

Edmonton Composite Assessment Review Board

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of
Edmonton, 2012 ECARB 2348**

Assessment Roll Number: 5213657
Municipal Address: 1150 HOOKE ROAD 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

**Dean Sanduga, Presiding Officer
Brian Hetherington, Board Member
Lillian Lundgren, Board Member**

Preliminary Matters

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

[2] The hearing commenced on November 16, 2012 and continued on November 27, 2012. During the Respondent's summation at the November 16, 2012 hearing, the Respondent advised the Board that additional time is required to review three of the Respondent's assessment comparables. The parties agreed to continue the hearing on November 27, 2012.

Background

[3] The subject property is a low rise apartment located at 1150 Hooke Road NW in the Homesteader neighborhood. The property has a total of 147 units comprised of one, two and three bedroom units. It was constructed in 1978 and is in average condition.

Issue(s)

[4] What is the appropriate vacancy rate?

[5] What is the correct Gross Income Multiplier (GIM)?

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 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 the subject property assessment of \$16,571,500 is incorrect. The assessment was prepared on the income approach using a vacancy rate of 4% and a GIM of 11.11. The Complainant is challenging the vacancy rate and the GIM.

Issue 1 - What is the appropriate vacancy rate?

[8] The Complainant argued that the subject vacancy is atypical because the management has difficulty attracting and keeping tenants. The subject property has been assessed using a typical vacancy rate of 4%; however, the subject property has consistently suffered vacancy rates in excess of the typical vacancy rate.

[9] In support of this argument, the Complainant presented a chart showing the vacant units as a percentage of total units for the subject property. The chart details the actual vacancy rate for each month beginning January, 2007 and ending May, 2011. The average vacancy rates for 2009, 2010 and 2011 were 11%, 13.4% and 10.8% respectively.

[10] The Complainant stated that the ongoing chronic situation has not been recognized and the vacancy rate should be increased to 10%. If a vacancy rate of 10% is applied to the potential gross income, the effective gross income would be \$1,398,073.

[11] The Complainant argued that other properties have received reductions in assessments because of chronic vacancy. In support of this position, the Complainant presented four decisions of the Edmonton Assessment Review Board that reduced assessments based on an increase in the vacancy rates. Two of the properties were shopping centers and two were office buildings.

[12] The Complainant also presented a decision of the Calgary Assessment Review Board for a suburban office building that reduced the assessment based on chronic vacancy.

Issue 2 - What is the correct Gross Income Multiplier (GIM)?

[13] The Complainant also argued that the GIM of 11.11 used to calculate the subject assessment is unreasonable in the marketplace as of the valuation date, July 1, 2011. In support of this position, the Complainant presented sixteen comparable building transactions of multi-family apartments. The range of GIMs is from 7.24 to 10.67 with a median of 9.32 and an average of 9.29.

[14] The subject property is located in Zone 11 and the Complainant presented six sale comparables that are located in nearby market areas. The range of GIMs is from 7.24 to 9.34 with a median of 8.88 and an average of 8.70. Based on these sales, the Complainant requested a GIM of 8.70.

Rebuttal

[15] In rebuttal, the Complainant provided the following comments on the Respondent's sale comparables. The Respondent's sale #1 located at 3103 137 Avenue NW is superior because it has an effective year built of 2008, whereas, the subject property was constructed in 1978. As well, this comparable was marketed as having potential for condominium conversion which may have had an effect on the sale price.

[16] The Respondent's sale #2 located at 11530 34 Street NW is superior in performance to the subject property. This comparable has an actual reported income of \$707,616 which exceeds the typical income of \$609,792.

[17] The Respondent's sale #3 located at 16404 115 Street NW is a highly leveraged transaction which is not typical. (The Board notes that both parties presented this sale comparable.)

[18] Through questions, the Complainant established that the assessments of three of the Respondent's equity comparables had been reduced since the Respondent's disclosure. The properties in question are 4807 137 Avenue NW, 5208 147 Avenue NW and 3104 116A Avenue NW. The Complainant wanted to know the reasons for the reductions and whether the model was correctly predicting the assessments.

[19] In summary, the Complainant requested the Board to reduce the assessment to \$12,163,000 based on a 10% vacancy allowance and a GIM of 8.70.

Position of the Respondent

[20] The Respondent submitted that the assessment of the subject property is fair, equitable and at market value.

Issue 1 - What is the appropriate vacancy rate?

[21] The Respondent defended the use of a 4% vacancy rate with the following explanation. The actual amount of the vacancy allowance must be determined according to market conditions.

There will be a variation in the allowance at different periods of time. The figure to use is not necessarily the vacancy rate actually existing at the date of the analysis but that which, according to estimates, will exist over the period of the investment.

[22] Further, the Respondent does not apply a chronic vacancy allowance to this type of property because other factors such as management or renovations may be the cause of the vacancy rate.

[23] In the case of the subject property, the Respondent observed that the vacancy rate was typical until July 2008. The Respondent questioned the Complainant as to the reason for the increase in vacancy rate from 2.0% in July 2008 to 6.8% in August 2008. The Complainant speculated that the increase in vacancy may be due to the economy.

Issue 2 - What is the correct Gross Income Multiplier (GIM)?

[24] The Respondent submitted that the GIMs on a property need to be applied in the same way that they are derived, and the Complainant is mixing the GIMs from third party sources with the incomes used by the Respondent.

[25] The Respondent stated that the sales reported by The Network and Anderson Online derive GIMs using unreliable income. There is no way to determine if the income used is actual or estimated. The Respondent uses typical income to derive its GIMs because it applies the GIMs to typical rental rates. This is the reason that the same sale used by both parties will have different GIMs. For example, The Network reported a GIM of 9.34 for the sale located at 16404 115 Street NW, whereas, the Respondent has a GIM of 10.43 for the same sale.

[26] The Respondent argued that the GIM of 11.11 used to calculate the subject assessment is in line with the market as of July 1, 2011. The Respondent presented three sale comparables located in market areas 11 and 12 with GIMs of 14.07, 11.56 and 10.43.

[27] The Respondent commented on the Complainant's sale comparables as follows. The Complainant's comparables have inferior suite mixes, inferior suite sizes and are located in different market areas. In addition, the Complainant's sale #1 is an estate sale that sold at a time when the rental rates were below market.

[28] The Respondent acknowledged that the sale located at 16404 115 Street NW and used by both parties is located in market area 12. The subject is located in market area 11.

[29] Although equity is not an issue, the Respondent presented a chart of eleven assessment comparables for multi-family apartments in Market Area 11 to demonstrate that the subject is assessed fairly and equitably. The comparables have a GIM range from 11.11 to 11.24. (The Board notes that the assessment comparables located at 4807 137 Avenue NW, 5208 147 Avenue NW and 3104 116A Avenue NW were later withdrawn by the Respondent.)

[30] The Respondent requested the Board to confirm the assessment at \$16,571,500.

[31] During summation, the Respondent requested an adjournment to review the matters raised by the Complainant respecting the three assessment comparables located at 4807 137 Avenue NW, 5208 147 Avenue NW and 3104 116A Avenue NW.

Decision on the Request For Adjournment

[32] The Board granted the Respondent's request for an adjournment because it would allow sufficient time to provide answers to the Complainant's questions on the three equity comparables. The parties agreed to a continuation of the hearing on November 27, 2012.

Continuation of the Hearing on November 27, 2012

[33] The Respondent confirmed that the assessments had changed on 4807 137 Avenue NW, 5208 147 Avenue NW and 3104 116A Avenue NW and, as such, the Respondent withdrew these three properties as equity comparables. The reductions were made because the Respondent was of the opinion that the model was not correctly predicting the final value on these properties. In particular, the rent that the City model was predicting for these properties appeared to vastly overstate the rent that the properties could obtain.

[34] The Respondent explained that the changes to these properties did not show any problem to the overall model as it was applied to Market Area 11. Most other properties, including the subject property appear to be correctly reflected in the modeled value.

[35] The Respondent stated that, since the changes required for these properties were because of the atypical nature of the properties, and changes were made outside the modeling process to reflect the requirement to correctly predict market value, this will not raise an issue with equity. Equity would only be raised if it appeared that the Respondent needed to change something within the entire zone and were not therefore treating similar properties in a similar fashion.

[36] Following the Respondent's clarification on the three assessment comparables, the Complainant questioned whether any of the GIMs were changed in the three assessment comparables, and the Respondent replied that no changes were made to the GIMs.

Decision

[37] The subject property assessment is confirmed at \$16,571,500.

Reasons for the Decision

[38] With respect to the issue of the vacancy rate, the assessment of the subject property was prepared using a 4% vacancy rate and the Complainant requested a 10% vacancy rate. The Complainant argued that this is a "chronic" situation.

[39] Regardless of the duration of higher than normal vacancy rates, the municipality does not recognize chronic vacancy in this type of property. The Board is not bound by the policies of the municipality; however, the Board is aware of the requirement in legislation to treat similar properties in a similar manner. The Complainant did not present any evidence of similar properties that received a vacancy allowance higher than the typical 4% vacancy rate.

[40] The Board placed little weight on the Assessment Review Board decisions because none of the decisions were for property that is similar to the subject low rise apartment building.

[41] Normally, chronic vacancy would be recognized in other types of property only if it persisted for longer than three years. The actual monthly vacancy rate was in excess of 10% from June 2009 to April 2011, which is less than a two year period.

[42] For the above reasons, the Board is not persuaded that a 10% vacancy rate should be applied to this property.

[43] In respect of the Gross Income Multiplier (GIM), the Board considered the Complainant's request to change the GIM from 11.11 to 8.70. The Complainant relied on the reported GIMs of six sales that have an average GIM of 8.70.

[44] The Board finds that there is insufficient market evidence to support a change in the GIM. None of the comparable sales are located in the same market area as the subject property and only one is similar in size. The Complainant's sale #2 at 16404 115 Street NW is a good comparable because it is similar to the subject property in age, location (market area 12) and size. It is slightly inferior to the subject property in terms of suite mix. As indicated earlier, this sale was used by both parties; however, the Complainant has a GIM of 9.34 and the Respondent has a GIM of 10.43.

[45] This is the problem with the GIMs presented by the Complainant. The Complainant relied on the GIMs reported by The Network that were derived using actual or estimated incomes. The GIMs derived in this manner cannot be applied to the typical income that was projected by the assessment department because it does not result in a correct prediction of market value. The methodology used by the Complainant is inconsistent with basic assessment principles.

[46] The Board also reviewed the Respondent's three sale comparables. Sale #1 is superior to the subject property and cannot be compared because it is thirty years newer. Sales #2 and #3 are similar in location, age and size. These comparables have GIMs of 11.56 and 10.43 which support the use of a GIM of 11.11 for the subject property.

[47] Further, the assessment comparables put forth by the Respondent show that the subject property is equitably assessed with similar properties. The eight equity comparables have a GIM range of 11.17 to 11.24 compared with the subject GIM of 11.11. The assessment comparables #7, #8 and #9 that were withdrawn by the Respondent were not considered by the Board.

[48] Accordingly, the assessment is confirmed at \$16,571,500.

Heard commencing November 16, 2012.

Dated this 10th day of December, 2012, at the City of Edmonton, Alberta.

Dean Sanduga, Presiding Officer

Appearances:

Greg Jobagy

Stephen Cook

for the Complainant

Allison Cossey

Cam Ashmore

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.