

NOTICE OF DECISION

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 22, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3567757	10065 Jasper Avenue NW	Plan: F Lot: 3-5	\$36,882,000	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: GE CANADA REAL ESTATE EQUITY HOLDING COMPANY / SOCIETE DE
PORTEFEUILLE IMMOBIL

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
Ron Funnell, Board Member

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.

Background

[2] The subject property, known as the Epcor Building, is a twenty storey office building located at 10065 Jasper Avenue NW. The building was constructed in 1975 and is classified as a BH highrise office building in the Financial district. The total area of 198,546 square feet is comprised of office space and CRU space. It has 103 underground parking stalls.

Issues

[3] What is the correct assessment for the subject property?

[4] (a) Does the assessment recognize the characteristics and physical condition on December 31, 2011?

[5] (b) Does the estimate of value proposed by the Complainant reflect market value?

Legislation

[6] 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 289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

s 289(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 Complainant

[7] The Complainant filed this complaint on the basis that 2012 assessment of \$36,882,000 is in excess of market value. The Complainant argued that it was common knowledge that all of the leases in the building would terminate by December 31, 2011 and Epcor Utilities Inc. would vacate the building. In support of this argument, the Complainant presented the 2011 Tenant Lease Chart showing that the leases terminated on December 31, 2011.

[8] The Complainant stated that the subject property is part of a redevelopment site that includes the old theatre property to the east and the old Bank of Montreal building to the west. The Complainant presented several photographs depicting the entire redevelopment site including interior photographs of the subject property. The photographs of the subject showed vacant space and various stages of demolition or renovation. While the Complainant's photographs are not dated, the Complainant stated that they were taken prior to December 31, 2011.

[9] The Complainant submitted that real estate investors purchase the majority of leased office buildings in Western Canada. Such investors are most concerned with the property's income generating abilities rather than its particular physical and locational characteristics. This suggests, according to the Complainant, that the Income Approach is a relevant valuation technique for the subject property and will be employed herein.

[10] The Complainant explained that the assessment for the subject property was prepared using the income approach assuming that the building would be fully leased over the next twelve month period. However, since the property will be fully vacant as of December 31, 2011, no purchaser would assume that the current lease income will continue on an ongoing basis. The most probable means of analysis by a purchaser would involve the lease-up of the property at market levels and subsequent subtraction from the capitalized value of all the holding and lease-up costs associated with achieving full occupancy.

[11] The Complainant prepared a revised estimate of value by adjusting the current assessment for the holding and lease-up costs and remaining contractual revenue. The holding and lease-up costs include such items as lost rental income, lost operating expense recoveries, lost parking revenue, tenant improvement allowance, free rent period and leasing commissions for a total estimated cost of \$17,110,977. These costs were deducted from the current assessment of \$36,882,000. In addition, the remaining contractual revenue of \$1,099,177 was added to the current assessment. In conclusion, the negative adjustment of \$17,110,977 and the positive adjustment of \$1,099,177 resulted in a revised value of \$20,870,200 or \$20,870,000 (truncated). Based on this calculation, the Complainant requested the Board to reduce the subject assessment to \$20,870,000.

Rebuttal

[12] In rebuttal to the Respondent's position that the subject property was fully leased as of December 31, 2011 and no renovations work had been started prior to December 31, 2011, the Complainant presented an e-mail. The e-mail was sent from Scott Kapt, Project Manager, Ledcor Construction Limited on July 10, 2012 to Barry White (GE Capital). The e-mail confirmed that Ledcor had been on site (10065 – 10089 Jasper Avenue) since August 2011 performing the construction activities (demolition of 10079/10089 Jasper Avenue and new construction/rework to 10065 Jasper Avenue) as per the CCDC 2 construction agreement.

[13] Further, the e-mail stated that Ledcor had been working on the interior demolition/rework of the entire Epcor tower since the previous tenants (Epcor/Capital Power) vacated and moved into the new Epcor tower on December 19, 2011. On December 19, 2011, LCL took control of the building's security system and only construction personnel have had access to the site since.

[14] Finally, the e-mail stated that construction of the addition/renovation is scheduled to be completed by March, 2013.

[15] The Complainant asserted that the Respondent would have been aware of the condition of the subject property had the Respondent inspected it prior to December 31, 2011.

Position of the Respondent

[16] The Respondent recommended that the subject assessment be reduced to \$36,179,000 based on revised net rentable areas for the office space and two CRU spaces. The Complainant agreed that the net rentable areas were corrected.

[17] The Respondent submitted that the Complainant's justification for a reduction in the 2012 assessment is flawed for several reasons. First, the legislated valuation date is July 1, 2011 with a condition date of December 31, 2011. As such, the assessed value must reflect the fee simple estate as of July 1, 2011, independent of what may or may not happen the following year. As of December 31, 2011 the property was still fully leased and no renovations work had been started.

[18] In answer to questions, the Respondent indicated that the property was not inspected prior to December 31, 2011 because they did not have time.

[19] Second, the Respondent submitted that the changes that take place in 2012 will be reflected in the 2013 assessment as that assessment will apply to the valuation date of July 1, 2012 and the condition date of December 31, 2012. This will likely take the form of the 2013 assessment being based on a cost value reflective of a partially complete but vacant building.

[20] Third, the Respondent stated that the extensive renovations and refitting in the subject property during 2012 began after the current assessment's condition date of December 31, 2011. Notwithstanding this, the subject property is already fully leased up and has tenants set to move in as soon as the renovations and construction are complete.

[21] In summary, the subject property was to be fully vacant as of January 1, 2012, which is six months after the valuation date. Therefore, no adjustment to the 2012 assessment is warranted. The Respondent requested the Board to reduce the subject assessment to the recommended amount of \$36,179,000 based on the revised net rentable areas.

Interim Decision

[22] The Board requires additional information.

Reasons for the Decision

[23] In determining this matter, the Board reviewed the Complainant's evidence and argument and finds as follows. The revised assessment relied on a series of estimates for the holding and lease-up costs with no evidence to support any of the assumptions. As such, the Board finds the Complainant's estimate of value to be unreliable because it is not supported by evidence.

[24] Next, the Board considered whether the 2012 assessment recognized the characteristics and physical condition on December 31, 2011 in accordance with sections 289 (1) and (2) of the *Act*.

[25] The only evidence of the condition of the subject property as at December 31, 2011 is the e-mail submitted by the Complainant. The e-mail states that Ledcor Construction has been working on the interior demolition/rework of the entire Epcor tower since Epcor/Capital Power

vacated and moved into the new Epcor tower on December 19, 2011. Owing to the fact that the Respondent did not inspect the property prior to December 31, 2011 and the Respondent did not disclose any evidence to refute the Complainant's position, the Board finds that the subject property was vacant and demolition/rework commenced prior to December 31, 2011.

[26] Given that the assessment was prepared on the assumption that the building was fully leased on December 31, 2011 and with no recognition for the physical condition on December 31, 2011 the Board requires additional information to make a decision on the correct assessment for the subject property. In accordance with section 465(1)(b) of the *Act*, the Board requests the Respondent to produce a revised 2012 assessment for the subject property based on the cost approach in recognition of the vacant and partially complete building as at December 31, 2011.

[27] The continuance of this matter is subject to the follow schedule:

Disclosure of Respondent's Evidence	September 26, 2012
Disclosure of Complainant's Response	October 24, 2012
Continuation of the hearing	November 8, 2012

[28] No new notice will be sent for the continuation of the hearing. The Board will hear only the new evidence and argument in relation to the Board's request. Following the hearing, the Board will consider the new evidence and make a decision on the quantum.

Heard commencing August 22, 2012.

Dated this 4th day of September, 2012, at the City of Edmonton, Alberta.

Warren Garten, Presiding Officer

Appearances:

Greg Jobagy, Colliers International Realty Advisors Inc
Stephen Cook, Colliers International Realty Advisors Inc
for the Complainant

Brennen Tipton, City of Edmonton
Cameron Ashmore, City of Edmonton
James Cummings, City of Edmonton
for the Respondent