

Edmonton Composite Assessment Review Board

**Citation: Colliers International Realty Advisors Inc v The City of Edmonton,
2012 ECARB 2120**

Assessment Roll Number: 10042949

Municipal Address: 5723 67 Street NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc for Edm Southeast Roper Road (Ari) Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

**Peter Irwin, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member**

Preliminary Matters

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

Objection to Portions of the Rebuttal Evidence

[2] The Respondent raised an objection to portions of the Complainant's rebuttal document, marked Exhibit C-2, because the information contained in those portions did not rebut any of the evidence disclosed by the Respondent in Exhibit R-2. The Respondent objected to the assessment information on page 7 and the assessment map on page 15. Whether the property was equitably assessed was not an issue pursued by the Complainant because there was no assessment evidence or argument disclosed in Exhibit C-1.

[3] The Complainant stated that one of the issues identified in the Assessment Review Board Complaint form was "fairness and equity"; therefore, equity was one of the issues. As a result, this was proper rebuttal evidence and should be allowed. The Complainant stated that he was not clear on what can be regarded as rebuttal evidence if these portions in question are not rebuttal evidence.

[4] In summary, the Respondent stated that the Complainant provided the same "boiler plate" list of reasons for this complaint as all other complaints. The list included many issues that were not pursued in the Complainant's Exhibit C-1. Exhibit C-1 contained only evidence and

argument relating to the correctness of the assessment and the correctness of the net rentable area.

Decision

[5] The Board finds that the references to assessment in Exhibit C-2 are not rebuttal evidence because they do not rebut the Respondent's disclosure, Exhibit R-1. The Respondent's disclosure contains sales comparables in defense of the correctness of the subject assessment.

[6] If the Complainant intended to challenge the subject assessment on the basis of equity, the evidence and argument relating to equity should have been disclosed in Exhibit C-1. This would have allowed the Respondent to respond to the issue of equity, and the Complainant to rebut the Respondent's evidence, in turn.

[7] The decision of the Board is to exclude the references to assessment in Exhibit C-2 on page 7 and the assessment map on page 15.

Background

[8] The subject property is a large warehouse located at 5723 67 Street NW in the Roper Industrial neighborhood. The 320,738 square foot (sf) lot is improved with a 125,137sf building that has an effective year built of 2005. The site coverage is 39%.

Issue

[9] The Board considered the following issues:

1. Is the subject assessment correct?
2. What area should be used to calculate the assessment?

Legislation

[10] 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.

[11] The Matters Relating To Assessment Complaints Regulation reads:

Matters Relating to Assessment Complaint Regulation, Alta. Reg. 310/200/-9

s 8(2)(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 for each witness, and any 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 respond to or rebut the evidence at the hearing.

Position of the Complainant

[12] The Complainant filed this complaint on the basis that the subject assessment was incorrect and the area used to calculate the assessment was incorrect.

1. Is the subject assessment correct?

[13] The Complainant argued that the subject assessment of \$12,963,000 (\$103.57/sf) was unreasonable in the context of the recent sales for comparable industrial warehouse buildings. In support of this position, the Complainant presented five sales comparables located in the southeast quadrant of the city. The sales ranged in value from \$66.77/sf to \$95.15/sf, with an average sale price of \$83.58/sf.

[14] The Complainant stated that sale #1, constructed in 1998, was the only comparable that was similar in age to the subject property, which was constructed in 2005. It sold in February 2010 for \$81.66/sf, and thus represented a reasonable comparable to the subject property from a valuation point of view.

[15] The Complainant noted that the average size of the comparables was considerably smaller than the subject property, with the exception of the first sale. Based on the typical economies of scale, this would necessitate a downward adjustment for the subject property.

[16] Due to the size of the subject property, the Complainant included three sales comparables with a building area of over 100,000sf that sold in the northwest quadrant of the city. The average sale price of those comparables was \$74.20/sf.

[17] The Complainant submitted that an upward adjustment was necessary to reflect the newer age of the subject; however, this was counter-balanced by the superior zoning of the comparables. The Complainant referenced page 12 of Exhibit C-1, which has "The Edmonton Industrial Sales by Zoning Chart" prepared by Colliers that shows there was a typical premium of 10% (\$178.65/sf for IB zoning vs. \$159.60/sf for IM zoning).

[18] With all of these factors considered, the Complainant stated that the resultant market value would be \$10,497,000 truncated, based on \$85.00/sf.

[19] As a test, the Complainant also prepared an estimate of value for the subject property on the income approach. The Complainant used an \$8.00/sf rental rate, a 5% vacancy rate, a 2% structural allowance and a 7% capitalization rate which yielded a value of \$11,816,500 truncated.

[20] The Complainant selected a rental rate of \$8.00/sf after reviewing four recent leases in the subject property and four recent leases from comparable properties. The recent leases in the subject ranged from \$7.50/sf to \$8.25/sf. The comparable leases ranged from \$7.00/sf to \$9.00/sf, with an average lease rate of \$8.43/sf.

[21] The 7% capitalization rate used in the analysis was taken from the Colliers International Cap Rate Report for the second quarter 2011 for this type of property. The Complainant chose 7% as a reasonable midpoint between the published range of 6.75% to 7.75 %

[22] In summary, the Complainant requested the Board reduce the assessment to \$10,500,000.

2. What area should be used to calculate the assessment?

[23] The Complainant submitted that the subject's net rentable area was incorrect. The assessed area is 125,137sf, compared to the actual net rentable area of 123,496sf.

Rebuttal

[24] Prior to the Complainant submitting the rebuttal evidence in Exhibit C-2, the Respondent raised an objection to portions of the document. Please refer to the preliminary matters section of this decision for the details.

[1] After the ruling from the Board, the Complainant continued with the balance of the rebuttal document.

[2] The Complainant argued that the Respondent's dated sales should be given less weight because of the reasons in Assessment Review Board Decision No. 0098 252/10. This decision stated that

The Board places less weight on the sales comparables provided by both the Complainant and the Respondent as they date back to 2006 and 2007 and require significant time adjustment. None of these sales were contaminated properties, as is the subject.

[3] The Complainant provided additional comments on the Respondent's sales. Sales #1, #2 and #3 were located in the northwest quadrant. Sale #3 had 0.75 acres of excess land. Sale #4 was an 11 building complex, including two neighborhood shopping centres, one bank and eight industrial flex buildings. Sales #1, #2 and #5 were zoned IB and were superior to the subject in zoning.

Position of the Respondent

1. Is the subject assessment correct?

[4] The Respondent submitted that the subject assessment of \$12,963,000 was correct. In support of this position, the Respondent presented five sales comparables which ranged in value from \$93.49/sf to \$203.16/sf and had an average sale price of \$140.07/sf. The subject property was assessed \$103.59/sf.

[5] Owing to the size of the subject property, at 125,137sf, and the year built of 2005, the Respondent looked beyond the southeast quadrant for comparables. Three of the comparables were located in the northeast quadrant and ranged in value from \$93.49/sf to \$139.31/sf.

[6] In summary, the Respondent requested the Board confirm the assessment at \$12,963,000.

[7] The Respondent was critical of the complainant's sales comparables in several aspects. The Respondent stated that sale #1 was the closest in age, at seven years older than the subject; however, eight of the sales comparables were much older than the subject property, dating back to 1961. Sale #1 sold at a time when the lease rates were considered to be 20% to 25% below market, indicating an upside.

[8] The Respondent clarified the use of its sale #3 located at 18507 104 Avenue NW. The 0.75 acres of land the Complainant considered to be excess land was not excess land. The 0.75 acres was vacant yard space.

[9] The Respondent disagreed with the Complainant's interpretation of the reasons in CARB Decision No. 0098 252/10. The Respondent interpreted the reasons to mean that less weight was placed on the comparable sales than the sale of the subject property. The subject property, which was contaminated, sold for \$785,000 and the CARB reduced the assessment to the sale price.

2. What area should be used to calculate the assessment?

[10] The Respondent submitted that the correct area to be used was 125,137sf, as shown on the property detail report in Exhibit R-1 page 17. The Respondent submitted that the subject property and all similar properties were assessed on the direct sales approach using the gross building area of the building. The Complainant's measurements were based on net leasable area, an area smaller than the gross building area.

Decision

[11] The property assessment is confirmed at \$12,963,000.

Reasons for the Decision

[12] In determining whether the subject property is correctly assessed, first, the Board reviewed the Complainant's sales evidence. The Board finds that there is insufficient evidence to show that the subject assessment of \$12,963,000 (\$103.57/sf) is incorrect and should be reduced to \$85.00/sf. With the exception of one sale, the Complainant's sales comparables were constructed between 1961 and 1978, and, as such, are not similar to the 2005 subject building.

[13] When all of the older sales comparables are excluded, only one sale is remaining. Sale #1, located at 4101/25 84 Avenue NW, was constructed in 1998 and is similar in age to the subject. However, it is inferior to the subject property because it has 15% greater site coverage, and sold at a time when the lease rates were considered to be 20% to 25% below market.

[14] With respect to the Complainant's income approach, the Board finds insufficient evidence to support the use of an \$8.00/sf rental rate. As well, the use of the 7% capitalization rate is somewhat arbitrary, because there is no evidence to support that particular number. Given these deficiencies, the estimate of value may not reflect the market value of the subject property.

[15] The Board also considered the Complainant's argument respecting the Respondent's sales that the Complainant considered dated. The Board finds that it is not unreasonable for the Respondent to use sales of similar property that transacted approximately three years prior to the

valuation date of July 1, 2011, provided they are adjusted for changes in the marketplace between the sale date and the valuation date.

[16] With respect to CARB Decision No. 0098 252/10, this Board is unable to comment on the reasons because this Board did not hear the evidence and argument presented at that hearing. The facts of that case appear to be different than this case. Furthermore, this Board is not bound by previous decisions of the Board.

[17] Next, the Board reviewed the Respondent's sales evidence. None of the Respondent's sales comparables are particularly helpful in valuing the subject property. Sales #1, #2 and #3 are located in the northwest quadrant and require an upward adjustment for location. Sale #2 may have been acquired jointly with the Bonaventure Building and is not a reliable indicator of value. Sale #4 is an eleven building complex which includes two shopping centres and is a poor indicator of value for the subject warehouse property. Sale #5 is superior in age and site coverage to the subject.

[18] With respect to the issue of whether the subject property is correctly assessed, the onus is on the Complainant to prove that the assessment is incorrect. The Complainant did not provide sufficient evidence to establish his claim. Accordingly, the assessment is confirmed at \$12,963,000.

[19] With respect to the second issue, the Board accepts the area of 125,137sf as the correct area to be used for assessment purposes because the subject property and all similar properties are assessed on the direct sales approach using the gross building area.

Heard September 6, 2012.

Dated this 5 day of October, 2012, at the City of Edmonton, Alberta.

Lillian Lundgren for:
Peter Irwin, Presiding Officer

Appearances:

Greg Jobagy
Stephen Cook
for the Complainant

Cameron Ashmore
Steve Lutes
Will Osborne
for the Respondent

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.