



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 216/11

Andrew Swoboda
214-2018 Sherwood Dr.
Sherwood Park AB T8A5V3

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 Composite Assessment Review Board (CARB) from a hearing held on September 8, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3194123	12711 97 ST NW	Plan: 3907AH Block: 8 Lots: 5 to 10	\$2,127,500	Annual New	2011

Before:

Dean Sanduga, Presiding Officer
Jasbeer Singh, Board Member
Howard Worrell, Board Member

Board Officer: Denis Beaudry

Persons Appearing on behalf of Complainant:

Andrew Swoboda, CU Real Property (4) Ltd

Persons Appearing on behalf of Respondent:

John Ball, Assessor, City of Edmonton

PROCEDURAL MATTERS

The parties expressed no objection as to the composition of the CARB and the Board Members expressed no bias toward this or any of the other accounts appearing on the agenda.

PRELIMINARY MATTERS

There were no preliminary matters before the Board.

BACKGROUND

The subject property, located in the Killarney subdivision, is a part of Plaza 97 located at 12711 97 Street, Edmonton. This was built in 1987 and extensive upgrades were carried out in 2001. Plaza 97 hosts four businesses occupying a total of 20,273 square feet of space. The entire parcel was zoned DC2 with effective zoning of CSC. Plaza 97 was spread over 22 lots between 96 and 97 Streets between 127 and 128 Avenues. The subject appeal pertained to the parcel consisting of lots 5 – 10, inclusively.

ISSUE(S)

Is the 2011 assessment of \$2,127,000 for the subject property, lots 5-10 inclusive, fair and equitable?

LEGISLATION

Municipal Government Act, RSA 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 Complainant attended the hearing and presented a 137-page brief (C-1) that included area maps, legislation, an appraisal report, evidence pertaining to certificates of title, pictorial evidence, and arguments in support of requested lower assessment of \$1,280,000 for the year 2011.

The Complaint form filed indicated the assessment and the type of property to be the issues before the Board. However, at the hearing, the Complainant stated that the only issue for the Board's consideration was 'parking' and how it impacted the 2011 assessment for the subject property (C-1, page 10).

The Complainant provided the following for the Board's consideration:

- The business complex (Plaza 97) is comprised of 12 titled lots but the Respondent had issued 13 assessment notices (C-1, page 9).
- More assessments than the titled lots constituted an obvious cause of inequity and error in 2011 assessment of the subject property.

- An alleyway (easement) running north to south through the plaza, had been closed in 1989 and a separate title issued, but had not been consolidated with any of the adjacent lots (C-1, page 8).
- The City has formalized the off-street parking requirements for the operation of the complete shopping complex, including the subject property (C-1, pages 14-18).
- A variance in the overall parking for the subject site development and businesses reduced the off-street parking requirements from 110 to 106 stalls. (C-1, pages 14,15)
- The site development permit and zoning bylaws (C-1, pages 14-18) required 7 parking spaces for the convenience store business (7-11) and 26 for the financial services (ATB). Requirement of the remaining 73 parking spaces was met by other lots comprising Plaza 97 (C-1, page 11).
- These 73 parking spaces required for the two businesses (Fishing Hole and Canadian Brewhouse located on the property under appeal) constituted 73.7% of the total parking requirement ($73/99=73.73\%$)(C-1, page 11).
- Lands assigned for parking (lots 15 – 21 inclusive) and the former alleyway were being assessed as though these were surplus to the operation of Plaza 97 (C-1, page 10).
- Unless the entities owning Plaza 97 want to be in violation of the site development permit and zoning bylaws, the parking spaces and consequently the land parcels that support them must be retained for parking.
- If the vacant lots on the property were not required to provide parking for the businesses in the plaza, the owners would have developed or disposed of the same.
- The 2011 assessment in respect of lots 15 – 22 was shown to be \$1,153,000 (C-1, page 11). The portion of these lots allocated for the parking of patrons of the two businesses located on the properties under appeal, amounted to \$850,191 (C-1, page 11).

The Complainant argued that this amount (\$850,191) be reduced from the 2011 assessment of \$2,127,000 in respect of the property under appeal.

The Complainant requested that the 2011 assessment of \$2,127,000 be reduced to \$1,280,000.

POSITION OF THE RESPONDENT

The Respondent attended the hearing and presented as documentary evidence an assessment and law and legislation brief (R-1, 126 pages) containing pictures, maps, traffic flow patterns on adjoining roads, and the 2011 assessment proforma.

- The Respondent stated that closed alleyway between lot #s 1-11 and 12-22, accounted for the additional notice of assessment, as this is used for parking by the patrons to the businesses in the plaza.
- The Respondent questioned as to why the Complainant's list of lots being used for shared parking, did not include lot #11, at the north-east end of the commercial plaza.
- The Respondent questioned the validity of the appraisal report included in the Complainant's evidence package (C-1, pages 66-130) since the appraisal was based on 'leased fee interest' and the property assessment is based on 'fee simple interest' (R-1, page 20).

- The Respondent also stated that the Complainant's appraisal report included other properties in addition to the subject and, therefore, could not be relied upon to provide any clarity as to the subject's valuation or assessment (R-1, page 20).
- The Respondent refuted the Complainant's suggestion that any parts of the property had been assessed as 'excess land'. There was no evidence of this in the Complainant's disclosure.
- The Respondent stressed that the subject had been assessed fairly and equitably by the model used for the 2011 assessment.

The Respondent requested that the 2011 assessment of \$2,127,000 be confirmed.

FINDINGS

The Complainant and the Respondent agreed that this roll number along with roll number 3194115 from the previous appeal on Plaza 97 would have common evidence packages and similar issues.

DECISION

The decision of the Board is to reduce the 2011 assessment from \$2,127,000 to \$1,280,000.

REASONS FOR THE DECISION

1. It was conceded by the Respondent during questioning that the per square foot assessment rates used for commercial properties included the assessment for the parking spaces required to meet the development permit and zoning requirements.
2. The Board was persuaded by the Complainant's evidence that included the 2011 assessment notices (C-1, pages 25-36) in respect of the other lots within the Plaza 97 complex that would be needed to provide the required parking spaces of the development permit. This convinced the Board that the required parking needed by Plaza 97 on these lots had indeed been assessed separately.
3. The Board noted that several (12 or 13) smaller parcels comprised Plaza 97 and each of the sub-parcels had been separately assessed. A clear potential existed for double assessment – once through the commercial assessment rates and again through separate assessment of the properties used to provide parking for the subject businesses.
4. The Board placed considerable weight on the merits of the Complainant's documentation of the relevant facts pertaining to the requirements, provisioning and apportioning of the parking spaces in the shopping plaza and accepts the quantum of adjustment in the 2011 assessment requested by the Complainant (C-1, page 11).
5. To compensate for the separate assessments in respect of other lots used to provide parking spaces required for the businesses on the subject property the Board reduces the 2011 assessment from \$2,127,000 to \$1,280,000.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 5th day of October 2011, at the City of Edmonton, in the Province of Alberta.

Dean Sanduga, Presiding Officer

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.

cc: CU REAL PROPERTY (4) LTD
CU (4) GP INC