

Edmonton Composite Assessment Review Board

**Citation: Colliers International Realty Advisors Inc. v The City of Edmonton, 2012
ECARB 2330**

Assessment Roll Number: 3567757
Municipal Address: 10065 Jasper Avenue 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

DECISION OF
Warren Garten, Presiding Officer
Lillian Lundgren, Board Member

Final Decision

[1] Please note that this final decision should be read in conjunction with the interim decision issued on September 4, 2012.

[2] Mr. Ron Funnell, Board Member, was unable to attend the continuation of the hearing and did not take part in the final decision. The parties did not object to continuing the hearing with the remaining two Board Members.

Legislation

[3] 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;

289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

2) Each assessment must reflect

a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

b) the valuation and other standards set out in the regulations for that property.

s. 465(1) When, in the opinion of an assessment review board,

a) the attendance of a person is required, or

b) the production of a document or thing is required,

the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing.

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 Respondent

[4] In response to the request for additional information by the Composite Assessment Review Board (CARB), the Respondent produced a cost approach to value assessment on the subject property. The Respondent's document is marked Exhibit R-3.

[5] Prior to submitting Exhibit R-3, the Respondent indicated that it objected to the material being compelled and used by the Board.

[6] The Respondent stated that there is no reference in the Ledcor e-mail to which floors were demolished prior to December 31, 2011, if any, and the extent or amount of the demolition. There was no way of knowing whether the e-mail referenced work that was specific to this property or whether the work simply related to other properties which were part of the overall project.

[7] The Respondent also submitted that, without knowing answers to these questions, it was impossible for the City to produce a cost approach which reflected anything other than a fully complete and vacant building as of December 31, 2011. To make any adjustments to this cost approach reflecting a fully complete and vacant building, the City would need to know how much of the property had been altered as of December 31, 2011.

[8] As such, the Respondent had provided a cost approach reflecting an unadjusted, complete building as of December 31, 2011, based on land values and Marshall & Swift Tables.

[9] The Respondent classified the subject property as a “B” Class office building utilizing the Marshall & Swift cost manual. Further to that, typical HVAC, sprinkler systems and elevators were additional cost-added, based on Marshall & Swift rates, resulting in the cost value of \$35,504,500.

[10] This cost represented the replacement cost new, less depreciation for the subject property with a condition date of December 31, 2011. It also reflected the property as 100% complete as the Respondent has no evidence to show what may have been removed from the subject property between December 19, 2011 and December 31, 2011.

[11] The Respondent stated that the cost value was within 3.5% of the current assessed value of \$36,882,000.

Position of the Complainant

Objections Raised by the Respondent

[12] Prior to the Complainant’s response, the Respondent objected to some of the information in the Complainant’s disclosure marked as Exhibit C-4. The Respondent stated that Colliers (the Complainant) had submitted new evidence and information that was not requested by the CARB. The Respondent objected to the dates of the photographs, the 50% adjustment and new evidence.

- Dates of the photographs – On page 4 of Exhibit C-4, the Complainant added the heading “Demolition Progress as of December 31, 2011”. On page 7 of Exhibit C-4, the heading “Construction as of October, 2012” was added.

The Respondent objected to this new information because it differed from the evidence at the original hearing. At the original hearing, when questions were asked of these undated photographs, the answers were not that they showed the state of the property as of December 31, 2011. Many of the questions about the photographs could not be answered. In addition, the sister photographs to the ones now purportedly taken on December 31 (which forms part of the original evidence) clearly contained green leafed trees in the background, and could not possibly have been taken on December 31, 2011.

- 50% adjustment for the removal of walls and flooring as of the condition date – The 50% adjustment for demolition was never argued and appeared out of nowhere. The Respondent stated that the suggestion that enough demolition took place between December 19 and 31 to create a 50% reduction, with breaks for Christmas and New Years did not make logical sense. It also did not make logical sense to depreciate a parkade for 50% when the only thing that could be removed were light fixtures. There were no walls or floor to remove in this area.
- New evidence – The Respondent objected to the Appendices in Exhibit C-4 on pages 11, 12 and 13 because they included two diagrams of the building.

[13] In summary, the Respondent objected to the inclusion of the above information because it was an attempt by the Complainant to place new evidence and argument before the Board that was not part of the original hearing. This is clearly affecting the fairness of the hearing process.

Response to the Objections Raised by the Respondent

[14] The Complainant responded to the objections as follows:

- Dates of the photographs – The Complainant stated that the photographs were the same photographs presented in the original hearing and were presented to focus on the demolition areas. In answer to Board questions, the Complainant agreed to withdraw the new references to the dates of the photographs.
- 50% adjustment for the removal of walls and flooring as of the condition date – The Complainant objected to the removal of its revised cost approach because it was in response to the cost approach prepared by the Respondent. The Complainant stated that the Respondent only complied with half of the CARB request for information because they prepared a cost approach based on the building being 100% complete as of December 31, 2011.

The Complainant stated that the Respondent's Replacement Cost Detail Report had one line representations for each of the floors showing the replacement cost new and the depreciation, without any supporting detailed explanation or information. The Complainant attempted to validate the values stated, using the Marshall & Swift Manual, but was unsuccessful due to the missing information. As a consequence, the Complainant accepted the calculations as prepared by the Assessor, with the addition of the "Functional and Economic Obsolescence" calculations due to the various parts of the subject property that the Board had stated must be recognized.

The Complainant submitted a revised cost approach based on the cost valuation prepared by the Respondent. Changes were made in recognition of the demolition that had commenced on the main, second, and third floors, as well as on the basement retail/office space and parkade levels one and two. A 50% decrease in value was warranted for each of these floors, because much, if not all, of the furnishings and some of the walls and flooring were removed. The final value for the improvements was \$26,465,000. When the land value of \$3,180,147 was added to the improvement value, the total value is \$29,645,000 (truncated).

In conclusion, the cost approach to value that accounted for the demolition as of the condition date indicated a value for the subject property of \$29,645,000.

- New evidence – The Complainant agreed to remove the appendices which included two diagrams of the building because they were not critical to the case.

Decision on the Objections Raised by the Respondent

[15] The decision of the Board is to remove the references to dates on pages 4 and 7 of Exhibit C-4 because this is new evidence and is contrary to evidence given by the Complainant during the original hearing. Further, the Board agrees with the Respondent that the photographs showing green leafed trees were not taken between December 19 and December 31, 2011, because Edmonton does not have green leafy trees in the latter part of December.

[16] The Board also removed the appendices that included the two diagrams of the building because they are not related to the information requested by the Board.

[17] The Board will consider the revised cost approach prepared by the Complainant because it is directly related to the Board's request for additional information.

Decision

[18] The property assessment is reduced to \$33,888,500.

Reasons for the Decision

[19] In determining whether the assessment reflects the condition of the property as of December 31, 2011, first, the Board determined that demolition had commenced prior to this date. The reasons are given in the interim decision issued on September 4, 2012.

[20] Neither party was able to quantify the amount of demolition work that occurred prior to December 31, 2011; however, the timeframe within which this work could have occurred is between December 19 and December 31. This is based on the e-mail sent by Ledcor, which stated that they had been working on the site since December 19, 2011.

[21] The Board appreciates the attempt by the Complainant to quantify the amount of demolition by applying a 50% depreciation factor to the building value; however, this factor is not supported by evidence. Further, it is unlikely that this amount of demolition/renovation work occurred in this short timeframe.

[22] Since the Board is convinced that demolition work had commenced prior to December 31, 2011, and given that the work could only have occurred in a very short period of time, the Board will make a nominal adjustment to the assessment in recognition of the condition as of December 31, 2011.

[23] Based on the cost approach prepared by the Respondent, the building value is \$32,324,603. When the building value is reduced by a nominal 5%, the result is \$30,708,372. Accordingly, the total assessment for building and land is \$33,888,500.

Heard November 8, 2012.

Dated this December 6, 2012, at the City of Edmonton, Alberta.

Warren Garten, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Brennen Tipton
Cameron Ashmore
James Cumming
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.