

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2012 ECARB 2215

Assessment Roll Number: 4259693
Municipal Address: 9939 115 Street NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Patricia Mowbrey, Presiding Officer
Taras Luciw, Board Member
Thomas Eapen, Board Member

Preliminary Matter

[1] At the outset of the hearing, the Complainant stated that the objection to the composition of the Board is carried forward from roll number 4313524. The Preliminary Matter, as framed in that decision, was as follows:

Should the current Presiding Officer (the “Presiding Officer”) step down on the basis of an allegation of bias brought forward by the Complainant? On what grounds should a Board member step down when an allegation of bias is raised?

Position of the Complainant Respecting the Preliminary Matter

[2] The Complainant stated that he was shocked that he was not advised that the bias issue would be revisited, and that he was now being asked to re-present his position from October 9, 2012. The Complainant indicated that he did not have the supporting documents with him on October 10, 2012. The Complainant further alleged that the documents were probably in the Board’s possession and the Board had probably reviewed them. The Complainant stated he could speak generally to the content of the documents but not to the specifics.

[3] The Complainant complained of bias in a letter he wrote to the Minister and the Chair of the Board (Municipal Government Board) sometime in November or December of 2011. In the letter the Complainant referenced a Board Order written by the Presiding Officer which confirmed an assessment. The Complainant alleged the reasons in this decision

were unwarranted, ill-advised and not representative of the facts presented at the hearing. The Complainant also completed a statistical analysis of the Presiding Officer's participation on the Board and indicated the results were staggeringly in favor of confirmations (92%).

- [4] The Complainant stated that, based on the letter, it was only natural that there would be an apprehension of bias. He further stated he was disappointed that the Presiding Officer was not aware of the letter.
- [5] The Complainant reiterated that he was not prepared to revisit the bias issue he had originally raised on October 9, 2012. He stated he was not given notice that bias would be revisited and considered it unfair that he was put in a position to recall the contents of a letter that was written nearly 11 months ago.

Position of the Respondent Respecting the Preliminary Matter

- [6] The solicitor for the Respondent (the "Respondent") stated that he was happy to receive reasons for the bias application. The Respondent was surprised the Complainant stated he was ambushed by the re-visitation of the bias issue, as the Respondent had clearly indicated on four occasions the previous day that reasons were required from the Complainant in support of the allegation.
- [7] The Respondent stated that he reviewed two text books to try and determine what reasons the Complainant may have had in support of his allegation. The text books were *Principles of Administrative Law*, Jones de Villars, fifth edition, and *Practice and Procedure Before Administrative Tribunals*, Macaulay and Sprague.
- [8] After hearing the Complainant's reasons, the Respondent indicated that there is no authority to suggest that a statistical analysis can support a reasonable apprehension of bias on the part of one member; that is why there are three members to a Board. Percentages of confirmations when a Presiding Officer is sitting are irrelevant. The Respondent stated it is disturbing the Board (presumably the MGB) told the Complainant that the Complainant would not have to appear before the Presiding Officer again.
- [9] The Respondent stated that when an apprehension of bias is raised, a reason supporting the allegation must be provided. If the allegation concerns conduct, the conduct at issue must be identified, and the person against whom the bias is alleged must decide whether they can hear the case without bias.
- [10] The Respondent stated the reason the Complainant did not want to present his evidence on October 9, 2012 was because the Complainant's reasons were ludicrous. The Respondent further stated he was prepared to proceed with the Presiding Officer sitting.

Argument of the Parties Respecting the Preliminary Matter

- [11] The Complainant stated he was not a lawyer and could not respond to any legal issues. He further stated he came to the hearing to argue a complaint. The Complainant agreed with the Respondent that it was the Presiding Officer's decision to decide whether there was bias.

[12] The Respondent stated that the mere allegation of bias does not automatically create bias, and that it is inappropriate for a party to bring a disqualification motion if the essential purpose is a form of reverse judge shopping because of dissatisfaction with the arbitrator. The Respondent described the Complainant as engaging in tactics in an effort to change the Presiding Officer.

[13] The Complainant responded that the Respondent's opinion of the Complainant's motives was completely false. The Complainant again referenced the letter the Complainant wrote to the Minister as the basis for the claim of bias. The Complainant stated that any reasonable person reviewing this scenario would agree the Presiding Officer was put in a difficult position, but not as difficult a position as the Complainant and the tax-payer. The Complainant indicated that what trumps all is a fair and equitable hearing.

Decision on the Preliminary Matter

[14] The Decision of the Presiding Officer is to remain in the chair.

Reasons for the Board's Decision on the Preliminary Matter

[15] The hearing of October 9, 2012 was reopened in order that the Board could revisit the issue of bias brought forward by the Complainant, and the verbal decision given at that time.

[16] The Board in their deliberation for a written decision from the hearings of October 9, 2012 found two significant pieces of information missing:

1. The roll number to which a decision can be attached;
2. A reason on which a decision can be based.

[17] The Board heard the Complainant's comments that he was shocked by not being informed about the re-visitation of the bias issue on October 10, 2012. The Board is of the opinion that the Complainant originally raised the issue of bias in the hearing on October 9, 2012, and the Complainant should have had the supporting evidence for the claim at that time.

[18] The Board heard the Complainant's reasons for claiming bias were based on a statistical analysis of the Presiding Officer's decisions from the past year, which indicated that 92% of the Presiding Officer's decisions confirmed assessments. The Complainant stated this was indefensible for a Board member. The Complainant also indicated there was incompetence shown by the Presiding Officer in a particular decision. The Board noted there was no indication that the particular decision was appealed. The Board considered the statistical analysis to be without merit.

[19] There was no supporting evidence presented by the Complainant on either October 9 or October 10, 2012. Contrary to the allegations raised by the Complainant, the Board had not seen any evidence or letter, nor reviewed any letter written by the Complainant. Further, no response to this letter had been brought to the attention of the Board.

- [20] The Board is of the opinion a decision-maker should not step down simply because a party has raised an apprehension of bias. The Board is an adjudicator and should not be seen as disqualified when in law it is not.
- [21] The Board recognized that the verbal decision given on October 9, 2012 was hastily made. The decision of the Presiding Officer to step down would only bring the authority of the Board into question.
- [22] The Board concluded that the evidence and facts presented in a hearing are the basis on which a decision is made. That decision is made by three Board members, and if there is a dissenting opinion, it is noted. As such, the statistical analysis conducted by the Complainant is without merit.
- [23] The test for bias is objective and reflects a strong presumption in law that a decision-maker is impartial and will act appropriately.
- [24] In *Committee for Justice and Liberty v. National Energy Board* [1978] 1 SCR 369, the test for bias was outlined as follows:
- “What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would he think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly?”
- [25] The Presiding Officer is of the opinion that an informed person viewing the current matter realistically and practically, and having thought the matter through, would not find bias. Therefore, the Presiding Officer will remain in the chair.

Procedural and Jurisdictional Matters

- [26] Upon questioning by the Presiding Officer, the Board members indicated no bias with respect to the file.
- [27] During the hearing the Complainant objected to the Respondent's surrebuttal as the evidence was not provided to the Complainant. The Board responded that surrebuttal evidence is allowed pursuant to *Matters Relating to Assessment Complaints Regulation* (MRAC), s.8(2)(c), which provides:
- 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.*
- [28] The Board inquired of the Complainant how much time would be required to review the material and the Complainant responded that 15 minutes would be sufficient. The hearing adjourned for 15 minutes.

Background

[29] The subject property is a 17 storey high rise apartment building containing 114 suites and a heated parkade with 148 underground parking stalls, 16 surface parking stalls, an elevator, balconies, river view suites, a fitness room and main floor commercial space. The subject was constructed in 1970, and is located at 9939 – 115 Street, in the Oliver neighborhood of Edmonton.

Issue(s)

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

- (a) Is the Gross Income Multiplier (GIM) appropriate?
- (b) Is the subject property equitably assessed with similar properties?

Legislation

[31] 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

[32] The position of the Complainant was that the 2012 assessment of \$16,926,000 was incorrect and stated that the GIM and the Potential Gross Income (PGI) used in the assessment were too high. The Complainant requested an assessment of \$12,655,000. The Complainant presented the subject rent roll which reflected a Gross Rental Income that was 16% less than the assessed Potential Gross Income and provided the following evidence to support the statement.

- Evidence Brief, exhibit C-1 – 42 pages
- Rebuttal, exhibit C-2 – 8 pages
- CARB Decision, exhibit C-3 – 7 pages

- [33] The Complainant stated that the 2012 assessment was based on an EGI of \$1,536,412, with a 3% vacancy factor, a GIM of 10.94184 for a multi residential assessment of \$16,811,000 or \$147,464 per suite, plus a \$115,000 uncontested commercial assessment for a total 2012 assessment of \$16,926,000. The complainant proposed the GIM and the EGI reflected in the assessment were too high and presented the subject's rent roll (C-1, page 18 – 20) which approximated a gross rental income of \$1,362,000, 16% less than the assessed gross rental income.
- [34] The Complainant provided a Canada Mortgage and Housing (CMHC) Rental Market Report (C-1, page 21) that detailed Private Apartment Average Rents in the Edmonton Census Metropolitan Area. The downtown area where the subject property is located is described as Zone 1 (C-1, page 24). Rents from the CMHC report were applied to the requisite number of bachelor, 1 bedroom and 2 bedroom units contained in the subject and the resulting gross income was \$1,309,872, within 4 % of the actual performance of the subject (C-1, page 10), which the Complainant stated supported a reduction.
- [35] The Complainant provided a list of 16 city-wide multi-residential comparable building sales from January 2010 and July 2011 with the respective GIMs (C-1, page 11) . The GIMs ranged from 7.24 to 10.67 with an average of 9.29 and a median of 9.32, fully 150 basis points below the GIM of 10.94184 used in the 2012 assessment of the subject (C-1, page 8).
- [36] The Complainant selected five of the 16 sales that were closest in proximity to the subject, of which four were 2 ½ storey buildings and one was a 3 ½ storey building. The number of suites in the sales comparables ranged from 20 to 44, the effective years built ranged from 1965 to 1977, and the sales prices per suite ranged from \$74,000 to \$110,000 (C-1, page 12).
- [37] The 5 sales comparables (C-1, page 12) were located in the subject market area 1C and indicated a range of GIMs from 7.24 to 10.67 with a median of 9.46 and an average of 9.28. The Complainant indicated the results are nearly identical to the city-wide chart with 16 sales. The Complainant pointed out that the market rents in place represent the location, condition, desirability, suite size and amenities. The Complainant stated that to use a GIM that is in excess of typical for the market is 'double counting' these features. The Complainant suggested the most reasonable GIM as indicated by the closest transactions in the market was 9.46, and, when the Effective Potential Gross Income of \$1,321,140 was multiplied by the GIM of 9.46 resulted in a value of \$12,497,500 or \$109,631 per suite.
- [38] The Complainant presented the same five sales comparables for use in the Direct Comparison Approach to Value (C-1, page 14) which is based on the principle of substitution. The Complainant explained that a purchaser would not pay more for a property than it cost to purchase a suitable alternative property with similar physical characteristics, tenancy and location. The Complainant stated the comparables were recent sales and relatively similar to the subject. The Complainant indicated the sales comparables were in the CMHC zone 1 (C-1, page 21) in which the subject is located. The comparable sales ranged from \$74,000 to \$110,000 per suite with an average of \$91,700 and a median of \$ 94,000.

[39] The Complainant explained that the subject property was in a superior location to the 5 sales comparables and is most comparable to sale number 5 which sold for \$110,000 per suite.

[40] The Complainant's requested market value was based on \$110,000 per suite and when applied to the 114 suites of the subject property equated to \$12,540,000. Added to this is the non-disputed commercial space income of \$115,000 which totals the 2012 requested assessment value of \$12,655,000.

[41] The Complainant stated that the GIM approach resulted in a multi residential market value of \$109,631 per suite and is supported by the direct comparison approach of \$110,000 per suite.

[42] The Complainant presented one equity comparable (C-1, page 15) on an adjacent property which is assessed at \$142,862 per suite. The Complainant indicated the comparable had 91 suites and had a superior suite mix including 4 – 3 bedroom units and 2 penthouses and is located in closer proximity to the river valley. The Complainant suggested it was illogical that the subject property would have a higher assessed value per suite than the comparable property which further substantiates the requested reduction for the subject as the comparable had an unobstructed view of the river valley which the subject property does not and the subject had a lower percentage of valuable suites. .

[43] The Complainant concluded the evidence supported a reduction based on the Income Approach (GIM) to \$12,612,500, which was supported by the Direct Sales Comparison Approach.

Position of the Respondent

[44] The position of the Respondent was that the 2012 assessment is correct. In support of this position, the following evidence was presented :

- Assessment Brief, exhibit R-1 – 79 pages
- Law and Assessment Brief, (“Errors Inherent...”) exhibit R-2 – 85 pages
- Law and Legislation, exhibit R-3 – 44 pages
- CARB Decision, exhibit R-4 – 7 pages
- Surrebuttal, exhibit R-5 – 3 pages

[45] The Respondent explained to the Board that Mass Appraisal methodology was the basis for assessment of the subject property. For the purpose of the 2012 annual assessment, high rise apartments were valued based on the income approach using typical potential gross income (PGI), typical vacancy, and a typical gross income multiplier (GIM). Income data from all properties responding to the Request For Information (RFI), which is sent out each year to property owners, is analyzed to form the basis of the potential gross income model.

- [46] The Respondent indicated that among the significant variables used in the PGI model is the building type, which is separated into low-rise, high-rise, row-house and four-plex.
- [47] The Respondent further indicated that the typical vacancy rate for the 2012 assessment year was 3%, the typical laundry income was calculated at the rate of \$12.00 per suite per month and monthly parking income was added to the model-predicted PGI. The Respondent explained to the Board that other income, which includes laundry and parking, is added to the calculated gross rental income to arrive at a gross income multiplier. The Respondent brought to the Board's attention the fact that the Complainant had included only the gross rental income and vacancy factor to arrive at its proposed gross income multiplier.
- [48] The Respondent described the multi residential market area for the 2012 assessment of the subject property as zone 1, the same market area as the CMHC zone 1, but indicated that zone 1 was separated into 3 areas, 1A, 1B, and 1C (R-1, pages 15 and 16). The subject is located in 1C, which the Respondent stated was a highly desirable area and is approximately bordered by 110 Street to 124 Street and from 105 Avenue to approximately the top of the river bank. The Respondent provided the Board with maps showing the boundaries of zone 1C, and the subject's location within it (R-1, page 15 & 16).
- [49] The Respondent addressed the issue of the GIM presented by the Complainant stating that the most comparable sales were omitted. The Respondent argued it had presented better comparable sales, a more consistent analysis, a more reliable result and suggested the GIM presented by the Complainant for the subject was low when compared to the market.
- [50] The Respondent stated the Complainant's use of actual rather than typical income is contrary to the *Municipal Government Act* (MGA) and *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004 (MRAT), which states that "the valuation standard must reflect typical market conditions" (s. 2(1)).
- [51] The Respondent included a copy of the RFI for the subject property (R-1, pages 33 – 46). From the RFI the Respondent calculated the median rent for each suite type which was \$828 for bachelor suites; \$950 for 1 bedroom suites and \$1,175 for 2 bedroom suites. The Respondent developed an actual rent comparison (R-1, page 50) which indicated total actual rental income of \$1,365,276; annual parking income of \$94,560; and laundry, estimated at \$12.00 per suite per month, of \$16,416. This added to a total actual income of \$1,476,252 compared to the 2012 assessment PGI of \$1,583,930. The Respondent also provided a rental advertisement for the subject which reflected that in 2012, after the valuation date, the asking rental price was increased. Additionally, the Respondent presented advertisements for 6 rental properties (R-1, pages 52–57) in the subject's area that were dated within the assessment year and indicated asking rental rates higher than the subject's rental rates.
- [52] The Respondent presented three sales comparables (R-1, page 58) consisting of one high rise and two low rise properties. Sale number 2 is a five storey, two building, high rise property with a total of 306 suites, and an effective year built of 2002. It is located in the subject market area of 1C, had an indicated GIM of 13.88 and a sales price per suite of \$189,542. Sales number 1 and 3 are low rise properties, and had, respectively,

65 and 44 suites; effective years built of 1969 and 1970; sales prices per suite of \$106,000 and \$110,000 and GIMs of 11.68 and 11.74. The Respondent pointed out that sale number 3 is the same as the Complainant's sale number 5.

[53] The Respondent compared the sales comparables to the subject and noted that the subject contains 114 suites, has an effective year built of 1970, an assessment per suite of \$147,464, and a GIM of 10.94184. The Respondent noted that the higher assessment takes into account the 148 underground, heated parking stalls.

[54] The Respondent provided a chart with 23 equity comparables (R-1, page 62), all high rises located in the subject market area of 1C. The total number of suites ranged from 47 to 249; the effective year built ranged from 1961 to 2002; the 2012 assessments per suite ranged from \$118,583 to \$171,086; and GIMs ranging from 10.69388 to 11.93372. The Respondent indicated the subject property's GIM of 10.94184 is within the comparable range.

[55] The Respondent compared the sales comparable used by both the Complainant (sale 5) and the Respondent (sale 3), which both agreed was most comparable in terms of location. However, the Respondent noted the differences between the subject and the comparable. These differences include the fact that the subject has a parkade with rented stalls, is a high rise, has larger suites, and has suites with a river view.

[56] The Respondent concluded that its comparable sales, in terms of location, building type and size of investment, were more comparable to the subject property.

[57] The Respondent submitted that for assessment purposes typical income, rather than actual income, is the more correct and widely accepted appraisal and assessment practice.

[58] The Respondent stated that the Complainant neglected to adjust comparable sales in its direct sales comparison approach for attributes such as river valley view, larger suite size and parkade income.

Complainant's Rebuttal

[59] The Complainant submitted rebuttal (C-2) to the Respondent's evidence, specifically in response to the 3 sales comparables submitted by the Respondent (R-1, page 58).

[60] With regard to sale number one (10240 – 122 Street; C-2, page 3) the Complainant noted that the third party document states "rental rates are somewhat below average at market rentals". The document also stated that the cap rate was 5.22%. The Complainant stated "therefore, we can adjust to the market rates". The Complainant then adjusted the cap rate to 6.29% from the 5.22%, adjusted the GIM to 9.37 from 11.76 and included calculations for the change. The Complainant commented that the location is far inferior to the subject and the low rent would indicate the higher cap rate reported.

[61] The Complainant addressed the Respondent's sale number 2 (11230 – 104 Avenue) and noted this comparable property, with a sale price of \$58 million, and built in 2001, is vastly superior to the subject, which has an effective age of 1970. The Complainant stated this newer sale comparable was built to more recent standards and

has many superior amenities that would attract a different investor than the subject property. The Complainant highlighted the price of this sale comparable at \$190,163 per suite. Also, it has an actual gross income of \$5,481,327 and a GIM of 10.91 compared to the Respondent's typical gross income of \$4,412,039 and a GIM of 13.88.

[62] With regard to sale 3 (10227 – 119 Street), the Complainant noted this comparable was utilized by both the Complainant and the Respondent.

[63] The Complainant concluded that based on its GIM approach and the evidence provided, a reduction to \$12,612,500 was supported.

Respondent's Surrebuttal

[64] The Respondent presented surrebuttal in response to the Complainant's rebuttal and referred to sales 1 and 2 on page 3 of C-2. The Respondent pointed out that the City did its own analysis, unlike the Complainant who relied on third party information. The Respondent noted from the Complainant's rebuttal that the Network, a third party source, indicated that the comparable rents in place were below average. The Respondent questioned what constitutes a below average rent, what locations were included and whether high rises were included. The Respondent proposed that sale 1 would demand a lower rental rate than a high rise property.

[65] The Respondent questioned the Network information for sale #1 as the Network indicated the property had 66 – 1 bedroom suites and the Respondent stated it had 65 – 1 bedroom suites. Thus, the Network based its gross rent calculation on more suites than actually existed.

[66] The Respondent questioned further inconsistencies in the Complainant's rebuttal. In particular, the Respondent wanted to know "where does this income come from?" The Respondent noted the Complainant's use of an effective income of \$735,569 and a GIM of 9.37. The Respondent also noted the effective income is not what the Network suggested would be average for this sale. The Respondent provided calculations using the Network's 4% vacancy factor, and arrived at an effective income of \$687,517. The Respondent suggested the effective income presented by the Complainant was created by the Complainant and asked "where did the income come from"? The Respondent calculated a gross income based on the Complainant's effective income and arrived at a rental rate of \$982.45 per suite per month. The Respondent argued that this is completely inconsistent as the Complainant suggested a market rental rate for a one bedroom in the subject is \$909 per suite per month, and noted the subject is a 114 suite high rise located next to the river valley. The Respondent suggested the Complainant's income for this property was unreliable, as was its proposed GIM.

[67] With regard to sale 2 the Respondent argued the Complainant somewhat exaggerated the comparable's amenities, noting that some are, in fact, contained in the same room. However, the Respondent agreed the amenities are more typical of high rise properties, and this comparable was a better comparable to the subject. The Respondent noted the major points of comparability: both were high rises, both had similar amenities, and both had large heated parkades. However, the subject was located next to the river valley.

[68] The Respondent noted the Complainant ignored the Network comments on the sale indicating that there was additional consideration in the form of a \$1.4 million mortgage payout, paid by the purchaser, and that the purchase price should be adjusted accordingly from \$58 million to \$59.4 million.

[69] The Respondent recognized sale comparable 2 had a higher sale price per suite than the low rise sales comparables. This was mostly attributable to the fact that it is a high rise property and offers many superior features over low rise properties. The Respondent further suggested the subject assessment is low by comparison to the market.

Decision

[70] The decision of the Board is to confirm the 2012 assessment of \$16,926,000.

Reasons for the Decision

[71] The Board considered the evidence presented by the Complainant and the Respondent and noted that both parties indicated that there were limited recent high rise comparable sales available in the market.

[72] The Board was of the opinion the Income Approach to Value, using the gross income multiplier, was the appropriate method of valuation and noted that both the Complainant and the Respondent applied this method for the subject property valuation. The GIM is produced from the analysis of comparable sales and the related gross income to market value.

[73] The Board accepted the Respondent's explanation that the assessment was prepared using the Mass Appraisal methodology, which is regulated by the *Municipal Government Act*, and *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004 (MRAT), which states that "the valuation must reflect typical market conditions" (s. 2(c)). The typical rental income and typical vacancies are collected annually by means of the RFI from individual property owners.

[74] The Board noted the mass appraisal definition of the PGI for the 2012 assessment was as follows:

"Potential Gross Income is the typical market rent that would be collected if the property were fully occupied at the date of valuation. Parking and laundry income were added to the model predicted PGI. The high rise parking income was based on surface, covered and under/above ground parkade rent. Laundry income was calculated at a rate of \$12.00 per suite per month. The rates were established through an analysis of the market survey rent returns and financial statements from property owners" (R-1, page 10).

The information is analyzed to the income model and differentiates significant variables, including building type, which is separated further into low rise, high rise, row house and four-plex. The Board noted the subject was a high rise property and would be better compared with other high rise properties.

[75] The Board noted the Respondent referred to the *Appraisal of Real Estate Second Canadian Edition*, which states:

“In developing an income or rent multiplier, it is essential that the income or rent of the properties used to derive the multiplier is comparable to that of the subject and that the specific multiplier derived be applied to the same income base”.....
“the properties analyzed must be comparable to the subject property and to one another in terms of physical, locational and investment characteristics” (R-2, page 26).

[76] The Board noted the Complainant’s five sales comparables that were extracted from the 16 city-wide sales comparable were 2 ½ and 3 ½ storey walk up apartments, and the number of suites ranged from 20 to 44. The comparable with 44 suites is comprised of two buildings. The Complainant stated sale 5 of the five sales comparables (10227/35 – 119 street) is most comparable and closest in location to the subject property. The Complainant also stated the subject’s location was superior. The Board noted both parties presented the same comparable (Complainant’s sale 5 and the Respondent’s sale 3).

[77] The Board further noted this sale comparable is a 2 ½ storey, two building - 44 suite wood frame constructed walk up apartment and did not have any special high rise amenities as does the subject property. The subject is a concrete constructed 17 storey high rise with 114 suites, heated underground parkade with 148 rental stalls and amenities such as fitness center and elevators. The subject is located close to the river with 28 suites enjoying a river view. In the Board’s opinion, this comparable, and the other four walk up comparables, significantly lacked physical and locational comparability to the subject.

[78] The Board noted the assessment is based on a potential gross income of \$1,583,930 which included the laundry and parking income. However, the subject rent roll approximates an actual gross income of \$1,365,276 (R-1, page 50) or \$1,362,000 (C-1, page 13). The Complainant supported the actual gross rent income of \$1,362,000 with a CMHC market report for Zone 1 (downtown) of the Edmonton Census Metropolitan Area (CMA). The Board noted the CMHC reported market rental rate was composed of the various residential building types and a broader market area than the Respondent’s zone 1C. The Respondent described zone 1C as a highly desirable area and stated that for assessment purposes, the building types are further separated, which results in a typical rental for each specific property type. The Board agreed with the Respondent that zone 1C is a highly desirable area and that the most similar comparables are a result of separated building types.

[79] The Board finds that the reported actual income from the Complainant’s five sales comparables was unsupported and the third party documents lacked an indicated source for the reported income. The Board was convinced the more appropriate basis for the GIM was the typical gross rent income, plus the laundry and parking income that was applied in the 2012 assessment.

[80] The Board considered the Complainant’s Direct Sales Approach which made use of the same 5 sales comparables used in the Income Approach. The Direct Sales Approach is based on the principle of substitution, which takes into account physical characteristics, tenancy and location. The Board was not persuaded that the comparable sale properties and the subject property were sufficiently similar to warrant comparison. The differences between the subject and the Complainant’s comparables were major. No

adjustments had been applied to distinguish the walk up comparable and the subject high rise.

[81] The Board noted the Complainant's five sales comparables indicated a GIM range of 7.27 to 10.67 with a median of 9.46. The Complainant selected the median of 9.46 to apply to the Effective Potential Gross Income (which included a 3% vacancy factor) and was based on the subject's actual income of \$1,321,140. This resulted in the requested value of \$12,497,500. The Complainant indicated the market rent in place reflected the location, condition, desirability, suite size and amenities, and to use a GIM that is in excess of typical in the market is "double counting". The Board was not convinced it was appropriate to apply the actual rent of the subject property, considering the GIM was selected from five sales comparables and the Effective Gross Income from the subject's actual income. That, in the Board's opinion, lacked the basis for "a typical market condition", which is a statutory requirement for mass appraisal.

[82] The Board considered the Respondent's three sales comparables: two low rise and one high rise property. The high rise is a two-building, 5 storey property with 306 suites, constructed in 2002 that sold in June, 2010 for \$58,000,000 (\$189,542 per suite). The purchaser of this property also paid a mortgage payout penalty in the amount of \$1,400,000. This property is located on 104 Avenue and 112 Street along a major roadway, which does not compare to the subject property's location with close proximity to the river valley. The comparable high rise was 32 years newer and contained newer amenities, including a theatre room, a meeting room and a guest suite. The Board finds that low rise properties are considerably incomparable to the subject high rise property. The five storey high rise with two buildings is 30 years newer, has better amenities and lacks comparability to the subject. The Board therefore placed less weight on the Respondent's sales comparables.

[83] The Board noted that with the lack of recent comparable high rise sales, both parties relied on low rise sales as comparables. The Board considered the low rise properties as unsuitable comparables and therefore gave them less consideration.

[84] The Board reviewed the one equity comparable presented by the Complainant and the 23 equity comparables presented by the Respondent, which includes the Complainant's equity comparable. The Complainant's equity comparable, located on an adjacent lot, had 15 storeys, 91 suites and a heated underground parkade with 35 stalls. The Board noted it had a superior suite mix with four 3 bedroom units, two penthouses and 35 suites with a river view. The GIM was 10.84886, and the 2012 assessment per suite was \$142,862, whereas the subject is assessed at \$147,464 per suite. The Board agrees with the Respondent that the difference in the assessment can be attributed to the subject having 148 underground parking stalls compared to the equity comparable having only 35 underground parking stalls.

[85] The Board placed greatest weight the comparables (including the Complainant's equity comparable) that were closest in suite number to the subject. These include numbers 2, 10, 11, 13, 14, 15, 19, 20 and 23. All were high rises, located in the Oliver neighborhood and in market area 1C, and ranged from 12 to 19 storeys. All but one had balconies, four had river view suites, six had enclosed parking while three had surface parking. The suite total ranged from 91 to 138, the 2012 GIM ranged from 10.72487 to 11.2828 and the assessment per suite ranged from \$123,030 to \$166,047. The Board

noted the subject property is within this range with a GIM of 10.94184 and an assessment per suite of \$147,464. The Board placed greatest weight on the Respondent's equity comparables, which includes the Complainant's equity comparable. These equity comparables indicate that the subject has been assessed fairly and equitably in comparison to other similar properties.

[86] The Board finds the 2012 assessment for the subject property of \$16,926,000 is correct, fair and equitable.

Dissenting Opinion

[87] There was no dissenting opinion.

Heard commencing October 10, 2012.

Dated this 31 day of October, 2012, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

Greg Jobagy
Stephen Cook
for the Complainant

Devon Chew
Steve Lutes
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.