Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
Phone: (780) 496-5026

ASSESSMENT REVIEW BOARD

NOTICE OF DECISION NO. 0098 429/11

Canadian Valuation Group
1200-10665 Jasper Avenue
Edmonton, AB T5J 3S9

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton, AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on November 23, 2011, respecting complaints for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
2705705	12226 Jasper Avenue NW	Plan: RN22 Block: 12 Lot: 9	$1,199,500	Annual New	2011
2705754	12220 Jasper Avenue NW	Plan: RN22 Block: 12 Lot: 10	$1,482,000	Annual New	2011
2740801	10110 122 Street NW	Plan: 987HW Block: 1 Lot: A	$615,000	Annual New	2011
2740835	12206 Jasper Avenue NW	Plan: 987HW Block: 1 Lot: B	$1,152,000	Annual New	2011
3810447	12212 Jasper Avenue NW	Plan: 9221358 Block: 1 Lot: 1B	$1,341,500	Annual New	2011

Before:

James Fleming, Presiding Officer
Francis Ng, Board Member
John Braim, Board Member

Board Officer:

Annet Adetunji

Persons Appearing on behalf of Complainant:

Tom Janzen, Canadian Valuation Group

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Persons Appearing on behalf of Respondent:

John Ball, Assessor, City of Edmonton

PRELIMINARY MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members did not indicate any bias with respect to these files.

At the outset, the Respondent indicated that in their opinion, the references to Highest and Best Use and Hazardous material in the Complainant's disclosure were inappropriate as these issues had not been disclosed on the Complaint form and in addition were post facto to the issues in the 2011 merit hearing. Accordingly, the Respondent asked that these issues not be considered in the complaints.

The Complainant indicated that the Highest and Best Use argument was included in the argument "…assessment is excessive ….. do not correctly reflect its actual physical and income-producing characteristics" which was outlined under the second last paragraph in the Reasons for Complaint in the attachment to the Complaint forms for all of the properties under complaint. The Complainant also argued that the hazardous material information arose in pursuit of the Highest and Best Use arguments, and thus should be considered by the CARB as a legitimate part of the Highest and Best Use argument.

The CARB considered the evidence and argument and ruled during the hearing. The CARB concluded that the Highest and Best Use argument was captured in the issue identified in the second last paragraph of the Reason for Complaint as noted above, and thus could be considered in this hearing. In the matter of the information on the costs for removal of hazardous materials, the CARB accepted the argument that it may have arisen as part of the Highest and Best Use discussion, however they concluded that because the issue was only identified in 2011, and because the valuation date and condition date were both in 2010, it was not appropriate to consider the removal costs of hazardous material in the Complaints for the 2011 taxation year.

It should be noted that the argument on Highest and Best Use was not specifically made during the merit component of the hearing. At best it was inferred from the fact that the Complainant was asking for an assessment based on vacant land value for the individual properties. However, no discussion/defense of Highest and Best Use was made in the merit hearing.

BACKGROUND

The subject properties comprise 5 adjacent lots towards the west end of Jasper Ave. Each of these lots was developed with income producing properties of one or two storey's and some of the properties had basements which were also rented as of the valuation date and the condition date for the 2011 taxation year. The effective land use for the properties was CB1. The Complainant advised that the properties were acquired for redevelopment, and while the properties were all valued on the Capitalized Income Approach, they felt that the "intended" future use of the properties supported a direct sales comparison of land value only.

With the agreement of both parties, the decisions on the 5 properties will be included in one decision template.

ISSUES

Is the proposed future use of the property an adequate basis for valuing the property on a land value "only" basis?

If the Income Approach is decided to be the best method of valuation, what input/attributes should be used to arrive at the assessment?

LEGISLATION

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

S.289(2) Each assessment must reflect
(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

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

The Complainant advised that all of the properties under appeal are the subject of a redevelopment proposal that had physically commenced the redevelopment process sometime in 2011. The total land assembly involved 6 parcels of land with improvements but only the 5 most easterly parcels are the subject of this combined appeal. Although the land assembly of the subject parcels had been started prior to 2010 it was progressing towards physical redevelopment during 2010. The subject properties were therefore considered to be re-development properties and as such should be valued for assessment purposes on the principle of its Highest and Best Use, which is basically the market value of the land.

The Complainant provided a chart (Exhibit C-1, page 2) detailing 6 sales of vacant land in the general vicinity of the subject properties on the basis of them being the best indicators of value for the subject lands, assuming vacant, and when time adjusted to valuation date of July 1, 2010 and condition date of December 31, 2010. Three of the parcels are located on busy traffic arteries like the majority of the subject properties and three are located on "interior" locations with lower exposure to traffic. Sale #2, #3, #4, and #5 are zoned for multi-family development and of these four sales the two interior parcels were noted to be 37% lower in value than the two parcels fronting a main roadway. The Complainant also stated that of the two zoned for commercial use the interior parcel, sale #1, is 41% lower in value than the better located parcel. The conclusion is that location is a very important factor and amounted to a 40% overall differential in this case. Notwithstanding this difference the Complainant concluded the sales comparables on "main roadways" averaged $67.83/ sq ft and supported a much lower unit rate than the 2011 assessments.

The Complainant also provided 5 equity comparables that were located in the general vicinity of the subject properties but were on Jasper Avenue or 116 Street and were very similar in terms of "main road" exposure. The equity comparables ranged from $61.88/ sq ft to $73.35/ sq ft and all supported a much lower unit rate than the 2011 assessments.

The individual properties were variable in size but the relevant information pertaining to each property is as follows;

1. **2705705 - 12226 Jasper Avenue;** This property contains 8,319 sq ft of land. The Complainant stated the assessment equated to a unit rate of $144.19/ sq ft for the land only, whereas the 6 sales comparables and the 5 equity comparables pointed to a unit rate of $70.00/ sq ft.

2. **2705754 - 12220 Jasper Avenue;** This parcel of land contains 8,950 sq ft. The Complainant stated the assessment equated to a unit rate of $165.59/ sq ft. for the vacant land, whereas the 6 sales comparables and the 5 equity comparables pointed to a unit rate of $70.00/ sq ft.

3. **2740835 - 110110 – 122 Street;** This parcel of land contains 6,600 sq ft. The Complainant stated the assessment equated to a unit rate of $93.18/ sq ft. for the vacant land, whereas the 6 sales comparables and the 5 equity comparables pointed to a unit rate of $75.00/ sq ft as it is a corner lot and hence somewhat higher than an inner lot.

4. **2740835 - 12206 Jasper Avenue;** This parcel of land contains 5,962 sq ft. The Complainant stated the assessment equated to a unit rate of $193.22/ sq ft. for the vacant land, whereas the 6 sales comparables and the 5 equity comparables pointed to a unit rate of $70.00/ sq ft.

5. **3810447 - 12212 Jasper Avenue;** This parcel of land contains 7,920 sq ft. The Complainant stated the assessment equated to a unit rate of $184.02/ sq ft. for the vacant land, whereas the 6 sales comparables and the 5 equity comparables pointed to a unit rate of $70.00/ sq ft.

The above details can be presented in summary form as follows;

Roll	Site Area (Sq Ft)	Assessment per ($/Sq Ft)	Requested Market Value per Sq Ft On the Land ($)	Requested Assessment Based on Land Value Only Approach ($)	Actual NOI ($)	Cap Rate (%)	Requested Assessment Based on Income Approach using Actual NOI ($)	Final Requested Assessment ($)
2705705	8,319	144.19	70.00	582,000	59,010	8.5%	694,000	600,000
2705754	8,950	165.59	70.00	627,000	78,789	8.5%	927,000	650,000
2740801	6,600	93.18	75.00	495,000	47,986	8.5%	564,000	500,000
2740835	5,962	193.22	70.00	431,000	78,086	8.5%	919,000	450,000
3810447	7,920	184.02	70.00	510,000	110,998	8.5%	1,306,000	550,000

As part of the Complainant's evidence, they provided copies of actual income statements (prepared on an accrual basis) for each of the properties. They used the figures both income and expense, to calculate the Net Operating Income and hence the estimate of value, for each of the properties. The Complainant advised they had not prepared the Statements, and they were unable to answer questions on how the statements had been prepared

<u>POSITION OF THE RESPONDENT</u>

The position of the Respondent is that the assessments of all the 5 subject properties are fair and correct. As of the condition date of Dec 31, 2010, the subject properties were still commercial income producing properties, therefore, the City of Edmonton valued them using the Capitalized Income Approach; the same method applied to all commercial properties. The City applied the typical rents, vacancy rates, and structural repair percentages as stated on the following charts.

Properties Having Main floor and/or Basement space:

Roll	Main Floor Area (Sq Ft)	Main Floor Rent ($)	Eff. Gross Inc. On Main ($)	Bsmt. Floor Area (Sq Ft)	Bsmt. Rent ($)	Eff. Gross Inc. Bsmt. ($)	Total Eff. Gross Income ($)	Structural Repair (%)	NOI($)	Assessment ($)
2705705	5,748	18.00	98,282	5,445	1.50	8,167	106,449	3%	101,963	1,199,500
2705754	5,748	17.25	94,187	5,445	8.50	37,026	131,214	3%	125,984	1,482,000
2740801	3,163	18.00	54,080	---	---	---	54,080	2%	52,287	615,000

Properties Having Main Floor and Upper floor space:

Roll	Main Floor Area (Sq Ft)	Main Floor Rent ($)	Eff. Gross Inc. On Main ($)	Upper Floor Area (Sq Ft)	Upper Rent ($)	Eff. Gross Inc. Upper ($)	Total Eff. Gross Income ($)	Structural Repair (%)	NOI($)	Assessment ($)
2740835	3,325	17.75	56,067	4,927	10.00	46,810	102,878	3%	97,935	1,152,000
3810447	4,886	17.25	80,066	4,629	8.75	38,475	118,541	2%	114,030	1,341,500

The common factors that the City applied are the 5% vacancy rate, $4.50 vacancy shortfall and then capitalized the Net Operating Income (NOI) by 8.5%.

The Respondent argued that the 5 properties should not be valued as land value only as submitted by the Complainant, because these properties continued to produce income in the tax year of 2010 and the evidence indicated that they have very low vacancy. The Respondent also argued that it would be incorrect to use the actual lease rates and the actual NOIs, because some of the leases are dated and some of the expenses reported on the owner's financial statements are not typical.

The Respondent submitted that one of the subject properties, Roll # 2705705 (12226 Jasper Avenue NW) sold in Oct 2009 for $2,100,000. Furthermore, the Respondent testified that the previous owner indicated that the "property sold for $600,000 to $700,000 over the actual market value" (Exhibit R-1, p.29). If this is correct, the adjusted sale price would be between $1,500,000 and $1,600,000, and which supports the assessment of $1,199,500.

In addition, the Respondent indicated that there is a second sale within these 5 properties and that is Roll # 2705754 (12220 Jasper Avenue NW). It sold for $1,500,000 on Oct 3, 2007 and its assessment for 2011 is $1,482,000, which is within 2% difference. Hence the sale price supported the assessment once again (Exhibit R-1, p.57).

The Respondent concluded that all of the 5 properties are correctly valued utilizing the capitalized income approach by applying typical market rent, collection loss, stabilized vacancy and capitalization rate (Exhibit R-1, p.13). Secondly, two of the subject sales supported their assessments; therefore, the Respondent asked the CARB to confirm the assessments of all 5 properties.

DECISION

The assessments are established as set out in the following table:

Roll Number	Municipal Address	Decision	Assessment
2705705	12226 Jasper Avenue NW	Reduce	$980,500
2705754	12220 Jasper Avenue NW	Confirm	$1,482,000
2740801	10110 122 Street NW	Confirm	$615,000
2740835	12206 Jasper Avenue NW	Confirm	$1,152,000
3810447	12212 Jasper Avenue NW	Confirm	$1,341,500

REASONS FOR THE DECISION

Reasons for the Decision on the General Argument

The Complainant argued implicitly that "intention" should play a part in the method of assessment. They argued the intention in the case of these properties was to demolish the improvements and redevelop the properties, and so vacant land value was an appropriate basis for the assessment. The Complainant indicated it was inappropriate to continue to value the properties on the income approach when the remaining economic life of the improvements was less than one year. They provided information on 6 land sales and 5 land assessment comparables which they adjusted to arrive at a value estimate of $70.00 per square foot for four of the subject sites, and $75.00 per square foot for the corner parcel.

The Respondent indicated that in accordance with the *Municipal Government Act*) Sec 289 (2) (a), "the assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed……" . The Respondent indicated that the evidence, even from the Complainant, showed that all of the properties were functioning as leased income producing properties on the condition date of December 31 2010. Accordingly, the City had no option but to establish the value of the properties based on the Capitalized Income approach. Not only was it in accordance with the legislation, it was also the right thing to do, because the City had no evidence/proof at the time the assessments were being prepared, that the leases would be terminated and the improvements demolished. No eviction/termination notices had been issued to any tenant; the properties were almost fully leased and could have continued into the future.

The CARB considered all the evidence and arguments. The CARB accepts that the Respondent is required to use the condition and on the condition date, and all of the subject properties were income producing properties. The CARB also accepts that the properties could have continued as income producing properties into the future, because there was no evidence of dangerous or economic reasons that would have necessitated demolition of the properties. On this basis, the decision to re-develop the property was a management decision which could have been changed at any time until the lease terminations began. Aside from the fact that the first notice to terminate a lease was taken well after the City was required to finalize the 2011 assessment, there was no evidence that the Complainant had provided the City assessor with any notice of their intention to demolish. Accordingly, the CARB finds that valuing the properties on the

Income Approach to value was allowable and the "better" of the two valuation methods proposed because it was reflective of the use of the properties at the valuation and condition dates.

<u>Decision on 2705705 - 12226 Jasper Ave.</u>

The Complainant provided the "actual" leases for the property which showed rents of $12.00 per sq. ft. for the main floor and $7.50 per sq. ft. for the basement space (Ex. C1, pg 21). The Complainant advised that the Main floor was a net lease while the basement space was on a gross base with a net rate equivalency of approximately $4.00 per sq. ft.

The Respondent provided no evidence to support the typical rent of $18.00 per sq. ft. for the ground floor or for the $1.50 per sq. ft. storage rate assessed for the basement. The Respondent did suggest that rental rates from other properties in the land assembly would provide support for the typical rents, but the CARB concluded that because the subject rents were so much lower than the City's typical rate for the main floor, and with no evidence from either party as to why, there must be some reason for the difference and so accepted the "actual" rents for the subject. It should be noted, that in the case of other properties in the land assembly, there were demonstrable reasons why the actual rents were lower (i.e. dated leases, and knowledge of demolition, for instance). In the subject however, there was no readily apparent reason why the rents were so low, and this is the reason for the acceptance of the actual rents.

Accordingly, when these rents are applied using the City's other attributes for vacancy etc., the assessment is reduced to $980,500 as noted above.

It should also be noted that in using the actual rates, the CARB applied a higher rate for the basement than was ascribed for it by the City (Actual Net = $4.00 vs. Typical Net = $1.50).

As part of the Complainant's package they provided an Income Statement to justify their net income calculation (Ex.C1, pg 22 & 23). The CARB reviewed the statement and noted that it included a number of expense items which would not normally be included on a pro-forma analysis for valuation purposes (payroll overhead, telephone etc), and more importantly these expenses were actual rather than typical. As a result, the CARB put little weight on these numbers because it did not receive sufficient assurance that these represented a standard typical assessment format.

<u>Decision on 2705754 - 12220 Jasper Ave.</u>

This property was fully leased. The Main Floor tenant had an original lease at $18.00 per sq. ft. net. They had taken additional Main Floor space at $8.00 per sq. ft. net although the Complainant could not be sure that the tenant didn't know of the re-development plans for the property when they were negotiating the rate for the expansion. This would account for a much lower rate on the expansion space and so the lease for the expansion space was not considered valid for this reason. The basement tenancy had significant tenant improvements thereby accounting for the $7.00 per sq. ft. rate.

Although there was no support for the typical rates provided by the City, they were in fact lower than the actuals for the property (not including the invalid expansion space), and so there is no support for changing the assessment.

As noted above, the Complainant provided a Net Income statement, and for the same reasons as noted with respect to the previous property, the CARB put little weight on this evidence.

<u>Decision on 2740801 - 10110 122 St</u>

This property was fully leased to a restaurant and a clothing store. The restaurant paid $25.00 net per sq. ft. and the clothing store paid $15.00 per sq. ft. also net.

The Respondent provided no support for the typical rent of $18.00 per sq. ft. but the CARB noted that the actual rents provided a net operating income (NOI) in excess of the typical NOI, and on this basis, could find no reason to change the assessment.

As noted above, the Complainant provided a Net Income statement, and for the same reasons as noted with respect to the first property, the CARB put little weight on this evidence.

<u>Decision on 2740835 - 12206 Jasper Ave.</u>

This property is fully leased, the upper floor at $8.50 per sq. ft. net to a dance studio, and the main floor at $9.15 per sq. ft. net to a restaurant.

The Respondent provided no support for their typical rates of $10.00 for the upper floor and $17.75 for the main floor.

The CARB noted that the restaurant lease was dated (July 1, 2004), and also noted the actual rent of $25.00 per sq. ft. for the restaurant next door was at a much higher rate. Accordingly, because the lease was dated and the neighbouring similar use was leased at a significantly higher rate, the CARB could not place much weight on the actual rents for the main floor.

As a result, the CARB concluded that it did not have good evidence to make any changes in the assessment.

As noted above, the Complainant provided a Net Income statement, and for the same reasons as noted with respect to the first property, the CARB put little weight on this evidence.

<u>Decision on 3810447 - 12212 Jasper Ave.</u>

The property is almost fully leased with the main floor at $15.00 per sq. ft. net, and the second floor at rates represented to be between $10.00 and $12.00 per sq. ft. net.

The Respondent provided no support for their typical rates of $17.25 per sq. ft. net for the main floor and $8.75 per sq. ft. net for the second floor.

The CARB reviewed the evidence and argument. The CARB considered that the main floor “actual” rates were lower than the purported “typical” rates, but also considered that the upper floor “actual” rates were higher than the purported “typical”. The CARB is reluctant to mix actual rates with typical rates to determine an assessment, and this is particularly true when the total income (whether all actual or all typical) is very close, as is the case in this property. Accordingly, the CARB found no justification to change the assessment.

As noted above, the Complainant provided a Net Income statement, and for the same reasons as noted with respect to the first property, the CARB put little weight on this evidence.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 8th day of December, 2011, at the City of Edmonton, in the Province of Alberta.

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James Fleming, Presiding Officer

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.

Cc: Norcan Development Corporation
717186 Alberta Ltd
394646 Alberta Ltd
1282916 Alberta Ltd