

NOTICE OF DECISION NO. 0098 159/12

RAY WONG
9523 - 163 STREET
EDMONTON, AB T5P 3M6

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 August 22, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3792041	5304 118 AVENUE NW	Plan: 9123799 Unit: 1	\$1,419,500	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.

cc: 764602 ALBERTA LTD.

Edmonton Composite Assessment Review Board

Citation: RAY WONG v The City of Edmonton, ECARB 2012-001389

Assessment Roll Number: 3792041

Municipal Address: 5304 118 AVENUE NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

**RAY WONG
764602 Alberta Ltd.**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Dean Sanduga, Presiding Officer

Jasbeer Singh, Board Member

Mary Sheldon, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

Preliminary Matters

[2] The Assessor presented a recommendation to reduce the assessment from \$1,419,500 to \$1,092,000 due to the condition and location of the subject site. The Complainant was asking for a reduction in the assessment to \$850,000, thus the hearing continued.

Background

The subject property is a main floor commercial condominium unit of 12,848 sq. ft. located in North East Edmonton. The building in which the subject is located was constructed in 1981 and is of concrete construction. The subject main floor commercial unit is leased to a number of commercial establishments. The remainder of the building is made up of thirty-nine residential condominium units located on the upper floors.

Issue(s)

[3] Is the 2012 assessment for the commercial condominium unit portion of the property fair and equitable?

Legislation

[4] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

s 1(1)(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;

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

[5] The Complainant filed this complaint on the basis that the subject property assessment of \$1,419,500 was inequitable and in excess of the market value. In support of this position, the Complainant presented a 2 page brief (Exhibit C-1), a 6 page Commercial Real Estate Purchase contract (Exhibit C-2), a letter addressed to the Assessment Review Board (Exhibit C-3) and a one page overview describing the subject under appeal (Exhibit C-4) .

[6] In support of his position that the 2012 assessment of the subject is not correct, the Complainant argued that the City in its 2012 assessment failed to consider the outstanding maintenance requirements and deficiencies and the inferior location of the subject. The Complainant advised the Board that the subject condominium reserve fund study confirms that the condominium maintenance reserve is severely underfunded and requested that the structural allowance be increased by 10%.

[7] The Complainant advised the Board that the 2012 assessment has been increased by 47% over the 2011 assessment and noted that the commercial real estate sector in Edmonton did not show any significant increase.

[8] An offer to purchase was accepted in February 12, 2012 by the Complainant (Exhibit C-2) for \$850,000. The Complainant speculated that the transaction did not proceed when the purchaser realized the poor condition of the condominium and the major expenditures required to build up the reserve fund. The Complainant argued that this indicated that the fair market value of the subject should be \$850,000.

[9] The Complainant advised the Board that the reduction in the assessment of the subject to \$1,092,000 as recommended by the Respondent was not sufficient and requested the Board to revise the 2012 assessment to \$850,000.

Position of the Respondent

[10] The Respondent presented a 127 page assessment brief (Exhibit R-1) and a 44 page Law and Legislation document (Exhibit R-2) .

[11] The Respondent defended his position that the revised 2012 assessment of \$1,092,000 for the subject was correct, fair and equitable. The Respondent produced a 2012 Retail Plaza Assessment Summary (R-1 page 69) noting that due to poor maintenance of the subject a recalculation was made reflecting a revised assessment of \$1,101,145. This recalculation took the form of a hypothetical *pro forma* for the subject prepared by the Respondent. This *pro forma* calculation used typical market rents of \$8.00 as well as a typical structural allowance of 2% in order to arrive at a revised value of \$1,101,145. The Respondent argued that this test supported his recommendation to lower the assessment of the subject to \$1,092,000.

[12] The Respondent also advised the Board that the actual rents received from the subject's tenants were in excess of the \$8.00 typical rents used in the Respondent's hypothetical income test.

[13] The Respondent requested the Board to confirm the recommended 2012 assessment at \$1,092,000.

Decision

[14] The decision of the Board is to reduce the 2012 assessment to \$1,092,000.

Reasons for the Decision

[15] The Board noted that it is the responsibility of the Complainant to provide sufficient compelling evidence to raise a doubt in the mind of the Board that the assessment of the subject is not correct. In the opinion of the Board, the Complainant failed to discharge this responsibility. The Board noted difficulties as well with the evidence provided by the Complainant since it was related to the management of the condominium property.

[16] The initial burden of proving the assessment incorrect rests with the Complainant and, as stated above, the evidence provided by the Complainant did not prove this.

[17] The Board acknowledges the current condition of the total building as well as its inferior location.

[18] Based on the poor maintenance and location of the subject, the Board accepts the Respondent's recommendation to reduce the 2012 assessment from \$1,419,500 to \$1,092,000.

Dissenting Opinion

[19] There was no dissenting opinion.

Heard commencing August 22, 2012.

Dated this 29th day of August, 2012, at the City of Edmonton, Alberta.

Dean Sanduga, Presiding Officer

Appearances:

Ray Wong

for the Complainant

Chris Rumsey, Assessor, City of Edmonton

for the Respondent