

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2012 ECARB 2341

Assessment Roll Number: 10142586
Municipal Address: 5103 36 Street 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
James Fleming, Presiding Officer
Mary Sheldon, Board Member
Jasbeer Singh, Board Member

Preliminary Matters

[1] At the outset of the hearing, the Presiding Officer advised the parties that he had worked with the Complainant's representative, Stephen Cook, at the MGB, but that this relationship would not cause him to be in conflict. Upon being asked, the parties indicated that they had no objection to the composition of the Board. The members of the Board did not indicate any bias with respect to this file.

Background

[2] The subject property is an undeveloped parcel of industrial land with an area of 11.77 acres. This parcel of land enjoys a corner location at 5103 – 36 Street NW in Pylypow Industrial neighbourhood of the City of Edmonton. This fully serviced property is used as an auxiliary parking facility for an automobile dealership in the vicinity. The subject is zoned IB. The subject has been valued by the direct sales method and the 2012 assessment is \$5,338,000. With respect to the sales

comparables presented by both parties, there is no dispute as to the time adjustment factor to be applied.

Issue

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

Does the sales evidence show the subject 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 assessment of \$5,338,000 was in excess of market value. In support of this position, the Complainant presented a 20 page assessment brief (Exhibit C-1) and an 18 page document rebutting the Respondent’s evidence to the Board (Exhibit C-2).

[6] The Complainant provided a set of four sales comparables of industrially zoned parcels of land. These transactions had occurred within a year prior to the July 1, 2011 valuation date and, in the opinion of the Complainant, sales close to the valuation date provided the best indication of market values. The Complainant stated that sales older than two years prior to the valuation date would require more adjustment and thus would be of less assistance in determining market value.

[7] The Complainant's comparables showed an average time adjusted sales price of \$393,734 per acre and in the Complainant's opinion, clearly demonstrated that the subject had been assessed excessively at \$453,372 per acre (Exhibit C-1, page 6).

[8] The Complainant argued that the average size of the four sales comparables was 8.93 acres. With the subject being larger in size at 11.77 acres, economies of scale would support a lower assessment value.

[9] The Complainant submitted to the Board that, based on the evidence presented, an appropriate value for the subject would be \$400,000 per acre or a total assessment of \$4,709,500.

[10] The Complainant requested that the Board reduce the 2012 assessment of the subject to \$4,709,500.

Position of the Respondent

[11] The Respondent presented to the Board a 130 page document including an assessment brief and a law & legislation brief (Exhibit R-1).

[12] The Respondent explained to the Board that the subject assessment and similar assessments were prepared using the direct comparison assessment methodology. (Exhibit R-1 pages 77-81).

[13] The Respondent argued that due to lack of sales of large parcels of comparable industrial land, it became necessary to use some older sales and apply the relevant time adjustment factors. The five sales comparables showed an average size of 15.40 acres and average time adjusted sales price of \$527,624 per acre or \$12.11 per square foot.

[14] The Respondent also provided evidence to the Board in the form of various orders for foreclosure and orders vesting title for properties in the Maple Ridge area of the municipality. The Respondent submitted that this demonstrated that the comparables submitted by the Complainant in this area would show a lower sale value.

[15] With reference to the Complainant's sales comparables, the Respondent advised the Board that;

- a. Comparables #2 & #3 (located at 6450 – 27 Street & 704 – 76 Avenue) did not have full municipal servicing, making them inferior to the subject and not good comparables.
- b. Comparables #3 (located at 704 – 76 Avenue) had been purchased by a provincial government department. This sale, in the opinion of the Respondent, might not accurately reflect the market.
- c. Comparable #4 (located at 7212 – 8 Street) was less than one-fifth the size of the subject (2.23 acres versus 11.77 acres) and would not provide any guidance to the Board in establishing the subject's value. As well, this comparable was located in the Maple Ridge area of the municipality and the price could have been influenced by financial troubles of some properties in the area as evidenced by the various court orders supplied.

[16] The Respondent argued that the primary purpose of the time adjustment factors was to apply the market changes to older, but otherwise comparable sales. In reality, the Respondent stated that application of a single, mutually agreed 'time adjustment' factor was reliable.

[17] The Respondent stated that the subject possessed superior location attributes on a corner of major roadway intersection and had been assessed fairly and equitably. The Respondent requested the Board confirm the subject's 2012 assessment at \$5,338,000.

Complainant's Rebuttal

[18] The Complainant argued that;

- a. The Respondent's sales comparable #1 (located at 931 Parsons Road SW) had sold in July 2008; 3 years prior to the valuation date. Its sales information could not be deemed current or reliable as the market had changed considerably. This comparable was also zoned commercial (CSC) and not industrial like the subject. In the opinion of the Complainant, this comparable could not provide any assistance to the Board in establishing the subject's value. As well, the subject (at 11.77 acres) was 66% larger than this comparable, which had an area of 7.782 acres.
- b. The Respondent's comparables #2 & #3 (located at 6304 Roper Road & 5605 – 780 Street), were even older sales, having occurred in January & March 2007, more than 4 years prior to the valuation date.
- c. The Respondent's sales comparable #4 (located at 5303 – 36 Street), with an area of 6.96 acres was much smaller than the subject's 11.77 acres and the transaction involved an unusually large amount (76% of sales price) of vendor take back (VTB) financing. In the opinion of the Complainant, this financing would have an influence on the purchase price and making this sale of less assistance in establishing value for the subject.
- d. Comparable #5 (located at 2545 Aurum Road NE) was from the northeast quadrant and not comparable to the subject, located in the southeast quadrant of Edmonton.

[19] The Complainant relied on an earlier Board decision (2012 ECARB 1692). Wherein the Board stated that the comparables from outside the subject's market area could not be relied upon (Exhibit C-2, page 11, paragraph 23). Further, the Board had found that a large "Vendor Take Back" mortgage could influence the final selling price. As a consequence, the Complainant advised the Board to place little weight on the Respondent's sales comparable #4, which involved a 76% VTB mortgage (Exhibit C-2, page 11, paragraph 26).

[20] The Complainant repeated his request that the Board reduce the 2012 assessment of the subject to \$4,709,500.

Decision

[21] The decision of the Board is to reduce the 2012 assessment of the subject to \$4,709,500.

Reasons for the Decision

[22] The Board notes that jurisprudence has established that it is the responsibility of the Complainant to present sufficiently compelling evidence to cast doubt on the correctness of the assessment.

[23] In this case, the Complainant has presented four comparables of which two (#2 and #3) have only rural servicing while the subject has full municipal servicing. The Board notes that this makes these two comparables of less assistance in establishing value for the subject.

[24] Of the Complainant's remaining comparables, both have industrial zoning. The Complainant's comparable #4 is much smaller than the subject and would require substantial adjustments. The Board notes that the Complainant indicated that the comparable #1 was the best comparable. The size of this comparable is close to that of the subject. It is zoned IM, which the Board heard is slightly inferior to the subject zoning of IB. Both the subject and Complainant's comparable #1 are fully serviced and are located in the south east quadrant of Edmonton. The time adjusted sale price of that comparable #1 is \$401,874 per acre whereas the subject is assessed at \$453,372 per acre. The Board notes that third party documentation indicates that the comparable #1 adjoins a rail line at the end of the property which may give it a benefit to offset its slightly inferior zoning.

[25] For the above reasons, the opinion of the Board is that this comparable #1 presented by the Complainant does bring into question the accuracy of the subject's assessment.

[26] The Board then turned to the comparables presented by the Respondent. The Board heard evidence that lot size, location, market area and servicing were all important factors in the valuation of industrial vacant land. In the opinion of the Board, the comparables presented by the Respondent do not support the assessment of the subject for the reasons outlined below.

[27] The Board notes that the Respondent's comparable #1 is zoned CSC while the subject is zoned industrial. The Respondent's comparables #2 and #3 are older sales and require substantial adjustments. Comparable #4 is located near the subject but is zoned IL. Further, the Respondent's comparable #4's sale transaction includes a very substantial vendor take back mortgage which, in the opinion of the Board, could influence the purchase price. The Respondent's comparable #5 is located in the northeast quadrant of Edmonton while the subject is located in the south east. Consequently, the Board places little weight on the comparables presented by the Respondent.

[28] The Board is persuaded that the Complainant has presented sufficient compelling evidence to demonstrate that the current assessment of the subject is excessive and that a value of \$400,000 per acre is appropriate. In particular, the Board is of the opinion that the Complainant's comparable #1 presents a good indication of market value for the subject.

[29] Accordingly, the Board's decision is to reduce the 2012 assessment of the subject to \$4,709,500.

Dissenting Opinion

[30] There was no dissenting opinion.

Heard commencing October 15, 2012.

Dated this 23 day of October, 2012, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Greg Jobagy

Stephen Cook

For the Complainant

Darren Nagy

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.