

**NOTICE OF DECISION      NO. 0098 137/12**

APTAS  
#397 52471 rr 223  
Sherwood Park, AB T8A 4P9

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 (the Board) from a hearing held on July 13, 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>
8871857	4804 89 Street NW	Plan: 5057TR Block: 7 Lot: 2	\$8,533,500	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: McIntyre Centre Ltd.

## Edmonton Composite Assessment Review Board

**Citation: McIntyre Centre Ltd. v The City of Edmonton, 2012 ECARB 1244**

**Assessment Roll Number:** 8871857

**Municipal Address:** 4804 89 Street NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between: **McIntyre Centre Ltd.**

**Represented by Alberta Property Tax Appeal Services (APTAS)**

Complainant

and

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

Respondent

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### DECISION OF

**Don Marchand, Presiding Officer**

**Howard Worrell, Board Member**

**Mary Sheldon, Board Member**

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### Preliminary Matters

[1] Prior to the hearing, the Parties were informed that the Composite Assessment Review Board (CARB) had no record of the Respondent providing its disclosure to the CARB in advance of the hearing, pursuant to *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009 [MRAC], which states:

**8(2)** If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence ...

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

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, and

**9(2)** A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

*(Underlined for emphasis)*

[2] The City of Edmonton advised that they were prepared to proceed with the merit hearing without the admission of their disclosure, which was disclosed in advance to the Complainant only.

[3] The hearing of Roll Number 8891857 convened with the parties under oath and with the understanding that only the Complainant's material would be considered and reviewed.

[4] No objection was raised as to the composition of the panel by the parties, and the panel indicated no bias with respect to the file.

### **Background**

[5] The subject is a multi-tenant warehouse located in the southeast quadrant of the City, within the McIntyre industrial neighbourhood, south of 51 Avenue and east of 91<sup>st</sup> Street, just north of the Whitemud freeway. Based on a 2011 Assessment Detail Report the clerk was provided with following assessment details for the subject:

- a. the lot size is 5.52 acres,
- b. it is zoned IB- Industrial Business District; and
- c. the site coverage is 31%.

The lot is improved with 4 buildings. Building one is a 1978 warehouse office with 24,000 square feet divided into 6 bays. Building two is a 1978 warehouse office with 27,648 square feet divided into 4 bays. Building three is a 1978 warehouse office with 24,266 square feet divided into 6 bays. Building four is a 1990 shed with 361 square feet. The total area of the four building presented is for 75,043 square feet.

[6] The 2012 assessment is \$8,533,500.

### **Issue**

[7] Is the assessment fair and equitable to similar properties?

### **Legislation**

[8] 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.

[9] The CARB gave consideration to the meaning of market value, and the requirement that this assessment be assessed at market value:

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

(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;

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

[10] The valuation standard is set out within the:

**Matters Relating to Assessment and Taxation Regulation, Alta. Reg. 220/2004.**

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

**Position of the Complainant**

**As to the subject’s location, access, and exposure:**

[11] The Complainant submitted that the subject is located in a secondary industrial neighbourhood that has a lower quality of appeal in comparison to newer 2012 power/retail warehouses. The lower profile neighborhood does not provide the synergies to draw the high profile developments.

[12] The Complainant writes that the subject is blocked by the berm surrounding the southern portion of the property lending no exposure to the Whitemud freeway and advised the CARB that there is no direct access to 91<sup>st</sup> Street. It is the Complainant’s position that the subject should be modeled as an interior property as it is not comparable to warehouses on 97<sup>th</sup>, 99<sup>th</sup>, and 101<sup>st</sup> Avenue. Further, the subject is not comparable as well to properties along 51<sup>st</sup> Street, Coronet and Argyll Road.

[13] The Complainant submits that the 2011 assessment, under a CARB complaint, was amended from \$8,752,500 to \$8,436,000 for the above reasons. A copy of the CARB decision, dated November 28<sup>th</sup>, 2011 was received as information.

As to the subject's assessment relative to an Income Approach test:

[14] In support of a lower assessment the Complainant undertook a test income approach model based on a rental rate of \$8.00 per square foot, a vacancy allowance of 3%, a management allowance of 2%, a non recoverable allowance, and a capitalization rate of 7.40%. The indicated valuation resulting for this test was in the amount of \$7,655,393.

[15] The rates for the variables were supported by an actual rent roll and third party published rates. The capitalization rate was supported within the *Anderson Data Online Property Analysis* details indentified as #2 located at 4704 – 97 street. The CARB was asked to give some consideration to the results concluded by the test.

As to the subject's assessment based on equity to similar comparables:

[16] Two groupings of equity comparables were provided to the CARB.

[17] The first grouping consisted of 4 comparables used as sales comparables by the Municipality in support of the 2011 assessment. The 2012 assessment per square foot base provided by these four comparables ranged from \$93.29 to \$116.34. Two of the four are single buildings and two are 2- building complexes. The four comparables indicate a size range from 40,400 sq. ft. to 76,233 sq. ft. The site coverage percentages are: 36%, 38%, 42%, and 36% respectively. The average assessment of the four is \$101.46 per square foot with a median of \$98.11.

[18] The second grouping consisted of 7 comparables of which 5 were used as equity comparables by the Municipality in support of the 2011 assessment. The 2011 assessment per square foot ranged from \$95.56 to \$130.18. The 2012 assessment per square ranged from \$93.29 to \$121.66. No evidence was provided to support the 2012 rates cited. The Complainant requested that the CARB give consideration and more weight to the average rate of \$101.46 as indicated by the first grouping of 4 comparables that formed the basis of the Municipalities' evidence to uphold the 2011 assessment. An assessment based on the equitable rate of \$101.46 per square foot amounted to a 2012 assessment of \$7,613,882.

As to the subject's assessment based on the Direct Sales Approach:

[19] The Complainant submitted the supporting data and details for 5 sales along with their 2012 assessment details. All the sales are the southeast region of Edmonton. They are sales from 2010 and 2011, within the sales review period.

#	# Bldg	Main Area	Age	Site %	Address	Sales Price	Sales price /sf	2012 Assm't	Assm't price /sf
1	3	64,149	1977	36	4900 93 Av	\$5,300,000	\$82.62	\$6,456,000	\$100.64
2	2	58,837	1979	44	4704 97 St	\$5,900,000	<b>\$100.28</b>	\$5,623,500	\$95.58
3	1	39,061	1979	39	3304 Parsons	\$2,900,000	\$74.24	\$3,818,000	\$97.75
4	2	97,743	1977	43	4600 99 St	\$9,300,000	<b>\$95.15</b>	\$9,315,000	\$95.30
5	1	44,994	1969	40	4115 101St	\$3,900,000	\$86.68	\$3,740,500	\$83.13
	3	75,043	1978	31%	<b>Subject</b>			\$8,533,500	\$113.71

[20] The Complainant asked the CARB to give the most weight to comparables #2 and #4 with an average of \$97.70 per square foot. Upon questioning the Complainant acknowledged that comparable #4 had an original agreed to price of \$10,000,000 and that \$700,000 was deducted for roof repairs.

[21]Based on the \$97.70 per square foot average for the two sales, #2 and # 4, the Complainant requested that the assessment be reduced to \$7,332,000.

**Position of the Respondent**

[22]The Respondent sought clarification of the Complainant's evidence seeking clarification of the evidence and submitted the Municipalities' "Law and Legislation 2012" brief for the CARB's consideration.

[23]The CARB's attention was directed to the section title: ***b. Burden of Proof or Onus of the Parties*** within the Municipalities' "Law and Legislation 2012" brief. This section's reference is to the Complainant's onus to lead sufficient evidence to cast doubt on the correctness of the assessment.

[24]The Respondent argues that the variables applied in Complainant's income approach test are site specific and not typical, some are based on third party general opinions and the capitalizations rate applied was based on one sale. The Complainant's equity evidence is incomplete and lacks supporting documentation. The two sales that the Complainant is relying on are not similar to the subject and adjustments are required to the indicted rates to make them

similar to the subject. This was not done. Further, sale #2 took place after the evaluation period and #4 is acknowledged as being sold at a reduced amount as compensation for roof repairs.

[25]The Respondent request a confirmation of the assessment at \$8,533,500.

### **Findings of the Board**

[26]The subject property's 2012 annual realty assessment details report was not provided.

[27]Evidence in support of the typical income parameters for the subject was not provided.

[28]The 2011 time adjusted sale prices to July 2010 were presented as the 2011 assessments within the first group of equity comparables. No evidence was provided in support of these four comparable's 2011 assessments.

[29]No 2012 assessment evidence was provided in support of the second grouping of seven equity comparables.

### **Decision**

[30]The assessment is confirmed at \$8,533,500.

### **Reasons for the Decision**

[31]Without assessment details for the 2012 assessment the CARB is unable to determine if 2011 reduction was carried forward to 2012 or not.

[32]The direct sales comparison approach is the valuation method adopted by the Municipality for the preparation of the subject's assessment and the assessment of similar property. Site specific data, third party general rates, and a capitalization rate garnered from one sale is used within the income approach test and the CARB is not persuaded to reduce the assessment based on its conclusion.

[33]The 2012 assessment rate of \$113.71 per square foot is within the per square foot range (\$93.29 to \$121.66) presented within the first group of the Complainants equity comparables.

[34]The Complainants sales comparables # 2 and # 4 are not similar to the subject. They require adjustments relative to location, size, building numbers, site coverage ratios, and sales features, such as the cost of roof repairs cited. No adjustments were offered for consideration.

Dated this \_\_\_\_13th\_\_\_\_ day of August, 2012, at the City of Edmonton, Alberta.

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Don Marchand, Presiding Officer

**Appearances:**

Michelle Warwa-Handel, APTAS  
for the Complainant

Luis Delgado, Assessor

Tanya Smith  
for the Respondent