

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

SAM OSMAN  
7340 YELLOWHEAD TRAIL NW  
EDMONTON, AB T5B 4K2

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 6, 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>
9959980	7324 YELLOWHEAD TRAIL NW	Plan: 9821533 Block: 11 Lot: 3	\$2,004,000	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: RAINBOW CAR WASH INC

## **Edmonton Composite Assessment Review Board**

**Citation: SAM OSMAN v The City of Edmonton, ECARB 2012-000322**

**Assessment Roll Number:** 9959980

**Municipal Address:** 7324 YELLOWHEAD TRAIL NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**SAM OSMAN**

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] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. In addition, the Board members stated they had no bias on this file.

[2] Witnesses giving testimony were either sworn in or affirmed, the choice being that of the individual witness.

[3] Prior to the Complainant giving evidence, the Complainant gave the Respondent and the Board his curriculum vitae indicating his qualifications as an expert witness. The Respondent objected on the grounds that provision of the curriculum vitae would not meet the disclosure guidelines and since the Complainant was an agent, then he could not play a dual role as an expert witness as well as the agent. The Board recessed, deliberated and rendered a decision to the parties. The decision was the Complainant would only act in the capacity as an agent and not in the capacity as an expert witness. The curriculum vitae were returned to the Complainant.

### **Background**

[4] The subject property is a single tenant occupied 12,350 square foot pre-engineered metal clad framed building utilized for manufacturing. The subject property was built in 2002 and was formerly a car wash. The 2012 assessment is \$2,004,000.

### **Issue(s)**

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

### **Legislation**

[6] 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.

### **Position Of The Complainant**

[7] The Complainant filed this complaint on the basis that the subject property's assessment of \$2,004,000 is in excess of market value. In support of this position, the Complainant presented an appraisal of the subject property prepared by Frost & Associates Realty Services Inc., with the effective date of value as of July 1<sup>st</sup>, 2011.

[8] Prior to presenting the report in detail, the Complainant advised the Board on three limitations regarding the appraisal report. One, the appraisal report did not research lease rates; two, the appraisal report did not research capitalization rates and three; the appraisal report did not measure the subject property and relied on the City for measurement.

[9] The Complainant stated the subject property did not have easy access nor egress and the triangular shape of the subject property posed some development restrictions. The Complainant indicated the structure was not strong enough to support cranes and the sloped flooring posed problems as well.

[10] The appraisal report was prepared utilizing three techniques in the valuation of the subject property. The three approaches were the cost, income and direct comparison approaches. The Complainant advised the Board that while the cost and income appraisal methodology were utilized, the direct comparison appraisal methodology should be given most weight..

[11] The Complainant produced four comparable sales that supported the Complainant's assertion that the subject property's assessment is too high. Three of the comparables were on the north side and one comparable was on the south side. Two of the comparables had triangular shaped lots, similar to the subject property. The effective year built ranged from 1996 to 2002. The site coverage ranged from 15% to 38%, while the subject property had site coverage of 28%. Three comparables were of metal frame construction and the fourth was concrete/metal frame,

noting the subject was of metal frame construction. The sale price per square foot ranged from \$121.16 to \$139.73 (Exhibit C-1, page 14).

[12] Index No. 1. 17803-118 Avenue represents an industrial complex well located in West Edmonton. The single tenant facility has improvements that are vastly superior to the subject property; therefore a positive adjustment in the vicinity of 10% is required for market conditions. The overall location of this property would be considered similar to the subject development. Further negative adjustments would be required for the site coverage ratio, superior access, and regular shape of site, regular shape of building and construction type. Taking into account all attributes of this property, a unit price significantly lower than \$137 per square foot would be anticipated for this subject real estate.

[13] Index No. 2. 12261-163 Street represents a single occupant complex that includes two cold storage buildings. The property has frontage to Yellowhead Trail, with no direct access which is similar to the subject property, however, the overall west location is deemed superior to northeast Edmonton. Upward adjustments must be made for the unheated storage buildings. Negative adjustments are required for the superior quality for the building, 3,000 square feet of good quality office development and building layout. Therefore, a unit price of \$138 per square foot would be suggested for this subject real estate.

[14] Index No. 3. 4611 Morris Road represents a metal frame complex which was developed on a triangular piece of real estate. Negative adjustments are required for the fact the sale includes three cranes; in addition, the overall access, south side location, construction quality and layout are far superior to that of the subject real estate. Overall, a unit rate lower than \$139 per square foot is considered appropriate for this subject property.

[15] Index No. 4. 11848-152 Street represents a single occupancy complex located in the Mitchell Industrial Area in northwest Edmonton. This complex has 39 foot ceiling heights and was constructed in 2002. A positive adjustment would be required for the site ratio coverage and a negative adjustment would be required for the regular shaped corner site. It should be noted that the overall location would be considered inferior to the subject property, but the overall access into the site would be deemed superior. Therefore, a unit price of approximately \$120 per square foot would be anticipated for this subject development.

[16] During rebuttal, the Complainant noted that upon review of the City of Edmonton's evidence, the assessment of the subject property should be lowered to \$1,450,000. The subject property suffers from a lack of access and visibility given the fact that the bulk of traffic has little opportunity to access the site. The subject property is an L shaped building on a triangular shaped piece of real estate with minimal yard area. The subject property is a former car wash and the overall construction quality is inferior to a standard industrial warehouse. (Exhibit C-2). In addition, the Complainant noted the subject property was assessed at \$2,057,000 and was reduced to \$1,639,500 in 2011. The subject property was assessed at \$1,836,500 and reduced to \$1,475,000 in 2010.

[17] Continuing with rebuttal, the Complainant noted the City provided 12 comparables that ranged from \$118 per square foot to \$232 per square foot, the range in unit prices being over 200%. The Complainant advised the Board that the City discounted the use of the Frost & Associates comparables Index No. 1 and 2; however, after making the necessary adjustments, the indicators are very comparable to the subject real estate.

[18] The Complainant stated that the City has also attempted to use 6 equity comparables, which reflect industrial developments on regular shaped sites with standard construction quality and regular access. The Complainant noted that these comparables must be adjusted to make them comparable to the subject property.

[19] The Complainant advised the Board that the appraisal report by Mr. Chopko was completed for an effective date of July 1, 2010. The report stated that Mr. Chopko did not review the interior of the property, but did note that the shape posed development restrictions. It should also be noted that the Chopko report had been formulated around an income approach which would be non typical.

[20] In summary, the Complainant advised the Board the subject property is unique, has a triangular site, and difficult access. In addition, the Complainant did not agree with the City's statement that quality of construction does not affect value. The Complainant also referred to a board order for the previous year which reduced the assessment of the subject property.

[21] In conclusion, the Complainant requested the Board to reduce the 2012 assessment from \$2,004,000 to \$1,450,000.

### **Position Of The Respondent**

[22] The Respondent explained to the Board that the subject assessment and similar assessments were prepared using the direct comparison assessment methodology. The Respondent stated that sales occurring from January 2008 through June 2011 were used in the model development and testing. Factors found to affect value in the warehouse inventory were: the location of the property, the size of the lot, the age and condition of the buildings, the total floor area of the main floor (per building), amount of finished area on the main floor as well as developed upper area (per building).(Exhibit R-1, page 8).

[23] The most common unit of comparison for industrial properties is value per square foot of building area. When comparing properties on this basis, it is imperative that the site coverage be a key factor in the comparison (Exhibit R-1, page 9).

[24] The Respondent defended the assessment using twelve sales comparables that ranged from \$118.05 to \$232.70 time adjusted sale price per square foot of total area. Five of the comparables were on the south side and seven were on the north side. The Respondent duly noted that all four of the Complainant's sales comparables were included as part of the City's sales comparables. All of the sales comparables were of average condition. The site coverage ranged from 9% to 39%. The effective year built ranged from 1959 to 2002 (Exhibit R-1, page 20).

[25] The Respondent also presented six equity comparables of similar condition. The equity comparables ranged in age from 1979 to 2002. These comparables ranged from 5,545 square feet to 15,300 square feet in total main floor and upper finished mezzanine. The assessment per square foot of total area ranged from \$133.82 \$185.42 (Exhibit R-1, page 34).

[26] The Respondent advised the Board that the Complainant's sale number 1 had a large canopy attached to the building and thus skewed the price per square foot downward. In addition, the Respondent advised the Board that two of the three buildings were assessed using the cost basis which lowered the unit price per square foot (Exhibit R-1 page 35).

[27] The Respondent advised the Board that the Complainant's sale number 2 had two buildings that were assessed using the cost basis (Exhibit R-1, page 38).

[28] The Respondent presented to the Board an appraisal (Impact Property Advisors Ltd.) dated June 17<sup>th</sup>, 2011. The Respondent noted the appraisal was dated and at the time of inspection (exterior only), the car wash was not in operation and an industrial tenant occupied the subject building. In addition, the appraisal noted the subject site is one acre in size, the triangular shape does pose some development restrictions; however, as the building is situated at the rear of the lot, there is sufficient yard area for parking and display, and there is good street exposure. The appraiser knew that change was coming, and determined that the property was not unique and nothing was unusual about the subject property (Exhibit R-1, page 50).

[29] During argument and summation, the Respondent stated that two of the Complainant's sales comparables were flawed and a reduction in assessment cannot be made on the basis of two sales comparables. One of the sales comparables had a large canopy and two of the sales comparables had buildings assessed on the cost basis. When the sizes are corrected, the case falls away and the price per square foot decreases accordingly.

[30] The Respondent advised the Board that page 88 to page 166 of R-1 could be ignored, as they referred to Canadian Uniform Standards of Professional Appraisal Practice which is not being addressed as the Complainant is not appearing as an expert witness.

[31] The Respondent requests the Board to confirm the 2012 assessment at \$2,004,000.

### **Decision**

[32] The decision of the Board is to confirm the 2012 assessment of \$2,004,000.

### **Reasons For The Decision**

[33] The Board finds the Complainant's appraisal methodology might be acceptable if a sufficient number of current sales were available. In this regard, the Board is persuaded that two of the four sales comparables (numbers one and two) relied upon by the Complainant to establish unit price per square foot were flawed. The Board therefore, questions the reliability in projecting a unit price per square foot for the subject property from such a small sampling of the remaining two sales.

[34] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. With the lack of documentation surrounding the Complainant's sales comparables, the Board is satisfied that the Complainant did not provide sufficient and compelling evidence to form an opinion as to the incorrectness of the assessment.

[35] The Board put some weight on the Respondent's sale comparables. The Board only reviewed those seven sales comparables on the north side, including three of the Complainant's comparables. The median of the seven sales comparables is \$159.55, which supports the assessment.

[36] The Board put little weight on the Respondent's appraisal from Impact Property Advisors Ltd. The appraisal report was dated and the appraisal methodology was the income approach for a former car wash and this year's assessment was based on the direct comparison approach.

[37] The Board did not rely on the Respondent's industrial equity comparables for the 2012 assessment. The age and size were too diverse that made comparability difficult.

[38] The Board noted that last year's appeal was on the basis of the income approach and not the direct comparison approach, utilized in the current year.

**Dissenting Opinion**

[39] There was no dissenting opinion.

Heard commencing June 6, 2012.

Dated this 13<sup>th</sup> day of June, 2012, at the City of Edmonton, Alberta.

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Robert Mowbrey, Presiding Officer

**Appearances:**

Brad Daviss  
for the Complainant

Cam Ashmore  
Suzanne Magdiak  
for the Respondent