

NOTICE OF DECISION NO. 0098 99/12

Riocan Holding Inc.
315 700 – Lawrence Avenue West
Toronto, ON M6A 3B4

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 CARB (the CARB) from a hearing held on July 9, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9976674	14231 137 Avenue NW	Plan: 9926834 Block: 13A Lot: 16	\$17,234,500	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: Cobank Property Tax Services Inc.

Edmonton Composite Assessment Review CARB (CARB)

Citation: Riocan Holdings Inc. v The City of Edmonton, 2012 ECARB 278

Assessment Roll Number: 9976674

Municipal Address: 14231 137 Avenue NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

**Riocan Holdings Inc.
Represented by Cobank Property Tax Services Inc.**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

**DECISION OF
Don Marchand, Presiding Officer
Howard Worrell, CARB Member
Mary Sheldon, CARB Member**

Preliminary Matters

[1] The Respondent asked to clarify in what capacity the Complainant was attending the hearing: as expert or as agent. The Complainant confirmed that his role would be as an agent relative to the Cineplex Theatre portion of the subject's assessment only.

[2] The parties were sworn in with the Complainant affirming and the Respondent taking an oath.

[3] Both parties indicated they had no objections to the composition of the CARB. Further, the CARB members indicated that they had no bias with respect to this matter.

[4] The parties also informed the CARB that a subsequent hearing to be heard on Roll Number 9980521 would have some common evidence, argument and submissions that are to be carried forward as relevant to that roll number.

Background

[5] The subject property is a Power Centre located in north Edmonton in the McArthur Industrial neighborhood and consists of two Commercial Retail Units (CRUs), a Cineplex Theatre with 64,900 square feet of main floor space, a mezzanine of 12,923 square feet for a total of 77,823 square feet and a restaurant CRU of 10,936 square feet. Both CRU's share the same parking lot.

[6] Owned by Cineplex Entertainment LP, the theatre forming the subject of this appeal is located at 14231- 137 Avenue. The restaurant CRU portion of the 2012 assessment is not under appeal.

[7] The 2012 assessment for the theatre used a direct capitalization methodology within the Income Approach to produce a valuation of \$13,107,253 for the Cineplex Entertainment LP portion. Together with the restaurant CRU portion of \$ 4,127,500, not in dispute, the total assessment for the subject is \$17,234,500.

[8] The above property description and facts were all agreed to by the Parties.

[9] The only issue outstanding what vacancy rate should be applied to the theatre portion of the 2012 assessment.

Issue

[10] What is the correct vacancy allowance for the subject property, 3% or 7%?

Legislation

[11] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

s 467(1) An assessment review CARB 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 CARB 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.

[12] The CARB gave consideration to the meaning of market value and to the requirements of an assessment made pursuant its market value.

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

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

S 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

[14] The Complainant provided an Application for Revision brief (C-1) that included 15 tabs and provided background details for an assessment reduction. The Complainant argued a 7% vacancy rate should be applied to the theatre instead of the current rate of 3%.

[15] The position of the Complainant was that the 3% vacancy allowance applied to the CRU rate of the subject is too low when assuming it takes 18 months to renovate a theatre premises to another commercial use after the theatre completes its commercial life.

[16] In C-1, Tab 12, the Complainant submitted a Quantification of Vacancy Allowance overview. It provided a “Summary of Theatre History, Theatres Closed Post 1960 to Date” for 16 closed Edmonton theatres showing these theatres had an average economic life of 20.11 years.

[17] To support the position of a 7% vacancy allowance, the Complainant provided two 2007 theatre closures and their subsequent property sales. The first property, at 3633 99 Street, closed September 30, 2007 and re-opened as a postal outlet in the summer of 2010. It was vacant 29 months and in operation as a theatre for 240 months. This equates to a 12.1% vacancy percentage. The other property, at 2950 Calgary Trail, closed in 2007 and was re-opened as a furniture store. It was vacant 26 months and in operation as a theatre for 288 months. This equates to a 9.03% vacancy percentage.

[18] The Complainant further stated that the average economic life of a movie theatre was 258 months, including the 18 month modification period and the average time to convert to another commercial use. This indicated a vacancy rate of 7% and should be used when assessing the subject property.

[19] A 2012 assessment value of \$ 12,267,000 results when a 7% vacancy rate is applied to the valuation of the theatre portion of the subject property, in place of the current 3% rate.

[20] By adding the 2012 assessment for the restaurant CRU of \$ 4,127,500 to the requested \$ 12,267,000 for the theatre CRU, this would reduce the 2012 assessment from \$17,234,500 to \$16,394,500.

Position of the Respondent

[21] The Respondent provided a 75 page brief (R-1) that included a mass appraisal overview, the subject's Power Centre Valuation Summary, third party retail market reports and a Law and Legislation Brief.

[22] The Respondent confirmed that the income approach to value was not in question by the Complainant but only the vacancy rate applied to the subject CRU.

[23] The Respondent referred the CARB to page 9 of R-1;

“Stabilized Vacancy and Collection Loss

This is a deduction from the potential gross income for typical vacancy and collection losses, assuming current market conditions and typical management.

Vacancy losses are best described as an allowance for vacant space. Collection losses are considered unpaid rents that the landlord is unlikely to recover. These allowances are usually expressed as a potential gross income although variations can occur where they are applied to only certain rental properties.

[24] Third party reports from the second quarter of 2011 (R-1, pages 20-30) provided by the Respondent showed that commercial vacancy rates continued to show a downward trend to 2.4% in January of 2011 and they were expected to be even lower by year's end. Vacancy rates at regional malls were at 1.1%.

[25] The Respondent provided oral evidence respecting the following typical vacancy rates for commercial properties assessed in the City of Edmonton: 3% for CRU tenants, 1% for main floor tenants, and 5% for upper level office space tenants.

[26] A chart provided by Respondent (R-1, page 19) showed nine active Edmonton theatres, in business for an average of 33 years. After removing the three government sponsored and not-for-profit theatres from this list, the median age in business for the remaining six theatres became 24 years. This showed that theatres have long occupancies and no vacancy during the term of their business life.

[27] The Respondent stated that the Complainant's evidence confirmed that during the tenure of its business life, a typical theatre property has no vacancy. The subject theatre was not proven to be near or at the end of its economic life. The Respondent provided a 3% vacancy rate in the income approach to value for the subject even though the Complainants evidence showed there was no vacancy.

[28] The Respondent requested the CARB to dismiss the complaint and confirm the 2012 assessment of the subject property at \$17,234,500, as onus falls on the Complainant to prove that the assessment is incorrect by providing sufficient evidence to change the assessment.

Findings of the CARB

[29] The evidence provided by the Complainant provided no indication of any vacancy in the subject's theatre CRU.

[30] No vacancies were shown for comparable theatres across the city.

[31] The sales comparables used by the Complainant showed minimal vacancy after closure and before the sale of the subject properties.

Decision

[32] The decision of the CARB is to confirm the 2012 assessment of the subject property at \$17,234,500.

Reasons for the Decision

[33] The CARB was not convinced that the assumptions relied upon by the Complainant for the Complainant's vacancy rate argument were correct, for the following reasons:

- i. Evidence provided by the Complainant indicated an average 20 year business life cycle for theatre premises. The Complainant's evidence shows that theatres in Edmonton during their economic life have no vacancy.
- ii. No lease for the subject theatre was provided to confirm length of lease, lease conditions, lease start or end dates, other terms or renewal clauses. The CARB, in the lack of supporting details otherwise would have to assume that during the period of the ongoing lease on the subject property, no vacancy has occurred.
- iii. Evidence was not provided to show the subject was at or near the end of its economic life and was ready for renovation or other use.

[34] The CARB placed little weight on the Complainants two 2007 comparable theatre sales as:

- i. Network data sheets provided by the Complainant did not show any issue of future retrofit or any condition on the sale of these existing theatres to another retail use.
- ii. The vacancy rate calculations by the Complainant included the post sales period of the new owner. No supporting details were provided to show any conditions in regards the sale and the new owners' time to renovate to another use.

[35] The CARB noted that the time on market for the sale of both the comparable properties was less than 6 months from date of closure of the theatres to the sale date of the properties. This vacant period falls within the 3% vacancy allowance that the Respondent has provided in the 2012 assessment as the Complainant has indicated the average lease of a theatre in Edmonton is 240 months. 3% vacancy over the life of an average theatre lease would be 7.2 months.

[36] The CARB was satisfied that the 3% vacancy rate provided by the Respondent to the subject property reflect a typical vacancy rate applied to Power Centers across the city by the City of Edmonton for the 2012 Assessment year.

Dissenting Opinion

[37] There was no dissenting opinion.

Heard commencing July 9th, 2012.

Dated this 2nd day of August 2012, at the City of Edmonton, Alberta.

Don Marchand, Presiding Officer

Appearances:

Jay Cohen, Cobank Property Tax Services Inc.
for the Complainant

Frank Wong, Assessor
Steve Lutes, legal counsel
for the Respondent