

Edmonton Composite Assessment Review Board

Citation: Gary Nash, Nashco Enterprises Ltd. v The City of Edmonton, 2014 ECARB 00266

Assessment Roll Number: 10384332
Municipal Address: 8525 106A Street NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$3,088,500

Between:

Gary Nash, Nashco Enterprises Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Shannon Boyer, Presiding Officer

Mary Sheldon, Board Member

Randy Townsend, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

Preliminary Matters

[2] The Complainant attempted to enter into evidence a 22 page document which contained his original disclosure, his rebuttal and information that had not been previously disclosed to the Respondent. Pursuant to s 8(2)(a)(i) and s 9(2) of the *Matters Relating to Assessment Complaints Regulation* (MRAC) the Board decided to allow only certain pages of the 22 page disclosure document to be entered into evidence as Exhibit C-1. Out of the initial 22 pages, Exhibit C-1 in its final form consisted of pages 1 through 6 (ending at paragraph 29), along with pages 10, 11 and 12. The remainder of the 22 page document seemed to consist of rebuttal evidence to be properly considered after the Respondent's submissions.

[3] After Exhibit C-1 was modified to conform to the Complainant's original disclosure, the Board then entered into the record as Exhibit C-2 a copy of the original disclosure document provided by the Complainant to the Respondent. Exhibit C-2 was primarily entered in order to ensure the completeness of the record as Exhibit C-1 had already been modified to bring Complainant's submission into conformance with the legislated disclosure requirements.

[4] At the time of the Complainant's rebuttal, the Respondent objected to the inclusion of pages 13 to 15 and pages 19 to 20 on the grounds it was not rebuttal but new evidence that had not been previously disclosed. Upon questioning by the Board the Respondent agreed to withdraw pages 19 and 20 of the 22 page document but objected to the exclusion of pages 13 to 15, a market report published by Cushman & Wakefield. The Board decided that the pages in question should be excluded pursuant to s 8(2)(c) of *MRAC*. As a result, pages 7 to 9, 16 to 18 and pages 21 and 22 were entered in as Exhibit C-3.

Background

[5] The subject property is a 2012 built, four storey, sixteen suite walk-up apartment building located in the Strathcona area at 8525 106A St., Market Area (MA) 3. There are fifteen one bedroom suites and one bachelor suite. The average suite size is 64 square meters. There is no elevator in the building and all parking is outdoor surface parking. The suites have balconies. The City of Edmonton applied a Gross Income Multiplier (GIM) of 14.47 to the Potential Gross Income (PGI), also referred to as Effective Potential Gross Income (EPGI), less vacancy to arrive at the Effective Gross Income (EGI) of \$3,088,500.

Issues

[6] Has the City of Edmonton assessed the subject property fairly and equitably compared to similar apartment buildings?

Position of the Complainant

[7] The Complainant explained to the Board that he had made a request to the City, pursuant to s 300 of the *Municipal Government Act* (MGA), as to how assessments, and his property in particular, were determined using regression analysis. The City did provide some information, which the Complainant then used to do his own analysis. The Complainant stated that he has a PhD in theoretical physics and is very familiar with regression analysis.

[8] The Complainant began the presentation of his evidence by describing to the Board the attributes of his apartment building. He described how he had purchased a vacant parcel of land for \$1,000,000 (Exhibit C-1, pg. 10) from Siegfried Janke in February 2012. Upon purchase of the land he immediately began construction of his sixteen suite apartment building. He stated that the intended renters were generally university students since the location is close to the University of Alberta. Since most of his tenants would be university students on limited budgets he saw no need to build underground parking, which he said would have added approximately \$20,000 in cost to each suite. A balance sheet as of June 30, 2013 (Exhibit C-1, pg 12) states a capital cost for the building at \$1,444,384.95 plus land cost of \$1,000,000 for a total cost of \$2,444,000 (rounded down).

[9] The Complainant provided the Board with two tables of comparable properties. Table 2 has six comparables of apartment buildings built between 2002 and 2012. They are all low-rise apartments but none are in the same neighborhood as the subject. Vacancy rates are as provided by the City of Edmonton. Total suites per building range from 6 suites to 163 suites compared to the subject at 16 suites. The time adjusted selling price (TASP) varies from a low of \$116,708 to \$211,938 per suite compared to the subject which is assessed at \$193,031 per suite. The Gross Income Multipliers (GIM) for the comparables, based on assessed value, range from 11.68 to 12.18 whereas the subject has a GIM of 14.47. Average suite sizes range from 85 square meters.

to 109 square meters. Most of the comparables contain mainly two bedroom suites. Comparables #1 to #3 are identical to three sales used by the Respondent in his presentation.

[10] In Table 3, the Complainant provided five comparables of apartments in the Strathcona neighborhood, but which are generally much older than the subject, ranging from effective year built of 1965 to 1970. The subject was built in 2012. No adjustment for location is required for these comparables. Number of suites in the comparables range from 12 to 25. The comparables are generally one bedroom units, the same as the subject. Average suite sizes range from 77 square meters to 85 square meters whereas the subject size averages 64 square meters for one bedroom suites.

[11] It is the Complainant's opinion, based on these comparables, that the Respondent failed to take into account that his building consists of relatively small one bedroom units, as compared to similar buildings which are generally at least 50% larger and mainly two bedroom suites; the fact that his building has no elevator, where most of the comparables do; the fact that the subject property has the highest GIM of all eleven comparables; and the fact that the subject only has surface parking as compared to many of the comparables which have underground parking. This shows, in his opinion, that his assessment is too high.

[12] The Complainant uses the same formulas as the Respondent to determine the assessment but attempted to show the Board how the City has not properly accounted for the variables necessary to properly analyze low-rise apartments. In his opinion, the City has not properly allowed for variances, such as not having an elevator(s), suite mix (one bedroom units versus two bedroom units) or surface parking versus underground parking. The Complainant attempted to prove his point by referring to his Tables 2 and 3 in Exhibit C-1 where he has shown eleven comparables.

[13] At point 18 of C-1 (pg. 5) the Complainant states that the Respondent failed to apply the City's own time adjustment (TA) factors to his land and building costs. The TA factors were obtained directly from the City of Edmonton. If actual land cost in 2012 of \$1,000,000 is time adjusted to July 2013 using a factor of 1.0428 and the building cost is time adjusted using a factor of 1.0112 (time- adjustments provided by the Respondent to the Complainant) the result is a TA value of \$2,502,973 for the subject. Dividing the TA value by the EGI of \$213,453, as determined by the City, results in a GIM of 11.73, not the 14.47 factor applied by the Respondent.

[14] The Complainant presented to the Board two possible scenarios of how the Respondent appears to have determined GIMs to create the assessment: one for low-rise apartments that are fairly new (Table 2), based on using a constant GIM of 12.18 but a PGI based on current typical rents of newer buildings; and one for older buildings in a similar location to the subject (Table 3) using a constant GIM of 12.37 but with a PGI based on actual rents of older buildings, which typically rent for a lower rental rate.

[15] In the Complainants opinion, the only adjustment the City appears to have made, in determining the assessments of the newer comparables (Table 2), is by starting with a constant 2012 GIM of 12.18. The GIM of 12.18 is then multiplied by the age of the building (2012 minus year built) times a depreciation rate of 0.05% per year to get the GIM of the comparable. The GIM is then applied to the EGI of the property to get an assessed value.

[16] In the second case (Table 3) a similar situation exists but in this case the Respondent appears to have "Grossed Up" the GIM by adding the age of the building (2012 less effective

age) times 0.05 to a GIM of 12.37. Since older apartment buildings have a typical lower rental income this will result in a much lower GIM.

[17] In both cases the PGI is multiplied by the typical vacancy rate to get the EGI. EGI is then multiplied by the GIM to get an assessed value of a property.

[18] It is the Complainant's contention that the Respondent has maximized the EGI and maximized the GIM to produce an assessment of \$3,088,500 for the subject. The result is an assessment much higher than similar properties and higher than the actual cost even after applying a time factor to the 2012 value. Maximizing both the EGI and the GIM would reflect a very hot market. For a building that lacks many amenities of other low-rise apartment complexes the result is an assessment that is neither fair nor equitable.

[19] It is the Complainants request that the 2014 assessment be revised to \$2,610,500.

Position of the Respondent

[20] The Respondent presented to the Board Exhibit R-1 consisting of 65 pages. The Respondent began by directing the Board's attention to the introduction of their Mass Appraisal Brief for low-rise apartments.

[21] Page 32 is the inspection report by the assessor dated Nov 18, 2013. Page 33 provides the Board with the Income Detail Report for the subject showing a final assessment of \$3,088,500.

[22] The Respondent provided the Board with four sales comparables, none of which are in the Strathcona neighborhood. Three of these sales comparables were also used by the Complainant. TASP's range from \$179,735 to \$211,938 per suite while the subject is \$193,031 per suite. Average suite sizes of the comparables are 91 meters squared to 110 meters squared compared to the subject at 64 meters squared

[23] The Respondent provided the Board with three Equity comparables on page 42. All of these comparables are located in Strathcona. Comparable #1 and #2 were built in 1981 and 1987 respectively and have surface parking, similar to the subject. Comparable #1 has 27 one bedroom suites with an average suite size of 70 meters squared. Comparable #2 has 11 one bedroom suites with an average size of 71 meters squared. There is no mention whether any of the comparables have elevators. Equity comparable #3 was built in 2012, the same as the subject. It has 6 one bedroom suites and 18 two bedroom suites, with average suite size of 153 meters squared. This comparable also has underground parking.

[24] Three of the Respondent's four comparables are also comparables #1 to #3 used by the Complainant and are not in dispute. The Respondent states that the Complainant's sale #4 (Table 2 of C-1) was a duress sale and should not be used. The Respondent provides some details about this sale on pages 44 and 45. The Respondent has discounted the Complainant's sale #5 because it benefits from a subsidized rent program; therefore, it is not a typical sale. The Respondent considers sale #6 a valid sale but noted it is only a six-plex apartment. The Respondent did not use this sale.

[25] From the Complainant's Table 3 the Respondent states that comparables #7, #9 and #10 are valid sales but are much older buildings. Sale #8 is considered non-arms length and sale #11 is a multiple parcel sale and therefore should not be used.

[26] The City uses “typical rents” not “actual rents” and that is why the rents used to determine the GIM may not be equal to what the Complainant is using.

[27] In summary, the Respondent requested the Board consider its sales comparables, in conjunction with their equity comparables, as the best evidence of market value of the subject. The Respondent stated that they could not find many good sales but they do have three sales in common with the Complainant. They do not agree with the Complainant that the cost approach is the best method of valuation for the subject. They pointed out that Strathcona is the number one rental market area in the City and that is why the subject has a high GIM. If the GIM were to be changed, the subject property would no longer be equitable with similar properties in the area.

[28] The Respondent stated that a value of \$193,000 per suite is fair and equitable and requests the Board confirm the assessment at \$3,088,500.

Complainant's Rebuttal

[29] The Complainant stated that the Respondent disputes the use of third party evidence and yet they are referring to third party information at pg 45 of their disclosure.

[30] The Respondent asked the Board to note that at page 17 of his Exhibit C-3, which was obtained from the City of Edmonton, the maximum GIM for low-rise multi-res is 14.47 and he questioned why the Respondent objects to the inclusion of the Cushman & Wakefield submission which shows an even higher range.

[31] The Respondent agreed that Strathcona is one of the best rental market areas in the City, however, the vacancy rates in other areas are not much different to the subject, yet the GIMs were lower. This shows that vacancy rate is not as significant in determining the GIM as the Respondent tries to have the Board believe. If vacancy is not a significant factor then the subject's location should have little bearing on its GIM.

[32] Enclosed parking costs approximately \$20,000 per stall, although the City generally uses between \$10,000 – \$16,000 per stall for assessment purposes. The Respondent has not accounted for the fact that the subject does not have enclosed parking in comparison to their comparables.

[33] The subject does not have an elevator whereas most of the Respondent's comparables do. This is an approximate difference of \$150,000 in the value of the building.

[34] Most of the Respondent's comparables have two bedroom apartments. Rents for two bedroom suites are generally \$200 per month more than one bedroom suites. This greatly effects EGI, which then effects the GIM.

[35] In the Complainant's opinion, the assessment is still too high and the Respondent has not taken into account all of the amenities lacking in his building as compared to the comparables used by the Respondent. His building should have a much lower GIM, more in line with his comparables, which would result in a much more equitable assessment.

[36] The Complainant requests the Board adjust his assessment to \$2,610,500, which is his 2012 cost multiplied by the Respondent's time adjustment factor to bring it to the valuation date of July 2013.

Decision

[37] The decision of the Board is to reduce the 2014 assessment to \$2,610,500.

Reasons for the Decision

[38] The Board does not doubt that the Complainant is qualified to perform a detailed and extensive analysis of data supplied to him by the Respondent, the City of Edmonton Assessment and Taxation Branch. According to his analysis, it appears that the Respondent did not make adequate adjustments in determining the 2014 assessment. The Complainant's methodology is not wholly based on the accepted assessment principals of mass appraisal that the Respondent must follow as required by legislation. However, it was sufficiently convincing to the Board to shift the onus to the respondent to prove that the assessment was fair and equitable.

[39] The Board accepts the Respondent's position that market value is not determined by a single property but rather a compilation of many sales and analysis of many factors. The Board agrees that the primary method of determining market value for multi- residential buildings is the income approach. The Board finds that there is insufficient income evidence from the Respondent to determine that the assessment is fair and equitable. The only income evidence is the Respondent's pro-forma of the subject property.

[40] In light of this the Board also examined the evidence regarding Direct Sales, the Cost Approach and Equity Comparables, all of which are acceptable methods of determining market value.

[41] The Board is persuaded by the Complainant's argument that the cost to purchase his land and the cost of construction (Exhibit C-1 pages 11-12) should be seriously considered as important information for determining an assessment in the absence of high quality comparables. Total cost of the land and buildings was determined to be \$2,444,385, with construction started in 2012. Using the cost approach, the time adjusted market value is \$2,610,500.

[42] Based on the Board's own examination of the sales presented by both parties, it is apparent that the Respondent has not made adequate adjustment for the lack of important variables, including average suite size, age, building type, elevators, suite mix and number of stories. Both parties provided three common sales comparables to the Board. The Board finds that all three of these comparables are superior in several areas to the subject: they are all much larger complexes; they have much larger average suite sizes; they are mainly two bedroom suites; they all have underground parking; they all have elevators. In all cases the TASP/suite is only slightly different than the subject. In the Board's opinion, these factors are significant and proper weight must be placed on them.

[43] The Board reviewed the Respondent's equity comparables and found the information interesting, but not helpful. Two of the equity comparables are at least 25 years older than the subject and one, Kativa Apartments (Kativa), which is assessed at \$230,854 per suite, is clearly superior to the subject. Kativa has underground parking, has an average suite size that is two and half times larger than the subject, granite countertops, higher end amenities and large balconies. The difference between Kativa and the subject indicates to the Board that, although in the same neighborhood, they were not comparable.

[44] The Board concludes that the Complainant had clearly shifted the onus to the Respondent to prove that the assessment was, in fact, correct. It is the Board's opinion that the Respondent

did not present enough evidence to prove that the assessment, as provided to the Board, was fair and equitable. The Board finds that the 2014 assessment is inequitable. In the absence of convincing income evidence, the Board accepts the Complainant's cost data and supporting documentation as the most accurate and persuasive evidence of market value. The Board accepts the Complainants request for a revised assessment of \$2,610,500.

Dissenting Opinion

[45] There were no dissenting opinions by the Board members.

Heard May 28, 2014.

Dated this 25th day of June, 2014, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

Gary Nash, Nashco Enterprises Ltd.
for the Complainant

Ralf Winkler, City of Edmonton
Steve Lutes, City of Edmonton
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.

Appendix

Legislation

The *Municipal Government Act*, RSA 2000, c M-26, reads:

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;

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor’s possession or under the assessor’s control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;

(e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

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.

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.

The Matters Relating to Assessment Complaints Regulation, Alta Reg. 320/2009, reads:

8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) 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, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant 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 respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent’s evidence;

(c) the complainant must, at least 7 days before the hearing date, 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 rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

10(1) A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).

(2) Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b) or (c).

(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.

Exhibits

Exhibit C-1 Complainant's Evidence – 9 pages

Exhibit C-2 Complainant's Evidence – 9 pages

Exhibit C-3 Complainant's Rebuttal – 8 pages

Exhibit R-1 Respondent's submission – 65 pages