

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 00878

Assessment Roll Number: 10196148
Municipal Address: 10037 109 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

DECISION OF
Shannon Boyer, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] The parties before the Board stated that they had no objection to the Board's composition. The Board Members stated that they had no bias with respect to this file.

Preliminary Matters

[2] The Respondent indicated a need to correct a page in the previously disclosed evidence package and both parties provided Board decisions, not contained in their original productions. Both sides consented.

Background

[3] The subject property, Mayfair South, is a high rise apartment complex located at 10037 – 109 Street. The 16 story building with 210 - 1 bedroom suites, 27 - 2 bedroom suites, and 89 heated underground parking stalls, was constructed in 2011. It was built for the purpose of providing affordable housing pursuant to an agreement between the owner and the City of Edmonton. The Subject assessment was prepared using the Income Approach using typical potential gross income, typical vacancy and typical gross income multiplier. The 2013 assessment is \$42,176,500 and is under complaint.

Issues

[4] Is the potential gross income used by the Respondent correct?

[5] Is it appropriate to include parking and laundry income for the assessment?

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 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.

[7] The *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004, reads:

s 2 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

Position of the Complainant

[8] The Complainant presented a brief (Exhibit C-1), a rebuttal brief (Exhibit C-2), a set of Board decisions (C-3, C-4, C-5 and C-6) and argument for the Board’s review and consideration.

[9] The Complainant stated that the appropriate method to assess the Subject is to apply the income approach using the maximum restricted income that the Subject could earn. The Complainant used the Subject’s actual income to determine the potential gross income (Exhibit C-1 pages 9, 14 and 15).

[10] The Complainant described the Subject as a 16 story high rise located at 10037-109 Street which was built in 2011. The composition of the suite mix is 210 - 1 bedroom suites and 27 - 2 bedroom suites. There are 89 enclosed heated parking stalls (Exhibit C-1 page 4). The ground level contains retail space.

[11] The Complainant calculated the suite size to be 572 square feet which differs from the assessed size of 710 square feet (Exhibit C-1 page 8).

[12] The actual gross income from laundry is \$10,782.58 per month (Exhibit C-1 page 9). The Complainant argued that income from laundry should not be included in the assessment because it is not real estate income.

[13] The Complainant said the total gross income from onsite parking is a monthly total of \$21,825.69 (Exhibit C-1 pages 8, 9 and 56).

[14] The Complainant said that the Subject is atypical due to small suite sizes, a high number of one bedroom suites, and a low parking stall to suite ratio. Further, there is a contracted cap of the rental income from the suites.

[15] The Complainant said that the Subject was built in response to a City driven initiative to provide affordable housing to lower income residents. The agreement between the owner and the City states that in exchange for funding in the amount of \$14,220,000, the property owner must provide accommodation to qualified tenants for a period of time, maintaining a maximum rental rate which averages 90% of the CMHC level 2 typical rents (Exhibit C-1 pages 4 and 19-25).

[16] The Complainant argued that it is incorrect to assess the Subject based on typical gross income since the property is only able to achieve 90% of the market rents as stated by CMHC. He argued that this was a form of economic obsolescence which should be recognized in the assessment (Exhibit C-1 page 13).

[17] The Complainant argued that because the Subject is not typical and cannot achieve typical rental income, the correct method of valuation is to use the actual gross income from the Subject.

[18] For the assessment year, the CMHC published Level 2 average rental rate for 1 bedroom suites is \$900 and for two bedrooms suites is \$1,119 (Exhibit C-1 pages 38-49). The Complainant provided the Board with its income calculations and stated that the total annual gross income based on the maximum average rates that the Subject is able to realize, is \$2,367,504 (Exhibit C-1 page 13).

[19] The Complainant provided two calculations based on the actual total income for the Subject. The first of these calculations, which excluded laundry income, resulted in an assessment of \$35,434,000. When the calculations were performed including laundry income, the resulting assessment was \$37,113,500 (Exhibit C-1 pages 14 and 15).

[20] Upon questioning, the Complainant agreed that:

- a) the Subject competes in the residential market, as a niche;
- b) the Agreement can be assigned to other parties;
- c) the restrictive covenant imposing controlled rent may be discharged at any time by repaying the \$14,220,000 advanced to the owner by the City (Exhibit C-1 page 33);
- d) the owner was required to obtain a signed Quantity Surveyor's Report confirming that the capital costs are equal to or greater than \$44,585,340, but stated this would include items such as architect fees and permits.

[21] In rebuttal, the Complainant argued that the assessment is not equitable based on a comparison between the Subject's average suite size and the average suite size of all of the Respondent's comparables. The Complainant said that when the Subject was compared to just the suites of similar size, the appropriate assessment would be \$144,000 per suite (Exhibit C-2 pages 3 and 4).

[22] The Complainant cited several Board decisions in support of his position that the Subject should not be assessed on the basis of market typical rents (Exhibits C-3 to C-6).

[23] The Complainant was in agreement with the vacancy rate of 3%; a GIM of 13.38; and the 2013 commercial assessment of \$172,438.

Position of the Respondent

[24] In defending the assessment, the Respondent presented an evidence package and a Law and Legislation brief (Exhibits R-1 and R-2). In addition, the Respondent presented an earlier Board decision (R-3) regarding obsolescence and argument for the Board's review and consideration.

[25] The Respondent personally inspected the Subject with the manager. It is a high rise, in average condition, and is located near Jasper Avenue near an LRT station, in Market Area 1B. The Subject's assessed average suite size is 710 square feet which was determined by dividing the number of suites into the residential gross building area. This is the Respondent's standard assessment practice and it was used to determine the average suite size for all of the Respondent's comparables.

[26] The Subject's assessed income from laundry is based on a stabilized \$12 per suite per month, for a total of \$2,844 per month and \$34,128 per year (Exhibit C-1 page 73). The Respondent assessed all the comparables in the same manner.

[27] The Respondent provided three sales comparables and highlighted comparable #3 as the best comparable (Exhibit R-2). Comparable #3 sold in June 2010 and is an average condition high rise in market area 1C, with an effective year built of 2002. The time adjusted sale price is \$61,027,600, or \$199,437 per suite. The subject property is assessed at \$172,438 per suite.

[28] The other comparables are low rise buildings of average condition in market areas 6 and 11. The Respondent advised that there are few comparables as there have been no recent comparable high rise apartment sales, other than comparable #3.

[29] The Respondent produced a set of 9 equity comparables (Exhibit R-1 page 37). All the comparables were high rise buildings; 4 located downtown, 2 in Oliver and 3 in Garneau; and all were of average condition. Two had surface parking and the balance of the comparables had underground heated or underground non-heated parking. Five of the comparables had a similar suite mix. The comparables ranged in assessments from \$142,360 to \$198,840 per suite and supported the Subject's assessment of \$172,438 per suite.

[30] The Respondent advised the Board of the legislated requirements and cited section 2 of MRAT, AR 220/04 to support that it is bound to value the Subject on Fee Simple and that assessment must be based in typical market value.

[31] The Respondent said that the Complainant's request to use actual rents is an inaccurate application and measure of market value when calculating value using mass appraisal. The Respondent said that mass appraisal is the legislated process and has been applied properly and uniformly throughout the entire multi-residential inventory for all property types. The Subject has been assessed at market value and with fee simple interest using typical market rents that have been calculated from actual data obtained through the Request for Information process.

[32] The Respondent cited Property Appraisal and Assessment Administration to establish that the proper formula for calculating effective gross income is potential gross rent less vacancy allowance plus miscellaneous income, such as parking and laundry (Exhibit R-1 page 47). The Respondent also cited Property Assessment Valuation which states that miscellaneous income is added to get the effective gross income (Exhibit R-1 page 57).

[33] The Respondent argued that the Complainant did not provide evidence to support the suggestion that the Complainant was restricted on how to build the Subject or the allowable number of parking stalls.

[34] On questioning by the Complainant, the Respondent said that in determining comparables the assessment model considered variables such as average suite size, building type, location, and age (Exhibit R-1 page 75).

[35] The Respondent argued that obsolescence is the loss of value from causes outside property (Exhibit R-3). The number of parking spots built was a management decision. Further the Complainant provided no evidence to support the contention that there was a loss of value.

[36] The Respondent cited Assessment Review Board 0098 85/11 and Edmonton Composite Assessment Review Board 2012 ECARB 1775 to support that the use of typical, rather than actual income, better reflects typical market conditions and requests the Board to confirm the 2013 assessment (Exhibit R-1 pages 58-68).

Decision

[37] The Board confirms the assessment of \$42,176,500.

Reasons for the Decision

[38] The Board is persuaded by the Respondent's evidence and argument that the appropriate method used to assess the Subject is the income approach to value using typical income and that effective gross income includes laundry income. The Board notes that the Respondent is legislated to prepare assessments based on market value using mass appraisal. It is the Board's opinion that the income approach to value using typical income best captures the value of the Subject's fee simple estate.

[39] The Board is not convinced by the Complainant's argument that the Subject should be assessed using the maximum income it could earn under the provisions of the Agreement and that the Subject's actual gross income should be used to calculate potential gross income because limitations on actual gross income may be due to management decisions and other extraneous reasons.

[40] The Complainant's actual income is lower than market rents due to the terms of the Agreement. The Owner accepted funding and in exchange, it agreed to charge controlled rents. The rents are atypical due to management decisions.

[41] The Agreement is a contract and does not affect market value. The \$14,200,000 funding can be returned to discharge the restrictive covenant sooner than the term. The management decision to agree to restricted rents for a period of time does not impact the estimate of what the property could command if offered for sale on the open market.

[42] The Board is not persuaded that Subject is atypical compared to other downtown high rise apartments. The Subject competes in the rental market. The low ratio of parking stalls per apartment is not unusual as the Subject is located downtown and along the LRT line. Marketing material prepared to promote Mayfair Village, a future development encompassing the Subject, advertises its central location, being "steps away from the LRT" and within walking distance to two major learning institutions (Exhibit R-1 pages 38-39).

[43] The Respondent provided 3 sales comparables and the Board accepts that Comparable # 3 is the best comparable and a good indicator of the value of the Subject. It has a time adjusted sale price of \$199,437 per suite compared to the Subject's 2013 assessment of \$172,438 per suite (R-2). The Complainant did not provide any comparables.

[44] The Board was not persuaded by the Complainant's rebuttal argument in support of a reduced assessment of \$144,000 per suite as the provided comparables were substantially dissimilar to the subject property, in terms of age and location.

[45] The Respondent's equity comparables included 9 high rise properties similar in location, suite mix, and condition. The assessment of value per suite shows the Subject falls within the lower end of the range.

[46] The Complainant did not persuade the Board that the Subject suffers from economic obsolescence. Built in 2011 to its specifications, the owners made informed management decisions as to the suite size and mix, the number of parking stalls and restricted rent. There is no evidence that the value of the property is negatively affected.

[47] The Board is satisfied that the laundry income of \$34,128 should be calculated into the effective gross income.

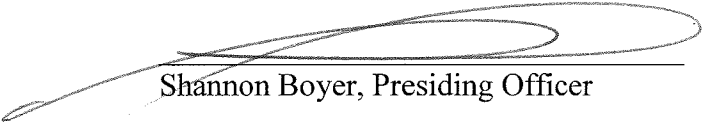
[48] The Board finds that the 2013 assessment of the subject property at \$42,176,500 is fair and equitable.

Dissenting Opinion

[49] There is no dissenting opinion.

Heard July 10, 2013.

Dated this 25th day of July, 2013, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

Greg Jobagy

Stephen Cook

for the Complainant

Allison Cossey

Tanya Smith

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.