

## **Edmonton Composite Assessment Review Board**

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of  
Edmonton, 2013 ECARB 00625**

**Assessment Roll Number:** 3778743  
**Municipal Address:** 11745 95 Street NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**COLLIERS INTERNATIONAL REALTY ADVISORS INC**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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### **DECISION OF**

**Lynn Patrick, Presiding Officer**

**John Braim, Board Member**

**Pam Gill, Board Member**

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### **Procedural 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 bias in this matter.

### **Preliminary Matters**

[2] There were no preliminary matters for the Board to deal with.

### **Background**

[3] The subject property is both a retail and residential space. It was built in 1942 with an effective year built of 1965. There is a total of 23,319 square feet of area, of which 7,795 square feet is second floor residential, comprising 8 apartment units. The warehouse shop area is 5,150 square feet and there is 1,000 square feet of mezzanine storage and the balance is retail sales. This results in 49% site coverage. It is located in the Alberta Avenue neighbourhood and has been assessed at \$2,241,500 for the 2013 assessment year, utilizing the income approach to value.

### **Issue(s)**

[4] Is the 2009 sale of the subject valid?

[5] Is the subject assessed correctly?

## Legislation

### [6] **The *Municipal Government Act*, RSA 2000, c M-26, reads:**

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 presented written evidence (Exhibit C-1, 22 pages) and oral argument for the Board's review and consideration.

[8] The Complainant contends that the assessment is incorrect, based upon its 2009 sale, which is the best evidence of value.

[9] The Complainant provided evidence from the Network of the sale in 2009 for \$1,650,000. The Complainant provided further evidence in the form of correspondence from the vendor and the purchaser (The Complainant) showing that they had negotiated a fair market value of the subject and that there were no other considerations or discounts applied to the sale. The Complainant also provided a copy of the Land Titles transfer (C-1, page 14) showing consideration and value of \$1,650,000.

[10] The Complainant submitted that the sale was a valid one. It took place between a willing buyer and willing vendor and there were in fact many offers made on the property, although they were not in front of the Board. The vendor is an experienced and knowledgeable individual in real estate and used his expertise in the area to conduct the sale.

[11] In the case of the subject property, the Complainant was a tenant and purchased the property in its entirety.

[12] The Complainant stated that no evidence was presented on time adjustments, however, it would be appropriate to make those adjustments to establish the current value of the subject.

[13] The Complainant also referred to a Board decision on the subject from the previous year in which the Board reduced the assessment to \$1,650,000.

[14] Upon questioning the Complainant noted that the property was marketed by the vendor himself; he was unsure if signage was displayed to market the property and the purchaser was the owner of the auto body shop in the same retail plaza.

[15] The Complainant, in summation, adopted the evidence of the Respondent (Exhibit R-1, page 49) on time adjusted sale price of the subject from \$1,650,000 to \$1,867,000 and asked the Board to reduce the assessment accordingly to \$1,867,000.

### **Position of the Respondent**

[16] The Respondent presented written evidence (Exhibit R-1, 80 pages) and oral argument for the Board's review and consideration.

[17] The Respondent submitted that the property was properly assessed on an income basis and that a capitalization rate of 7.5% was used (R-1, page 10). The autoserv main area rent rate is \$10/sq.ft, CRUMED main area rent rate is \$11.25/sq.ft and the Upper floor rent rate is \$5.50/sq.ft. The net operating income derived from the rental rates and the capitalization rate of 7.5% provides a market value of \$168,145.

[18] The Respondent provided the Board with comparable rents of autoserv spaces (R-1, page 51), CRUMED rents in the commercial market (R-1, page 52), global auto service predicted rents (R-1, page 53), and CRUMED assessed rents close in location to the subject (R-1, page 54).

[19] The Respondent argued that the 2009 sale was not a valid sale as the new owner used to be a tenant and the property was never listed. For this reason the Respondent argued that the sale should be disregarded and the assessment should be based on the market data provided and the Income approach.

[20] Upon questioning, the Respondent was asked to confirm that their definitions of open market do not state that the property has to be listed.

[21] The Respondent was asked if he was aware of the multiple offers that were received on the subject, he replied that he was not.

[22] Upon questioning the Respondent confirmed that many of the comparables were newer than the subject's build year, but that the subject was being assessed with an effective build year of 1965.

[23] The Respondent acknowledged that the evidence confirmed that the sale of the subject was a good sale and that it was used in the audit and the model as stated on page 24 of R-1. The Respondent added that it was considered a valid sale at one time but not anymore as it sold for less than market.

[24] The Board asked the Respondent if there was something that remained undisclosed in the sale between the two parties and he replied that there was nothing else other than what had already been stated.

[25] The Board asked if there was any back up to the locations of the comparable rents listed on page 51 of R-1 and the Respondent replied that those could not be disclosed due to FOIP.

[26] Upon being asked clarify the highlighted portion of page 51 (R-1), the Respondent indicated that three highlighted properties were the most comparable. However, they were located in different market area to the subject (R-1, page 63)

[27] Upon the last question by the Board, the Respondent indicated that a management fee was not calculated because the rents were triple net, and that this also applied to the residential rents.

[28] The Respondent asked that the 2013 assessment be confirmed at \$2,241,500.

### **Decision**

[29] It is the decision of the Board to reduce the 2013 assessment to \$1,867,000.

### **Reasons for the Decision**

[30] The Board would like to note that it is not bound by previous Board decisions, even if they pertain to the subject property itself.

[31] The Board finds that the 2009 sale is a valid sale. It meets the definition of a valid sale and that definition does not require that the property be listed with an agent. The sale has been recognized previously as a valid sale and the Respondent's documents still list it a "valid sale" (R-1, page 23 and page 40). The Board is further convinced of the validity of the sale as it is used in the audit and the model.

[32] The Board having satisfied itself that the 2009 sale is good and valid, turned to the issue of the whether or not the subject is assessed correctly and if the Respondent succeeded in defending its assessment at \$2,241,500.

[33] The Respondent offered many comparables as stated in paragraph 19, the Board addressed them as follows:

- i. autoserv spaces (R-1, page 51): the comparables listed were not located in the subject market area, and while the Board understands the FOIP requirements, the absence of backup introduces a weakness to the analysis and its reliability.
- ii. CRUMED rents in the commercial market (R-1, page 52): the CRUMED rents present the same issues as stated in (i) above.
- iii. global auto service predicted rents (R-1, page 53): the Board placed little weight on this evidence as these rents were from the entire City of Edmonton and no market areas were indicated.
- iv. CRUMED assessed rents close in location to the subject (R-1, page 54): The Board finds that the CRUS listed are in more desirable locations than the subject, 3 have frontage on 118 Avenue, and one is very close to a post secondary institution.

[34] The Board found that no evidence was presented as to how a capitalization rate of 7.5% was arrived at and therefore is not certain of its reliability.

[35] The Board also found the absence of a management fee to be troublesome, and although this was not an error but rather a weakness, it contributed to the doubt cast on the assessment.

[36] The Board notes that the subject is rated as a quality 4, however, no quality factors were mentioned on any of the comparable properties, which the Board would have found helpful considering the age of the subject.

[37] For these reasons the Board finds that the time adjusted sale from 2009 at \$1,867,000 is the most meaningful indicator of value and is the correct 2013 assessment for the subject.

**Dissenting Opinion**

[38] There was no dissenting opinion.

Heard on June 17, 2013.

Dated this 16<sup>th</sup> day of July, 2013, at the City of Edmonton, Alberta.



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Lynn Patrick, Presiding Officer

**Appearances:**

Greg Jobagy

For the Complainant

Ryan Heit

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.*