

**NOTICE OF DECISION      NO. 0098 197/12**

Colliers International Realty Advisors Inc.  
3555 - 10180 101 Street  
Edmonton, AB T5J 3S4

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 20, 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>
3042504	9929 103 STREET NW	Plan: NB Block: 2 Lot: 62	\$768,500	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: SEDONA KEYS DEVELOPMENTS LTD

## **Edmonton Composite Assessment Review Board**

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of  
Edmonton, ECARB 2012-002128**

**Assessment Roll Number:** 3042504  
**Municipal Address:** 9929 103 STREET NW  
**Assessment Year:** 2012  
**Assessment Type:** Annual New

Between:

**COLLIERS INTERNATIONAL REALTY ADVISORS INC**

Complainant

and

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

Respondent

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**DECISION OF**  
**Warren Garten, Presiding Officer**  
**Lillian Lundgren, Board Member**  
**Ron Funnell, Board Member**

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### **Preliminary Matters**

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members indicated that they had no conflict of interest in this matter.

### **Objection To The Complainant's Rebuttal Evidence**

[2] During the course of the hearing, the Complainant wanted to present a contamination report entitled "Hazardous Materials Assessment" as rebuttal evidence. It was the Complainant's intention to append this report to the original disclosure document; however, it was omitted.

[3] The Respondent objected to the presentation of the contamination report because the report was not in rebuttal to any of the evidence presented by the Respondent. Instead, it was evidence the Complainant intended to present as part of Exhibit C-1. The Respondent argued that the Complainant is "case splitting" and the Board should not allow this document to be entered as rebuttal evidence.

## **Decision on the preliminary matter**

[4] The Complainant's contamination report is not rebuttal evidence. The Board finds the report to be new evidence that should have been part of the original disclosure. The report does not respond to or rebut the Respondent's evidence.

## **Background**

[5] The subject property is a two storey office building located at 9929 103 Street NW in the downtown. The property is comprised of a 7,575 square foot (sf) lot improved with 10,515sf of net leasable office space. The building is assessed in average condition and has an effective year built of 1966. The land has an effective zoning of RMU. There is no available parking.

## **Issue(s)**

[6] Is the subject property assessment correct?

(a) Is the subject property contaminated?

(b) Should the subject property be valued on land value only?

## **Legislation**

[7] 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.

[8] ***Matters Relating to Assessment and Complaints Regulation AR 310/2009***

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

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report, and written argument that the complainant intends to present at the hearing in rebuttal to the

disclosure made under clause (b) in sufficient detail to allow the respondent to or rebut the evidence at the hearing.

### **Position of the Complainant**

[9] The Complainant filed this complaint on the basis that the subject property assessment of \$768,500 is not supported in the marketplace. The Complainant argued that the subject property should be valued at land value only because the property has been vacant since 2006 due to various levels of contamination. Attempts to lease or sell the property have failed. The Complainant submitted a photograph taken in 2008 of the subject property showing that it is for lease.

[10] The Complainant stated that the subject site has undergone a “Hazardous Materials Assessment” and the report confirms that there is evidence of asbestos, lead paint, PCB’s, radioactive components and potential ozone-depleting substances in the subject property. The consequence is that the condition of the property will have a dramatic effect on the marketability.

[11] The Complainant referenced CARB 1617/2011-P decision as an example of a decision to reduce the property assessment by 30% based on the effect of contamination on the market value of the property.

[12] The Complainant submitted that the current assessment of \$768,500 results in a value of \$101.45 per square foot for the 7,575sf lot. The Complainant argued that recent sales in the immediate surrounding area do not support the current assessment if only the land value is considered. In support of this argument, the Complainant presented three comparable sales. The comparables located at 10085 100 Street NW and 11558 Jasper Avenue NW are vacant land sales. The comparable at 10044 105 Street NW is improved with a building. The average sale price of these comparables is \$82.93 per square foot. The Complainant stated that these sales indicate a value of \$90.00 per square foot for the subject for a total assessment of \$681,750 or \$681,500 truncated.

[13] The Complainant highlighted a comparable land assessment located at 10215 100 Avenue NW that was reduced to \$56.00 per square foot by way of a recommendation from the City of Edmonton. The comparable has the same RMU zoning as the subject property and is located approximately one block from the subject. At \$56.00 per square foot, the subject lot would be valued at \$424,200.

[14] In summary, the Complainant requested the Board to reduce the assessment to \$477,000 based on a -30% adjustment to the indicated value of \$681,500.

### **Position of the Respondent**

[15] The Respondent submitted that the subject assessment of \$768,500 is correct. The subject property is grouped with the Suburban 124 “C” Class office buildings because the subject property is more similar to this group of buildings. The same suburban valuation rates were applied to the subject property as all other properties in this group.

[16] Although the 8% capitalization rate is not an issue raised by the Complainant, the Respondent presented two sales comparables of office buildings located at 14815 110 Avenue NW and 11660 95 Street NW that had a median capitalization rate of 5.68%. They sold in February 2011 for a time adjusted sale price of \$98/sf and \$94/sf respectively.

[17] The Respondent stated that the assessment was prepared using the income approach and the Complainant has provided nothing to prove that the subject property should not be assessed on the income approach. A photograph in the Complainant's brief show the subject property as being listed for lease, and it was also recently listed for sale by Cushman & Wakefield for \$1,495,000.

[18] The Respondent noted that the Complainant's sales comparables that form the basis of the requested value are of questionable comparison to the subject. The comparables located at 10085 100 Street NW and 11558 Jasper Avenue NW have Direct Control zoning and the Complainant did not provide the effective zoning for these properties. The comparable located at 10044 105 Street NW sold with the purchaser's knowledge that the property is contaminated.

[19] The Respondent addressed the content of CARB 1617/2011-P decision by pointing out that the facts in that case are not similar to the facts in this case. CARB 1617/2011-P deals with a property located on Glenmore Trail in Calgary. The property is contaminated with gasoline that leaked from underground storage tanks at a Mohawk station on a site nearby. Cleaning up the site will not solve the problem because most of the contamination is under Glenmore Trail and more could flow in. There is agreement that the property on Glenmore Trail is contaminated. However, in the case of the subject property, the Respondent stated that there is no evidence of contamination.

[20] The Respondent provided a report from the Environmental Site Assessment Repository (ESAR) which shows search results for the subject property. Since no documents came up in the search, it is questionable whether the alleged contamination is of any significance. In contrast, a similar search for the Complainant's sale comparable at 10044 105 Street resulted in documents that show the site is contaminated. The Respondent concluded that if there is contamination of any significance it would show up in the ESAR search.

[21] The Respondent also prepared an estimate of value for the subject property using the cost approach which yielded a building assessment of \$253,773 and a land assessment of \$557,742 for a total assessment of \$811,500.

[22] The Respondent stated that chronic vacancy was not an issue raised by the Complainant. In answer to questions, the Respondent stated that if it was established that the subject property had chronic vacancy, a vacancy allowance of 30% could be applied. However, the resultant value is lower than the land only value of \$557,742 calculated by the Respondent on the cost approach.

[23] Included in the Respondent's brief is a sales data sheet published by Bourgeois & Company Ltd. For the sale of the subject on July 4, 2007 that showed the subject property was vacant at time of sale. It also shows that there is no available parking.

[24] In conclusion, the Respondent stated that the Complainant has provided no justification for a land only assessment; thus, the Respondent requested the Board to confirm the assessment at \$768,500.

### **Decision**

[25] The property assessment is reduced to \$557,500.

## **Reasons for the Decision**

[26] As set out in the preliminary matters of this decision, the Complainant intended to append a report which addressed the contamination on site. As a result of an oversight, it was not appended and there is no documentary evidence to support the contention that the subject property is contaminated. Further, the Respondent provided the ESAR search results for the subject property which did not indicate that the subject is contaminated. While it is possible that the subject property has problems, the Board finds that there is insufficient evidence to establish that it is contaminated.

[27] The Complainant argued that the subject property should be valued on land value since it has been vacant since 2006. The Board reviewed the history of the subject property with respect to vacancy and finds that it does suffer from chronic vacancy. There is photographic evidence to support this position in the disclosure documents provided by each of the parties. Included in the Complainant's brief is a photograph taken in 2008 that shows the property for lease. In the Respondent's brief, there is a sales data sheet published by Bourgeois & Company Ltd. for the sale of the subject on July 4, 2007 that showed the subject property was vacant at time of sale.

[28] Given that a vacancy allowance of 30% used in the income approach would result in a value lower than the land value established in the cost approach by the Respondent, the Board is not prepared to reduce the assessment below land value. The Board rejects the land value proposed by the Complainant because it is based on two sales of land zoned Direct Control for which the effective zoning is not known, and one sale of contaminated property.

[29] For the above reasons, the Board is reducing the subject property assessment to \$557,500.

Heard commencing August 20, 2012.

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

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Warren Garten, Presiding Officer

### **Appearances:**

Greg Jobagy

Stephen Cook

for the Complainant

Brennen Tipton

Cameron Ashmore

James Cummings

for the Respondent