

Edmonton Composite Assessment Review Board

**Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of
Edmonton, 2012 ECARB 2301**

Assessment Roll Number: 8769754
Municipal Address: 8931 83 AVENUE NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
Jasbeer Singh, Board Member
Mary Sheldon, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. In addition, the Board members indicated they had no bias on this file.

Background

[2] The subject property is a paved parking lot with a total area of 39,172.443 square feet (0.899 acres). This property is zoned Commercial Shopping Centre (CSC), has all municipal services available to it and is located at 83rd Avenue and 89th Street in the Bonnie Doon neighbourhood of the City of Edmonton. The subject is in use as an auxiliary parking facility for a retail business in the vicinity (Value Village) located on 82nd Avenue, but no evidence of any binding covenants was provided. The improvements (paving) were carried out in 1991 and are assessed at \$83,350. This assessment is not in dispute. The 2012 assessment for the land is \$1,503,286 and is under appeal.

Issue(s)

[3] The Board heard evidence and argument on a single issue:

Does the sales evidence show the subject land is assessed at greater than market value?

Legislation

[4] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

s 1(1)(n) “market value” 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;

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

[5] The Complainant filed this complaint on the basis that the subject property’s assessment of \$1,586,500 was in excess of the market value, and the increase in the current year (2012) assessment was in excess of the market changes. In support of this position, the Complainant presented a 26-page assessment brief (Exhibit C-1) and a 23-page document rebutting the Respondent’s evidence to the Board (Exhibit C-2).

[6] The Complainant provided a set of five sales comparables that were all zoned CSC or CNC. The sizes of these comparables ranged between 0.91 and 4.18 acres and averaged 2.83 acres. The time adjusted sales price was shown to be between \$600,613 and \$966,433 per acre and averaged \$724,923 per acre (C-1, page 9).

[7] The Complainant stressed the fact that all of the cited sales had occurred less than 18 months prior to the valuation date of July 01, 2011, and best reflected the relevant market conditions.

[8] The Complainant provided neighbourhood plans showing the location of the comparables, an aerial plan of the City showing the relative positions of the subject and the comparables, as well as the independent third party (Network) sales reports for each of the cited sales (C-1, pages, 10-12 & 17-22).

[9] The Complainant argued that the 'Commercial Land Time Adjustment Factors' provided by the City, showed a market value drop of nearly 7.5% over the intervening period from the last year's assessment to the current year's assessment. If the same market value reduction had been applied to the subject's 2011 assessment of \$1,302,500, the current year's assessment value would have been \$1,205,500. However, the subject's assessment had increased by 21.8% over the same period. This, in the Complainant's opinion, provided clear evidence that the subject had been incorrectly and excessively assessed (C-1, page 14).

[10] The Complainant recognized the parcel size differences in respect of the sales comparables and requested that a market value of \$750,000 per acre be applied for the subject's 2012 assessment. Adding the undisputed assessment of \$83,350 for the improvements, the Complainant requested the Board to reduce the 2012 assessment to \$757,500.

Position of the Respondent

[11] The Respondent presented an 86-page document comprising an assessment brief and a law & legislation brief (Exhibit R-1) to the Board. The assessment brief included five sales comparables and three equity comparables that supported the subject's 2012 assessment of \$1,586,500 as fair and equitable.

[12] The Respondent explained to the Board that the subject assessment and similar assessments were based on mass-appraisal methodology and were prepared using the direct comparison assessment approach (Exhibit R-1 pages 36-41).

[13] The Respondent provided a set of five sales comparables that were zoned CB1, CB2, CSC or CNC. The sizes of these comparables ranged between 0.42 and 1.06 acres and were shown to be good comparables to the subject at 0.90 acres. The time adjusted sales price was shown to be between \$1,619,595 and \$2,271,753 per acre and averaged \$1,897,541 per acre compared with the subject's 2012 assessment of \$1,672,176 per acre (R-1, page 14).

[14] The three equity comparables provided by the Respondent were all zoned commercial (CB2), were located within a few blocks of the subject, shared similarity in shape, size and supported the subject's assessment of \$1,672,176 per acre or \$38.38 per square foot. (R-1, page 14).

[15] The Respondent argued that the Complainant's sales comparables were flawed in that;

- a. Comparable #1 (located at 5603 – 199 Street) was an odd and irregularly shaped parcel of land that could not be compared to the subject's regular, rectangular shape.
 - i. The size of this parcel was 4.18 acres or more than 4 times the subject's 0.9 acre size, making the comparison invalid.

- ii. This comparable had three utility rights of way running through the middle of the property, two restrictive covenants and easement, to put serious limitations on future development and use. (C-1, page 18).
 - iii. Its location far west of the City, with residential development only to the West, made this a very poor comparable to the subject that is located in the midst of an established residential neighbourhood.
- b. Comparable #2 (located at 2610 Hewes Way) was also an uneven, irregular 'L' shaped parcel measuring 2.39 acres
 - i. This parcel also carried four restrictive covenants and easement, to constitute a good comparable.
 - ii. A recent aerial picture of the area showed very little residential development in the vicinity and that, in the Respondent's opinion, made it a poor comparable to the subject that is located in the midst of an established residential neighbourhood.
- c. Comparable #3 (located at 9407 Ellerslie Road) was a narrow and long strip of land used as an access road with limited parking potential.
 - i. This parcel also carried two utility rights of way, three restrictive covenants and three easements, and was not a good comparable.
 - ii. This parcel had been purchased by the adjoining owner to the west (Totem Building Supplies) as it would facilitate access to Ellerslie Road (C-1, page 20).
 - iii. The Respondent commented on the dearth of valid comparables in the Complainant's evidentiary package that compelled the Complainant to present this as their 'best' comparable.
- d. Comparable #4 (located at 403 McConachie Way) was an irregular shaped 3.58 acre parcel of land with large tracts of land to its North and West awaiting development and hence, not a good comparable at the present time.
 - i. This parcel also has two utility rights of way that could restrict its development potential.
- e. Comparable #5 (located at 1704 – 34 Avenue) was a 3.11 acre parcel of land facing Agriculture zoned (AG) land to the North and future residential development to its South.
 - i. In the Respondent's opinion, its size (more than three times larger than the subject) and its location in the midst of future development, made it a questionable comparable at the present time.

[16] The Respondent stressed that the subject property, with its regular rectangular shape, is nearly one acre in size, is zoned commercial (CSC) and is located a mere half a block north of

very busy Whyte Avenue. The Respondent stated that, in his opinion, these factors offered attractive development potential and opportunities.

[17] The Respondent stated that none of the Complainant's sales comparables could be deemed good comparables. Four of the five comparables were 3 to 4 times larger than the subject, three of the comparables had irregular shape and practically all of the comparables were located in areas undergoing development and did not enjoy the benefits of an established residential neighbourhood and proximity to the heavily travelled Whyte Avenue.

[18] The Respondent argued that the Complainant had failed to provide any valid argument in support of its position and asked that the Board confirm the subject's 2012 assessment of \$1,586,500 that was well supported by the sales and equity comparables presented.

Complainant's Rebuttal

[19] The Complainant questioned the validity of the Respondent's sales comparables and argued that;

- a. The Respondent's sales comparable #1 (located at 9111 – 111 Avenue) was in a superior location with 24,200 vehicle traffic count on this busy roadway and this could not be compared to the subject with no traffic count.
 - i. The sale of this property in August 2008 was, in the Complainant's opinion, too old to be considered for the subject's 2012 assessment.
 - ii. This comparable was also located in the Northeast of the City versus the subject's Southeast location.
- b. The Respondent's sales comparable #2 (located at 9009 – 111 Avenue) was also in a superior location with 24,200 vehicle traffic count on this busy roadway and this could not be compared to the subject with no traffic count.
 - i. The sale of this property in March 2008 was, in the Complainant's opinion, too old to be considered for the subject's 2012 assessment.
 - ii. This comparable was also located in the Northeast of the City versus the subject's Southeast location.
 - iii. The size of this parcel (0.42 acre) was less than half the size of the subject measuring 0.90 acre and should not be considered a good comparable.
 - iv. This property had been purchased by Capital Region Housing Corporation and as such could not be deemed a valid sale.
- c. The Respondent's sales comparable #3 (located at 8535 – 83 Street) was also in a superior location with 24,100 vehicle traffic count on this busy roadway and this could not be compared to the subject with no traffic count.
 - i. The size of this parcel (0.452 acre) was about half the size of the subject measuring 0.90 acre and should not be considered a good comparable.

- ii. This property had been purchased by the City of Edmonton and as such could not be deemed a valid sale.
- d. The Respondent's sales comparable #4 (located at 1110 – 108 Street) was also in a superior location with 27,000 vehicle traffic count on this heavily travelled roadway, and this could not be compared to the subject with no traffic count.
 - i. The sale of this property in August 2007 was, in the Complainant's opinion, too old to be considered for the subject's 2012 assessment.
 - ii. This comparable was also located in the Northwest of the City versus the subject's Southeast location.
 - iii. The size of this parcel (0.66 acre) was 73% of the size of the subject measuring 0.90 acre and should not be considered a good comparable.
 - iv. The vendor of this property was the City of Edmonton and this had been acquired by the adjoining owner. Therefore, in the opinion of the Complainant, this could not be deemed a valid sale.
- e. The Respondent's sales comparable #5 (located at 13615 – 66 Street) was also in a superior location with 44,900 vehicle traffic count on this heavily travelled roadway and this could not be compared to the subject with no traffic count.
 - i. The sale of this property in April 2007 was, in the Complainant's opinion, too old to be considered for the subject's 2012 assessment.
 - ii. This comparable was also located in the Northeast of the City versus the subject's Southeast location.
 - iii. The size of this parcel (0.56 acre) was only 63% the size of the subject measuring 0.90 acre and should not be considered a good comparable.

Respondent's Surrebuttal

[20] Quoting from the Ministerial Order L:206/11, the Respondent argued that '*Government sales can be included only if made on the open market with both parties seeking the best possible price*' (R-2, page 2).

[21] The Respondent provided listing and sales documents in respect of the Respondent's sales comparable #3 (located at 8535 - 83 Street) and questioned the Complainant's objection to its consideration by the Board as a valid comparable. (R-2, pages 3-6).

[22] Citing from an earlier Board Order ECARB 2012-001097, the Respondent argued that the subject's assessment rate should be expected to be higher than the other comparables because of its proximity to the Whyte Avenue, with its high traffic volumes (R-2, page 10, paragraph 19).

[23] Citing from the same Board Order, the Respondent advised the Board that if the City had validated a sale, even if the City had sold the property to its tenant, it could be viewed as a valid sale (R-2, page 11, paragraph 21).

[24] The Respondent countered the Complainant's argument questioning the validity of the 'dated' sales, by quoting from a Board Order 2012 ECARB 2106, wherein the Board found that *'it is not unreasonable for the Respondent to use sales of similar property that transacted approximately three years prior to the valuation date of July 1, 2011, provided they are adjusted for changes in the marketplace between the sale date and the valuation date'* (R-2, page 17, paragraph 27).

Decision

[25] The Board confirms the 2012 assessment of \$1,586,500.

Reasons for the Decision

[26] Section 1(1)(n) of the *Municipal Government Act*, defines "market value" as 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.

[27] The Board noted that both parties had encountered difficulties in locating good and recent sales comparables in or close to the subject's neighbourhood. The sales comparables provided by both parties showed significant dissimilarities in terms of size, shape, location, the date of sale, involvement of government or charitable entities and proximity to the subject, to provide any meaningful guidance to the Board.

[28] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board is satisfied that the Complainant did not provide sufficient and compelling evidence for the Board to form an opinion as to the incorrectness of the assessment. In particular, the Board does not consider that the sales comparables presented by the Complainant assist in demonstrating that the assessment of the subject is incorrect.

[29] The Board heard evidence that size and location are important factors in valuing these properties. With the exception of one comparable presented by the Complainant, all are at least twice the size of the subject. The location of the comparables are far from the Whyte Avenue location of the subject and are situated in areas not at all comparable with the dynamic and established Whyte Avenue area.

[30] The Board also notes that the subject had a rectangular, regular shape while three of the Complainant's comparables are highly irregular. In particular, the Board notes the comment of the Complainant that the best comparable to the subject was the Complainant's comparable #3 at 9407 Ellerslie Road which was an elongated narrow strip of land used as an access road. In the opinion of the Board, this is not a good comparable to assist in establishing value for the subject.

[31] The Board notes the argument of the Complainant that the municipality's commercial time adjustment factors indicated a 7.5% drop in the value of commercial real estate in 2012 over 2011. The Board agrees with the Respondent that each year's assessment is independent of the previous year. The Board also notes a comment by the Respondent that if the Board were to agree with the Complainant's requested assessment of \$757,500, it would represent a 42% drop in the assessment in 2012 over 2011, which is not reasonable.

[32] Accordingly, the Board confirms the recommended 2012 assessment of the subject at \$1,586,500.

Dissenting Opinion

[33] There was no dissenting opinion.

Heard commencing October 17, 2012.

Dated this 8th day of November, 2012, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Greg Jobagy

Stephen Cook

for the Complainant

Keivan Navidikasmaei

Tanya Smith

for the Respondent

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.