

## **Edmonton Composite Assessment Review Board**

**Citation: Dorner Investments Ltd. v The City of Edmonton, 2013 ECARB 01183**

**Assessment Roll Number:** 9954210

**Municipal Address:** 7903 Argyll Road NW

**Assessment Year:** 2013

**Assessment Type:** Annual New

Between:

**Dorner Investments Ltd.**

Complainant

and

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

Respondent

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### **DECISION OF**

**Petra Hagemann, Presiding Officer**

**Mary Sheldon, Board Member**

**Judy Shewchuk, Board Member**

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### **Procedural Matters**

[1] The parties to the hearing did not have any objection to the composition of the Board. The Board members did not allege any bias with respect to this matter.

### **Preliminary Matters**

[2] At the outset of the hearing on July 30, 2013, the Respondent objected to material contained in the Complainant's rebuttal package. The Respondent submitted that this material was new information and did not respond to material in the Respondent's disclosure and, as such, was not proper rebuttal. The Respondent requested that the Board not consider the Complainant's rebuttal material.

[3] While considering this objection, the Board was advised that the Assessment Review Board's (ARB) records showed that the Complainant's rebuttal package had not been served on the ARB. The Board also noted that the file contained an agent authorization form appointing another party, other than the one appearing, as agent.

[4] The Complainant's legal representative advised the Board that the rebuttal package had been couriered to the ARB within the appropriate time limits. He also advised that the complaint had been filed by his client, the former owner, and that the subject had transferred to a new owner in May, 2013. He also stated that the present owner had agreed that the former owner could continue to proceed with the complaint. However, the Complainant's representative could not produce a copy of this agreement nor an agent authorization form.

[5] The Board's decision was that the hearing would be adjourned until the following day, July 31, 2013. Regarding the Respondent's objection to the Complainant's rebuttal material, the Board reserved its decision until after the Respondent's presentation of their disclosure. At that time, the Board would decide if the Complainant's rebuttal properly responded to the Respondent's evidence.

[6] With respect to proper service of the Respondent's rebuttal package on the ARB, the Board was willing to abridge time of service, pursuant to section 10(3) of *Matters Relating to Assessment Complaints* (MRAC), on the grounds that there would be no prejudice to either party. With respect to an agent authorization form, the Board requested that the Complainant provide either a copy of the agreement between the owners or an agent authorization form when the hearing recommenced on July 31, 2013.

[7] Before the opening of the merit hearing on July 31, 2013, the ARB administration discovered that the Complainant's rebuttal package had been properly served on the ARB. The ARB administration also discovered that the complaint form and the agent authorization form contained in the file were incorrectly filed and belonged to another file.

[8] When the parties reconvened in the morning of July 31, 2013, the Board was advised that the Complainant's legal representative from the previous day was unavailable and another member of the law firm representing the Complainant, along with a student-at-law, appeared.

[9] The parties were advised of the administrative errors outlined above. Since the Complainant's rebuttal package had been properly served on the ARB, there was no issue with improper disclosure.

[10] The Complainant's legal representative advised that the agreement between the former and present owner in respect to the continuance of the complaint appeal process was a verbal agreement only. As well, due to circumstances beyond the agent's control, an agent authorization form could not be obtained.

[11] The Board decided that, since a law firm was present and representing the Complainant, an agent authorization form would not be required and the merit hearing would proceed.

[12] After the Respondent presented his evidence, the Board reviewed the Complainant's rebuttal document and decided that it contained new evidence in the form of an appraisal of the subject. The Board ordered that only the first paragraph on page one of the rebuttal would be admitted as evidence and that the remainder of the rebuttal document would not be considered.

### **Background**

[13] The subject property is an Edmonton warehouse in industrial group 12. The subject consists of three buildings and the respective effective age of each building is 1963, 1966, and 1978. The site coverage is 37%. The total main floor area is 25,827 square foot (sq ft) with 4,396 sq ft of finished area. The subject is in average condition. Two of the buildings have a rear building adjustment of 10%. The 2013 assessment of the subject is \$3,325,500, valued according to the direct sales comparison approach.

### **Issue(s)**

[14] Is the 2013 assessment of the subject correct when considering the sale of the subject?

## **Legislation**

[15] **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.

[16] **The *Matters Relating to Assessment Complaints Regulation* (MRAC), AR 310/2009, reads:**

s 10(3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

## **Position of the Complainant**

[17] The Complainant submitted a brief (Exhibit C-1, 19 pages) in support of the position that the 2013 assessment of the subject was excessive.

[18] The Complainant advised that a consent order had been filed on November 2, 2012, which ordered the subject to be listed for sale at \$3,100,000 (Exhibit C-1, pages 3-4). The Complainant stated that this consent order was the result of a shareholder dispute. Since one of the parties was a dependent adult, it was prudent to obtain a court order.

[19] The Complainant also provided a listing agreement for the subject dated November 1, 2012 (Exhibit C-1, page 5). The subject had sold on November 22, 2012 pursuant to an offer to purchase (Exhibit C-1, pages 6-13). The Complainant stated that the purchase price was \$2,900,000, subsequently amended to \$2,850,000 in February, 2013 (Exhibit C-1, page 17), and reduced by a further \$30,000 in April, 2013. Title transferred to the purchaser in May, 2013.

[20] In response to questioning, the Complainant noted that the consent order contained a clause whereby one party would have to purchase the subject for the offer price plus 5% if the parties could not agree on an offer in excess of \$2,500,000.

[21] The Complainant argued that the sale of the subject was a valid sale on the open market between a willing seller and a willing buyer and that it was the best indicator of value for the subject. Furthermore, the sale price was essentially determined in November, 2012.

### **Complainant's Rebuttal**

[22] The Complainant referred to the first paragraph of a letter from the law firm stating that the consent order was in the nature of a "forced listing", not a "forced sale", since the disputing shareholders wanted to sell at fair market value.

[23] The Complainant requested that the Board reduce the 2013 assessment to the subject's selling price at \$2,820,000.

### **Position of the Respondent**

[24] The Respondent presented an assessment brief (Exhibit R-1, 86 pages) in support of the position that the subject assessment was correct.

[25] The Respondent provided details concerning factors affecting value in the industrial inventory (Exhibit R-1, page 8).

[26] The Respondent argued that there were factors surrounding the sale of the subject which made it more like an estate sale. Given the fact that there was a court order, there may have been pressure to sell. Furthermore, the sale of the subject was *post facto* and, in any event, one sale does not make a market.

[27] The Respondent presented a chart of four property sales which, in the opinion of the Respondent, were similar to the subject (Exhibit R-1, page 58). The Respondent noted that the comparables were in an inferior industrial group location as the subject was on a major road, and that one property was in fair condition while the subject is average. The Respondent noted that comparables #2 and #3 were multiple building properties, with similar site coverage. Furthermore, the time adjusted sale price per square foot of those comparables would have to be adjusted downward to account for a newer effective age and smaller size.

[28] The Respondent submitted that, with those adjustments, the evidence supports the 2013 assessment of the subject at \$128.76/sq ft.

[29] The Respondent requested that the Board confirm the current assessment of the subject at \$3,325,500.

### **Decision**

[30] The decision of the Board is to confirm the 2013 assessment of the subject at \$3,325,500.

### **Reasons for the Decision**

[31] The Board notes that it is the responsibility of the Complainant to provide sufficiently convincing evidence to demonstrate that an assessment is not correct.

[32] The opinion of the Board is that the Complainant did not meet this responsibility in this case.

[33] The Board agrees that while a sale of the subject is the most realistic method of establishing value, in this case, there are factors which make the sale of less assistance. The sale

took place several months *post facto*. Even the offer to purchase was not signed until November, 2012.


[34] There are also circumstances surrounding the consent order and listing of the subject which make the sale transaction of less assistance in establishing value for the subject. The Board recognizes the Complainant's submission that it was prudent to obtain a court order given the dependent adult status of one party. However, the background of a shareholder dispute and a consent order containing a clause whereby one party would have to purchase the subject for the offer price plus 5% if the parties cannot agree on an offer in excess of \$2,500,000 would, in the opinion of the Board, impose some pressure to sell. Although this was not exactly in the nature of an estate sale, as referenced by the Respondent, there were motivations surrounding the sale.

[35] Finally, the Board notes that one sale does not make a market and no other evidence was provided by the Complainant to assist the Board in determining the accuracy of the assessment.

[36] Accordingly, the Board's decision is to confirm the 2013 assessment of the subject at \$3,325,500.

Heard commencing July 30<sup>th</sup>, 2013.

Dated this 14<sup>th</sup> day of August, 2013, at the City of Edmonton, Alberta.

  
Petra Hagemann, Presiding Officer

**Appearances:**

Meghan Power

Peter Mawson

Phillipe Lefebvre

for the Complainant

Joel Schmaus

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.*