



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
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July 5, 2010

NOTICE OF DECISION NO. 0098 10/10

RICHARD GENDRON
6504 – 75TH STREET NW
EDMONTON, AB T6E 6E4

THE CITY OF EDMONTON
ASSESSMENT AND TAXATION BRANCH
600 CHANCERY HALL
3 SIR WINSTON CHURCHILL SQUARE
EDMONTON, AB T5J 2C3

This is a decision of the Assessment Review Board (ARB) from a hearing held on June 21, 2010 respecting an appeal on the 2010 Annual New Realty Assessment.

Roll Number 3011871	Municipal Address 6504 75 Street NW	Legal Description Plan: 8420880 Block: 13 Lot: 20
Assessed Value \$1,559,000	Assessment Type Annual – New	Assessment Year 2010

Before:

Pat Mowbrey, Presiding Officer
George Zaharia, Board Member
Judy Shewchuk, Board Member

Persons Appearing: Complainant

Richard Gendron

Persons Appearing: Respondent

John Ball – Assessment Branch
Veronica Ferenc Berry - Law Branch

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

There were no preliminary issues raised by the parties and the Respondent did not have any recommendations on the file.

ISSUES

Is the Assessment too high in comparison to neighbouring properties?



LEGISLATION

The Municipal Government Act, R.S.A. 2000, c. M-26;

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

The position of the Complainant is as follows and details the reasons why the Complainant considers the subject property assessment too high, and is stated in Exhibit C-1.

1. The land is contaminated by hydrocarbons as it is the former site of a gas station and is in its first year of reclamation. Because the land is contaminated it cannot be:
 - a) Mortgaged;
 - b) used for any scenario with children e.g daycare.
2. The building was used as a special purpose building (car wash), and has a 5% sloped floor.
3. There are several covenants on title that are restrictive, one of which restricts the use of a portion of the subject land.
4. The building lacks reasonably sized overhead doors.
5. The building requires repairs and maintenance.
6. The water for the adjacent property is accessed from the subject property.
7. The Income Approach to Value plus excess land was used to value the subject property but excess land value is not justified as a portion of the land is unuseable due to an easement.

POSITION OF THE RESPONDENT

1. The position of the Respondent is that the subject property was developed as a car wash and gas bar with a sales office and a retail area which has been restored from a restaurant to a CRU space. The sales and car wash area of the subject has been renovated by the Complainant to serve as a sales and administrative area, warehouse and work area, R-1, Tab #2.
2. Evidence of the building condition and contamination remediation work was visible during the inspection of the property on May 05, 2010. The contamination and remediation process was declared in the sales agreement with the Vendor, Shell Canada Products. The restrictive covenants were on title at the time of purchase and were accepted, R-1 Tab #2.
3. The subject property was under a "Purchase and Sale Agreement" in June 2009, and title was registered on September 24, 2009. The consideration was sworn to be \$1,500,000. Value for

excess land is calculated in the same way for all properties using site coverage of 25% as typical, with any site coverage less than 25% resulting in value being added for excess land.

4. The sale of a property at the valuation date is the single best indicator of market value. The equity comparable chart, R-1, Tab #2, shows the subject property has been assessed fairly and equitably to similar properties in close proximity to the subject property.
5. The condition of the property was known to the Complainant at the time of purchase.

FINDINGS

1. A contract for purchase and sale was in place and full disclosure of the contamination and Remediation was made. (*Contract for Purchase and Sale dated June 15, 2009 (the "Agreement") between Shell Canada Products as Vendor and Richard Gendron as Purchaser – 6504 – 75 Street, Edmonton, Alberta (the Property") Shell location C10497*)
2. The Transfer of Land occurred and Title was registered on September 16, 2009. The covenants registered are shown on the Title of the subject property and the reasons for each are clearly stated.
3. The property was purchased close to June 30, 2009, the 2010 Assessment Valuation Date, in "as is" condition for the purchase price of \$1,500,000, \$200,000 less than the list price of \$1,700,000.

DECISION

The Decision of the Board is to confirm the 2010 Assessment of \$1,559,000.

REASONS FOR THE DECISION

1. The Board places greater weight on the sale of the subject property which occurred close to June 30, 2009, the Valuation Date for the 2010 Assessment. The Board referred to the Court of Queen's Bench Decision 697604 *Alberta Ltd. v. Calgary (City)*, 2005 ABQB 512, R-1, Tab #6, para 24, "Recent sales, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value."
2. The Board noted that market value is a defined term in the Municipal Government Act and 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". The Affidavit of Transferee, R1 Tab#3, attached to the Transfer of Land document, declared the "value" of the land is \$1,500,000. "Value" as notated on the Affidavit, means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer, and "land" includes buildings and all other improvements affixed to land.
3. The Board is of the opinion that the Complainant was aware of the conditions of the subject property at the time of purchase and negotiated a purchase price to reflect:
 - a) the contaminated land, the restriction of uses and the remediation process and expense undertaken by Shell ;
 - b) the covenants on Title including Easement 782175404, C-1, which allows the adjacent property owner access to a portion of the subject lands, and allows the Complainant access to a portion of the adjacent lands;

- c) the condition of the building including the sloped floor, size of overhead doors, repairs and maintenance required, and water accessed from the subject building by the adjacent property.
- 4. The Board considered the excess land value applied to the subject property. The City assesses typical site coverage of all improved properties at 25% of the total land area. The subject property has site coverage of 23% and is assessed with an excess land area of 2% of the total land area. The Board reviewed the excess land comparables, R-1, Tab #2, of properties located in close proximity to the subject property with similar site coverage and noted that the assessed rate is typical.
- 5. The Board noted that the City of Edmonton Sales Validation questionnaire was completed by the Complainant where it was stated the value of the subject property is \$1,500,000 R-1, Tab #2.
- 6. The Board reviewed the equity comparables of properties in close proximity to the subject property, R-1, Tab #2. The Board noted that the assessed rate of the comparable property closest in building size to the subject, but newer by 16 years is assessed at \$148.36 per sq. ft., whereas the subject property is assessed at \$126.79 per sq. ft. indicating the assessed value of the subject property is reasonable.
- 7. The Board is mindful the assessment methodology is based on mass appraisal and thus, valuation models developed for mass appraisal purposes must represent supply and demand patterns for groups of properties rather than a single property.

The Board finds the 2010 assessment of \$1,559,000 to be fair and equitable.

Dated this 5TH day of July, 2010 A.D. at the City of Edmonton, in the Province of Alberta.

Presiding Officer

CC: MUNICIPAL GOVERNMENT BOARD