

Edmonton Composite Assessment Review Board

Citation: MAGDOLNA DEAK v The City of Edmonton, 2013 ECARB 00130

Assessment Roll Number: 4091005

Municipal Address: 9407 114 Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

MAGDOLNA DEAK

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

George Zaharia, Presiding Officer

Brian Frost, Board Member

Mary Sheldon, Board Member

Procedural Matters

[1] The parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

Preliminary Matters

[2] The Respondent raised the concern that the Complainant had not submitted any disclosure as mandated by the *Matters Relating to Assessment Complaints Regulation* (MRAC), s. 8(2). The only information that the Complainant had submitted was a statement outlining her concerns that had been attached to the Complaint Form. Upon questioning by the Board, the Respondent agreed to proceed with the merit hearing based upon the written concerns of the Complainant.

[3] The Complainant stated that a video had been prepared and that they were prepared to show it to the Board. Upon questioning by the Board, the Respondent advised that she had not seen this video. Given that MRAC is very clear regarding disclosure requirements, the Board ruled that the video was not admissible, and the hearing continued based upon the written concerns submitted by the Complainant.

Background

[4] The subject property is a 703.62 meter squared three-storey rooming house built in 1916 and sits on a lot 735.805 meters squared in size. It is located at 9407 - 114 Avenue in the Alberta Avenue neighborhood of north central Edmonton. It is rated in average condition for its age.

[5] The property was assessed on the cost approach resulting in a 2013 assessment of \$504,500.

Issue(s)

[6] Is the 2013 assessment of the subject property at \$504,500 fair and equitable compared to similar properties?

[7] Should the 2013 assessment be lowered due to social concerns in the area and alleged deficiencies in external city services?

Legislation

[8] **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.

[9] **The *Matters Relating to Assessment Complaints Regulation*, AR 310/2009:**

s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,
 - (i) 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 sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

Position of the Complainant

[10] The Complainant did not submit an evidentiary document at the hearing; however, the written concerns that had been submitted with the complaint form were used as the basis for the complaint.

[11] The Complainant stated that the property assessment had almost doubled over the previous year and deemed this to be extremely wrong.

[12] The Complainant raised concerns in two specific areas: 1) lack of sewer drains by the subject property resulting in flooding in the basement, along with broken curbs near the subject property, and 2) prostitution happening in the area with prostitutes standing or walking in front of the subject property.

[13] The Complainant advised that the police were contacted several times, but that they had indicated that there was not much that they could do.

[14] Based on the above-noted concerns, the Complainant requested that there should be relief in the assessed value of the subject property, requesting that the assessment should be reduced from the original 2013 assessment of \$504,500 to \$353,500.

Position of the Respondent

[15] The Respondent submitted a 55-page brief that included several photos of the subject, a detailed report of how the assessment was derived, four comparable land sales to support the land value attributed to the subject property, and Law and Legislation.

[16] The photos, taken in February 2013, were a mix of interior and exterior shots that showed the condition of the subject property as well as the city road in front of the property (Exhibit R-1, pages 4 – 11). The Respondent explained that with a building built in 1916, it is not unusual for there to be problems with the concrete basement. The Respondent also advised the Board that there were three sewer drains on opposite corners to the subject.

[17] The Respondent advised that the subject was valued using the cost approach. The value attributed to the improvement based on the Marshall and Swift manual was \$144,785, and the value attributed to the land was \$359,753 resulting in the total 2013 assessment of \$504,500 (Exhibit R-1, page 14).

[18] The Respondent provided a description of the cost approach as included in the Mass Appraisal section of the brief. Following is the description: *"The Cost Approach involves adding the depreciated replacement cost of improvements to the estimated value of the land (derived from sales)."* (Exhibit R-1, page 23)

[19] In support of the land value attributed to the subject, the Respondent provided four land sales from the Boyle Street and McCauley neighborhoods considered similar to the Alberta Avenue neighborhood where the subject is located. The time-adjusted sale prices of these comparables ranged from \$563 to \$798 per m², with the assessment of the subject's land value at \$489 per m² falling within this range (Exhibit R-1, page 17).

[20] Included in the Law and Legislation portion of the brief was a discussion of "burden of proof" or "onus". It is stated: *"The onus of proving the incorrectness of an assessment is on the*

individual alleging it. The onus rests with the Complainant to provide sufficiently convincing evidence on which a change to the assessment can be based. The Complainant's evidence needs to be sufficiently compelling to allow the Board to alter the assessment." (Exhibit R-1, page 48) It was the position of the Respondent that the Complainant had not met the burden of proof in that there was no market value evidence to justify a reduction in the assessment.

[21] It was the position of the Respondent that social issues cannot be the basis of a change in the assessment as requested by the Complainant.

[22] The Respondent requested the Board to confirm the 2013 assessment of the subject property at \$504,500.

Decision

[23] The decision of the Board is to confirm the 2013 assessment of the subject property at \$504,500.

Reasons for the Decision

[24] The Board considered the Complainant's arguments regarding the social issues and the "street conditions" near the subject property. Although the Board may have some empathy with the Complaint's concerns, no evidence was provided that would place a value on these concerns.

[25] The Board was not convinced that the water problems in the basement were solely as a result of alleged pooling of water on the street by the subject, or the lack of a storm sewer drain beside the subject. Rather the Board questioned whether there may be an issue with the basement walls of a 1916 structure. The Board noted that there were three storm sewer drains on the other side of the road near the subject, and that the elevation of the subject does not appear to be below the street level such that it would result in pooling of water or flooding.

[26] Other than an explanation of issues that were of concern to the Complainant, no market value evidence was presented by the Complainant to support the requested reduced assessment. The Board is guided by the definition of "market value" as defined in the Municipal Government Act at s. 1(n) that states: "*market value*" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if sold on the open market by a willing seller to a willing buyer".

[27] The Board placed greatest weight on the detailed assessed value of the subject, breaking the value into two components: 1) the value of the improvement using the Marshall and Swift manual, and 2) the value of the land using sales of land parcels in comparable neighborhoods. Although the Board noted that the subject's land size was more than two to three times larger than the comparables, raising the question of "economies of scale", there was no evidence that the land sales did not properly reflect the value of the subject's land.

[28] The Board concurs with the Respondent's position that the burden of proof rests with the Complainant to provide sufficiently compelling evidence that there is an error in the assessment. In this case, the Board was not provided any market value evidence that would justify a reduction in the assessment of the subject property as sought by the Complainant.

[29] The Board was persuaded that the 2013 assessment of the subject property at \$504,500 was fair and equitable.

Dissenting Opinion

[30] There was no dissenting opinion.

Heard on June 3, 2013.

Dated this 7th day of June 2013, at the City of Edmonton, Alberta.

A handwritten signature in black ink, appearing to read 'George Zaharia', written over a horizontal line.

George Zaharia, Presiding Officer

Appearances:

Magdolna Deak

Attila Deak

for the Complainant

Allison Cossey

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.