

Edmonton Composite Assessment Review Board

**Citation: Colliers International Realty Advisors Inc v The City of Edmonton,
2012 ECARB 2340**

Assessment Roll Number: 10097096
Municipal Address: 5219 47 Street NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc for 2278372 Ontario Inc.
Complainant
and

The City of Edmonton, Assessment and Taxation Branch
Respondent

DECISION OF
Peter Irwin, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, 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 that they had no bias in this matter.

Objection to Portions of the Rebuttal Evidence

[2] The Respondent raised an objection to portions of the Complainant's rebuttal document marked Exhibit C-2, because the information contained in those portions did not rebut any of the evidence disclosed by the Respondent in Exhibit R-2. The Respondent objected to the assessment information on page 10 and the assessment map on page 17. Whether the property was equitably assessed was not an issue that was pursued by the Complainant because there was no assessment evidence or argument disclosed in Exhibit C-1.

[3] The Complainant stated that one of the issues identified in the Assessment Review Board Complaint form was "fairness and equity"; therefore, equity was one of the issues. As a result, this was proper rebuttal evidence and should be allowed. The Complainant stated that he was not clear on what could be regarded as rebuttal evidence if those portions in question were not rebuttal evidence.

[4] In summary, the Respondent stated that the Complainant provided the same "boiler plate" list of reasons for this complaint as all other complaints. The list included many issues that were not pursued in the Complainant's Exhibit C-1. Exhibit C-1 contained only evidence and argument relating to the correctness of the assessment.

Decision

[5] The Board finds that the references to assessment in Exhibit C-2 are not rebuttal evidence because they do not rebut the Respondent's disclosure, Exhibit R-1. The Respondent's disclosure contains sales comparables in defense of the correctness of the subject assessment.

[6] If the Complainant intended to challenge the subject assessment on the basis of equity, the evidence and argument relating to equity should have been disclosed in Exhibit C-1. This would have allowed the Respondent to respond to the issue of equity, and the Complainant to rebut the Respondent's evidence, in turn.

[7] The decision of the Board is to exclude the references to assessment in Exhibit C-2 on page 10 and the assessment map on page 17.

Background

[8] The subject property is a large warehouse located at 5219 47 Street NW in the Pylypow Industrial neighborhood. The 348,658 square foot (sf) lot is improved with a 152,051sf building that has an effective year built of 2006. The site coverage is 40%.

Issue

[9] Is the subject assessment correct?

Legislation

[10] 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.

[11] The Matters Relating To Assessment Complaints Regulation reads:

Matters Relating to Assessment Complaint Regulation, Alta. Reg. 310/200/-9

s 8(2)(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness,

and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Position of the Complainant

[12] The Complainant filed this complaint on the basis that the subject assessment was incorrect. The Complainant argued that the subject assessment of \$14,616,500 (\$96.13/sf) was unreasonable in the context of the recent sales for comparable industrial warehouse buildings. In support of this position, the Complainant presented five sales comparables located in the southeast quadrant of the city. The sales ranged in value from \$66.77/sf to \$95.15/sf with an average sale price of \$83.58/sf.

[13] The Complainant stated that sale #1, located at 4101/25 84 Avenue NW, was the most comparable in age and size to the subject property. The comparable was constructed in 1998 and had a building area of 162,860sf, whereas the subject was constructed in 2006 and had a building area of 152,056sf. The comparable sold for \$81.66/sf.

[14] The Complainant explained that owing to the lack of good comparables in the southeast quadrant, the Complainant provided four comparables from the northwest quadrant. These comparables had an average sale price of \$77.37/sf.

[15] The Complainant combined the best comparables from the southeast and northeast quadrants resulting in five sales comparables that sold for an average sale price of \$78.23/sf. The Complainant reasoned that the comparables were reasonably similar in size, zoning and site coverage; however they would require adjustment for the newer age of the subject property. In applying a 10% adjustment upwards to recognize this factor, the resultant value would be the requested amount of \$85.00/sf or \$12,924,500 truncated.

Rebuttal

[16] Prior to the Complainant submitting the rebuttal evidence in Exhibit C-2, the Respondent raised an objection to portions of the document. Please refer to the preliminary matters section of this decision for the details.

[17] After the ruling from the Board, the Complainant continued with the balance of the rebuttal document.

[18] The Complainant argued that the Respondent's dated sales should be given less weight because of the reasons in Assessment Review Board decision No. 0098 252/10. The decision stated that

The Board places less weight on the sales comparables provided by both the Complainant and the Respondent as they date back to 2006 and 2007 and require significant time adjustment. None of these sales were contaminated properties, as is the subject.

[19] The Complainant provided additional comments on the Respondent's sales. Sales #1, #2 and #3 were located in the northwest quadrant. Sale #3 had 0.75 acres of excess land. Sale #4 was an 11 building complex including two neighborhood shopping centres, one bank and eight

industrial flex buildings. Sales #1, #2 and #5 were zoned IB and were superior to the subject in zoning.

Position of the Respondent

[20] The Respondent submitted that the subject assessment of \$14,616,500 was correct. In support of this position, the Respondent presented five sales comparables which ranged in value from \$93.49/sf to \$203.16/sf and had an average sale price of \$140.07/sf. The subject property was assessed \$96.13/sf.

[21] Owing to the size of the subject property, at 125,137sf, and the year built of 2005, the Respondent looked beyond the southeast quadrant for comparables. Three of the comparables were located in the northeast quadrant and ranged in value from \$93.49/sf to \$139.31/sf.

[22] In summary, the Respondent requested the Board confirm the assessment at \$14,616,500.

[23] The Respondent was critical of the Complainant's sales comparables in several aspects. The Respondent stated that six of the sales comparables were much older than the subject property. Sale #1 sold at a time when the lease rates were considered to be 20% to 25% below market indicating an upside. Sale #2, located at 12810 170 Street, had a building area of at least two and one-half times the size of the subject, requiring a large upward adjustment.

[24] The Respondent clarified the use of its sale #3, located at 18507 104 Avenue NW. The 0.75 acres of land considered to be excess land by the Complainant was not excess land. The 0.75 acres was vacant yard space.

[25] The Respondent disagreed with the Complainant's interpretation of CARB Decision No. 0098 252/10. The Respondent interpreted the reasons to mean that less weight was placed on the comparable sales than the sale of the subject property. The subject property, which was contaminated, sold for \$785,000 and the CARB reduced the assessment to the sale price.

Decision

[26] The assessment is confirmed at \$14,616,500.

Reasons for the Decision

[27] In determining this matter, the Board finds that the Complainant's sales evidence failed to convince the Board that the assessment is incorrect.

[28] The Board will focus its comments on the five sales used by the Complainant as the basis for the requested assessment of \$85.00/sf. These comparables are set out in a chart on page 12 of Exhibit C-1.

[29] Sale #1, located at 4101/25 84 Avenue NW, is similar in age to the subject. However, it is inferior to the subject property because it has 15% greater site coverage and sold at a time when the lease rates were considered to be 20% to 25% below market. Sale #2, located at 12810 170 Street NW, has a total area of 399,767sf compared with the subject building area of 152,056sf, which requires a large adjustment for the difference in size.

[30] The Complainant's three sales comparables (#3, #4 and #5) were constructed at least 28 years before the subject property was constructed and, as such, require significant adjustments for the differences in age.

[31] The Board also considered the Complainant's argument respecting the Respondent's sales that the Complainant considered dated. The Board finds 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.

[32] With respect to CARB Decision No. 0098 252/10, this Board is unable to comment on the reasons because this Board did not hear the evidence and argument presented at that hearing. The facts of that case appear to be different than this case. Furthermore, this Board is not bound by previous decisions of the Board.

[33] Next the Board reviewed the Respondent's sales evidence. None of the Respondent's sales comparables are particularly helpful in valuing the subject property. Sales #1, #2 and #3 are located in the northwest quadrant and would require an upward adjustment for location. Sale #2 may have been acquired jointly with the Bonaventure Building and is not a reliable indicator of value. Sale #4 is an eleven building complex which includes two shopping centres and is a poor indicator of value for the subject warehouse property. Sale #5 is superior in age and site coverage to the subject.

[34] With respect to the issue of whether the subject property is correctly assessed, the onus is on the Complainant to prove that the assessment is incorrect. Given that the Complainant failed to advance sufficient evidence to support the contention that the assessment is incorrect, the Board confirms the assessment.

Heard September 6, 2012.

Dated this 5 day of October, 2012, at the City of Edmonton, Alberta.

Lillian Lundgren for:
Peter Irwin, Presiding Officer

Appearances:

Greg Jobagy
Stephen Cook
for the Complainant

Steve Lutes
Will Osborne
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.