

Edmonton Composite Assessment Review Board

Citation: Fairtax Realty Advocates Inc. v The City of Edmonton, 2013 ECARB 00887

Assessment Roll Number: 10194418

Municipal Address: 9615 160 Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Fairtax Realty Advocates Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Patricia Mowbrey, Presiding Officer

Howard Worrell, Board Member

Judy Shewchuk, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the Board's composition. The Board Members indicated no bias with respect to this file.

Preliminary Matters

[2] The Respondent brought forward a preliminary issue and stated that the Respondent had received no disclosure from the Complainant.

[3] The Respondent advised that disclosure by the Complainant must be made at least 42 days before the hearing date, pursuant to s. 8 (2)(a) of the *Matters Relating to Assessment Complaints Regulation* (MRAC). The Respondent stated that pursuant to s. 9(2) of MRAC, the Board must not hear any evidence that was not disclosed in accordance with s. 8 (2)(a). The Respondent therefore requested that the Board dismiss the appeal.

[4] The Board adjourned to consider the preliminary issue.

Decision

[5] The decision of the Board was that the Merit Hearing would proceed but that the Board would hear and consider only the evidence presented in the complaint form and attachments, and would hear no new evidence.

Reasons

[6] The Board allowed the hearing to proceed on the basis of fairness and natural justice.

[7] The Board noted that the complaint form had been filed on time and had been accepted.

[8] The Board warned the Complainant that new evidence would not be allowed as the Board's mandate under s. 284 (1)(c) of the *Municipal Government Act* (MGA), and MRAC s. 9(2) states: "A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8." Section 8 (2)(a)(i) of MRAC states: "If a complaint is to be heard by the composite assessment review board, the following rules apply with respect to the disclosure of evidence: (a) the complainant must, at least 42 days before the hearing date, (i) disclose to the respondent and the composite assessment review board the documentary evidence..."

Background

[9] The subject property is a shopping centre consisting of five buildings constructed between 2008 and 2012, is 64,949 square feet and located at 9615 – 160 Avenue NW, Edmonton. The 2013 assessment is \$22,566,500 and based on the income approach to value.

Issue

[10] Although there were numerous issues indicated on the complaint form only one issue was brought forward at the hearing:

- a) Is the vacancy rate appropriate?

Legislation

[11] **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 284(1)(c) "assessment" means a value of property determined in accordance with this Part and the regulations

s 285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

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.

[12] **The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009, reads:**

s. 8(2)(a)(i) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

s 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

[13] ***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

[14] The Complainant presented evidence (C-1, 4 pages), which was comprised of the Complaint Form, a form with a recalculation of the assessment using a 34.7% vacancy rate, the City's Power Centre Valuation Summary and the subject Annual Realty Assessment Notice for 2013.

[15] The Complainant explained there had been an error in faxing the disclosure evidence and it had not been received by the assessment department or the composite assessment review board.

[16] The Complainant stated that the subject had been purchased in October 2012 together with two other properties in the same shopping complex for \$51,000,000. The Complainant stated that at the time of purchase there was in excess of 30,000 square feet of vacant space in the shopping complex which the Complainant claimed was also vacant at the valuation date of July 1, 2012. The Complainant stated that the vendor guaranteed three year's rent and operating expenses for the vacant space.

[17] The Complainant stated that the previous owner had returned a rent roll in response to the City Request For Information for the 2012 valuation date of July 1 and that the Complainant had sent a rent roll more recently to the Respondent and had been in discussion with the assessor.

[18] The Complainant noted that the shopping centre did not have an anchor tenant.

[19] The Complainant's position is that the subject should be consolidated with the other two properties in the shopping complex (rolls #10223166 and #10242664), and assessed under one roll number, which would better reflect the vacancy rate.

[20] The Complainant indicated that the photos presented by the Respondent were taken in April 2013, after a request for the subject to be inspected, and therefore were not representative of the occupancy at July 1, 2012.

[21] The Complainant indicated that there was no issue with the Respondent's assessed lease rates.

[22] The Complainant explained that the actual vacancy rate was 34.7% for the three properties within the shopping complex, at the valuation date. Therefore the 34.7% vacancy should be applied to the assessment income approach to value, which would result in the requested assessment of \$12,904,101 (C-1, page 2).

[23] However, the Complainant stated that a 15% vacancy rate would be acceptable and requested that the Board reduce the assessment to \$19,515,000.

Position of the Respondent

[24] The Respondent provided an evidence package, R-1, 51 pages.

[25] The position of the Respondent was that no evidence was received from the Complainant to support the vacancy rate requested. In support of its position, the Respondent referred to MRAC s. 8(2)(a)(i).

[26] The Respondent reminded the Board that evidence that has not been disclosed to both the Respondent and the Composite Assessment Review Board within the allowed time period cannot be heard. Section 9(1)(2) of MRAC was cited in support of this contention.

[27] The Respondent stated that the evidence package R-1, is a response only to the complaint form and attachments, as that was the only disclosure submitted by the Complainant.

[28] The Respondent stated that the assessment was based on mass appraisal, using typical lease rates and vacancy rates, and referred to MRAT s. 2, which states, "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."

[29] The Respondent stated that the Complainant had failed to disclose any evidence to support the sale price of the of the subject property; had failed to disclose any evidence to support the vacancy rate at the time of valuation; nor was any evidence disclosed to support the requested 15% vacancy rate for the requested 2013 assessment of \$19,515,000.

[30] The Respondent stated that the Complainant had failed to meet onus and requested confirmation of the 2013 assessment of \$22,566,500.

Decision

[31] The Board confirms the 2013 assessment of \$22,566,500.

Reasons for the Decision

[32] The Board reviewed and considered the evidence of the Complainant (Exhibit C-1) and the Respondent (Exhibit R-1).

[33] The Board noted that the Complainant's evidence was comprised of four pages: the Complaint Form; the Complainant's calculation for the requested assessment; the Respondent's valuation summary; and the subject assessment notice for 2013.

[34] The Board noted that in the Complainant's calculation (C-1, page 2) a 34.7% vacancy rate was applied, whereas, all the other factors remained the same as the Respondent's valuation summary (C-1, page 3).

[35] The Complainant's calculation resulted in a requested value of \$12,904,101. However, at the hearing the Complainant stated that a 15% vacancy rate would be acceptable and requested that the Board reduce the assessment to \$19,515,000.

[36] The Board could not grant the Complainant's request for an increase in the vacancy rate, nor the requested reduction in value, because no supporting evidence had been disclosed from which the Board could base such a decision.

[37] The Board clarified for the Complainant that it is mandated by the legislation to follow the rules for the disclosure of evidence: MRAC s. 8(2)(a)(i) and ss. 9(1) and 9(2).

[38] The Board also reiterated that it is bound by s. 2 of MRAT, which states that an assessment based on market value must use mass appraisal, must be an estimate of value of the fee simple estate, and must reflect typical market conditions for similar properties.

[39] The Board finds that the Complainant did not meet onus or the burden of proof. The Alberta Court of Queen's Bench considered the issue of the onus on the parties on an appeal of a tax assessment in *Calgary (City) v Alberta (Municipal Government Board)*, 2010 ABQB 719 (R-1, page 44 and 45). In that case the Court adopted the following comments from the MGB in *Deloitte & Touche LLP Property Tax Services v. Calgary (City)*, MGB BO 140/02 (at para 161):

... The ultimate burden of proof or onus rests on the Appellant, at an assessment appeal, to convince the MGB their arguments, facts, and evidence are more credible than that of the Respondent....

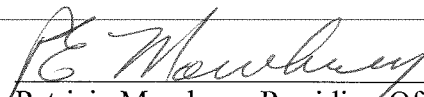
[40] The Board finds that the 2013 assessment of \$22,566,500 was prepared in accordance with legislation and is correct, fair and equitable.

Dissenting Opinion

[41] There was no dissenting opinion.

Heard July 15, 2013.

Dated this 18 day of July, 2013, at the City of Edmonton, Alberta.


Patricia Mowbrey, Presiding Officer

Appearances:

Syd Storey
for the Complainant

Amy Cheuk
Tracy Ryan
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.