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T Update Week 2001-23
Commercial and Industrial Properties

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**Irwin Lyons Holding Corp. (c.o.b. Louis S. Levy) v. Ontario
Property Assessment Corp., Region No. 15**

**IN THE MATTER OF Section 40 of the Assessment Act, R.S.O.
1990, c. A.31, as amended, and
IN THE MATTER OF complaints with respect to taxation years
1998, 1999 and 2000 on premises known municipally as 1153
Pioneer Road**

Between

**Irwin Lyons Holding Corporation c/o Louis S. Levy, Assessed
Person/Complainant, and
The Ontario Property Assessment Corporation, Region No. 15 and
the City of Burlington, Respondents**

[\[2001\] O.A.R.B.D. No. 495](#)

File No. 4859

Hearing No. 23476

Complaint Nos. 1027047, 1027048, 1272104

**Ontario Assessment Review Board
I. Oliveira, Member**

May 25, 2001
(21 paras.)

Appearances:

S. Pocrnic, for the Assessed Person/Complainant.

S. Futa, Y. Kwiecien, for the Ontario Property Assessment Corporation.

No one appeared for the Municipality.

DECISION

¶ 1 These complaints came before the Assessment Review Board on February 15, 2001 in the City of Burlington.

ISSUE

¶ 2 The issue before the Board for determination is whether the assessment of the subject property is correct. The representative for the complainant takes the position that the subject property should be assessed based on actual rents, not based on economic rents. The Ontario Property Assessment Corporation (OPAC) takes the position that by using the income approach, the assessment is correct.

DECISION

¶ 3 The Board orders that the assessment be reduced from \$1,600,000 to \$1,282,000 for the taxation years of 1998, 1999 and 2000.

REASONS FOR DECISION

¶ 4 In making a decision in this matter the Board shall have reference to section 1 and subsections 19(1) and 40(11) of the Assessment Act (Act).

¶ 5 Section 1 defines current value:

"current value" means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer.

¶ 6 Subsection 19(1) states that:

19(1) - The assessment of land shall be based on its current value or average current value, as determined under section 19.1.

¶ 7 Subsection 40(11) provides that:

40(11) - Board to make determination. - After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

¶ 8 OPAC described the subject property as being municipally known as 1153 Pioneer Road, in the City of Burlington, consisting of two industrial buildings and having a total building area of 48,809 square feet. It is assessed at \$1,600,000 and this assessment was arrived at using the income approach.

¶ 9 Mr. Pocrnic, representative for the complainant, informed the Board that the subject property is a multi-unit rental industrial plaza, containing a total of 24 tenants divided between two buildings. In his evidence, he stated that, "We are dealing with an income generating property and OPAC ignored operating rents when the majority of the tenancies were renegotiated in the base year or shouldered years".

¶ 10 In Exhibit #2, a letter to OPAC, Mr. Pocrnic stated that, "The complainant takes no issue with respect to the methodology or the class of the property". He adds that, "Where issue is taken, however, is in the determination of rent for the purposes of value". He further added that the fundamental issue was whether the subject property should be valued using actual rents or the market rents as used by OPAC; and that the current rents should be representative of economic rents given the physical characteristics of the property such as age, condition and unit size.

¶ 11 Mr. Pocrnic further stated that, "The subject property is a class C industrial complex with

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predominantly small-scale tenancies in place". He further gave evidence that most leases are structured on a short term basis and are renewed or renegotiated every six months to one year.

¶ 12 Mr. Pocrnic's evidence showed that building #1 attracts a more transient tenant base with all leases being on short term and on a "gross" basis. He added that, "Once an expense allowance of \$2.50 per square foot is applied, the net operating income averages for 1996 is therefore \$3.33 per square foot and after vacancy and capitalization a value of \$507,055 results." Building #2 shows that most leases were negotiated, renewed or entered into in 1996. Rental averages are slightly higher and a capitalized value of \$774,103 results. Mr. Pocrnic suggested that by using the actual income approach, the subject property should be assessed at \$1,281,000. He further added that, "The subject property maintains fairly consistent rents, which are continuously being renegotiated and as such, the actual rents are more consistent and should therefore provide the best estimate for income methodology".

¶ 13 Further evidence was introduced by Mr. Pocrnic, showing a summary of 12 property leases (Exhibit #3), all in Burlington with an average of \$3.61 per square foot, net leases. The actual net rent for the subject, as of June 30, 1996, was \$3.48 per square foot; Exhibit #4 shows three comparable properties sold in 1996 and 1997. These comparables show, on a per square foot basis, a sales price of \$27.40. The subject property is assessed at \$32.78 on a per square foot basis.

¶ 14 Mr. Pocrnic introduced two more sales, which took place in 1997. These two sales show an average sale price, on a per square foot basis, of \$27.50.

¶ 15 In cross-examination, OPAC questioned Mr. Pocrnic for using OPAC's vacancy rate in his calculations, when OPAC uses it in conjunction with economic rents not actual rents. If the subject property is to be assessed based on actual rents, where there was no vacancy as of the evaluation date, OPAC's vacancy rate should not be applied, OPAC maintained. OPAC further questioned the validity of the sold comparable properties introduced by Mr. Pocrnic in that only one is located in Burlington and the others are located in Oakville. Mr. Pocrnic replied that any investor, when looking at an income producing property, would look at the bottom line using a vacancy allowance, regardless of whether the property is fully occupied at the time of purchase. He further stated that these types of properties are bought and sold based on their income stream and not necessarily the city in which they are located. The properties used for comparison purposes are located within the Halton Region, he added.

¶ 16 OPAC gave evidence that all industrial properties in Ontario are assessed by the income approach and that for the City of Burlington, vacancy rates are determined at 17% and capitalization rates at 11%.

¶ 17 OPAC introduced two further exhibits as evidence: an "Economic Rent Table" used for all industrial complexes in Burlington; and three comparable properties showing assessed values from \$32.27 to \$33.93 on a square foot basis. There was no sales data for these comparable properties.

¶ 18 After hearing the evidence and submissions of both parties, the Board finds that the best evidence was introduced by the complainant and the Board accepts the fact that due to the nature of a more "transient" tenant and short term leases, the subject property should be assessed using actual rents. The Board further finds that the 17% vacancy rate and bad debt should be applied, even though on the valuation date the subject property was fully occupied. The Board also finds that with these types of short term tenancies, the tenant turn-over will cause the subject property to have vacant units from time to time, in between leases, and OPAC presented no argument to this fact.

¶ 19 The Board accepts the evidence that on the date of valuation, June 30, 1996, the net rents for the subject property were \$3.48 per square foot. In completing the valuation, this rent was applied to the gross leasable area of 48,809 square feet, indicating an actual net rent of \$169,855. To arrive at the actual net rent, operating expenses, after being analyzed to determine accuracy as introduced in the evidence, were

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deducted. OPAC's rate of 17% (\$28,875) was deducted to arrive at the net operating income of \$140,980. The net income was then capitalized at the rate of 11%, consistent with the rate used by OPAC for similar properties for this region, thus indicating a value of \$26.26 per square feet.

¶ 20 The Board finds that not all income producing properties have to be assessed in the same fashion. The dollar amount generated on a per square foot basis is subject to market conditions and directly related to the quality of the tenancies, age and location of the premises, as well the size and accessibility of the rentable unit.

¶ 21 For the reasons cited, the Board orders that the assessment be reduced from \$1,600,000 to \$1,282,000 for the taxation years under appeal.

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