



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 120/10

Teik Tan
3530 199 Street NW
Edmonton, AB T6M 2N5

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 July 26, 2010 respecting a complaint for:

Roll Number 4296752	Municipal Address 101 10826 124 Street NW	Legal Description Plan: 9523179 Unit: 1
Assessed Value \$154,000	Assessment Type Annual – New	Assessment Notice for 2010

Before:

Darryl Trueman, Presiding Officer
George Zaharia, Board Member
Brian Frost, Board Member

Board Officer: Annet N. Adetunji

Persons Appearing: Complainant
Teik Tan

Persons Appearing: Respondent
John Ball, Assessment and Taxation Branch

PRELIMINARY MATTERS

Upon questioning by the Presiding Officer, the parties had no objection to the composition of the Board.

Board Member Brian Frost indicated he had business dealings with the Complainant over 10 years ago but that his judgment in this matter would not be affected. The Board and the parties had no objection to Mr. Frost's presence on the board.

Prior to the commencement of the hearing, the parties were sworn in.

BACKGROUND

The subject property is a wood frame two story, with basement, mixed use building constructed in 1964. The building underwent conversion to condominium units sometime in the early 1990s resulting in residential suites on the upper floor, three commercial retail units on the main floor and a single commercial unit in the basement. The residential units located within the subject complex are not under appeal. The subject of this appeal is unit number 1 which is a basement commercial retail unit consisting of 2,539 sq. ft. with access to 124th St.

ISSUE

The condition of the subject property and its functional limitations have not been adequately addressed resulting in an excessive assessment.

LEGISLATION

The Municipal Government Act, R.S.A. 2000, c. M-26; (MGA)

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.

Interpretation

s.1(1) In this Act,

(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.

The Matters Relating to Assessment and Taxation Regulation, Alberta Regulation 220/2004 (MRAT);

Part 1, Standards of Assessment

Valuation standard for a parcel of land

s.4(1) The valuation standard for a parcel of land is

(a) Market value.

POSITION OF THE COMPLAINANT

The complainant stated that City bylaws had changed from when the subject building was constructed in 1964 and converted to condominium status in the 1990s. Currently there are 10 parking spots available for the tenants of the building but that with current City bylaws, 22 spots would be required.

According to Mr. Tan, the complex contains wood frame constructed floors which do not prevent water damage resulting from water leaking from floor to floor if the leak is on an upper floor.

The complainant advised that the building complex is functionally deficient because of the absence of separate metering to tenants. After attempting to engage a plumber to install separate meters, the plumber refused the job due to a City bylaw that would not allow this to be done if separate metering would be for charging utility costs back to the tenants.

The complainant submitted a City of Edmonton neighborhood water scoping study prepared as a result of a storm on July 11, 2004, suggesting that the sewer line may need to be enlarged.

The complainant submitted a copy of a letter from an insurance broker addressed to an owner of a property located at 10838 124th St., advising that the insurer was not going to continue coverage due to insurance claims in 2002 and 2004.

The complainant presented evidence of the difficulty experienced in leasing this basement unit in the form of a former lease to a massage parlor. Evidence was presented that this lease was short lived due to public dissent. Although this lease rate was reported to be in the range of \$6.50 per sq. ft. the primary consideration is that the duration of the lease was short resulting in significantly higher than market vacancy. At the present time there is a martial arts studio occupying a small portion of the subject unit and further the entire basement is too large a unit for a typical single tenant, which at \$6.50 net per sq. ft. would require the tenant to pay something in the order of \$33,000 per year gross rent.

In the opinion of the claimant the effects of the entirety of the foregoing are that the market value of the subject unit is substantially discounted from that of a typical retail condominium unit notwithstanding that all 4 commercial condominium units within the building have historically continued to be operated as one investment property and should be valued as such.

POSITION OF THE RESPONDENT

The respondent advised that under current legislation, the building, by virtue of its being registered as a condominium, contains individual units and all units must be assessed individually.

The respondent advised the board that while he agreed the building was “not in pristine condition” nevertheless his comparable sales data fairly represented the marketplace for commercial retail condominium units.

On page 22 of the respondent’s brief, five sales comparables were provided. The time adjusted sales prices of the comparables ranged from \$184 to \$258 per sq. ft. and the assessments ranged from \$219.14 to \$260.38 per sq. ft. thus supporting the assessment of the subject property at \$60.65 per sq. ft. based on the Complainant’s area calculation.

On page 23 of the respondent’s submission, an adjustment rationale for the basement unit was presented. The assessor estimated that main floor rents could reasonably be achieved in the \$14 per sq. ft. range thereby supporting a reduced rate, due to the impairment resulting from the basement location and condition of \$7.00 per sq. ft. The assessor went on to say that a \$6.50 per sq. ft. rate would fairly represent an allowance for vacancy and structural maintenance. Given an arbitrary capitalization rate of 8 ½%, a market value of \$76.50 per sq. ft. for the subject unit would be indicated. The assessor thought that this value was supported by his sales comparables which at the lower end suggested \$184 for main floor space. The assessor went on to rationalize that since the assessed amount of \$154,000 represented a unit value of roughly \$37.65 per sq. ft. then he had fairly accounted for the condition of the subject property.

FINDINGS

The Board finds that the units must be assessed individually. The Board further finds that the vacancy rate used must be supported in order for a market value assessment to be achieved.

DECISION

It is the Board's decision to reduce the assessment to \$102,000.

REASONS FOR THE DECISION

The Board agreed with the assessor that the individual units must be individually assessed to remain consistent with legislation.

The Board however rejected the reasoning of the assessor because there was no support for his use of a vacancy allowance. Given that vacancy is an integral component of an income approach to valuation the absence for support could not be rationalized.

On the other hand the complainant presented his evidence of an inability to lease the subject unit on a regular basis without incurring inordinate vacancy loss. The Board was able to accept the public negative reaction to the massage parlor tenant and the Board was unable to see evidence of any other tenant occupying the full area of the space so assessed. The complainant suggested in table 4 of his 2010 Appeal Board hearing submission that a new assessment of \$102,261 would fairly represent the value of this subject unit. The Board is prepared to accept this value, given the complainant's direct experience with the vacancy that this unit has experienced. The board felt that a "willing buyer" as directed by the interpretation section of the MGA would necessarily depend upon the track record of the subject properties vacancy history in order to arrive upon his market value conclusion. Further, the assessor's comparables demonstrated too much disparity to be instructive.

Dated this 13th day of August, 2010, at the City of Edmonton, in the Province of Alberta.

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, R.S.A. 2000, c.M-26.