

Edmonton Composite Assessment Review Board

Citation: Suncor Energy Inc. v The City of Edmonton, 2012 ECARB 2399

Assessment Roll Number: 7979578

Municipal Address: 2520 Calgary Trail NW

Assessment Year: 2012

Assessment Type: Annual Revised

Between:

Suncor Energy Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Dean Sanduga, Presiding Officer

Brian Hetherington, Board Member

Lillian Lundgren, Board Member

Preliminary Matters

[1] Both parties indicated they had no objection to the composition of the Board. Each of the Board members indicated that they had no bias with regard to the matter.

[2] At the outset of the meeting the Respondent informed the Board that he had recommended an assessment of \$3,383,500 – or \$27.28 per sq. ft. - in view of the restriction in access to the subject property created by the development of the 23 Avenue overpass. The Complainant declined to accept the recommendation.

Background

[3] The subject property is a 2.796-acre lot formerly housing a Petro Canada gas station, but is now a vacant lot, with an address of 2520 Calgary Trail NW. It is zoned CHY (Commercial Highway). The access from Calgary Trail has been removed as part of the modifications in the area to build the 23rd Avenue overpass, resulting in the only access to the subject property being southbound on 104 Street, before it turns west on to 23 Avenue.

Issue(s)

[4] Is the annual amended 2012 assessment of \$3,383,500 too high?

Legislation

[5] 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

[6] The Complainant presented the Board with an 18-page brief, which was entered as Exhibit C-1, and a 13-page rebuttal, entered as Exhibit C-2.

[7] The Complainant advised the Board that the \$4,229,500 assessment of the vacant land is incorrect and exceeded the property’s market value of \$2,490,000 as of the valuation date of July 1, 2011.

[8] The Complainant told the Board that a third-party professional valuation of the site, prepared for the property owner, was in line with the market value request. However, when asked if a copy of the valuation was available, he was unable to produce it.

[9] The Complainant indicated to the Board that the current valuation fails to take into account the negative impacts on the property, created by the poor ingress and egress that has been created by the road changes.

[10] The Complainant informed the Board that the subject property was a former gas station and car wash, and is now a vacant site. This change has been necessary, due to the severe restrictions placed on access and site visibility by the recently constructed 23rd Avenue overpass, which resulted in limiting access to the subject property only from 104 Street.

[11] To support his request, the Complainant presented the Board with an aerial overview of the area (C-1, p 11), showing how the site no longer has direct access to Calgary Trail and there is no longer any access to east-bound 23 Avenue. He also presented photographs (C-1, pages 12

and 13) showing that the site had been cleared of buildings and one photograph illustrating the complexity of accessing both the southbound Calgary Trail and the northbound Gateway Boulevard.

[12] The Complainant presented a Petro Canada Real Estate Department Chart, (C-1 page 16) noting the subject property was listed for sale in February 2012 at \$2,490,000.

[13] The Complainant also presented the Board with a list of 53 vacant land sales that took place across Edmonton during 2011. This chart indicated a range of sales from \$2.63 to \$36.54 per sq. ft. yielding an average of \$14.66 per sq. ft. (C-1, page 17). He suggested to the Board that this indicated that the subject's assessment at \$34.73 per sq. ft. was out of line with other vacant land sales in the city.

[14] When questioned about the source of the list of comparable vacant property land sales, the Complainant said that it was acquired from the Commercial Edge software program and acknowledged that it was not always 100% accurate and he had removed any sales which he considered suspicious.

[15] In a rebuttal document, the Complainant submitted that an offer to purchase the subject property had been made on May 1, 2012 and accepted on May 10, 2012 at a price of \$2,600,000 (C-2 pages 5-13).

[16] In this rebuttal document, the Complainant also cited several cases that were quoted in the City of Edmonton's Law and Legislation which he suggested relate to the assessment of the subject property and referenced the case of 697604 Alberta Ltd vs Calgary, (2005) A.J. No 861. He noted that the City of Edmonton in summarizing the decision had said:

"In Alberta, if the Board is faced with situation where there is a clear conflict between equity and market value, and one objective must be sacrificed at the expense of the other, market value should prevail. Adjustment can be made to ensure that the subject is assessed at market value, even though the change may result in inequity in relation to the rest of the class of the properties which have not been appealed."

[17] The Complainant further advised the Board that the sales comparables submitted by the Respondent do not accurately reflect the subject property. He said that while the 2904 Calgary Trail sale is close in location and size, it was finalized in 2007, a significantly different economic time than the valuation date. He also added that this comparable is far less impacted by the interchange at Calgary Trail and 23 Avenue and has superior access and visibility than the subject. He further added that the transaction was, in fact, the sale of two distinct properties with a combined land of 7.11 acres.

[18] The Complainant further stated that in conclusion, he had listed more than 50 sales, all of which occurred in 2011 and were of vacant land. The properties ranged in size from 45,000 square feet to 240,000 square feet and accurately reflect the market for properties similar to the subject.

[19] In closing, the Complainant requested the Board approve his request for reduction in the assessment from \$4,391,500 to \$2,400,000.

Position of the Respondent

[20] The Respondent submitted a 41-page brief (R-1) and the City of Edmonton's 44-page Law and Legislation brief (R-2).

[21] At the outset of his presentation, the Respondent presented the Board with the details of his recommendation of a reduced assessment, which the Complainant had rejected. He explained that the City had recommended a 20% reduction in the assessment, to account for the change in lot access and the limited exposure resulting from the road modifications to Calgary Trail to facilitate the construction of the 23rd Avenue Overpass.

[22] The Respondent told the Board that the subject property is zoned Highway Commercial (CHY), and has visibility from the busy Calgary Trail South highway.

[23] The Respondent provided a chart of three vacant Land Sales Comparable, (R-1, page 10). The time adjusted per sq. ft. sale prices of the comparables ranged from \$28.39 to \$42.01 with an average of \$37.33, which he suggested supported the recommended revised assessment at \$27.28 per sq. ft. of the subject.

[24] The Respondent provided a chart of three vacant land equity comparables to the subject, (R-1, page 10). The equity assessment of the comparables ranged from \$33.72 to \$40.88 per sq. ft., generating an average of \$36.66 per sq. ft., which he suggested supported the recommended assessment of the subject property at \$27.28 per sq. ft.

[25] The Respondent challenged the list of comparable sales presented by the Complainant and presented detailed information on 14 of the sales, stating that they were zoned RA7, RA8, IB, IH or IM and not one sale had a Highway zoning. He added that all were dissimilar to the subject in zoning, size and location.

[26] The Respondent further stated that the subject site is located on the Calgary Trail which has seen very significant changes in the past 5 years. This major roadway has one of the highest traffic counts in the City with enough visibility to attract customers. The service road permits business patrons access in a safe manner, and provides the benefits of the location.

[27] The Respondent advised the Board that a major higher end retail office condo was developed on the property located to the north of the subject. Within the neighborhood, recent developments have included high end businesses such as the Cora Restaurant chain and a Holiday Inn Express.

[28] In a surrebuttal document (R-3, 10 pages) the Respondent presented the Board with copies of the restricted covenant on the sale of the subject land, which prevented the purchaser from using the property for any purpose which would be in competition to the sale of gasoline or convenience store services. Questioned by the Chair about the terms of the sale, the Complainant indicated that it was a standard sale of gas station properties and was in no way out of line.

[29] The Respondent requested the Board to approve the recommended revised 2012 assessment at \$3,383,500.

Decision

[30] The subject property assessment is reduced to \$3,383,500.

Reasons for the Decision

[31] The Board places greater weight on the Respondent's land equity comparables, and vacant land sales, which are properties located in the immediate area of the subject and support the revised land assessment of the subject property.

[32] The Board agrees that the subject property is affected by access changes and agrees with the Respondent's recommended industrial adjustment of 20% to the assessment.

[33] The Board places less weight on the Complainant's sales comparables and noted that they are not similar to the subject in zoning, location or size.

[34] The Board acknowledges that the offer to purchase the subject property was accepted on May 1, 2012 at a higher value than the Complainant's requested assessment, but considered the conclusion of the transaction was much later than the valuation date of July 1, 2011 and that it was considered *post facto*.

[35] The Board finds the 20% industrial adjustment, recommended by the Respondent, to be fair and equitable and is in agreement with the recommendation to reduce the 2012 assessment to \$3,383,500.

Heard commencing November 15, 2012.

Dated this 3rd day of December, 2012, at the City of Edmonton, Alberta.

Dean Sanduga, Presiding Officer

Appearances:

Mark Cathro, Suncor Energy Inc.
for the Complainant

Keivan Navidikasmaei, Assessor
Tanya Smith, Legal Counsel
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.