

## **Edmonton Composite Assessment Review Board**

**Citation: Lorenzo Clonfero, Rosedale v The City of Edmonton, ECARB 2012-000766**

**Assessment Roll Number:** 9959758

**Municipal Address:** 10053 111 STREET NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**Lorenzo Clonfero, Rosedale Developments**

Complainant

and

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

Respondent

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**DECISION OF  
Lynn Patrick, Presiding Officer  
Taras Luciw, Board Member  
Tom Eapen, Board Member**

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### **Procedural Matters**

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them. At the request of the Respondent, all parties were sworn in.

### **Preliminary Matters**

[2] The Complainant advised the Board that he did not receive evidence disclosure from the Respondent by the date indicated in the Notice of Hearing. The Respondent's disclosure date, as provided by MRAC and set forth in the Notice of Hearing, was August 13, 2012. The disclosure was received on August 14, 2012 being one day late. The Complainant requested that the Respondent's disclosure not be admitted into evidence.

[3] The Board found that under MRAC section 9(2) that the CARB must not hear any evidence that has not been disclosed in accordance with section 8 and therefore they must not hear any evidence from the Respondent without the consent of the Complainant.

[4] The Complainant advised the CARB that he would not consent to the abridgement of the time period for such disclosure.

## **Preliminary Decision**

[5] The Board found that the Respondent's disclosure was late and that the Board does not have the authority to abridge the time and will not accept the Respondent's evidence.

## **Background**

[6] The subject property is a 58 suite high-rise building known as Rosedale Manor, located at 10053 111 Street. It was constructed in 1979 as a 6 storey concrete office building. Subsequently, it was purchased and converted into a seniors' facility in approximately 1997.

## **Issue(s)**

[7] Is the 2012 assessment of the subject property correct?

## **Legislation**

[8] The Matters Relating to Assessment Complaints Regulation (MRAC) reads:

### ***Matters Relating to Assessment Complaints Regulation, Alta. Reg. 310/2009***

s 8(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:

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

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

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

[9] The Municipal Government Act reads:

### ***Municipal Government Act, RSA 2000, c M-26***

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**

[10] The Complainant submitted written evidence in the form of a letter referencing Rebuttal Disclosure (C-1, three pages) wherein the Complainant advised that a Rebuttal Disclosure would not be submitted; Written Argument and Documentary Evidence (C-2, twelve pages); a copy of the 2012 Assessment for a comparable property known as Claire Estates (C-3, one page); and a copy of the 2012 Assessment for a comparable property known as Riverbend Retirement Seniors' Residence (C-4, one page).

[11] The Complainant advised the Board that the assessment for the subject property has been reduced in each of the past four years, the first three years (2008 to 2010) by way of an appeal and a Merit Hearing and in 2011 by way of an amended assessment. Notwithstanding this history of reduced assessment, the assessment for 2012 is again set considerably higher than the previous assessments.

[12] The Complainant referred to a City of Edmonton document, "2011-2012 Total Assessment Percent Change by Neighborhood" (C-2, page nine) wherein assessments in the subject property's neighborhood had an average 2% decrease to a 2% increase while the subject increased by 60%. The assessment for a comparable property, Rosedale Estates, located one block north of the subject, increased by 0.5%.

[13] On page two of C-2, the Complainant provided three comparable properties. Riverbend Retirement Senior's Residence, located at 103 Rabbit Hill Court, contains 136 suites, is assessed at \$8,430,000 (\$61,985 per suite) yet has substantially higher rents. A feature sheet on page 12 of C-2 describes the facility and the rents. Rosedale Estates, located at 10101 – 111 Street, contains 121 suites and is assessed at \$10,034,000 (\$82,925 per suite). The third property, Claire Estates Retirement Community, is located at 10305 – 100 Avenue, contains 150 suites, and is assessed at \$10,389,500 (\$69,263 per suite). These assessments are well below the subject's assessment of \$132,827 per suite.

[14] The Complainant is agreeable to an assessment increase of 0.5% as was applied to Rosedale Estates, the comparable property located only one block from the subject.

### **Position of the Respondent**

[15] Pursuant to the Preliminary Matter raised by the Complainant wherein the Board was advised that he did not receive disclosure from the Respondent by the date indicated in the Notice of Hearing, and MRAC s9(2), as noted above, the Respondent's evidence was not heard.

[16] The Respondent questioned the Complainant on various aspects of the Complainant's comparable properties such as location, construction, age, condition and licensing and the Respondent argued that there was a lack of comparability with the subject property.

## **Decision**

[17] The decision of the Board is to reduce the 2012 assessment from \$7,704,000 to \$4,809,500.

## **Reasons for the Decision**

### **Preliminary Matter**

[18] The CARB finds that section 8(2) of MRAC provides that the Respondent must file its evidence at least 14 days clear of the hearing date if it intends to rely upon such evidence at the hearing.

[19] The CARB would need to abridge that time period to allow it to be heard at the hearing however the legislation has been interpreted such that authority to do so has not been given to the CARB and sections 9(2) of MRAC applies resulting in the CARB being denied the authority to hear such evidence.

[20] Section 10(3) of MRAC which refers to an abridgement of time for section 8(2) does not apply because the Complainant has not consented in writing or orally to such an abridgement.

### **Assessment Matters**

[21] The Complainant provided the CARB with three comparables with regard to its request for a reduction in the assessment. The CARB notes that two of the three comparables are of wood frame construction as distinct from the concrete construction of the subject property.

[22] The assessment of the subject by the cost approach does not provide a market value as disclosed by the comparables of the Complainant.

[23] The CARB, in considering the three comparables, put less reliance upon the Claire Estates Retirement Community property because it is not a licensed facility.

[24] The Riverbend Retirement Seniors Residence and the Rosedale Estates are the two more persuasive of the comparables as they are of similar construction, size and unit values at \$61,986 and \$82,925 per suite respectively. This indicates a better proximity to market value. The location of Rosedale Estates near the subject lends support for the value of \$82,925 as the market value of comparable seniors' residences.

[25] Support for this is found in the rental evidence of the Riverbend property and the subject. The Riverbend rental rates, for what appears to be a comparable suite size with the additional seniors services such as meals, housekeeping and other programs, is substantially higher than the equivalent at the subject property. The CARB finds that the suggested quality and location advantage of the subject doesn't equate in higher rents that would be expected from a property of higher market value. The difference in costs of the two types of structures is not borne out by the market for the product of seniors housing offered by these properties.

[26] The history of the assessments done recently indicates that there has been a consistent reduction in the assessment through appeals and one notable amended assessment by the Respondent in the 2011 taxation year which reduced the assessment from \$7,774,500 to \$4,820,500 without the need of an appeal. The decision by this CARB based upon the evidence provides an equitable result.

[27] It was argued by the Respondent that consideration of the Riverbend comparable by the CARB should not be given because of its location some distance from the downtown location of the subject. For more normal types of properties such as retail or warehouses that argument might have some merit however in the case of such special properties like seniors residential it is necessary to go further afield to include comparables that are somewhat removed from the location of the subject.

### **Dissenting Opinion**

[28] There was no dissenting opinion.

Heard commencing August 28, 2012.

Dated this 25<sup>th</sup> day of September, 2012, at the City of Edmonton, Alberta.

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Lynn Patrick, Presiding Officer

### **Appearances:**

Lorenzo Clonfero, Rosedale Developments  
for the Complainant

Amy Murphy, Assessor, City of Edmonton  
Cam Ashmore, Legal Counsel, City of Edmonton  
for the Respondent