



## ASSESSMENT REVIEW BOARD

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
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### NOTICE OF DECISION NO. 0098 427/11

82 AVENUE DEVELOPMENTS INC  
2 - LAURIER PLACE NW  
EDMONTON, AB T5R 5P4

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 hearings held on November 14, 2011, respecting complaints for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
8054157	9923 82 Avenue NW	Plan: I Block: 58 Lot: 10	\$560,500	Annual New	2011
8054314	9917 82 Avenue NW	Plan: I Block: 58 Lot: 11 & 12	\$1,006,000	Annual New	2011

#### Before:

Hatem Naboulsi, Presiding Officer  
Brian Hetherington, Board Member  
Howard Worrell, Board Member

**Board Officer:** Jason Morris

#### Persons Appearing on behalf of Complainant:

Aaron Slawsky, 82 Avenue Developments  
Liam Kelly, Witten LLP

#### Persons Appearing on behalf of Respondent:

John Ball, Assessor, City of Edmonton  
Cam Ashmore, Law Branch, City of Edmonton

## **PROCEDURAL MATTERS**

The parties indicated that they had no objection to the composition of the Board. The Board members indicated that they did not have any bias with regard to the matters under appeal. During the course of the hearing, Board member Howard Worrell became aware of evidence contained in the Complainant's brief (C-1, pgs 34-37, 38-41) regarding two 2010 CARB decisions on this property on which he had served as a panel member. Worrell raised this during the hearing and both parties confirmed they had no issue with this.

The Board heard from the parties that Roll Number 8054157 and 8054314 should be heard at the same time as the contamination issue was common to both neighboring properties.

## **PRELIMINARY MATTERS**

In the course of the hearing the Complainant requested that the Board order that information regarding the time-adjustment rates used by the City of Edmonton between the date of the sale of the subject property and the valuation date be provided to the Board and the Complainant. After hearing from the parties and adjourning to consider the matter, the Board ordered that the information be provided, as it may assist the board in coming to a fair resolution of the matter. The information was provided by the City in the course of the hearing and was entered as exhibit R2.

## **BACKGROUND**

The subject properties are adjoining one another and owned by the same party, and their property assessments are appealed on the same grounds.

Roll Number 8054157 is a property located at municipal address 9923 82 Avenue NW in the Ritchie neighbourhood of south Edmonton. It is a single-storey retail property consisting of approximately 2,630 square feet on a lot of approximately 4,300 square feet. It was assessed on the income approach, and the 2011 assessment is \$560,500.

Roll Number 8054314 is a property located at municipal address 9917 82 Avenue NW in the Ritchie neighbourhood of south Edmonton. It is a two-storey retail property consisting of approximately 9,393 square feet on a lot of approximately 8,700 square feet. It was assessed on the income approach, and the 2011 assessment is \$1,006,000

## **ISSUE(S)**

- 1) Should the 2011 assessment reflect the 2007 purchase price of the property?
- 2) Has the environmental contamination been reflected in the 2011 assessment?

## **LEGISLATION**

*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**

The Complainant confirmed to the Board that evidence (C-1) presented will be common to both roll numbers.

The position of the Complainant is that the 2011 assessment should be based upon the 2007 purchase price of the parcel that contains the two roll numbers, plus or minus the time-adjustment factor used by the City. The subject properties were purchased for \$1,000,000 by the Complainant in May, 2007 (C-1, pgs 6-20). The Complainant argues the 2011 assessment is incorrect because the sale documents clearly show that the site was contaminated when purchased (C-1, pgs 10, 17-20).

The Complainant provided a letter from NAI Commercial Real Estate (C-1, pg 21) to show that the subject property had been exposed to the market place for some time before the Complainant purchased the property on May 27, 2007.

The Complainant provided an environment site liability cost report from Nichols Environmental dated March 25, 2009 (C-1, pgs 22-24) and an updated environmental report from the same company February 14, 2011 (C-1 pgs 42-44). This Phase II Environmental Report provided a site liability cost estimate for the subject properties. Two alternative methods of dealing with the contamination were suggested;

- 1) Demolition of the existing buildings and ground remediation. These costs ranged from \$975,000 plus reconstruction for the subject properties.
- 2) In situ remediation using a chemical oxidant. This in situ process would be operated over a 7- 10 year period and cost approximately \$1,200,000 over that period.

The Complainant argues that the evidence presented, showing the 2007 sales contract for the subject property and the Environmental Reports confirming the contamination of the site, support the requested 2011 assessments of the subject properties being the purchase price of \$1,000,000 plus or minus the required time adjustments.

### **POSITION OF THE RESPONDENT**

The Respondent told the Board that, subsequent to the Complainant filing his appeals on both account properties, the City had offered to reduce the assessments, but had not entered into any discussions with the Complainant on these offers.

The reductions were:

Roll Number 8054157 from \$560,500 to \$498,000

Roll Number 8054314 from \$1,006,000 to \$950,000

The Respondent acknowledged the environmental contamination on the two sites, which it said limited the range of tenancies that could be offered in the buildings. It was further acknowledged that rental rates on the subject properties had been “reduced by 15-20% from the surrounding properties of similar type and quality in a one-block radius of the subject property.” (Roll Number 8054314, R1, page 27 and Roll Number 8054157, R1 page 23).

While the original assessments had been made with a capitalization rate increase of 0.5% over neighbouring properties, the City had since increased the capitalization rate by a further 0.5% to 9% to recognize the leasing limitations on the properties and the reduced rental potential.

Assessment details of four comparable – but non-contaminated – properties, (Account # 8054157, R1, pp 25-28 and Account # 8054314, R1, pp 26 and 28-30) also located on the 99<sup>th</sup> block of Whyte Avenue showed that rental rates were higher than those possible at the subject property.

#### Account # 8054157

The Respondent argued that a rental income of \$18.25 per sq. ft. represents the impact of the contamination on the property.

Asked by the Complainant’s counsel if the Respondent had any documents to support the recommended reduction in the assessment, he said that he did not. He also told the Board that he had no documents to support how the increase in the capitalization rate had been resolved.

The Respondent stated that the appropriate rental rate on a clean site would have been \$22 per sq. ft. and that the deduction of \$4.00 had been allocated.

These calculations had led the City to reduce the assessment on this property to \$498,000, which he asked the Board to approve.

#### Account # 8054314

The Respondent showed on his Income Detail Report (R1 pg 22) for this property that the rental income was \$14.75 on the main floor and \$7.25 on the second floor (R1 – p 22). He added that the rental rates had been reduced by \$4.00 per sq. ft to \$14.75 per square foot. .

Based on these calculations, a revised assessment of the subject property was \$950,500 and he requested the Board to approve that figure.

### **DECISION**

The Board decision is to

1. reduce the assessment for Roll # 8054157 from \$560,500 to \$384,000 and;
2. accept the recommendation of the Assessor for Roll # 8054314 from \$1,006,000 to \$950,500.

Roll Number	Original Assessment	New Assessment
8054157	\$ 560,500	\$384,000
8054314	\$1,006,000	\$950,500

## **REASONS FOR THE DECISION**

Roll # 8054157

- 1) The Board recognized the 2007 sale of the subject property as a good indicator of the market value of the contaminated property at that time. Since the property currently produces rental income, the Board agrees with the position of the Respondent in assessing the property on the income approach. There was no evidence provided by either party that supported an adverse affect to the rent roll by the site contamination of the property, other than the exclusion of food services.
- 2) The Respondent concurs with the Complainant that the site is contaminated.
- 3) The Board was provided a Contamination Consideration sheet (R-1, pg 23) that showed the subject's rental rate has been reduced \$4.00 per square foot from surrounding properties of similar type and quality in a one block area of the subject. A further 1% increase in the capitalization rate was also provided for the extra risk of the subject. This was to allow for the stigma and inconvenience that would be incurred from the contamination. This allowed a reduction of \$176,352 to provide for the income loss and extra risk.
- 4) The Respondent provided four equity comparables of similar properties (R-1, pgs 25-28) that showed an average rental rate of \$19.31 per square foot vs. a rental rate applied of \$18.75 per square foot for the subject property (R-1, pg 21).
- 5) The Board was not convinced that the \$4.00 per square foot reduction and additional .05% capital risk had been applied to the 2011 assessment considering the \$18.75 rental rate used in comparison to the rental rates of those similar properties in a one block area.
- 6) The Board reduces the 2011 assessment from \$560,500 to \$384,148.

Roll # 8054314

- 1) The Complainant allowed C-1 from the other roll number to stand as the appropriate evidence for this complaint.
- 2) The Board was presented with the same four equity comparables as the previous roll number. These also showed an average rental rate of \$19.31 per square foot vs a rental rate applied of the subject of \$14.75 per square foot (R-1, pg 22).
- 3) The Board was convinced that the appropriate rental rate reduction was applied to support the claim of the Complainant that the property had contamination issues.
- 4) The City also made a further recommendation that the capitalization rate be increased .05% to support the higher risk because of the environmental shortcomings of the subject property.
- 5) The Board accepts the recommendation of the City to reduce the 2011 assessment from \$1,006,000 to \$950,000.

## **DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 14th day of December, 2011, at the City of Edmonton, in the Province of Alberta.

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Brian Hetherington, on behalf of Hatem Naboulsi, Presiding Officer

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*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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