Edmonton Composite Assessment Review Board (CARB)

Citation: Melvin Wong for Philip George Sceviour, 1758512 Alberta Ltd. v The City of Edmonton, 2014 ECARB 00286

Assessment Roll Number:	2514032 2514206 2514503
Municipal Addresses:	12402 118 Avenue NW 11804 124 Street NW 11824 124 Street NW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amounts:	$2,259,500 $916,500 $229,000

Between:

Melvin Wong for Philip George Sceviour, 1758512 Alberta Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
Mary Sheldon, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to these files.

[2] Mr. Wong confirmed that he was a partner in the property, and that his co-owner Mr. Sceviour was unable to attend the hearing. The Respondent indicated they had no concerns with Mr. Wong acting for the complainant.

[3] Both parties agreed that the three Roll Numbers could be heard at the same time, because they were operationally essentially all one property.

Preliminary Matters

[4] At the outset, the Respondent indicated they had a preliminary matter they wished to raise. Mr. Lutes advised that the Respondent was objecting to the Complainant's rebuttal because it had been received late by the City.

[5] Mr. Lutes provided a copy of the Rebuttal which showed that it had been time stamped upon receipt by the City Assessment Office on 24June2014, which was less than the disclosure time required under Matters Relating to Assessment Complaints Regulation, Alta Reg. 310/2009 (MRAC) s 8(2) which requires 7 days notice.

[6] Mr. Lutes indicated that s 9(2) of MRAC states that the CARB must not hear any evidence not disclosed in accordance with section 8. Accordingly, the Respondent asked that the Complainant's Rebuttal not be allowed.

[7] In response, the Complainant advised that his partner, Mr. Sceviour had said that he delivered the Rebuttal in person to the Assessment Review Board (ARB) and the City Assessment office on June 23rd which, he said, was within the prescribed time, and so the Rebuttal should be admitted.

[8] The ARB Board Officer confirmed that the ARB had received the Rebuttal on June 23rd 2014.

Preliminary Matter Decision

[9] The Rebuttal will not be permitted in the Merit Hearing.

Reasons for the Decision on the Preliminary Matter

[10] The only evidence produced in this preliminary matter was from the City which showed that the Rebuttal was not received within the required time (i.e. 7 days before the hearing date).

[11] The Board considered the oral argument from the Complainant that his partner had delivered copies of the Rebuttal to the ARB and the Assessment Office on June 23rd, however without an affidavit or a letter from the partner, the Board had no documentary evidence from the Complainant as to when the Rebuttal was delivered and perhaps more importantly where the Rebuttal may have been delivered.

[12] The Board notes that the Rebuttal was received by the ARB office within the timelines, but, as noted above, the only evidence clearly shows that the Rebuttal was NOT received in time by the Assessment Office of the City, and the Board puts decisive weight on the City's evidence in making the decision noted above.

Merit Hearing

Background

[13] The three properties under complaint all function as Inglewood Plaza. The main title, fronting on 118th Ave. (12402 118 Ave.) is comprised of two, two storey (with basement) attached buildings. Bldg #1 has approximately 3,500 square foot (sq. ft.) per floor on three floors, while Bldg #2 has 3,750 sq. ft. per floor, also on three floors. The second title is a contiguous building to the first except it fronts on 124th St. (11804 124 St.). It also contains three floors at 3,500 sq. ft. per floor.

[14] These two titles are classed as commercial on the main floors, office on the second floor and storage in the basement, however part of the basement area in the 12402 118 Ave. buildings is classed as office space based on its finish and use.

[15] These two properties are zoned CB1 and are assessed on the Income Approach (IAV). Both were built in the late 1950's and early 1960's.

[16] The third property is not contiguous, and is separated by one lot and so is further north than the 11804 124 St. property. This property (11824 124 St.) is used as a parking lot, for the tenants of the 118th Ave. property which does not have any tenant parking. It is assessed as land only, and zoned CB1. Because of its use, and the fact that the 118th Ave. property has insufficient tenant parking, the City has chosen to reduce the value of the 118th Ave. property by the assessed value of the parking lot property. It should be noted that the assessment for the parking lot land is not in dispute.

[17] The properties are assessed as outlined in the chart below, however, the City revisited the property in February 2014, and based on that visit, is prepared to make a recommendation to reduce the assessment as outlined in the chart:

Property	Assessment	Recommended
12402 118 Ave.	$2,259,500	$1,491,000
11804 124 St.	$ 916,500	$ 644,500
11824 124 St.	$ 229,000	$ 229,000
Total	**$3,405,000**	**$2,364,500**

Brief History

[18] The properties comprising the 3 roll numbers of the subject were the subject of a foreclosure action. As part of that action the properties were listed for sale in June 2012 for $3,200,000 with an understanding that the price would drop by $100,000 per month until July 2013, when the first mortgage holders acquired the property for $1,500,000 (represented as being roughly the amount of the outstanding first mortgage).

[19] When the new owners took possession in July 2013, the property was largely vacant due mostly to the fact that the previous owner occupied much of the space.

[20] Since 2012 when the property was listed for sale, there has been flooding.

Issues

[21] On the complaint form the Complainant listed only one issue; that the property was worth only $1,500,000, the amount that the property had been transferred to them for.

[22] In their argument at the hearing they clarified a number of additional issues which had led them to their requested value:

Issue #1 - Amortized Improvements

[23] Should the amortized cost of tenant improvements be a legitimate deduction from the rental rate? If they are determined to be a legitimate deduction, then under what terms should they be amortized?

Issue #2 – Basement Rent

[24] Is it acceptable to assess an improved office rent ($6.50 per sq. ft.) for offices located in the basement?

Issue #3 –Vacancy Allowance

[25] What is the most appropriate and best evidence for vacancy allowances in the basement?

Issue #4 – Structural Allowance

[26] What is the most appropriate and best evidence for Structural Allowance for the properties?

Issue #5 - Market Value on Sale

[27] Does the acquisition price on July 12, 2013 represent the best evidence of value?

Issue #1 - Amortized Improvements

[28] Should the amortized cost of tenant improvements be a legitimate deduction from the rental rate? If they are determined to be a legitimate deduction, then under what terms should they be amortized?

Position of the Complainant

[29] The Complainant advised that they have had to spend money on tenant improvements since they assumed ownership and they indicated an amount of $200,000 has been spent on building repairs and ground floor tenant improvements.

[30] In addition, they provided a copy of an engineering report which was commissioned by a potential purchaser who declined to proceed. This report estimated the probable cost to address major deficiencies were in the order of $500,000.

[31] Based on the information the Complainants have from the engineering study, the amount spent to date, and an estimate of costs needed to prepare the balance of the space for occupancy, the Complainant has calculated the total cost for tenant improvements.

[32] Actual costs and details were not provided in the evidence, but the Complainant advised that they had amortized the "estimated" costs over five years, and thus the amortized tenant improvement costs ranged from $2.00 to $4.00 per sq. ft. for main floor occupants, $3.00 to $5.00 per sq. ft. for 2nd floor office tenants, and $.50 per sq. ft. for basement storage tenants.

[33] The Complainant accepted the base rents used by the City (except for Non-storage Basement users), and thus had deducted their tenant improvement amortizations per sq. ft. from the City rental rates. The impact of all of this the Complainant laid out on a chart.

[34] In summary, the Complainant felt they had made reasonable assumptions which reflected the "anticipated" actual situation, and asked that the "Tenant Improvement cost adjusted" rental rates be used to calculate the revenue from the property.

Position of the Respondent

[35] The Respondent noted that it is sometimes permissible to deduct the cost of tenant improvements, but this practice may only be accepted when it reflects "typical" behavior in the market. The Respondent advised that in their opinion, the deduction of tenant improvement costs was not typical anywhere in the Edmonton market, nor was there a "typical" amount for "similar" properties, and they advised that in their opinion the Complainant had not provided any evidence to counter that position.

[36] They further pointed out that whether or not there was proof that the costs were "typical", the Complainant had not provided any evidence of the costs incurred and certainly based on the arguments, there were questions as to whether the estimates provided were tenant improvements or structural repairs, each of which would receive a different treatment according to assessment policy and practice, and depending on the classification, it would impact the value.

[37] The Respondent cited Municipal Government Board Order 048/03 which reflected the points raised in the two previous paragraphs (Ex. R1, pg. 109) to provide support for the treatment of tenant improvements.

[38] The Respondent also provided a number of comparable rents from the area which supported the rental rates used in the City analysis (Ex. R1, pg. 26 & 27).

[39] They also provided their Retail Assessment Brief (Ex. R1, pg. 110) which set out how Mass Appraisal addressed valuing retail properties. Tenant improvements are not noted as a legitimate deduction in the valuation.

Decision

[40] Tenant improvements are not "typical" deductions for office/retail developments, and therefore cannot be deducted from the rental rate in any way.

Reasons for the Decision

[41] The Complainant argued that the amortization of tenant improvements reflected market conditions for the subject properties and represented a realistic analysis for the properties given the condition and circumstances of the acquisition. The Complainant did not provide "market" evidence in support of these contentions.

[42] The Respondent did not deny that there may have been tenant improvement costs incurred, but pointed out that these costs were not a legitimate deduction from the typical rent in the circumstances because the Complainant had not demonstrated that the improvement costs were "typical" for similar properties in the City of Edmonton. The Respondent however, provided comparable rents for similar properties which supported the value of the Respondent's variables.

[43] Accordingly, the Board placed greater weight on the Respondent's information, because it was supported by evidence (comparable rates, assessment guidelines), and made the decision noted above.

[44] The Board further makes the observation that even if the information provided by the Complainant had supported the application of deduction of tenant improvement costs; none of the costs were supported by firm evidence, and could not have been used to calculate a determinative value.

Issue #2 – Basement Rent

[45] Is it acceptable to assess an improved office rent ($6.50 per sq. ft.) for offices also located in the basement?

Position of the Complainant

[46] The Complainant noted that much of the space in the basement was designated and used for storage, and that the City had attributed a rental rate of $1.50 per sq. ft. to that space. The Complainant felt that the $1.50 rate should be applied to the entire basement space, as they were unable to rent basement space for any greater amount. They also noted that the basements were prone to flooding from sewer backups, and this would make it harder to rent the basements for any purpose other than storage.

Position of the Respondent

[47] The Respondent noted photographs in their evidence which showed demised office space in the basement of the subjects. They also provided comparable basement rents in the area from similar properties which supported the rates used.

Decision

[48] A rate of $6.50 per sq. ft. is appropriate for basement space designated and demised as office in the subject properties.

Reasons for the Decision

[49] The Board reviewed the evidence, and based on the fact that there was demised basement office space in the buildings which was represented to have been previously rented as office, and the fact that comparable property basement rental rates show an average basement office rent significantly higher than a storage rate, the Board concludes that a rental rate of $6.50 per sq. ft. is reasonable for demised basement office space

[50] The Board also notes that the Complainant did not provide sufficient evidence to demonstrate that demised basement office space should be assessed as storage space, nor did they demonstrate the effect and/or impact of any sewer back up on the properties.

Issue #3 –Vacancy Allowance

[51] What is the most appropriate and best evidence for vacancy allowances in the basement?

Position of the Complainant

[52] The Complainant noted in their analysis that the City had not allocated a vacancy rate to the basement of the building at 11804 124th St. They were asking that the 20% vacancy rate be applied to the basement space in the building.

Position of the Respondent

[53] This issue was not addressed in the hearing, and only arose from an analysis of the information provided by the Complainant subsequent to the hearing. As such, there was no position taken by the Respondent at the hearing with respect to this issue.

Decision

[54] Application of a revised vacancy rate for the basement space in 11804 124th St. will not result in a meaningful change in the value of the properties, so it is insufficient to disturb the value of the current assessment.

Reasons for the Decision

[55] It would appear that the City made an error in not applying the 20% vacancy to the basement space. The Board notes however, that the recalculation of the value based on a revised vacancy for the basement storage in the building at 11804 124th St. only changes the value of the particular property by under 2%, and the value of the total properties by under one half of one percent. Accordingly, the Board concludes it is an insufficient amount to merit a change in the assessment.

Issue #4 – Structural Allowance

[56] What is the most appropriate and best evidence for Structural Allowance for the properties?

Position of the Complainant

[57] The Complainant requested an increase in the allowance for structural repair for the two developed properties from 3% allotted by the City to 10%.

[58] As was the case with respect to the amortization of tenant improvements (Issue #1 above), the Complainant argued that the amount of money spent to date on the properties and the estimated costs to repair the structural items noted in the Engineering Study all supported the request for an increase in the structural allowance.

[59] The use of 10% was not supported by any detailed analysis other than the estimates included in the Engineering Report.

Position of the Respondent

[60] The Respondent advised that an allowance for structural repair was an annual allowance intended to provide recognition for the periodic costs of structural repairs. It recognized that the allowance would not normally be spent each and every year, but represented an effective way to recognize structural costs over the lifecycle of the building.

[61] Accordingly, the Respondent did not necessarily dispute the need for the structural repairs to the subject properties, but in their opinion, unless there was firm evidence of a unique structural issue, the Respondent said that the property had been allocated funding for required structural repairs over the previous years of the building's life through the annual allowance.

[62] As further support, the Respondent advised that the subject properties were entitled to a three percent annual structural allowance rather than the "normal" two percent allowance based on their age (over 45 years). This was a 50% increase in the structural allowance.

[63] As noted above, the City has provisions under which they might be willing to consider a special one-time allowance for structural repairs, but it would have to be a well supported request generally highlighting a unique special situation. They advised that they had not received a request for this from the Complainant, nor were they aware of any unique conditions in the subject's which might lead to a special allowance.

Decision

[64] A three percent annual allowance for structural repairs is adequate for the developed portions of the subject properties.

Reasons for the Decision

[65] The Board considered the evidence and argument on this issue. The Complainant did not provide evidence of the amount of any structural deficiencies. The Engineering Report was prepared, not for the Complainant, but for one of the potential purchasers, and as was observed before, the entire quantum of the work to be done mentioned in the Report were estimates of cost, with few details.

[66] The Respondent advised that the annual allowance for structural repairs was intended to recognize the need for periodic expenditures, and the Board notes that the type of expenditures noted in the report (such as HVAC, roofing and mechanical) were precisely the sort of expenditures that were designed to be met through the annual structural allowance.

[67] In addition the Complainant did not identify or produce costs for any unique structural issues that would perhaps have qualified for special treatment.

[68] Finally, the Respondent indicated that they had increased the annual structural allowance by 50% once the property had reached 45 years of age.

[69] Accordingly, the Respondent provided dependable evidence that the annual structural allowance was intended to provide a means to recognize the "usual" types of structural costs, and that this allowance increased as the buildings aged. In addition, the costs identified in the engineering report were the sorts of normal structural costs intended to be addressed by the annual allowance.

[70] In addition, the Complainant did not provide sufficient detail as to the costs, and the fact that these costs were not designed to be addressed by the annual allowance.

[71] The Board placed weight on the evidence of the Respondent, and thus concluded that the three percent annual structural allowance was adequate to recognize the structural cost of the buildings over the lifetime of the properties.

Issue #5 Market Value on Sale

[72] Does the acquisition price on July 12, 2013 represent the best evidence of value?

Position of the Complainant

[73] As summarized earlier in the Background, the Complainants highlighted the foreclosure and noted that there were three mortgages on the property amounting to around $2.8 million in value. The Complainant indicated that the property had been for sale from June 2012 (at a price reducing by $100,000 per month from $3.2 million) throughout the foreclosure process, until the Complainant acquired it (as they were the First Mortgagee) for the $1.5 million outstanding amount of their mortgage in July 2013.

[74] The Complainants advised that there had been offers in the $2.0 million range, but none of those had closed following due diligence investigation.

[75] Further, the Complainant advised that they too had listed the properties for sale subsequent to their acquiring the properties in July 2013. They had listed the property for $2.3 million, and were unsuccessful in arranging a sale.

[76] When the Complainants took over ownership of the property only two small tenants on the ground floor remained in the building.

[77] The Complainant believes that there is ample evidence from exposure to the market that the value of the property is "best" represented by the $1.5 million acquisition price in July 2013 (actually 12 days post-facto to the valuation date of July 1st, 2013).

[78] Thus the Complainant requests that the value of the three properties be reduced to $1,545,000 (based on their revised IAV calculations).

Position of the Respondent

[79] The Respondent affirms that their recommended revised valuation at $2,364,500 is well supported with market evidence. They highlight that they visited the subject in Feb. 2014, and that their "proposed" revisions adequately reflect the condition of the building in the market as of the valuation date.

[80] As support for that contention, they note that the Complainant listed the properties for sale at virtually the recommended assessed value ($2.3 million). They also note that the forced sale appraisal value in Nov. 2012 was $2.4 million, also virtually the recommended assessed value.

[81] Further, they point to the evidence in their packages supporting the rental rates, and they also highlighted that, by and large, the Complainants supported the value of the City's attributes for the most part, and the principal area of dispute was the deduction of tenant improvement costs by the Complainant.

[82] The Respondent requested that the assessment be reduced to the values outlined in their recommended revisions as set out below.

Roll #	Municipal Address	Recommended
2514032	12402 118 Ave	$1,491,000
2514206	11804 124 St.	$ 644,500
2514503	11824 124 St.	$ 229,000
Total		$2,364,500

Decision

[83] The best evidence of value for the properties is the recommended revisions provided by the City.

Reasons for the Decision

[84] The Board notes that a market sale just before the valuation date is "usually" the best evidence of value.

[85] In the case of the subjects, the sale date is a little post facto (12 days after the valuation date). Of more consequence however, are the conditions surrounding the sale.

[86] The Board notes that this was NOT (emphasis added) a market sale. The properties were in foreclosure and had been for over one year. Also of note was the fact that since the foreclosure was against an owner occupier, the properties were largely vacant. The Board accepts that a vacant investment property is usually harder to sell than an occupied income producing property.

[87] A market value sale is defined as a sale between a willing seller and a willing buyer. A forced sale such as was occurring with the subject properties, does not meet this criterion. There are a myriad of potential factors which might impact the conditions of sale. Certainly in this case the fact that the property was virtually vacant could have been an important factor.

[88] Because of the circumstances of the sale and without the benefit of any further comment from the court, or the previous owner or any of the other participants in the process, the Board concludes that the sale is tainted.

[89] Accordingly, the Board is unwilling to accept that the sale price is the best evidence of value. The Board turned to the evidence to determine the best evidence of value.

[90] In evaluating the evidence and the arguments of both parties, the previous elements of this decision have demonstrated:

- The rental rates used by the City are correct. (Issue #1 & #2).
- The vacancy rates used by the City are agreed to by the parties, and where an error was discovered, the impact of the error was not significant and so no change was made. (Issue #3).
- The allowance for structural repairs is adequate at three percent. (Issue #4).

[91] Because the sale is tainted, the Board concludes the best evidence of value results from the application of the attributes determined to be valid in the previous paragraph.

[92] Accordingly, the assessment is reduced to reflect the revisions recommended by the City as set out below.

Roll #	Municipal Address	Recommended
2514032	12402 118 Ave	$1,491,000
2514206	11804 124 St.	$ 644,500
2514503	11824 124 St.	$ 229,000
Total		**$2,364,500**

Dissenting Opinion

[93] There is no dissenting opinion.

Heard June 30, 2014.
Dated this 16 day of July, 2014, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Melvin Wong
for the Complainant

Steve Lutes
Tracy Ryan
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.

Appendix

Legislation

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 289(2) Each assessment must reflect
>
> > (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
>
> s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.
>
> s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration
>
> > (a) the valuation and other standards set out in the regulations,
> >
> > (b) the procedures set out in the regulations, and
> >
> > (c) the assessments of similar property or businesses in the same municipality.

The ***Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009** reads:

> s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
>
> > (c) 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.
>
> s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

Exhibits

I-1	Complainant Rebuttal
C-1	Complainant Submission
R-1	Respondent Submission 2514032
R-2	Respondent Submission 2514206
R-3	Respondent Submission 2514503