4, 2012.

Dated this 5<sup>th</sup> day of June, 2012, at the City of Edmonton, Alberta.

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Robert Mowbrey, Presiding Officer

**Appearances:**

Al P. Pitchko, Pitch Properties Ltd.  
for the Complainant

Gail Rookes, City of Edmonton  
Ryan Heit, City of Edmonton  
for the Respondent