

Edmonton Composite Assessment Review Board

Citation: Liz McLeod, MNP LLP v The City of Edmonton, 2013 ECARB 00205

Assessment Roll Number: 4310462

Municipal Address: 17920 - 100 Avenue NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Liz McLeod, MNP LLP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Steven Kashuba, Presiding Officer

Brian Hetherington, Board Member

Dale Doan, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

Preliminary Matters

[2] At the outset of the merit hearing, the Respondent noted that the Complainant would be submitting a Rebuttal document which contained, in their view, new evidence not disclosed earlier.

[3] As a result, it was the request of the Respondent to disallow the presentation of the Complainant's Rebuttal document.

[4] In reviewing the nature of the Respondent's request, the Board concluded that the request by the Respondent was premature.

[5] Without first reviewing the content of the Complainant's Rebuttal document, the Board would not be able to rule on its admissibility.

[6] As a result, the Board ruled that the Complainant, at an appropriate stage in hearing the merits of the complaint, would be allowed to present the Rebuttal document.

[7] If during the presentation of the contents of the Rebuttal document the Respondent discerned that new evidence was being presented, an objection could be lodged at that point.

Background

[8] The subject property has a lot size of 99,187 square feet, is zoned as DC2 CHY, and is located in the Place La Rue Neighborhood. Situated between 100A Avenue to the north and 100 Avenue to the south, the subject is known as West Side Mitsubishi, an auto dealership. The total floor area of the improvement is 22,180 square feet, and the effective year of construction is 2003. The total 2013 assessment is \$4,402,500, consisting of the building assessment of \$2,609,389 and the land assessment of \$1,793,111.

Issue

[9] Is the subject property assessed fairly and correctly based upon sales comparables?

Legislation

[10] ***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.

Position of the Complainant

[11] In support of their request for a reduction in the 2013 assessment, the Complainant submitted Exhibit C-1 consisting of 61 pages.

[12] Based upon three sales comparables of similar properties (Exhibit C-1, page 11), the Complainant requested an assessment of \$4,183,000 (Exhibit C-1, page 17, \$2,596,290 for improvements and \$1,586,992 for land value).

[13] The Complainant’s three sales comparables (Exhibit C-1, page 11) occurred in the same quadrant of the City as the subject property.

[14] The subject property is located on a one-way arterial avenue. Two of the sales comparables are located on a two-way street, while the third sale comparable is located on a one-way street.

[15] The time-adjusted average of the sales comparables is \$18.26 per square foot and the median is \$17.98 per square foot. The subject property is assessed at \$18.08 per square foot.

[16] In response to a question from the Respondent, the Complainant submitted that an adjustment to the values per square foot attained for the two sales comparables located on a two-way street (Exhibit C-1, page 11, sales #1 and #3) was necessary because the subject was located on a one-way street. A downward adjustment would compensate for the reduced traffic.

[17] By adjusting these values downward (see #16, above), a figure of \$16 per square foot results in a request for a reduction in the assessment amount.

[18] In further support of their request for a reduction in the assessment amount, the Complainant presented two Alberta Court of Appeal decisions (Exhibit C-1, page 42), and three Albert Court of Queen's Bench decisions (Exhibit C-1, pages 43-50).

[19] To further support their request for a reduction in the assessment amount, the Complainant submitted a Rebuttal document (Exhibit C-2, 36 pages). The purpose of the Rebuttal document (which contained excerpts from the City of Edmonton's Zoning Bylaw 12800 Exhibit C-2, pages 2 – 33), was to point out that the Respondent's sales comparables did not exhibit characteristics similar to those of the subject property, which is zoned as DC2.

[20] At issue in the Complainant's Rebuttal document was the attempt by the Respondent to compare a sale of a property zoned as RMH (the Respondent's sales comparable #1, Exhibit R-1, page 27) to that of the subject property which was zoned as DC2.

[21] In particular, the Complainant made reference to clause #1, page 2 of Exhibit C-2 (Bylaw 13053 as amending Bylaw 12800), which states that the subject lands, "...which are shown on the sketch plan annexed hereto as Schedule "A", from (CHY) Highway Corridor Zone to (DC2) Site Specific Development Control."

[22] This specific designation of a DC2 zoning for the subject property made it difficult to compare its market value to that of any other property and brings into question the reliability of any sales comparables presented by the Respondent.

Position of the Respondent

[23] In support of the assessment, the Respondent submitted Exhibit R-1, 54 pages.

[24] The Respondent's four sales comparables (Exhibit R-1, page 27) reflect an average time-adjusted sales price of \$24.44 per square foot and a median of \$20.80 per square foot. These sales comparables fully support the assessment of \$18.08 per square foot.

[25] Not only did the Respondent's sales comparables support the assessment, but so do the Complainant's three sales comparables (Exhibit R-1, page 26). Both the average of \$18.26 per square foot and median of \$17.98 per square foot support the assessment.

[26] As for the question of zoning raised by the Complainant, the Respondent pointed out that two of the Complainant's three sales comparables are zoned as DC2 (Exhibit R-1, page 26), similar to that of the subject property. Therefore, there is no reason to characterize this sale or any other sale occurring in a DC2 zone as not exhibiting characteristics similar to that of the subject property which was also zoned as DC2.

[27] Further to this, the Respondent submitted that their sales comparables occurred in the same quadrant of the City and that three out of four were located on one-way streets, similar to the subject.

[28] The Respondent agreed with the Complainant that although their sales comparable #1 did carry a zoning of RMH, it was zoned as DC2, similar to the subject. As a result, the use as a Mobile Home Park zoned as RMH did not diminish its market value and made it comparable to the characteristics found in the subject property.

[29] The Respondent concluded their presentation by requesting the Board confirm the assessment of the subject property.

Decision

[30] It is the decision of the Board to confirm the assessment of the subject property for 2013 at \$4,402,500.

Reasons for the Decision

[31] First of all, in reference to the Preliminary Issue having to do with the Complainant's submission of Rebuttal document Exhibit C-2, the Board is satisfied that the document, other than the inclusion of sections of the City of Edmonton's Land Use Bylaw 12800, did not contain any information that could be construed as being new evidence.

[32] In reaching its decision about the merits of the complaint, the Board places considerable weight upon the Respondent's four sales comparables. As well, the Board places considerable weight upon the Complainant's three sales comparables.

[33] The Complainant's sales comparable reflect an average time-adjusted sales value of \$18.26 per square foot while the subject is assessed at \$18.08 per square foot. The Board concludes that these sales comparables fully support the assessment.

[34] The Respondent's sales comparables, on average, reflected a time-adjusted value of \$24.44 per square foot; a value that far exceeds the assessment value of \$18.08 per square foot.

[35] The argument advanced by the Complainant that lands zoned as DC2 and CHY cannot be relied upon as constituting valid sales comparables because of the range of commercial activity that can take place in each, is rejected by the Board.

[36] In the opinion of the Board, the sales comparables used by both parties (which occurred on properties zoned as DC2) are reliable comparables in that they do reflect similarities in size, location, use, and traffic flow to that of the subject property.


[37] Having regard for the foregoing reasons, the Board concludes that the assessment of the subject property is fair and just and should not be disturbed.

Dissenting Opinion

[38] There was no dissenting opinion.

Heard on July 4, 2013.

Dated this 26th day of July, 2013, at the City of Edmonton, Alberta.


Steven Kashuba, Presiding Officer

Appearances:

Walid Melhem
for the Complainant

Colin Hindman
Michael Johnson
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.