Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2012 ECARB 2344

Assessment Roll Number:	4242996
Municipal Address:	13404 96 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
Tom Eapen, Board Member

Preliminary Matters

[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 that it was the Presiding Officer's decision to decide whether there was bias.

[12] The Complainant stated that on October 9, 2012 he objected to the Presiding Officer sitting, and his request for the Presiding Officer's recusal was granted orally. It is the Complainant's view that the Board should be seen to perform in a fair and equitable manner and there should not be any stain on future decisions by the Board.

[13] 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.

[14] 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

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

Reasons for the Board's Decision on the Preliminary Matter

[16] 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.

[17] 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.

[18] 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.

[19] 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.

[20] 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.

[21] 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.

[22] 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.

[23] 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.

[24] The test for bias is objective and reflects a strong presumption in law that a decision-maker is impartial and will act appropriately.

[25] 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?"

[26] 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 Matter

[27] Upon questioning by the Presiding Officer, the Board members indicated there was no bias with respect to the file.

Background

[28] The subject property is a 9 storey high rise apartment building containing 72 suites, an underground parkade with 60 underground parking stalls, 12 surface parking stalls, an elevator, balconies and an exercise area. The subject was constructed in 1969, and is located at 13404 – 96 Street, in the Glengarry neighborhood of Edmonton.

Issue(s)

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

(a) Is the Gross Income Multiplier (GIM) appropriate?

Legislation

[30] 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

[31] The position of the Complainant was that the 2012 assessment of $7,810,500 was incorrect and stated that the GIM used in the assessment was too high. The Complainant requested an assessment of $6,690,500. The Complainant presented the subject property's rent roll, which reflected a gross rental income that was 7% less than the assessed PGI. The following evidence was provided to support the position:

- Evidence Brief, exhibit C-1 – 41 pages
- Rebuttal, exhibit C-2 – 18 pages

[32] The Complainant stated that the 2012 assessment was based on a PGI of $852,357, less a 3% vacancy factor, a GIM of 9.44696 for a multi residential assessment of $7,810,500 or $108,479 per suite. The Complainant proposed the GIM and the PGI were too high and presented the subject's rent roll (C-1, page 17 and 18) which approximated a gross rental income of $792,840. As a backup approach, the Complainant looked at the Canada Mortgage and Housing Corporation (CMHC) statistics and applied their 2011 market value rent, which resulted in a PGI of $671,328 (C-1, page 10). The Complainant noted the CMHC PGI result was 21% less than the assessed PGI and stated the CMHC market evidence further supported the requested reduction.

[33] The Complainant provided a CMHC rental market report (C-1, pages 19 to 22) that detailed the Private Apartment Average Rent by Zone and Bedroom Type in the Edmonton Census Metropolitan Area. The subject property is located in zone 10, North Central.

[34] The Complainant provided a list of 16 city-wide multi-residential comparable building sales from January 2010 to July 2011 with their 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, below the GIM of 9.44696 used in the 2012 assessment of the subject (C-1, page 12).

[35] The Complainant selected six of the 16 sales (C-1, page 12) that were closest in proximity to the subject, of which four were 2 ½ storey buildings and two were 3 ½ storey buildings. The number of suites ranged from 20 to 33, with one property being a six building complex with a total of 150 suites. The effective years built ranged from 1966 to 1978 and the sales prices per suite ranged from $72,143 to $103,466 (C-1, page 14).

[36] Of the six sales comparables (C-1, page 12), two were located in the subject market area 10, two were located in the downtown market area 1C, with one located in north central Edmonton and one in north Edmonton. These comparables indicated a range of GIMs from 7.24 to 9.34 with a median of 8.88 and an average of 8.70. The Complainant pointed out that the market rents in place represent the location, condition, desirability, suite size and amenities. The Complainant indicated that to use a GIM that is in excess of typical for the market was 'double counting' these features. The Complainant suggested the most reasonable GIM as shown by the closest transactions in the market was 8.70, and, when applied to the Effective Potential Gross Income of $769,055 (which takes into account a 3% vacancy factor), equals the requested assessment of $6,690,500 or $92,927 per suite (C-1, page 13).

[37] The Complainant presented the same six 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 or close to the subject market area. The comparable sales ranged from $72,143 to $103,466 per suite with an average of $85,268 and a median of $83,500.

[38] The Complainant stated that the GIM approach resulted in a multi residential market value of $92,927 per suite, which is supported by the direct comparison approach of $85,268 per suite.

[39] The Complainant concluded the evidence supported a reduction based on the Income Approach (GIM) to $6,690,500.

Position of the Respondent

[40] 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

[41] 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.

[42] 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.

[43] The Respondent further indicated that the typical vacancy rate for the 2012 assessment year was 3% and the typical laundry income was calculated at the rate of $12.00 per suite per month. The Respondent explained to the Board that other income, which included laundry and parking, is added to the calculated gross rental income and a vacancy rate is applied 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 an effective gross income and a gross income multiplier.

[44] The Respondent described the multi residential market area for the 2012 assessment of the subject property as zone 10. Zone 10 is approximately bordered by 142 Street to 50 Street and from 137 Avenue to the Yellowhead Trail. It extends to approximately the top of the river bank at 90 Street. The Respondent provided the Board with maps showing the boundaries of zone 10, and the subject's location within it (R-1, page 15 & 16).

[45] 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.

[46] The Respondent stated that 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)).

[47] The Respondent included a copy of the RFI for the subject property (R-1, pages 38 – 46). From the RFI the Respondent calculated the median rent for each suite type which was $750 for bachelor suites; $928 for one bedroom suites; $1,070 for two bedroom suites, and $1,600 for the one three bedroom suite. The Respondent developed an actual rent comparison (R-1, page 49) which indicated total actual rental income of $800,196; annual parking income of $28,800; and laundry, estimated at $12.00 per suite per month, of $10,368 annually. This added to a total actual PGI of $839,364 compared to the 2012 assessment PGI of $852,357, which the Respondent noted was very close.

[48] The Respondent presented six large investment sales comparables (sales numbered 1 to 6; R-1, page 50) in various areas of the city, as well as five sales

comparables in market area 10 (sales numbered 7 to 11). The six large investment sales comparables included five low rise and one high rise property, with sales prices that ranged from $3.6 million to $58 million. The high rise sale comparable number five had five stories, with a total of 306 suites, and an effective year built of 2002. It is located in the downtown market area of 1C, and is comprised of two buildings with a GIM of 13.88 and a sales price per suite of $189,542.

[49] Comparable number three was a low rise property with a total of 150 suites comprised of six buildings, an effective year built of 1978, and is located in north Edmonton. It had an indicated GIM 10.43 and a sales price per suite of $103,467. Sale comparable number two was a low rise property with a total of 94 suites, an effective year built of 2008, is located in northeast Edmonton, had an indicated GIM of 14.07 and a sale price of $186,170 per suite.

[50] Of the remaining three low rise properties, two were located in the west end and one was located in northeast Edmonton. The total suites of these remaining comparables ranges from 40 to 88 and the GIMs range from 9.37 to 11.56. The five sales comparables located in market area 10 were all low rise buildings, with total suites ranging from 16 to 20. The effective year built for these properties showed a median of 1968, an indicated GIM that ranged from 8.82 to 10.19 with a median of 9.65, and the sales prices range from $76,944 to $87,500 per suite.

[51] The Respondent pointed out that respectively the Respondent's comparable sales numbered 3, 8, and 9, are the same as the Complainant's comparable sales numbered 2, 4, and 3.

[52] The Respondent compared the sales comparables to the subject noting that the subject is nine storeys, contains 72 suites, had an effective year built of 1969, the assessment per suite is $108,479 and a GIM of 9.44696. The Respondent noted that the assessment takes into account the 60 underground stalls and 12 surface parking stalls.

[53] The Respondent provided the sales comparables numbered 3, 8 and 9, which were the same as the Complainant's sales comparables 2, 4 and 3 respectively, for the Direct Sales Approach, and noted that the subject had a parkade with rented stalls, was a high rise and had large suites (R-1, page 65).

[54] The Respondent provided a chart with 23 equity comparables (R-1, page 62), all high rises located in different areas of the City. The total number of suites ranged from 60 to 414; the effective years built ranged from 1968 to 2002; the 2012 assessments per suite ranged from $106,309 to $171,086; and GIMs ranging from 9.44696 to 11.93372. The Respondent indicated the subject property's GIM of 9.44696 is at the low end of the comparable range.

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

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

[57] The Respondent stated that the Complainant neglected to adjust comparable sales in its direct sales comparison approach for attributes such as high rise status, larger suite size and parkade income.

Complainant's Rebuttal

[58] The Complainant submitted rebuttal (C-2) to the Respondent's evidence, specifically in response to the 11 sales comparables submitted by the Respondent (R-1, page 50).

[59] With regard to the Respondent's comparables, (C-2, pages 3, 4 & 5) the Complainant noted the following:

- Sale 1 (11530 – 34 Street): The third party document stated "extensive renovations to the common areas" and the income based on CMHC typical rental rates was $609,792, whereas the actual rent reported was $707,616. The Complainant concluded that this property was performing superior to the typical property.

- Sale 2: Was built in 2008, had a sale price per suite of $186,170, and was "marketed as having potential for condominium conversion". The Complainant concluded this was not a typical property.

- Sale 3: Was a "highly leveraged transaction", and had a low down payment which was not typical.

- Sale 4: Was in a south west location.

- Sale 5: Built in 2001 had an average sale price per suite of $190,163, each of the two buildings had a guest suite, social room, lobby, boardroom, business centre theater, library and exercise room. The third party document indicated the actual annual gross income was $5,481,327 with a GIM of 10.91. However, the Respondent's gross annual income was $4,412,039 with a GIM of 13.88. The Complainant concluded the comparable is an overall vastly superior property to the subject.

- Sale 6: Was located in the west end, and the sale document states "upgrades include new roof, hot-water system, exterior siding, newer balconies and common areas".

- Sale 7: The Respondent's document states "numerous upgrades within the last few years leading up to the sale"; the Network document states "various upgrades were completed between 2007 and 2009 eight units have been renovated" and "the rents are at the low end of the market range".

- Sales 8 and 9: Were also utilized by the Complainant.

- Sale 10: Sale document states "improvements include new roof (2005), new hot water tank (2008), new window (2006/07) & new common area carpeting in (2008)". The Complainant concluded the upgrades increased the value.

- Sale 11: Sale document states "note the high level of financing assumed". The Complainant concluded this was not a typical transaction.

[60] The Complainant concluded that the most persuasive evidence, presented by the Complainant, supported a reduction to $6,690,500 based on the Income Approach and the GIM.

Decision

[61] The Decision of the Board is to confirm the 2012 Assessment of $7,810,500.

Reasons for the Decision

[62] 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.

[63] 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.

[64] 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 received from individual property owners.

[65] 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.

[66] 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).

[67] The Board noted the Complainant's six sales comparables that were extracted from the 16 city-wide sales comparable were 2 ½ and 3 ½ storey walk up apartments. The number of suites ranged from 20 to 33, but one six building property had 150 suites. Two of the sales comparables were located in the subject Market Area 10, and two were located in the downtown Market Area 1C, a highly desirable area. A further two were located in the north east area of the City.

[68] The Board noted both parties presented three of the same comparables: the Complainant's sales 2, 3 and 4, and the Respondent's sales 3, 9 and 8. The Complainant's sales 3 and 4 and the Respondent's sales 9 and 8 were the comparables located in the subject market area 10. These had sale prices per suite of $79,500 and $87,500 and GIM's of 8.94 and 8.83. Although the Board noted the comparables were in the same market area as the subject, the comparables are wood frame constructed walk up apartments that did not have any special high rise amenities as does the subject property. The subject is a concrete-constructed nine storey high rise with 72 suites, an underground parkade with 60 rental stalls, and 12 surface parking spaces. The subject also has amenities such as elevators and a fitness area. In the Board's view these two comparables and the other four walk up comparables, significantly lacked physical and locational comparability to the subject.

[69] The Board noted the assessment is based on a potential gross income of $852,357, which included the laundry and parking income. According to the Respondent the subject rent roll approximates an actual gross income of $839,464 (R-1, page 49) but the Complainant stated it was $792,840 (C-1, page 10). The Complainant supported the actual gross rental income of $792,840 with a CMHC market report for Zone 10 (Glengarry) of the Edmonton Census Metropolitan Area (CMA), which indicated a potential gross income of $671,328. The Board noted the CMHC reported market rental rate was composed of the various residential building types and a broad market area. The Respondent 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 the most similar comparables are a result of separated building types such as low rise and high rise.

[70] The Board finds that the reported actual income from the Complainant's six sales comparables was unsupported and the third party documents, on which the Complainant relied, lacked an indicated source of 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.

[71] The Board considered the Complainant's Direct Sales Approach which made use of the same six sales comparables used in the Income Approach. The Direct Sales Approach is based on the principle of substitution that 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

and considered the differences to be major. There were no adjustments applied to distinguish the walk up comparables and the subject high rise.

[72] The Board noted the Complainant's six sales comparables indicated a GIM range of 7.24 to 9.34 with a median of 8.88 and an average of 8.70. The Complainant selected the average of 8.70 to apply to the Effective Potential Gross Income (which included a 3% vacancy factor) and was based on the actual income of the subject of $792,840. This resulted in the requested value of $6,690,500. 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' these features. The Board was not convinced it was appropriate to apply the Effective Gross Income from the actual rent of the subject property, considering the GIM was selected from five sales comparables reported in third party documents. That, in the Board's opinion, lacked the basis for "a typical market condition", which is a statutory requirement for mass appraisal.

[73] The Board considered the Respondent's 11 sales comparables: six were large investment sale comparables, and five were located in the subject market area, Zone 10. Of the six large investment comparables, sale five was considered a high rise. The high rise is a five storey, two building 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. The property is located on 104 Avenue and 112 Street, a highly desirable area along a major roadway. The Board finds the comparable high rise was 32 years newer than the subject, and contained newer and better amenities, including a theatre room, a meeting room and a guest suite. Therefore, this property considerably lacked comparability to the subject.

[74] The Board considered the Respondent's Sale 2, a four storey low rise with 94 suites, constructed in 2008, and located in north east Edmonton at 3103 – 137 Avenue. Although the comparable has similar amenities to the subject, (elevator, balconies, fitness and games room, underground and surface parking) the Board finds the comparable low rise is newer by 38 years and therefore lacks reasonable comparability to the subject.

[75] The remaining low rise comparable properties are dissimilar to the subject high rise property as they are single or multiple building properties with approximately16 to 25 suites. Further, these comparables are of wood frame construction, and have no amenities (such as an elevators or an underground parkade). The Board finds that low rise properties are markedly incomparable to the subject high rise property.

[76] The Board was highly aware that there was a lack of recent comparable high rise sales and that both the Complainant and the Respondent had to rely on low rise sales as comparables. The Board considered the low rise properties as unsuitable comparables and therefore could give them little consideration.

[77] The Respondent presented an equity comparable chart that listed 25 high rise comparables in various areas of the City, and noted that the subject is the only high rise in north Edmonton, including market areas 10, 11 and 12. The Respondent excluded those high rises from the chart that had river view suites, no balconies, and no parkades. The Board placed greatest weight on number 7 of the equity comparables that were closest in suite number to the subject. The comparables that were closest in suite

number included numbers 1, 2, 4, 6, 7, 15 and 21. The comparables were located in market areas 1B, 3, and 7, and ranged from five to 15 storeys. They had a suite total of 60 to 111, assessments per suite of $106,309 to $142,711, and GIMs that ranged from 9.47795 to 11.48237. The Board noted the subject is at the low end of this range with an assessment per suite of $108,479 and a GIM of 9.44696. Although equity was not stated as an issue by the Complainant, the Board considered the equity and placed greater weight on the Respondent's equity comparables, which indicated to the Board that the subject had been assessed fairly and equitably with similar high rise properties.

[78] The Board finds the 2012 assessment for the subject property of $7,810,500 is correct, fair and equitable.

Dissenting Opinion

[79] There was no dissenting opinion.

Heard commencing October 11, 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.