

Edmonton Composite Assessment Review Board

**Citation: Colliers International Realty Advisors Inc. v The City of Edmonton, 2012
ECARB 2343**

Assessment Roll Number: 4535704
Municipal Address: 6633 118 Avenue 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
Robert Mowbrey, Presiding Officer
Petra Hagemann, Board Member
Dale Doan, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. Each of the Board members indicated that they had no bias with respect to this matter.

[2] The Respondent advised that they had provided the Complainant with a recommendation to reduce the assessment from \$3,519,500 to \$2,255,500. This was based on changing the condition of the building from average to fair and consequently changing the lease rate of the main building from \$11.00 per square foot (sq. ft.) to \$6.00 per sq. ft. as well as adjusting the size of the gas bar/convenience store from 3,463 to 2,610 square feet. The Complainant did not accept the recommendation.

Background

[3] The subject property is a two building site, comprising a former grocery store, built in 1969, and a convenience store/gas station, built in 2002. The subject property is located in Edmonton's Highlands neighbourhood, on 118 Avenue, and the property is zoned CSC. The size of the convenience store is 2,748 sq. ft., while the former grocery store, now a retail warehouse, measures 21,780 sq. ft. The property is on a lot area of 91,234 sq. ft with 30% site coverage. Currently the subject property is classified as wholesale/retail and is assessed at \$3,519,500, using the income approach to value.

Issues

[4] The Board considered the following issues:

- a. Is the rental rate used for the assessment fair and equitable?
- b. Is the capitalization rate used for the assessment fair and equitable?
- c. Is the leasable area of the main building correct?
- d. Should the building type be changed from retail/wholesale to medium warehouse?
- e. Should the property be reclassified from CSC to industrial?
- f. Should the condition of the building be changed from average to fair?

Legislation

[5] 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

Issues regarding the Main Building

[6] The Complainant advised the Board that the assessment of the subject had increased by 78.9% over the previous year. The Complainant submitted a 109 page brief (Ex. C-1) challenging the correctness of the assessment of the subject property.

[7] The Complainant suggested to the Board that the subject property, formerly a Safeway grocery store is currently assessed as wholesale/retail. However, based on current use, configuration and restrictive covenant, the subject should be assessed as an industrial warehouse.

[8] In support of a reduction in the assessment, the Complainant explained that the subject is over 40 years old, has not had any improvements or renovations and is in deteriorating condition. The Complainant drew the Board's attention to photos (Ex. C-1, pg 5-12) illustrating a boarded exterior, poor condition of the building structure in loading bay, inadequate ventilation and damage caused by leaking roof in the office and warehouse. The Complainant submitted a letter dated July 9, 2012 from Christensen & McLean Roofing Co (Ex. C-1, pg 25) stating the cost to cure the roof damage is \$199,138.00.

[9] The Complainant referred the Board to the sale of the subject property (Jan 8, 2010). Under normal circumstances the sale of the subject is the most compelling evidence of the subject's market value; however this was not a typical sale. The owner encountered significant challenges when purchasing the subject property. The Complainant's former business premise, located at 10420-105 Avenue, was expropriated by the City in 2009 with a request that the owner vacate Dec 31, 2009. The owner claimed \$1,540,000 was inadequate compensation for the property. The owner had three requirements in acquiring new premises: relative proximity to downtown, 20,000+ sq. ft. of warehouse space and dock level loading. The Complainant stated that during this time light industrial warehouse space was in short supply and the owner was forced to purchase the subject for an inflated price of \$2,500,000 with the vendor taking back a mortgage of \$1,300,000 at 5% interest. The Complainant suggested that it was not a willing buyer and was of the opinion that the price had been inflated and that the interest rate charged by the vendor for the mortgage was too high. The Complainant is of the opinion that this did not constitute a market sale.

[10] The Complainant advised the Board that the purchase agreement of the subject included a restrictive covenant that limited the use of the main building (Ex. C-1, pg 21, 64 -66). This negatively affected the market value of the subject property. The restrictive covenant states:

1.1 At no time during the Prohibited Period shall all or any portion of the Servient Tenement or all or any portion of any existing or future building or other improvements situate upon the Servient Tenement, be used in whole or in part for the purposes of a food store, grocery store, supermarket, pharmacy or drug store, or for selling groceries, food (including, without limitation, produce, meats, fish, dairy products, bakery products, poultry and pet food), personal hygiene products, pharmaceutical products (including, without limitation, prescription drug products) or any other products or merchandise generally sold from food stores, grocery stores, supermarkets, convenience stores, pharmacies or drug stores (collectively referred to as the "restricted items").

1.2 Notwithstanding Section 1.1:

1.2.1 Up to, but no more than, a total of 2,950 square feet of building area on the Servient Tenement may be used for the purposes of selling the restricted items (other than prescription drug products); and

1.2.2 Up to, but no more than, 3,000 square feet of building area on the Servient Tenement may be used for the purposes of a drug store or pharmacy.

1.3 'Prohibited Period' means that period of time commencing on July 1999 and continuing until such time as all of the Dominant Tenements permanently cease to be used for the sale of the restricted items.

[11] The Complainant directed the Board to Exhibit C-1, pg 96-97, MGB Board Order 160/03 which refers to the affect on market value of a restrictive covenant, "*.....In the subject appeal, the MGB is satisfied that the market would respond negatively to the Restrictive Clause in the agreement registered on title.*"

[12] The Complainant stated (Ex. C-1, pg 22) that the main building had been assessed at a size of 20,691 sq. ft. However due to "*the main building having the only permitted use as a warehouse, the total usable area must be accessible to palletized good. Within the subject property there are two rooms (e.g. Compressor Room) in which pallets are unable to be stored, and as such are considered unusable space*". The Complainant therefore requested the Board base it's decision on a size of 18,725 sq. ft. for the main building.

[13] The Complainant referred the Board to the assessed rental rate of \$11.00 per sq. ft. for the main building, which had increased from \$5.00 per sq. ft. from the previous year. To support a reduction in the rental rate back to \$5.00 per sq. ft., the Complainant submitted eight comparable industrial warehouse properties located in north Edmonton (Ex. C-1, pg 25) with lease rates ranging from \$4.00 to \$6.75 per sq. ft. with a median of \$5.00 per sq. ft. These properties had leases ranging in start date from Oct 2009 to June 2011 and were similar in age to the subject. All but one were similar in size to the subject. The Complainant indicated that all of these properties were in superior locations with multiple loading bays and taller loading ceilings, typical of warehouse buildings. The Complainant also submitted two listings of warehouses in superior locations to the subject with asking rates of \$4.50 and \$6.50 per sq. ft. (Ex. C-1, pg 40-43). In addition, six warehouse leases of newer, better quality buildings with rental rates ranging from \$6.50 to \$7.50 per sq. ft. (Ex. C-1, pg 44-45) were also supplied as evidence that an assessed lease rate of \$5.00 per sq. ft. was more appropriate for the subject.

[14] To support an increase in the capitalization rate (cap rate) from 8.0% to 8.5%, the Complainant reminded the Board that the 8% cap rate applied to the main building was not reflective of its age, deteriorating condition and limited use due to the restrictive covenant. The service station on the other hand, also assessed with an 8% cap rate, is likewise considered in "average condition" yet is a 2002 structure which has been regularly maintained. The Complainant noted that a potential purchaser will assess the inherent risk and reflect it in the cap rate. The risk is obviously higher in the main building than in the gas station.

Issues regarding assessment of the Gas Station/ Convenience Store

[15] The Complainant advised the Board that the size of the Gas Station/Convenience Store had been incorrectly assessed at 3,464 sq. ft when in fact it measured 2,720 sq. ft. The Complainant requested the Board to adjust the assessment accordingly.

Rebuttal

[16] In answer to the Respondent's evidence, the Complainant submitted a rebuttal document (Ex. C-2) with pictures and information sheets from Wikipedia of the Respondent's equity comparables (Ex. C-2, pg 5-9). These properties, within walking distance of the subject, were all assessed with an 8% cap rate. They were, however, visibly in superior condition to the subject property. To challenge the comparability of these properties in respect to cap rate, the Complainant quoted from the Appraisal of Real Estate, Third Edition, which refers to the derivation of overall capitalization rates:

The overall level of risk associated with each comparable should be similar to that of the subject property. An Appraiser can analyze risk by investigating the credit rating of the property's income stream, the level of investment in the property by the tenants, and the property's potential upside or downside.

[17] In conclusion, the Complainant requested the Board consider the evidence submitted and reduce the assessment of the main building to \$995,000. This would reduce the size to 18,725 sq. ft. of assessable usable space, apply a rental rate of \$5.00 per sq. ft (instead of \$11.00), increase the capitalization rate to 8.5% from 8.0% and adjust the condition from average to fair. The only change in the assessment of the gas station/convenience store would be to reduce its size from 3,464 to 2,720 sq. ft., for a reduced assessment of \$715,500.

[18] The Complainant respectfully requested the Board reduce the 2012 assessment of the subject property to \$1,710,500.

Position of the Respondent

[19] The Respondent submitted a 167 page brief (Ex. R-1) in support of the recommended reduction in the assessment of the subject property. Pages 11 and 12 illustrated the original and amended Income Detail Report highlighting the changes made to the rental rate of the main building (from \$11.00 to \$6.00 per sq. ft) and the main floor area of the second smaller building (from 3,463 to 2,610 sq. ft.).

[20] The Respondent explained that he inspected the subject. The adjusted assessment to \$6.00 per sq. ft of the main building and the 2% deduction for structural repair took into account that the subject was in less than average condition and exhibited damage due to a leaking roof. After adding \$115,500 for depreciated service station equipment, the new recommended assessment of the subject was \$2,255,500.

[21] To support the original \$11.00 per sq. ft. assessment, the Respondent submitted six comparables of commercial properties in excess of 10,000 sq. ft. (Ex. R-1, pg 21). All of these were in average condition and had net rental rates ranging from \$11.70 to \$15.92. Two of these were former grocery stores converted to retail establishments.

[22] To illustrate that the 8% cap rate applied to the assessment of the subject is fair and equitable, the Respondent submitted a map (Ex. R-1, pg 27) showing properties located along 118 Avenue in close proximity to the subject outlined in green were all assessed at the same typical 8% cap rate. The Respondent stated that the cap rate had been 8.5% the previous year for all of these properties.

[23] The Respondent included a data sheet and land title certificate related to the sale of the subject property which occurred January 8, 2010 in the amount of \$2,500,000 (Ex. R-1, pg 28-42). The Respondent noted that there was no reference that this had been anything but a valid sale. A listing sheet for the subject at \$2,750,000 (Ex. R-1, pg 43 -44) stated: "Excellent Redevelopment Site, Close to Northlands, Clean Environmental, and Fully Paved." Other features of the property included: "fully sprinklered and excellent exposure to 118 Avenue."

[24] The Respondent further referred to the mortgage documentation (Ex. R-1, pg 49-63) which outlines the vendor take back of a mortgage in the amount of \$1,300,000 at a rate of 5% including an interest free period from Jan 12 to Feb 1, 2010. The Respondent stated that the 5% interest rate was typical and there was no indication that this sale was anything other than a typical market transaction. The Respondent included a document from KWC Property Buyers and Direct Real Estate Investors (Ex. R-1, pg 70-76) which outlines the advantages of a vendor take back mortgage for both vendor and purchaser. It suggests that the vendor take back in the case of the subject's sale in no way reflected duress to the purchaser.

[25] The Respondent submitted several documents in respect to the expropriation of the Complainant's previous business (Ex. R-1, pg 81-108). These include notification of expropriation, and e-mail between Mr. Billingley-Smith and the City of Edmonton. The owner had known about this expropriation since Jan 2005. The date to vacate the premises was set at Dec 31, 2009 and later extended to March 2010. The owner had nine months to find another property and vacate the premises. The City supplied the Complainant with four comparable properties to consider in replacing the property being expropriated.

[26] The Respondent noted that the Restrictive Covenant on title of the subject was not severely restrictive as it would only impact the sale of food and drugs. Even then, the Restrictive Covenant permitted 3,000 sq. ft. to be used for the sale of groceries and the same amount for the sale of drugs. Furthermore, a restrictive covenant must be properly evaluated and no evidence was provided as to the monetary value by which it would negatively affect the market value of the subject.

[27] In argument and summary the Respondent supported their recommended reduction based on their inspection which resulted in adjusting the condition, assessed lease rate and size of the subject. They gave evidence that 8% cap rate was fair and equitable therefore requested the Board accept their recommendation and reduce the assessment of the subject to \$2,255,500.

Decision

[28] The decision of the Board is to reduce the 2012 assessment of the subject property from \$3,519,500 to \$2,020,500.

Reasons for the Decision

[29] The Board heard the Complainant state that the assessment of the subject property had increased by 78.9% from the previous year. Although this is a significant increase, the Board notes that each year's assessment is independent of the previous year's assessment and in itself is

not evidence that the 2012 assessment is incorrect. In addition, the Board is cognizant of the fact that the Respondent's recommended assessment is substantially lower than the 78.9%.

[30] The Board is sympathetic to the Complainant's challenges connected with the expropriation of the previous premises due to the expansion of the Edmonton LRT.

[31] The Board considered the purchase of the subject property in January of 2010 and finds little evidence to determine that the purchase price of \$2,500,000 has been inflated as suggested by the Complainant. The Board notes that an extension to vacate the original premises had been granted to the Complainant and that the nine months should have been sufficient time to acquire a new property. The Board reviewed the evidence in respect to the vendor take back mortgage of \$1,300,000 at 5% interest and is in agreement with the Respondent that a mortgage provided by the Vendor could be of value to both Purchaser and Vendor. No evidence was provided that 5% interest was not at market at the time of purchase. The Board therefore places little weight on the statement by the Complainant that the purchase of the subject was not a typical market sale.

[32] The Board agrees with the Complainant that there is limited use of the main building due to the restrictive covenant registered on title. However, the Board does not agree with the Complainant that the subject should be reclassified as an industrial warehouse and not a retail building. The Board finds that the subject could in fact be used as a retail property, just not exclusively as a grocery store and therefore accepts the Respondent's recommendation to change the classification to retail/warehouse.

[33] The Board considered the Complainant's evidence to reduce the lease rate from \$11.00 to \$5.00 per sq. ft. The eight comparable warehouse properties provided range in lease rates from \$4.00 to \$6.75 per sq. ft. These comparables, in addition to two listings with similar asking rates, all in superior locations, tend to support this request. However, the Board is of the opinion that the subject is not an industrial warehouse but a retail warehouse and therefore finds the Complainant's comparables are not comparable to the subject. The Board accepts the Respondent's recommendation to reduce the lease rate to \$6.00 per sq. ft.

[34] The Board examined the evidence regarding the Complainant's request to adjust the cap rate from 8% to 8.5% for the main building. The Board agrees with the Complainant that the main building should not have the same cap rate as building #2, which is a newer (2002) gas bar/convenience store and is in better condition. The Board considered the properties along 118th Avenue near the subject, all of which are assessed at an 8% cap rate. The Board is of the opinion that these properties are in superior condition and finds that the 8.5% cap rate requested by the Complainant is fair and represents the additional risk to any potential purchaser.

[35] The Board reviewed the request by the Complainant to reduce the assessable area of the main building from 21,780 sq. ft. to 18,725 sq. ft. due to the unusable space as shown on photos (Ex. C-1, pg 10). While the Board has jurisdiction to make such a decision, given the lack of detailed evidence, the Board is unable to find that the assessable area should be revised.

[36] The Board accepts the Respondent's recommendation to reduce the assessable area of building #2 from 3,463 sq. ft. to 2,610 sq. ft.

[37] In conclusion, the Board finds that a \$6.00 per sq. ft. lease rate and an 8.5% cap rate for building #1 are appropriate. In addition, the Board agrees with the Respondent regarding the reduced size of building #2. Therefore the Board reduces the 2012 assessment of the subject property from the recommended assessment of \$2,255,500 to \$2,020,500.

Dissenting Opinion

[38] There was no dissenting decision.

Heard September 25, 2012.

Dated this 9 day of October, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Greg Jobagy, Colliers International Realty Advisors Inc.

Stephen Cook, Colliers International Realty Advisors Inc.
for the Complainant

Ryan Assessor
Tanya Smith
for the Respondent

Lorne Billingsley-Smith
Observer

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.