



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 217/11

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:
3194115	12703 97 ST NW	Plan: 3907AH Block: 8 Lots: 1 to 4	\$4,060,500	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 12703 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 comprised of lots 1 to 4, inclusive. The property under appeal is in use as a branch location for ATB Financial.

ISSUE(S)

Is the 2011 assessment of \$4,060,500 for the subject property fair and equitable?

Has necessary offset been made to the assessment amount for the required parking spaces provided on adjoining vacant lots and assessed separately?

Is the assessment rental rate (\$40 per square foot) applied to the subject property 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 143-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 \$2,940,000 for the year 2011.

The Complaint form 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 issues for the Board's consideration were 'parking', as it impacted the 2011 assessment of the subject property, and the assessment rate applied to the subject property (C-1, page 11).

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

- The business complex (Plaza 97) was 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 15-19).
- 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 15,16)
- The site development permit and zoning bylaws required 26 parking spaces for the financial services (ATB) business while only 7 could be accommodated on the premises (lots #1-4). The remaining 19 parking spaces needed to be located on the adjoining vacant lots (lots #15-22).
- These 26 parking spaces required for ATB constituted 26.3% of the total parking requirement ($26/99=26.26\%$).
- Lands employed 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).
- 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 \$302,808 (C-1, page 11).
- The Complainant argued that the 2011 assessment of \$4,060,500 in respect of the property under appeal be reduced by this amount (\$302,808) (C-1, page 11).
- The independent appraisal (valuation report) provided in the package indicated that free-standing bank spaces commanded lease rates between \$32 and \$45 per square foot (C-1, page 116).
- The appraiser, ‘remaining sensitive to the current rental structure’ used the lower parameter of the range (\$32/ft²) for the evaluation report (C-1, page 87).
- The Complainant argued that in view of the age of the building, the same lower rental rate be used for the 2011 assessment of the subject property.

The Complainant requested that the 2011 assessment of \$4,060,500 be reduced to \$2,940,000 (C-1, page 13).

POSITION OF THE RESPONDENT

The Respondent attended the hearing and presented as documentary evidence an assessment and law and legislation brief (R-1, 123 pages) containing pictures, maps, traffic flow patterns on adjoining roads, equity comparables, and the 2011 assessment proforma.

- The Respondent stated that closed alleyway between lots # 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 northeast end of the commercial plaza.
- The Respondent questioned the validity of the appraisal report included in the Complainant's evidence package (C-1, pages 72-136) since the appraisal was based on 'leased fee interest' and the property assessment is based on 'fee simple interest' (R-1, page 23).
- 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 23).
- 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.
- Nine equity comparables in respect of financial institutions in various parts of the city confirmed the fact that the subject had been assessed fairly and equitably.
- During cross-examination, the Respondent stated that assessment rates are a combination of several contributing factors. Age, particularly in view of periodic refurbishments and upgrades, is certainly not as significant as the exposure and the traffic.
- The Respondent also conceded that the issue of parking spaces may have some merit.

The Respondent requested that the 2011 assessment of \$4,060,500 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 \$4,060,500 to \$3,839,000.

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 this commercial plaza (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 noted that the Complainant's argument for a \$302,808 reduction in the 2011 assessment was based on 26 parking spaces being provided on separately assessed lands (C-1, page 11). However, taking into account the 7 parking spaces available on the subject premises, only 19 additional parking spaces needed to be accommodated on separate lots. The correct adjustment in respect of such 19 parking spaces amounted to \$221,283 ($1,153,000 \times 19/99 = 221,283$).
5. The Board placed little weight on the Complainant's appraiser's preference to use the lower value in the range of lease rates for the comparables with a view to be 'sensitive to the current rental structure' (C-1, page 87).
6. The Board was persuaded by the Respondent's equity comparables (R-1, page 24), that showed 9 free-standing bank locations, assessed at the same rates as the subject property. The Board was of the opinion that while none of the comparables were exactly identical to each other or to the subject, but any relative positive or negative influences would even out.
7. Applying the adjustment (\$221,283) in respect of the 19 parking spaces required for the business but that could not be accommodated on the subject premises; the Board finds that the 2011 assessment should be reduced to \$3,839,000.

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