

## **Edmonton Composite Assessment Review Board**

**Citation: Hardy Holdings Ltd. v The City of Edmonton, 2013 ECARB 00007**

**Assessment Roll Number:** 1098771

**Municipal Address:** 18021 105 Avenue NW

**Assessment Year:** 2013

**Assessment Type:** Annual New

Between:

**Hardy Holdings Ltd.**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Lynn Patrick, Presiding Officer**  
**Brian Hetherington, Board Member**  
**Lillian Lundgren, Board Member**

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### **Procedural Matters**

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

### **Preliminary Matters**

[2] A preliminary matter was raised by the Respondent respecting the Complainant's rebuttal evidence. The Respondent objected to the portions of the Complainant's rebuttal that are not in rebuttal to any of the evidence disclosed by the Respondent. The Respondent requested that page 3 and pages 9 to 22 be removed because they relate to comparable sales that were not disclosed by the Complainant in its initial disclosure. The Board finds that the Complainant failed to comply with the *Matters Relating To Assessment Complaints Regulation (MRAC)* section 8(2)(c) because the comparable sales referenced in these pages are new evidence. Accordingly, the pages were not taken into evidence by the Board.

### **Background**

[3] The subject property is a 7,500 square foot (sf) warehouse located at 18021 105 Avenue NW in the Morin Industrial neighborhood. The metal building was constructed in 1993 and is assessed in average condition. The lot size is 19,634sf and the site coverage is 38%. The assessed value is \$1,146,500.

## **Issue**

[4] Is the subject assessment correct?

- (a) What effect, if any, does the high voltage power line, switching device and transformer box have on the subject property?

## **Legislation**

[5] ***The Municipal Government Act, RSA 2000, c M-26, reads:***

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.

[6] ***The Matters Relating to Assessment Complaints Regulation, Alta Reg 310/2009 reads:***

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**

[7] The Complainant filed this complaint on the basis that the subject assessment of \$1,146,500 is incorrect.

[8] The Complainant argued that the actual income and expenses do not support the assessed value. In support of this argument, the Complainant presented a Pro Forma Income & Expense Statement that indicates a value of \$693,713 for the subject property (Exhibit C-1 page 3).

[9] The pro forma is based on the actual income of \$79,500 less the property taxes and insurance. Further deductions were made for vacancy and collection loss, management expense and structural repairs. These percentages were taken from an income and expense statement that the Respondent submitted to the Assessment Review Board in 2006.

[10] The Complainant relied on a 7.11% capitalization rate suggested by a real estate agent. The use of a 7.11% capitalization rate results in a total value of \$693,713.

[11] The Complainant also presented one comparable sale located at 21103 107 Avenue NW in the Winterburn Industrial area that sold in August 2008 for a time adjusted sale price of \$566,888 (C-1, p. 9). The Complainant argued that this property is a good comparable because it has a metal building with a ceiling height of 12 feet.

[12] The Complainant also noted the differences between the comparable sale at 21103 107 Avenue NW and the subject property. The comparable has an 8% site coverage compared to the subject 38% site coverage. The comparable was constructed in 1978 and the subject was constructed in 1993. The comparable has a water well and septic system and the subject has city services.

[13] The subject property has a Power Utility Right-of-Way that restricts the use of the front of the property adjacent to 105 Avenue. A high voltage power line runs along the right-of way. As well, a switching device and transformer box are situated in the northeast corner of the property.

[14] The Complainant argued that high voltage power lines are very dangerous, hazardous to health and could lead to the closing of a school near Sherwood Park. In support of this argument, the Complainant provided a copy of an article in the Fort Saskatchewan Record dated January, 2011 that stated "Opponents of the dual-circuit 500 kV Heartland Transmission Project contend that it could force Colchester Elementary School to close, as the power line could pass within 141 metres of the school."

[15] The Complainant stated that previously the city assessor's office allowed a 10% discount for the high voltage lines and switching device. The Complainant requested the Board to reinstate the 10% reduction.

[16] The Complainant stated that the Respondent's sale comparables are superior because the comparables have concrete buildings. Concrete buildings cost more to construct than metal buildings and would therefore be less comparable to the subject.

[17] In summary, the Complainant requested the Board to reduce the assessment to \$693,713.

### **Position of the Respondent**

[18] The Respondent submitted that the subject assessment of \$1,146,000 is correct and equitable.

[19] In support of this position, the Respondent presented four sale comparables that transferred between June 2008 and June 2012 (Exhibit R-1 page 48). The comparables are similar to the subject in building size and location. The comparables range in time adjusted sale price from \$144/sf to \$193/sf compared with the subject assessment of \$153/sf.

[20] The Respondent explained that the assessment department has analyzed sales of industrial properties for the characteristics that affect resale value, and metal buildings do not sell for less than concrete block buildings.

[21] Although equity is not an issue, the Respondent presented seven equity comparables that are similar to the subject in location, age, condition, building size and site coverage. The comparables have assessments that range from \$148/sf to \$183/sf (Exhibit R-1 page 54).

[22] In response to the Complainant's evidence, the Respondent offered these comments:

- The Complainant's Income Pro Forma
  - (a) The lease rate used is actual rent with no reference to typical market rent.
  - (b) The capitalization rate used by the Complainant was not derived using properties comparable to the subject as required by the appraisal institute.
  - (c) The International Association of Assessing Officers recognizes that while all three approaches to value are valid, "When sufficient sales are available, this (sales) approach tends to be the preferred valuation method".
- The Complainant's sale comparable
  - (a) A number of sales are required to show that a transaction is typical of the market. The CARB has previously found that one sale is not sufficient to determine market value.
  - (b) The sale provided is from a significantly inferior location as it is a parcel without city services.
  - (c) The comparable is similar to the subject in wall height and construction type but no evidence is presented to suggest that ceiling height or construction type significantly affect value. The City has performed statistical testing of more than 200 industrial sales in Edmonton. Construction type and wall height were found to be insignificant.
  - (d) The sale provided has 9% site coverage compared to the subject at 38%. This major difference is a significant obstacle for any meaningful comparison of the two properties.
  - (e) The subject has .45 acres of land while the comparable sale has 1.1 acres. To account for this difference, the excess land would have to be valued at market.
- The Complainant's Amended Right-Of-Way agreement
  - (a) Right-Of-Way agreements are very common and often have little, if any, effect on market value.
  - (b) The Complainant has not provided evidence to demonstrate any effect this right-of-way might have on market value.

[23] In summary, the Respondent requested the Board to confirm the assessment at \$1,146,500.

### **Decision**

[24] The property assessment is confirmed at \$1,146,500.

### **Reasons for the Decision**

[25] In determining whether the subject property assessment is correct, the Board reviewed the Complainant's evidence and finds as follows. The Board finds that the income approach used

by the Complainant does not result in a correct estimate of value for the subject property because it is based on the actual income and expenses rather than typical income and expenses. For assessment purposes, typical rental rates and expenses are to be used for this type of property.

[26] Further, there is no market evidence to support the use of a 7.11% capitalization rate.

[27] The Board finds that the Complainant's comparable sale located at 21103 107 Avenue NW is not a good indication of the market value of the subject property because of the significant differences in location, city services and site coverage.

[28] With respect to the Complainant's assertion that the high voltage power line and switching device have a negative effect the value of the subject property, no market evidence was presented in support of this position.

[29] The Board also reviewed the Respondent's sale comparables which support the assessment of \$153 per square foot. The comparables range in time adjusted sale price per square foot from \$144 to \$193.

[30] Accordingly, the assessment is confirmed.

Heard May 6, 2013.

Dated this 16<sup>th</sup> day of May, 2013, at the City of Edmonton, Alberta.

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Lynn Patrick, Presiding Officer

**Appearances:**

Neil Hardy, Hardy Holdings Ltd.  
for the Complainant

Joel Schmaus  
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.*