



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 303/11

CVG
1200-10665 JASPER AVENUE
EDMONTON, AB T5J 3S9

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 October 4, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
3573706	10040 101A Avenue NW	Plan: F Lot: 39 / Plan: F Lot: 40	\$2,887,000	Annual New	2011

Before:

John Noonan, Presiding Officer
Brian Hetherington, Board Member
Howard Worrell, Board Member

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Peter Smith, CVG

Persons Appearing on behalf of Respondent:

Brennen Tipton, Assessor, City of Edmonton
Cameron Ashmore, Law Branch, City of Edmonton

BACKGROUND

The subject property is known as the Kelly Ramsey Block, a vintage two-building office development with an effective age of 1935. It is located on a lot of approximately 14,100 sq. ft. at 10040 – 101A Avenue in downtown Edmonton. The building suffered a fire in March of 2009 rendering it derelict. The 2011 assessment, prepared by the cost approach, is \$2,887,000. The land value is \$2,176,305 and the building value is \$711,192. The subject was acquired by the current owner through a judicial sale in January 2010 for \$4,037,000.

ISSUE(S)

The complaint form identified a number of reasons for complaint:

- the assessment was greater than market value as of July 1, 2010
- inequitable in comparison to assessments of similar properties
- the land value estimated by the assessment is in excess of that derived from sales of similar parcels and inequitable in comparison to similarly zoned and located sites
- the building component of the assessment is excessive as it does not reflect the total depreciation affecting the building
- the details and description of the property do not correctly reflect the actual physical characteristics.

The CARB heard evidence and argument on the following issues:

1. Should the building value be changed to zero?
2. Should the land value be reduced from the assessed amount of \$154.28 per square foot to \$130 per square foot?
3. Should the land value then be further reduced by an amount sufficient to remediate asbestos contamination?

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 provided to the Board a 19-page brief that included an executive outline of the outstanding issues, maps, City of Edmonton 2011 assessment details for the subject property and reports and tenders on the Asbestos Abatement requirements for the subject property.

Building Value

The current development is derelict and should be valued at zero. The building was rendered unusable by smoke and water damage due to the fire in March 2009. Although the owner plans to dismantle the south and east facades and reassemble them as part of a new development on the site, any other developer would simply bulldoze the structure and start anew.

The Board heard evidence about a judicial sale of the subject property but should place no weight on this sale value as the subject parcel was an integral part of a larger land assembly by the owner. Judicial sales are atypical transactions, excluded from analysis in the normal course of assessment preparation.

The 2011 assessment was calculated by the City using the cost approach: the land component was \$2,176,305 and the building was valued at \$711,192. Even though the building is derelict and has no value, City Assessment details show the building valued at 50% of its depreciated replacement cost.

Land Value

Five examples were presented of functioning commercial developments on highly valued land. In these examples, the City's assessment department had determined the capitalized net income from the development was less than the land value, and so it had developed a policy in such cases to choose for assessment purposes the higher of those two values (i.e. land value plus a nominal amount for the improvement, or the capped net income). This policy should be applied here: as there was no net income capable of being generated in the circumstances, the assessment should be simply the value of land plus the nominal \$500 for the derelict improvement.

The subject was assessed at \$154.28 per square foot and the Complainant provided 6 land sales comparables to support a lower value. A time-adjusted sales chart showed these sales ranged from \$110 to \$178 per square foot, the sales dating from January 2006 to April 2007. The three best comparables showed an average value of approximately \$130.00 per square foot, which if applied to the subject's 14,106 sq.ft. would produce a land value of \$1,834,000.

Asbestos Remediation

The Complainant brought to the attention of the Board an issue of asbestos contamination that would have to be dealt with no matter what the plans for site redevelopment. The construction manager had received three tenders to carry out this work, and estimated a cost of \$425,000. With the improvements being derelict and of no value, this cost to remediate should properly be deducted from the land value, and recognized in the subject's assessment.

The Complainant requested the 2011 assessment be reduced from \$2,877,000 to \$1,409,000 to reflect:

- \$1,834,000, the vacant land value
- \$500.00 nominal improvement value
- minus \$425,000 for asbestos remediation.

POSITION OF THE RESPONDENT

The Respondent provided a 110-page Assessment Brief which contained a Law and Legislation Brief, photographs, maps, Title Transfer Documents and City of Edmonton Assessment Details.

Building Value

The Respondent countered that the assessment examples cited by the Complainant of land value plus \$500 were retail developments. The land value policy was not applicable to the office inventory as the situation never arose: the capitalized income derived from multiple stories of development was always greater than typical land value alone.

The subject was further distinguished in that its assessment had been prepared on the cost approach due to fire damage. The cost approach assessment team had determined there was still value in the damaged structure as supported by comments of the owner in the sales validation questionnaire. That value was estimated at 50% of the depreciated replacement cost new of a 1935 building from the Marshall & Swift tables. The fact that the owner paid well in excess of either party's estimate of land value demonstrates the structure still has significant value.

Land Value

The Respondent provided 5 land sales comparables to support the land component of the 2011 assessment. These land sales of similar properties in the downtown core ranged from time-adjusted prices of \$134.10 to \$315.17 with an average of \$206.49 per square foot and a median price of \$186.52. This supports the 2011 land assessment of \$154.28 per square foot.

In the Sales Validation Summary provided on April 4, 2010 by the Complainant to the City of Edmonton Planning and Development Department, the Complainant confirmed the sale price at \$4,000,000 plus \$100,000 for expense. This should be considered a fair reflection of the market value of the subject.

Asbestos

Even if the Board were to take into consideration the asbestos removal costs of \$425,000, the time-adjusted sale price of \$3,946,252 less these costs would still yield a value of \$3,521,252 or an amount well in excess of the 2011 assessment.

The Respondent requested confirmation of the 2011 assessment at \$2,887,000.

DECISION

The CARB reduces the assessment to \$2,462,000.

REASONS FOR THE DECISION

Land and Building Value

The CARB preferred the land sales comparables advanced by the Respondent as better representative of the subject land value, generally being more recent and in closer proximity to the subject than those comparables presented by the Complainant. In comparison to some of those comparables, the land value ascribed of \$154.28 per sq.ft. appears modest.

The CARB also accepts the Respondent's analogy that just as the cost approach can be applied on a percentage complete basis for a building under construction, so it can and should be used in a situation such as the subject's case. Of the other value approaches available to prepare an assessment, there are few if any fire-damaged sales comparables, and there is no income to capitalize.

The parties expressed their views on the relevance of a judicial sale: the Complainant urging no weight be accorded because such sales are considered atypical and not referenced in the assessment process; the Respondent noted a text which concluded that judicial sales usually occur at below market value. The CARB places weight on this judicial sale, guided by a court decision: *697604 Alberta Ltd. V. Calgary (City)*, 2005 ABQB 512.

Prior to consideration of the asbestos issue, the Board has three values to consider:

1. the Complainant's requested land value only - having already decided \$154.28 per square foot is better supported than \$130, the land value only would be \$2,176,000
2. the current assessment, \$2,887,000
3. the judicial sale price, \$4,037,000.

It is not the historical practice of the CARB, or before it, the MGB, to act on its own motion to increase an assessment. Consequently, the Board has a choice of the requested or the current assessment, or some different value below the current assessment. Considering the sale price, the choice is obvious, the highest value available: \$2,887,000. The CARB understands the assessment would have been prepared in late 2010. That the assessment is so far below the sale price suggests to the CARB that the sale must have been considered a high outlier, and the assessment of some \$2.9 million an equitable value conclusion.

The Board was not persuaded by the Complainant's argument the building has no value: the sale price alone tells the panel otherwise. Even if the Board is wrong in this conclusion, one could view the \$2,887,000 as simply land value alone. That option would imply a land value of about \$205 per sq.ft., very close to the average seen from the Respondent's comparables.

Asbestos Contamination

During the course of questions, mention was made of an appraisal report that would have been part of the judicial sale process. Whether that appraisal report alerted potential buyers to the presence of asbestos on site is an unanswered question. The Complainant advises that the asbestos problem came to light after the sale, and referred to an explicit question and answer on the sales validation questionnaire completed very shortly after the sale: the only problem with the building was smoke and water damage, no mention was made of asbestos. As to who knew what

and when, the only evidence before the Board was the project manager's call for tenders to remediate the asbestos problem, dated March 2010. The Board also heard that in the intervening time, little if any of this work has actually been done.

Although some of the identified asbestos seems relatively benign, such as its presence in vinyl flooring, stair treads and ceiling tiles, there is also reference to skim coat cement parging, ventilation wrapping, and asbestos content in plaster, among other applications. The Board is satisfied that given the fire, smoke and water damage to the building, the asbestos problem or problems would have to be addressed no matter what the future plans for redevelopment.

Neither party offered assistance to the CARB in the form of precedent decisions dealing with asbestos contamination. The Board is aware of previous assessment tribunals' decisions that have endorsed a "cost to cure" one-time deduction from an assessment in the amount of the verified expense, in the year the expense was incurred. This approach became standard procedure in dealing with structural defects such as cable corrosion problems in buildings with post-tensioning construction. From limited research, the CARB cannot see such a standard approach in decisions dealing with, for instance, petrochemical contamination at industrial/warehouse properties. In dealing with contaminated or defective properties, significant consideration appears to be given to the impact of the problem on the property's ability to generate current rent. In the absence of an immediate health risk, if left undisturbed a certain level of contamination at an industrial property might have no material influence on market value. In the post-tension cases, there was no indication that the buildings could not continue to generate income as repairs were effected. In contrast, the subject is vacant and would not generate income until the contaminant is removed.

The CARB finds that the asbestos contamination was discovered after the January sale, and this information would not have been known at the time the assessment was prepared. Now identified, the CARB further finds the estimated, equitable value of \$2,887,000 should be reduced by \$425,000 to account for the expense necessary to solve the asbestos contamination issue. The revised value of \$2,462,000 would represent typical value for a contaminated fire-damaged 1935 structure.

Dated this 3rd day of November, 2011, at the City of Edmonton, in the Province of Alberta.

John Noonan, 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: 1507602 ALBERTA LTD