

Edmonton Composite Assessment Review Board

Citation: ANDREA ROGERS v The City of Edmonton, 2013 ECARB 00813

Assessment Roll Number: 3861457

Municipal Address: 8803 101 AVENUE NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

ANDREA ROGERS

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Petra Hagemann, Presiding Officer

Pam Gill, Board Member

John Braim, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

Preliminary Matters

[2] There were no preliminary matters brought before the Board.

Background

[3] The subject property is a low rise not for profit housing cooperative (Sundance) located in the City of Edmonton located at 8803 101 Avenue, NW. The 3 storey apartment building contains three 1 bedroom suites and six 2 bedroom suites providing housing for low and moderate income seniors. The effective year built is 2009 and the average suite size is 136 square meters; a Gross Income Multiplier of 13.18 with a 4% vacancy rate was applied to the subject to reach the 2013 assessment of \$1,473,500.

Issue(s)

[4] Should the assessment be reduced because of the limitations on income placed on the subject? Is this Derogation of Grant?

[5] Does the large increase in assessment from the previous year warrant a reduction in the assessment?

Legislation

[6] **The *Municipal Government Act*, RSA 2000, c M-26, reads:**

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

[7] The Complainant presented written evidence (Exhibit C-1, 104 pages and Exhibit C-2, 15 pages) and oral argument for the Board’s review and consideration.

[8] The Complainant provided some background on the project. The Sundance Housing Co-operative was incorporated in 1974 as a non-profit continuing housing cooperative under the relevant Alberta legislation. There are restrictions on these types of projects; there can be no distribution of dividends or interest to members unlike a private company.

[9] The subject received a capital grant of \$600,000 from the Affordable Housing Partnership Initiative of the Province of Alberta. The grant has conditions associated with it, the monthly housing charges cannot be higher than 90% of the average market rent as stated by the Canadian Mortgage & Housing Corporation (CMHC), as a result the Co-op charges 85% of the market as determined by the CMHC.

[10] The Complainant submitted that according to the Cushman & Wakefield Market Apartment Report for Edmonton, units sold for an average of \$117,023/unit in 2012 (C-1, page

92); The CBRE report stated that buildings with 40 suites or less sold for \$92,000/suite (C-1, page 87); and according to the Avison Young Outlook report the average cost per suite was \$94,384 (C-1, page 84). The subject is assessed at \$163,722/unit.

[11] The Complainant also submitted that the value of the subject should be calculated using the revenue it is allowed to generate at \$88,920/year. Using a GIM of 13.18 and a vacancy rate of 4% a value of \$1,125,084 is generated. The Complainant further submitted that a GIM of 10 were to be used as per Cushman & Wakefield (C-1, page 94) the value of the subject would be \$889,200.

[12] The Complainant argued that a 21% increase in the assessment from the previous year was quite high and that the co-op had not budgeted for this much of an increase.

[13] The Complainant also submitted to the Board a Derogation of Grant argument. It was argued that the government presented the Co-op with a grant that had restrictions on income that could be generated and then turned around and charged the Co-op taxes based on the full market value of the subject. This is an unfair practice.

[14] The Complainant requested that the 2013 assessment be reduced to \$1,125,084 because there are limits placed on how much income the subject can generate, third party documents support a lower assessment and the percentage increase over last year's assessment is too high.

Position of the Respondent

[15] The Respondent presented written evidence (Exhibit R-1, 69 pages) and oral argument for the Board's review and consideration.

[16] The Respondent provided a response to the issues brought up by the Complainant as follows:

- i. The assessment should be reduced because there is a limit placed on the subject's income: The limitations placed on the subject's income are the result of the City of Edmonton Cornerstone Grant Program and Alberta's Affordable Housing Program. The Respondent noted that the subject property does not charge but merely housing charges to cover their costs. The assessment is based on typical market income and not actual income. This approach is the most appropriate method of determining market value.
- ii. Third party source documents: The Respondent finds using third party documents to be problematic, the Respondent provided sales and equity comparables as well as a test of the subject on the Cost approach to value.
- iii. Percentage increase in assessment over the previous year is too high: Each year's assessment is independent of the previous year's assessments.

[17] The Respondent provided 7 sales comparables that ranged in time adjusted sale price from \$140,732/unit to \$199,437/unit (R-1, page 38). The GIMs ranged from 12.66 to 15.10. The subject is assessed at \$163,722 with a GIM of 13.18.

[18] The Respondent also provided 5 equity comparables (R-1, page 49) for the Board's consideration. The comparables ranged from \$157,485/unit to \$165,400/unit.

[19] Upon questioning the Respondent informed the Board that there was no separate category established for Co-ops and that the Respondent is legislated to assess the subject according to typical market conditions. The only other option was to assess market value using the cost approach (R-1, page 43-46); however the resulting assessment would be considerable higher at \$1,929,000.

[20] The Respondent submitted that the sales comparables and the cost approach show that the subject's assessment falls below market value. The equity comparables further supported the assessment. Accordingly, the Respondent requested confirmation of the 2013 assessment at \$1,473,500.

Decision

[21] It is the decision of the Board to confirm the 2013 assessment at \$1,473,500.

Reasons for the Decision

[22] While the Board has sympathy for the Complainant, each year's assessment is independent of the previous year's assessments. A large increase in the assessment without additional evidence is insufficient to show that the Respondent erred in their assessment of the subject.

[23] The Board noted that the Complainant did not budget for the increase which was one of the reasons the assessment was challenged, however, this is not a factor in determining market value.

[24] The Board placed no weight on the Derogation of Grant argument. Derogation of Grant does not apply to the situation at hand, because the concept only applies to the transfer of property rights (*Edmonton Regional Airports Authority v North West Geomatics Ltd* 2004 ABQB 1041 at para 54; Bruce MacDougall, *Halsbury's Laws of Canada – Nature of Estoppel*, at para HES-17 (QL)). There were no property rights transferred in this case.

[25] The Board was not persuaded by the Complainant's evidence and found that the complainant had failed to show the assessment was incorrect.


[26] Furthermore, the Board found that the Respondent's sales and equity comparables supported the assessment and that the Respondent had no other option but to assess the subject in accordance with the relevant legislation.

Dissenting Opinion

[27] There was no dissenting opinion.

Heard commencing June 25, 2013.

Dated this 22 day of July, 2013, at the City of Edmonton, Alberta.


Petra Hagemann, Presiding Officer

Appearances:

Andrea Rogers
for the Complainant

Devon Chew
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.